

The Entrepreneur's Lab Video

Series: Definitive Sales Agreement

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Definitive sales agreement – the sales agreement is the key document for the seller in a transaction. It encompasses the hard work of the parties from LOI through diligence. Definitive agreements typically are drafted by the buyer's counsel and will be a large document with many moving parts. A few of the key parts are as follows:

1. **The business terms:** A seller needs to make certain the key terms in the LOI are accurately and fully reflected in the agreement. Typically, the first portion of a definitive agreement speaks to the price, the payment terms, and the related items.
2. **Representations, warranties and covenants:** The largest part of the agreement will be the various reps and warranties required of the seller. These reps are statements of truth about the business and will need to be carefully reviewed with legal counsel to make certain no modifications are necessary.
3. **Conditions to closing:** A seller needs to be keen on any conditions in the agreement that need to be satisfied prior to closing. Such conditions could include buyer's financing or the obtainment of certain customer consents.
4. **Indemnifications:** Remember the buyer will want to pass the risk of any issues arising prior to closing back to the seller. A seller needs to fully understand the risk of indemnification and make efforts to cap and/or limit future exposure.
5. **Disclosure schedules:** These schedules supplement the agreement, especially the reps and warranties. In many respects, disclosure schedules culminate and complement the diligence process. As a seller, disclosure and completeness is your friend. Make certain that your sell-side schedules are accurate.

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