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BEING ACQUIRED

CHECKLIST: DUE DILIGENCE

So you have been approached by a potential acquirer of your business. Regardless of whether the deal is structured as an asset transaction, a stock transaction, or a merger, you can expect that the acquirer will want to conduct a detailed “due diligence investigation” of your company’s finances and operations. The following is a checklist of information and documents you can expect the acquirer will want to review.

A. *Organization and Good Standing.*

- ✓ The Company’s Articles of Incorporation, and all amendments
- ✓ The Company’s Bylaws, and all amendments
- ✓ The Company’s minute book, including all minutes and resolutions of shareholders and directors, executive committees, and other governing groups
- ✓ The Company’s organizational chart
- ✓ The Company’s list of shareholders and number of shares held by each
- ✓ Copies of agreements relating to options, voting trusts, warrants, puts, calls, subscriptions, and convertible securities
- ✓ A Certificate of Good Standing from the Secretary of State of the state where the Company is incorporated
- ✓ Copies of active status reports in the state of incorporation for the last three years
- ✓ A list of all states where the Company is authorized to do business and annual reports for the last three years
- ✓ A list of all states, provinces, or countries where the Company owns or leases property, maintains employees, or conducts business
- ✓ A list of all of the Company’s assumed names and copies of registrations

B. *Financial Information.*

- ✓ Audited financial statements for three years, together with Auditor’s Reports
- ✓ The most recent unaudited statements, with comparable statements to the prior year
- ✓ Auditor’s letters and replies for the past five years
- ✓ The Company’s credit report, if available
- ✓ Any projections, capital budgets, and strategic plans

- ✓ Analyst reports, if available
- ✓ A schedule of all indebtedness and contingent liabilities
- ✓ A schedule of inventory
- ✓ A schedule of accounts receivable
- ✓ A schedule of accounts payable
- ✓ A description of depreciation and amortization methods and changes in accounting methods over the past five years
- ✓ Any analysis of fixed and variable expenses
- ✓ Any analysis of gross margins
- ✓ The Company's general ledger
- ✓ A description of the Company's internal control procedures

D. *Physical Assets.*

- ✓ A schedule of fixed assets and their locations
- ✓ All U.C.C. filings
- ✓ All leases of equipment
- ✓ A schedule of sales and purchases of major capital equipment during the last three years

E. *Real Estate.*

- ✓ A schedule of the Company's business locations
- ✓ Copies of all real estate leases, deeds, mortgages, title policies, surveys, zoning approvals, variances, or use permits

F. *Intellectual Property.*

- ✓ A schedule of domestic and foreign patents and patent applications
- ✓ A schedule of trademark and trade names
- ✓ A schedule of copyrights
- ✓ A description of important technical know-how
- ✓ A description of methods used to protect trade secrets and know-how
- ✓ Any "work for hire" agreements
- ✓ A schedule and copies of all consulting agreements, agreements regarding inventions, licenses, or assignments of intellectual property to or from the Company
- ✓ Any patent clearance documents
- ✓ A schedule and summary of any claims or threatened claims by or against the Company regarding intellectual property

G. *Employees and Employee Benefits.*

- ✓ A list of employees including positions, current salaries, salaries, and bonuses paid during last three years, and years of service
- ✓ All employment, consulting, nondisclosure, nonsolicitation, or noncompetition agreements between the Company and any of its employees
- ✓ Resumes of key employees
- ✓ The Company's personnel handbook and a schedule of all employee benefits and holiday, vacation, and sick leave policies
- ✓ Summary plan descriptions of qualified and nonqualified retirement plans
- ✓ Copies of collective bargaining agreements, if any
- ✓ A description of all employee problems within the last three years, including alleged wrongful termination, harassment, and discrimination
- ✓ A description of any labor disputes, requests for arbitration, or grievance procedures currently pending or settled within the last three years
- ✓ A list and description of benefits of all employee health and welfare insurance policies or self-funded arrangements
- ✓ A description of worker's compensation claim history
- ✓ A description of unemployment insurance claims history
- ✓ Copies of all stock option and stock purchase plans and a schedule of grants

H. *Licenses and Permits.*

- ✓ Copies of any governmental licenses, permits, or consents
- ✓ Any correspondence or documents relating to any proceedings of any regulatory agency

I. *Environmental Issues.*

- ✓ Environmental audits, if any, for each property leased by the Company
- ✓ A listing of hazardous substances used in the Company's operations
- ✓ A description of the Company's disposal methods
- ✓ A list of environmental permits and licenses
- ✓ Copies of all correspondence, notices, and files related to EPA, state, or local regulatory agencies
- ✓ A list identifying and describing any environmental litigation or investigations
- ✓ A list identifying and describing any known Superfund exposure
- ✓ A list identifying and describing any contingent environmental liabilities or continuing indemnification obligations

J. Taxes.

- ✓ Federal, state, local, and foreign income tax returns for the last three years
- ✓ States sales tax returns for the last three years
- ✓ Any audit and revenue agency reports
- ✓ Any tax settlement documents for the last three years
- ✓ Employment tax filings for three years
- ✓ Excise tax filings for three years
- ✓ Any tax liens

K. Material Contracts.

- ✓ A schedule of all subsidiary, partnership, or joint venture relationships and obligations, with copies of all related agreements
- ✓ Copies of all contracts between the Company and any officers, directors, five-percent shareholders, or affiliates
- ✓ All loan agreements, bank financing arrangements, line of credit, or promissory notes to which the Company is a party
- ✓ All security agreements, mortgages, indentures, collateral pledges, and similar agreements, including guaranties to which the Company is a party, and any installment sale agreements
- ✓ Any distribution agreements, sales representative agreements, marketing agreements, and supply agreements
- ✓ Any letters of intent, contracts, and closing transcripts from any mergers, acquisitions, or divestitures within last five years
- ✓ Any options and stock purchase agreements involving interests in other companies
- ✓ The Company's standard quote, purchase order, invoice, and warranty forms
- ✓ All nondisclosure or noncompetition agreements to which the Company is a party
- ✓ All other material contracts

L. Product or Service Lines.

- ✓ A list of all existing products or services and products or services under development
- ✓ Copies of all correspondence and reports related to any regulatory approvals or disapprovals of any Company's products or services
- ✓ A summary of all complaints or warranty claims
- ✓ A summary of results of all tests, evaluations, studies, surveys, and other data regarding existing products or services and products or services under development

M. *Customer Information.*

- ✓ A schedule of the Company's twelve largest customers in terms of sales thereto and a description of sales thereto over a period of two years
- ✓ Any supply or service agreements
- ✓ A description or copy of the Company's purchasing policies
- ✓ A description or copy of the Company's credit policy
- ✓ A schedule of unfilled orders
- ✓ A list and explanation for any major customers lost over the last two years
- ✓ All surveys and market research reports relevant to the Company or its products or services
- ✓ The Company's current advertising programs, marketing plans, and budgets, and printed marketing materials
- ✓ A description of the Company's major competitors

N. *Litigation.*

- ✓ A schedule of all pending litigation
- ✓ A description of any threatened litigation
- ✓ Copies of insurance policies possibly providing coverage as to pending or threatened litigation
- ✓ Documents relating to any injunctions, consent decrees, or settlements to which the Company is a party
- ✓ A list of unsatisfied judgments

O. *Insurance Coverage.*

- ✓ A schedule and copies of the Company's general liability, personal and real property, product liability, errors and omissions, key-man, directors and officers, worker's compensation, and other insurance
- ✓ A schedule of the Company's insurance claims history for past three years

P. *Professionals.*

- ✓ A schedule of all law firms, accounting firms, consulting firms, and similar professionals engaged by the Company during past five years

Q. *Articles and Publicity.*

- ✓ Copies of all articles and press releases relating to the Company within the past three years