

Sample of a Pre-Closing Comprehensive Due Diligence Request List

GENERAL INFORMATION

- Provide Organization Chart and other information regarding structure of the Company, including subsidiaries and other affiliates, % ownership and jurisdiction of each organization.
- Provide listing of officers, directors and key management/supervisory personnel with appropriate background information regarding credentials.
- Provide summary of number of employees with relevant information, by functional group (Sales, Marketing, R&D, G&A, etc.) with approximate total wage/salary cost of each category.

ORGANIZATIONAL MATTERS

- Provide all corporate charter documents and by-laws (including all amendments to date), if applicable, of the Company and any other corporation, partnership or other entity in which the Company has an equity interest, which relates to any business of the Company (an "affiliate").
- Comment on any unusual clauses, preemptive rights, cumulative voting, special majority and quorum requirements.
- Provide any authorization necessary to transact business in foreign jurisdictions (if applicable).
- Provide all minutes of meetings of boards of directors, committees (including executive and finance), and shareholders for the past five years.
- Provide all stock transfer and certificate books, ledgers and records of the Company.
- For each class of stock, provide listing of current shareholders indicating name, number of share owned and special restrictions (if any).
- For each class of stock provide listing of holders of options, warrants, rights, etc. indicating related terms (issue date, exercise date and price, vesting, etc.). Also provide copies of form of warrant, option, right agreement, etc.
- Provide agreements relating to the purchase, sale or issuance of securities, including any warrants or options.
- All agreements under which any person has registration rights for any securities of or preemptive rights for shares of capital stock of the Company.
- Provide information on any treasury stock acquisition or any obligation to issue or repurchase shares.
- For each class of debt, provide listing of debt holders.

- Provide details regarding all voting agreements, voting trusts, proxies relating to capital stock of the Company.
- Provide listing and appropriate details regarding investments in other corporations or entities.
- Provide information regarding all corporate and fictitious names used by the Company and any predecessors in the past five years.
- Provide names, addresses, and contacts of Company's professional advisors, including attorneys, auditors, lenders and investment bankers.
- Detail the locations of Company's financial and legal records.

LITIGATION

- Provide copies of the legal representation letters sent to the Company's auditors with Company responses, for the past five years.
- Provide a summary of all litigation or arbitration, claims and proceedings (whether pending or threatened), to include worker's compensation actions, in which the Company or any affiliate or any officer or director of the Company is a party. Include a brief description of the following:
 - Parties
 - Nature of proceeding
 - Date commenced
 - Amount of damages and/or other relief sought
 - Name of firm and attorneys representing Company or affiliate
 - Assessment of likely outcome
- Provide all litigation files relating to any pending or threatened legal proceedings in which the company, affiliate, officer or director is a party.
- Provide all consent decrees, injunctions, judgments, other decrees or orders, settlement agreements, and other agreements to which the Company is bound, that requires the payment of money by the Company or prohibits any activity by the Company.
- Provide reports, files, significant correspondence and documentation relating to any investigation or proceedings by any federal, state or other governmental regulatory agency in respect to the Company.
- Provide a summary of any ongoing tax disputes between the Company and the federal government, the IRS, any state or local government or taxing authority, and any foreign jurisdiction or foreign taxing authority.
- Provide information regarding in-house counsel to the Company, including legal representation, coordination with outside counsel, etc. Provide addresses and contacts at all outside law firms.

- Detail any charges that may be pending against the Company by any federal or state agency regulatory body or agency.
- Provide relevant information in the event that the Company's officers, directors or employees been involved in criminal proceedings regulatory commission violations or significant civil court litigation.
- Describe, if any, legal problems that competitors have experienced, and if such problems will eventually confront the Company.
- Discuss any international legal issues.

REGULATION AND PERMITS

- Discuss whether the Company is in compliance with environmental, equal opportunity employment, OSHA requirements or other regulations or requirements peculiar to the industry. If not, discuss what compliance will cost.
- Discuss whether there are products that need governmental review and approval. If so, discuss the current stage of the approval process.
- List and describe and provide copies of all governmental licenses and permits required for the Company's business as currently conducted or planned (except environmental permits as covered above).
- Comment upon any governmental regulations which might impact the Company's business either domestically or in foreign countries.
- Provide information pertaining to any and all regulatory actions (state, local, and federal) that may impact the Company's operations, products, or securities.

INTELLECTUAL PROPERTY

- List and copies of patents held and applications made by the Company and all related material correspondence and documentation (including file wrapper).
- List trademarks held and applications made by the Company and all related material correspondence and documentation.
- List copyrights held and applications made by the Company and all related material correspondence and documentation.
- List and copies of design and model rights held and applications made by the Company.
- Trade names used by the Company.

- Identify all persons who created or participated in the creation of the Company's intellectual property.
- List and copy of licenses for any form of intellectual property held by or granted by the Company.
- Description of any pending or threatened infringement claims by or against the Company, and copies of any such claims for the last five years.
- Description of any important know-how at the Company's disposal.

FINANCIAL AND ACCOUNTING MATTERS

General

- Provide audited financial statements and other financial documents of the Company and any affiliates for the past three fiscal years. Including (where applicable):
 - i. Comparative financial results by major divisions
 - ii. Detailed breakdown of sales and costs
 - iii. Detailed breakdown of general and administrative expenses
 - iv. Detailed breakdown of selling and marketing expenses
 - v. Detailed breakdown of working capital accounts
 - vi. Detailed breakdown of fixed assets
 - vii. Depreciation and capital expenditures (with particular emphasis on capitalized software development expenses, if applicable)
 - viii. Tax returns, IRS reports or correspondence
- Provide the following, if applicable:
 - i. Chart of accounts and a description of accounting practices.
 - ii. Accounting procedure manuals and location and nature of accounting records.
 - iii. Accounting procedure manuals and location and nature of accounting records
- Outline any seasonal bank borrowings required.
- Outline any foreign exchange requirements, procedures for hedging and value of transactions done in foreign currency.
- Name and address of auditors of Company and any prior auditors (date of appointment, duration, remuneration).
- Accountants' management control letters concerning the Company and any responses by the Company for the past five years.
- All audit documentation, papers and communications between the Company and its auditors, other consultants or the IRS and any internal audit reports.

- All documentation relating to material write-downs or write-offs by the Company of notes or accounts receivable or inventories, other than in the ordinary course of business.

Receivables

- For accounts receivable, provide:
 - i. Analysis of total receivables due from customers, officers, employees and others
 - ii. Aged trial balance of receivable accounts above; compare them to aging percentages for previous years and comment on any trends, seasonally, etc.
- For customer receivables, provide:
 - i. Terms of sale
 - ii. Number of customers
 - iii. Names of large customers and amount of annual sales to each by product line; comment on any special arrangements with any of these customers
 - iv. Credit policies and comment on the effectiveness of credit department and significance of credit limits
 - v. Turnover data
- Discuss collectibility of receivables and adequacy of loss reserves.
- Discuss if receivables are discounted or pledged as collateral for borrowings.

Liabilities

- Provide detail of any assets pledged as collateral.
- Provide detail of the Company's compliance with loan covenants.
- Provide details about all financial liabilities, recorded or contingent, including the general terms of all notes, bonds and mortgages with particular reference to personal guarantees and accelerated maturity upon change of control.
- Specifically address contingent liabilities such as:
 - i. Contracts and agreements
 - ii. Price re-determination or renegotiations
 - iii. Sales subject to service and warranty guarantees
 - iv. Product liability
 - v. Unfunded past service costs of pension plans or unfunded retirement benefits.
- With respect to accounts payable, provide an analysis of payables by type (vendor, taxes, payroll, etc.) and describe payment practices for each.

Budgets and Forecasts

- Describe the budgeting process, including capital budgeting, if applicable.
- For each of the next three years (calendar or fiscal years ended), provide consolidated projections and separate business unit projections, on a quarterly basis, including:
 - i. Income statements, balance sheets and cash flow statements
 - ii. Underlying assumptions including product/service introductions, market size, market share, pricing, volumes, discounts, ramp-up costs, etc.
 - iii. Underlying assumptions for all major expense and capital expenditures, particularly R&D software development
- Discuss the amortization policy for any prepaid expenses or deferred charges.
- Discuss how goodwill or other intangibles arose and how they are being amortized. Address any issues regarding the "going concern value".
- Provide details regarding the important metrics which management uses to run the Company (capacity utilization, sales per person, bench time, etc.). Provide comparisons of these metrics for the past three years.
- Discuss how the Company's metrics compare with the industry in general, and with peers/competitors.

TAXES

- All tax returns or copies of extensions of time within which to file such reports filed by the Company with the Federal government, the Internal Revenue Service, any state or local government or taxing authority, and any foreign jurisdiction or taxing authority, for at least the past three fiscal years, and any years prior there to that remain open and subject to review by the IRS or any other taxing authority. Provide copies of all audit, determination and other correspondence pertaining thereto.
- Copies of all tax-sharing and other tax-related agreements.
- All information related to any audit of any return or report filed by or on behalf of the Company for the last three fiscal years, and any pending audits for any prior periods that could affect the tax liability, credits or other tax attributes of the Company.
- For state franchise or similar tax liabilities of the Company, a schedule setting forth, for each state in which such payments were made, the most recent period for which a franchise tax or similar tax payment was made, and the date on which each payment is due and payable each year.
- For each applicable state, discuss:

- i. If there have been any state tax audits
 - ii. If any adjustments made by federal revenue agents have been reported to the states affected
 - iii. If the state tax returns have been amended to reflect IRS adjustments
- Prepare a schedule showing the percentage of Federal Taxable Income being reported to the states in which the Company files returns (the sum of all state apportionment factors).
 - For personal and real property taxes, provide a schedule setting forth, for each location in which such payments were made, the most recent period for which such tax payment was made, and the date on which such payment is due and payable each year.
 - Provide a scheduling describing any ongoing tax disputes, together with copies of revenue agents' reports, correspondence, etc., with respect to any pending federal, state, provincial or similar tax proceedings, with regard to open years or items relating to the Company.
 - Provide detailed reconciliations of the Company's effective tax rate for the past three years.
 - Provide an analysis of any deferred taxes.
 - Provide schedules reconciling book income to taxable income for the last three years.
 - Provide detail of the amounts and expirations of any carryovers of net operating or capital losses,
 - investment tax credits, foreign tax credits and other tax credit carryovers.
 - Discuss the tax basis for the Company's assets.

MATERIAL AGREEMENTS AND DOCUMENTATION

- Provide all documentation relating to real property owned or leased by the Company (including, without limitation thereto, purchase agreements, leases, title policies, title reports, surveys, easements, rights of way, licenses and deeds). Note: for real property, title reports and surveys are especially important.
- Provide information regarding all mortgages and other security documents relating to any of the properties or assets (real or personal) of the Company.
- If not previously provided, Material Agreements/Documents, list and copy of all contracts with dealers, distributors, agents and others.
- Copy of general sales conditions of the Company; model contracts, orders and invoices.
- Provide the form of product warranties of the Company.

- Give a general description of warranty claims during the last three years, and discuss significant or unusual claims.
- Provide all contracts and agreements relating to the Company to which any officer, director, employee or stockholder of the Company is a party or in which any officer, director, employee or stockholder of the Company has an interest including secrecy, confidentiality, nondisclosure, assignment of inventions and non-compete agreements.
- All equipment leases (operating or capitalized) to which the Company is a party or is bound or in which the Company has an interest.
- All agreements and contracts concerning any acquisition or disposition in the past five years by the Company of any substantial properties or assets, whether real or personal, outside the ordinary course of business.
- All documents and agreements relating to any merger, consolidation or corporate division in the past five years in which the Company was a party or the surviving corporation.
- All loan agreements, guarantees, indentures, promissory notes, debentures, line of credit and related documentation in connection with any loan or other indebtedness of the Company.
- All loan agreements, guarantees, indentures, promissory notes, debentures, line of credit and related documentation in connection with any advances or loans made by the Company to an officer, director, employee or shareholder of the Company.
- All license and royalty agreements to which the Company is a party or in which the Company has an interest.
- All agreements and contracts between the Company and any affiliate including, without limitation thereto, any royalty and license agreements.
- All sales, marketing and distribution agreements to which the Company is a party or by which it is bound (including documentation with any brokers and other independent sales persons or entities).
- All contracts and agreements with suppliers of services, raw materials, finished or semi-finished materials, or products of the Company.
- All standard forms of purchase orders, sales orders, supply contract, service contracts and sales contracts used by the Company.
- All agreements to which the Company is a party or by which it is bound, for the delivery, manufacture or supply of goods or services.
- Any other particular agreements based on Company business.
- Government contracts and subcontracts, if any.
- All evidences of inter-company debt.

- All insurance policies, and a claims history and any correspondence between the Company and the insurer.
- Certificate of insurance (casualty, property, liability, errors and omissions, officer and director, etc.). To the extent coverage has changed during the past three years, please indicate.
- Any other contracts, agreements or documents material to the business of the Company or any affiliate including management service and tax sharing agreements, performance guarantees, bonds and indemnification agreements, non-compete and confidentiality agreements.
- List and copy of any contracts with independent or self-employed consultants.

SALES AND MARKETING

- Discuss how potential customers are identified.
- Discuss and provide detail regarding the average dollar sale and time requirements to close a sale.
- Provide a list of 10 customer references with contact names and telephone numbers.
- Provide a list of the top 10 customers for each major business segments with total sales for the past three fiscal years.
- Provide a list of the top 10 suppliers.
- Provide samples/copies of all product brochures, marketing materials, promotions and advertisements.
- Discuss in detail the sales pipeline process and detail the current sales backlog.
- Describe the Company's major type of customer for each major segment. Respond by type of business, domestic vs. foreign or other classification you deem relevant. Discuss if the profile of future customers will change.
- Discuss the tenure of the average customer, including whether there are continuing contracts with customers. Discuss whether special terms are offered to significant customers.
- With particular emphasis on new products/services, discuss future product/service trends addressing projected marketplace, features, cost, technical aspects and competition.
- For each major business segment, provide market share information and trends.
- Describe the sales and distribution strategy for domestic sales and for foreign sales (if applicable) by market segment and product line.

- Provide a detailed listing of distribution channels/resources (personnel, OEM's, distributors, VAR's, systems integrators, etc.). Include name, address, dollar sales, and percentage of total sales, commission percentage.
- For each major business segment, provide a sales breakdown (dollars and percent) by distribution channel.
- Provide detailed information with respect to service and support.
- Discuss whether future changes in sales or distribution strategies are contemplated.
- Discuss any cyclical factors or seasonal factors with respect to the sale of the Company's products and services.
- Describe the Customer Support and Service organization, including:
 - i. Functions
 - ii. Personnel
 - iii. Pre-sales and technical support
 - iv. Post-sales assistance
 - v. Compliance resolutions
- Provide information on complaints, efficiency and effectiveness of Service/Support function.
- Discuss whether any support activities are billed to customers, on what basis, and if this is treated as cost recovery or a profit center.
- Discuss any significant quality problems within the past 36 months and describe problems or returns by product line.
- With respect to competition, for each major business segment provide the following information:
 - i. Describe each major competitor (size, products, profitability, financial strength, organization, etc.). Evaluate each of the competitor's strengths and weaknesses in each product line.
 - ii. Relate any significant price or cost effectiveness or the technical differentials among competing products to present an anticipated competitive market share.
 - iii. Relate the most frequent basis of competition (price, quality, features, etc.) to other factors such as number of suppliers, methods of distribution, etc. that shed light on the nature and strength of competition.

INSURANCE

- Provide information with respect to self-insurance, if any.
- Provide information with respect to past loss and claims experience.

- Provide information concerning whether a change in control will cause additional cost for Workers
- Compensation Insurance, Unemployment Insurance or other insurance.
- Discuss if there are any unusual risks, products or events that the Company has been unable to insure.
- Discuss what insurance is written on a "claims made" basis.
- Provide information concerning the Company's reporting and reserving practices.
- Discuss whether any insurance policy aggregates been penetrated or exhausted.
- Define who in the Company provides internal risk management and insurance management.

EMPLOYEE DEFERRED COMPENSATION AND BENEFITS MATTERS

- All collective bargaining and labor agreements to which the Company is a party or is bound.
- A list of all officers and key employees of the Company, together with the following information on, each officer or employee: (a) salary; (b) previous five years of employment history; and (c) description of present duties and responsibilities.
- Description of management perquisites or other arrangements, other than those listed in items below, to include, without limitation thereto, any bonus plans or other incentive compensation arrangements maintained by the Company.
- Description of any stock option or other stock appreciation, phantom stock and other similar plan maintained by the Company.
- All employee benefit plans, trusts, determination letters, IRS filings (including tax returns), filings and actuarial reports relating to any deferred compensation arrangement to which the Company is a party or by which the Company is bound.
- All documentation relating to any severance arrangement between the Company and any employee, officer, director or consultant of the Company.
- All documentation relating to any welfare benefit plan, health insurance, disability insurance, life insurance or other benefits provided to employees, officers, directors or consultants of the Company.
- Copy of standard employment contract of the Company, for each category of employees, and indication of any difference for individual employees; and a list and copy of all individual employment contracts.

- Sample copies of any standard agreements of the Company which employees are required to sign, including:
 - i. Confidentiality agreements
 - ii. Invention assignment agreements
 - iii. Conflict of interest declarations
 - iv. Non competition agreements
- Description of significant correspondence with labor and social security authorities for last three years.
- If not already provided in "Material Agreements/Documents", list and copy of any contracts with independent, or self-employed consultants.
- If not already provided under "Material Agreements/Documents," list and copy of any agreements currently in effect between the Company and any former officer, director or employee.
- Summary of liability for termination payments to employees.
- Brochures, information, booklets, policies and procedures manuals, internal regulations, or other written material given to employees or potential employees of the Company to acquaint them with the Company's business and with services, compensation and benefits offered to employees.
- Summary of labor concerns, including whether any strikes are threatened or pending, all current disputes and negotiations, and all Occupational Safety and Health Administration (OSHA) issues and complaints.
- All correspondence with labor unions and all memoranda regarding communication with such labor unions or union employees.
- Summary of the history for the last three years of any union negotiations, number of employees, turnover, absentee rates, and distribution.
- Provide a summary of current compensation plans, including incentives and deferred compensation plans, with particular attention to the ten highest compensated employees.
- Provide a summary with respect to all employment noncompete and other agreements or contracts with any employee.
- Describe any current proceedings before any State or Federal labor agency.
- Provide the Company's Code of Conduct Manual or other personnel manual and discuss procedures that exist to monitor compliance with these policies.
- List any key management position that is currently vacant.
- Provide information with respect to the Company's compliance with the Foreign Corrupt Practices Act.
- Comment on general working conditions, employee morale, and turnover.
- Summarize the Company's policies for severance, vacations, holidays, leaves of absence, sick days, personal days, and other similar programs.

- Discuss the extent to which the Company provides post-retirement medical or other benefits, including the current liability with respect to such benefits and what it is projected to be in the future.
- Discuss whether any officers or directors been involved in criminal proceedings, regulatory commission violations, or major civil litigation.
- Provide information with respect to any recent key personnel losses to competitors.
- Discuss the Company's process for recruiting new employees.
- Discuss any past or contemplated closings/layoffs and associated costs.

ENVIRONMENTAL MATTERS

General

- List and description of all environmental litigation or proceedings currently involving the Company,
- including claims, amounts, names of counsel and assessment of likely outcomes.
- Provide a general overview of environmental legislation and requirements in the Company's jurisdiction relating to the Company's activities including discussion of potential risk areas and liabilities; application of such rules in practice, political climate and experience with respect to damage claims, etc., proposed or likely future legislation.
- Organization chart indicating the persons in the Company responsible for permits, contracts with the environmental authorities, reports to the management, follow up of applicable legislation, etc.
- Copies of policy memoranda, programs, procedures, training courses, emergency plans etc. relating to the environment.

Permits and Licenses

- List of all environmental permits and licenses required for the Company's activities including licenses with respect to manufacture, labeling and sale of products.
- History and current status of permits Company's compliance with and licenses.
- Description of procedure for transfer of licenses or permits in event of a stock sale/asset sale.

History Ownership and Use

- Description of ownership and use history of each parcel of real property and leased property used by the Company in the last ten years.

Discharges

- Description of the production and storage and related environmental risks.
- Description of any emissions into air or water; wastewater and other discharges; noise pollution; waste produced.
- List and copy of any studies, analyses, examinations of discharges and emissions, whether produced internally or by external consultants; description of material problems or risks.
- Description of removal methods of waste; cleaning methods for discharges/emissions; state of compliance with law.
- List and copies of waste removal contracts and any agreements relating to environmental matters (pollution clean up, etc.)
- History of any accidental discharges and results and measures taken to clean up and prevent future occurrences.

Relations with Authorities

- Description of Company's relationship with environmental authorities.
- Description of obligations of Company to file reports or studies with authorities with copies of reports.
- Description of any inquiries, inspections, examinations, investigations, etc., by environmental authorities and results; copies of documentation/correspondence; description of suspensions or withdrawals of any permits or licenses; significant correspondence for the last five years.
- Description of any surrounding/adjacent conditions which could give rise to liability for the Company.
- Description of insurance arrangements and environmental claims history.
- Description of any injuries or illnesses of personnel, accidents, during the last five years, with effect upon environmental matters.
- Description of any other relevant matters with respect to the environment.

REAL ESTATE AND EQUIPMENT

- List and description of all real property owned by the Company (and appraisals, if available); nature of the title held, and any mortgages, liens or encumbrances on the property; title documents confirming ownership; report by person authorized to conduct title searches.
- List of any property rented or leased by the Company; nature of leasehold interest; copy of the leases; description of significant or unusual clauses.
- Description of compliance with land use planning and zoning laws and any other laws affecting real estate.

- Limitation, if any on the Company's real estate or business as a result of historic preservation or similar laws or regulations.
- Copies of any title insurance or title searches.
- List and copy of renting/leasing agreements with respect to machinery, equipment, automobiles not owned by the Company.
- Description of compliance of use of machinery and equipment with applicable laws and regulations, and in particular, safety and environmental regulations.
- List and documents evidencing liens and security interests granted on machinery and equipment.
- Describe the Company's depreciation policy.
- Provide a list of surplus or idle equipment. Summarize annual maintenance expenditures.
- Discuss any related party transactions in connections with plant or facilities.

MISCELLANEOUS

- Copies of speeches delivered by any officer or director of the Company to trade associations, etc.
- Copies of all significant articles from financial or other publications including market research, consulting reports, industry newsletters, competitive analyses, concerning the Company or its competition.
- Copies of internal or external analysis/research regarding competitive products/technologies.
- All customer and independent contractor complaints or demands received within the last twelve months with respect to the Company or the services thereof.
- All complaints of residents and business establishments near any of the facilities involved in the business of the Company received within the last twelve months.
- All complaints to the Company received within the last twelve months regarding any employee or agent associated with the Company.