



SUNBELT
BUSINESS SALES & ACQUISITIONS



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Buy a Business Sample Due Diligence List

This sample due diligence list **IS NOT TO BE USED AS AN ACTUAL DUE DILIGENCE LIST**, its purpose is to act as a guide in creating a due diligence list for acquisition of a particular business.

A. GENERAL INFORMATION

Review organization Chart and other information regarding structure of the Company, including subsidiaries and other affiliates, % ownership and jurisdiction of each organization.

Review list of officers, directors and key management/supervisory personnel with appropriate background information regarding credentials.

Review 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.

B. ORGANIZATIONAL MATTERS

Review 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"). Check for any unusual clauses, pre-emptive rights, cumulative voting, special majority and quorum requirements.

Review any authorization necessary to transact business in foreign jurisdictions (if applicable).

Review all minutes of meetings of boards of directors, committees (including executive and finance), and shareholders for the past five years.

Review all stock transfer and certificate books, ledgers and records of the Company. For each class of stock, review listing of current shareholders indicating name, number of share owned and special restrictions (if any).

For each class of stock Review listing of holders of options, warrants, rights, etc. indicating related terms (issue date, exercise date and price, vesting, etc.). Also Review copies of form of warrant, option, right agreement, etc.

Review agreements relating to the purchase, sale or issuance of securities, including any warrants or options.

Review all agreements under which any person has registration rights for any securities of or preemptive rights for shares of capital stock of the Company.

Review information on any treasury stock acquisition or any obligation to issue or repurchase shares.

For each class of debt, review listing of debt holders.

Review details regarding all voting agreements, voting trusts, proxies relating to capital stock of the Company.

Review listing and appropriate details regarding investments in other corporations or entities.

Review information regarding all corporate and fictitious names used by the Company and any predecessors in the past five years.

Review names, addresses, and contacts of Company's professional advisors, including attorneys, auditors, lenders and investment bankers.

C. LITIGATION

Review copies of the legal representation letters sent to the Company's auditors with Company responses, for the past five years. Review 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:

1. Parties
2. Nature of proceeding
3. Date commenced
4. Amount of damages and/or other relief sought
5. Name of firm and attorneys representing Company or affiliate
6. Get a Legal opinion on the assessment of likely outcome

Review all litigation files relating to any pending or threatened legal proceedings in which the company, affiliate, officer or director is a party.

Review 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.

Review 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.

Review 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.

Review information regarding in-house counsel to the Company, including legal representation, coordination with outside counsel, etc. Review addresses and contacts of all outside law firms.

Review any charges that may be pending against the Company by any federal or state agency regulatory body or agency.

Review relevant information in the event that the Company's officers, directors or employees that have been involved in criminal proceedings regulatory commission violations or significant civil court litigation.

Review, if any, legal problems that competitors have experienced, and if such problems will eventually confront the Company.

Review any international legal issues.

D. REGULATION AND PERMITS

Review whether the Company is in compliance with environmental, equal opportunity employment, OSHA requirements or other regulations or requirements peculiar to the industry. If not, determine what compliance will cost.

Review whether there are products that need governmental review and approval. If so, determine the current stage of the approval process.

Review copies of all governmental licenses and permits required for the Company's business as currently conducted or planned (except environmental permits as covered above.)

Determine which governmental regulations might impact the Company's business either domestically or in foreign countries.

E. INTELLECTUAL PROPERTY

Review patents held and applications made by the Company and all related material correspondence and documentation (including file wrapper).

Review trademarks held and applications made by the Company and all related material correspondence and documentation.

Review copyrights held and applications made by the Company and all related material correspondence and documentation.

Review design and model rights held and applications made by the Company.

Review trade names used by the Company.

Review licenses for any form of intellectual property held by or granted by the Company.

Determine any pending or threatened infringement claims by or against the Company, and copies of any such claims for the last five years.

Determine any important know how at the Company's disposal.

F. FINANCIAL AND ACCOUNTING MATTERS

Review, audited if available, financial statements and other financial documents of the Company and any affiliates for the past three fiscal years. Including (where applicable):

1. Comparative financial results by major divisions
2. Detailed breakdown of sales and costs
3. Detailed breakdown of general and administrative expenses
4. Detailed breakdown of selling and marketing expenses
5. Detailed breakdown of working capital accounts
6. Detailed breakdown of fixed assets
7. Depreciation and capital expenditures (with particular emphasis on capitalized software development expenses, if applicable)
8. Tax returns, IRS reports or correspondence

Review the following, if applicable:

1. Chart of accounts and a description of accounting practices.
2. Accounting procedure manuals and location and nature of accounting records.
3. Accounting procedure manuals and location and nature of accounting records

Determine if any seasonal bank borrowings required

Determine any foreign exchange requirements, procedures for hedging and value of transactions done in foreign currency.

If applicable, procure the name and address of auditors of Company and any prior auditors (including date of appointments, duration, remuneration).

If applicable, procure accountants' management control letters concerning the Company and any responses by the Company for the past five years.

If applicable, review all audit documentation, papers and communications between the Company and its auditors, other consultants or the IRS and any internal audit reports. If applicable, review 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.

G. RECEIVABLES

For accounts receivable, review:

1. Analysis of total receivables due from customers, officers, employees and others
2. Aged trial balance of receivable accounts above; compare them to aging percentages for previous years and determine any trends, seasonality, etc.
3. Terms of sale
4. Number of customers
5. Names of large customers and amount of annual sales to each by product line; determine any special arrangements with any of these customers
6. Credit policies and comment on the effectiveness of credit department and significance of credit limits
7. Turnover data

Determine collectibility of receivables and adequacy of loss reserves.

Determine if receivables are discounted or pledged as collateral for borrowings.

H. LIABILITIES

Determine if any assets are pledged as collateral.

Determine if the Company's is in compliance with loan covenants.

Review 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.

Determine contingent liabilities such as:

1. Contracts and agreements
2. Price re-determination or renegotiations
3. Sales subject to service and warranty guarantees
4. Product liability
5. Unfunded past service costs of pension plans or unfunded retirement benefits.

With respect to accounts payable, review an analysis of payables by type (vendor, taxes, payroll, etc.) and determine payment practices for each.

I. BUDGETS AND FORECASTS

Determine the budgeting process, including capital budgeting, if applicable.

For each of the next three years (calendar or fiscal years ended), determine consolidated projections and separate business unit projections, on a quarterly basis, including:

1. Income statements, balance sheets and cash flow statements
 2. Underlying assumptions including product/service introductions, market size, market share, pricing, volumes, discounts, ramp-up costs, etc.
 3. Underlying assumptions for all major expense and capital expenditures, particularly R&D software development
- Determine the amortization policy for any prepaid expenses or deferred charges.

Determine how goodwill or other intangibles arose and how they are being amortized. Determine any issues regarding the "going concern value".

Review details regarding the important metrics which management uses to run the Company (capacity utilization, sales per person, bench time, etc.). Review comparisons of these metrics for the past three years.

Determine how the Company's metrics compare with the industry in general, and with peers/competitors.

J. TAXES

Review 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. If applicable, review copies of all audit, determination and other correspondence pertaining thereto.

Review copies of all tax-sharing and other tax-related agreements.

Review 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.

Review 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, determine:

1. If there have been any state tax audits
2. If any adjustments made by federal revenue agents have been reported to the states affected
3. If the state tax returns have been amended to reflect IRS adjustments

Review any schedules 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, review 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.

Review 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.

Review detailed reconciliation's of the Company's effective tax rate for the past three years. Review an analysis of any deferred taxes.

Review schedules reconciling book income to taxable income for the last three years.

Review 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. Determine the tax basis for the Company's assets.

K. MATERIAL AGREEMENTS AND DOCUMENTATION

Review 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.

Review information regarding all mortgages and other security documents relating to any of the properties or assets (real or personal) of the Company.

Review all contracts with dealers, distributors, agents and others.

Review general sales conditions of the Company; model contracts, orders and invoices.

Review the form of product warranties of the Company.

Review general description of warranty claims during the last three years, and determine significant or unusual claims.

Review 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.

Review all equipment leases (operating or capitalized) to which the Company is a party or is bound or in which the Company has an interest.

Review 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. Review 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.

Review 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.

Review 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.

Review all license and royalty agreements to which the Company is a party or in which the Company has an interest.

Review all agreements and contracts between the Company and any affiliate including, without limitation thereto, any royalty and license agreements.

Review 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).

Review all contracts and agreements with suppliers of services, raw materials, finished or semi-finished materials, or products of the Company.

Review all standard forms of purchase orders, sales orders, supply contract, service contracts and sales contracts used by the Company.

Review 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.

Review any other particular agreements based on Company business.

Review government contracts and subcontracts, if any.

Review all evidences of inter-company debt.

Review all insurance policies, and a claims history and any correspondence between the Company and the insurer.

Review all certificates of insurance (casualty, property, liability, errors and omissions, officer and director, etc.).

Determine to the extent coverage has changed during the past three years.

Review 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, noncompete and confidentiality agreements.

Review any contracts with independent or self-employed consultants.

L. SALES AND MARKETING

Determine how potential customers are identified.

Review and determine detail regarding the average dollar sale and time requirements to close a sale. Call 10 customer references.

Review a list of the top 10 customers for each major business segments and determine the total sales for the past three fiscal years.

Review a list of the top 10 suppliers.

Review samples/copies of all product brochures, marketing materials, promotions and advertisements.

Review the sales pipeline process and determine the current sales backlog.

Review the Company's major type of customers for each major segment - by type of business, domestic vs. foreign or other classification you deem relevant. Determine if the profile of future customers will change.

Review the tenure of the average customer, including whether there are continuing contracts with customers. Determine whether special terms are offered to significant customers.

With particular emphasis on new products/services, determine future product/service trends addressing projected marketplace, features, cost, technical aspects and competition.

For each major business segment, review market share information and trends.

Review the sales and distribution strategy for domestic sales and for foreign sales (if applicable) by market segment and product line.

Review distribution channels/resources (personnel, OEM's, distributors, VAR's, systems integrators, etc.) by name, address, dollar sales, and percentage of total sales, commission percentage.

For each major business segment, review a sales breakdown (dollars and percent) by distribution channel.

Review detailed information with respect to service and support.

Determine whether future changes in sales or distribution strategies are required.

Review any cyclical factors or seasonal factors with respect to the sale of the Company's products and services.

Review the Customer Support and Service organization, including:

1. Functions
2. Personnel
3. Pre-sales and technical support
4. Post-sales assistance
5. Compliance resolutions

Review information on complaints, efficiency and effectiveness of Service/Support function.

Determine whether any support activities are billed to customers, on what basis, and if this is treated as cost recovery or a profit center.

Determine 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 review the following information:

1. Determine each major competitor (size, products, profitability, financial strength, organization, etc.). Evaluate each of the competitor's strengths and weaknesses in each product line.
2. Review any significant price or cost effectiveness or the technical differentials among competing products to present an anticipated competitive market share.
3. Review 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.

M. INSURANCE

Review information with respect to self-insurance, if any.

Review information with respect to past loss and claims experience.

Review information concerning whether a change in control will cause additional cost for Workers Compensation Insurance, unemployment insurance or other insurance.

Determine if there are any unusual risks, products or events that the Company has been unable to insure.

Determine if any insurance is written on a "claims made" basis.

Review information concerning the Company's reporting and reserving practices.

Determine if any insurance policy aggregates been penetrated or exhausted.

Review who in the Company Reviews internal risk management and insurance management.

N. EMPLOYEE, DEFERRED COMPENSATION AND BENEFITS MATTERS

Review all collective bargaining and labor agreements to which the Company is a party or is bound. Review a list of all officers and key employees or 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.

Determine if there are any 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.

Review any stock option or other stock appreciation, phantom stock and other similar plan maintained by the Company.

Review 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.

Review all documentation relating to any severance arrangement between the Company and any employee, officer, director or consultant of the Company.

Review all documentation relating to any welfare benefit plan, health insurance, disability insurance, life insurance or other benefits given to employees, officers, directors or consultants of the Company.

Review any employment contracts of the Company, for each category of employees, and indication of any difference for individual employees. Review all individual employment contracts.

Review all standard agreements of the Company which employees are required to sign, including:

1. Confidentiality agreements
2. Invention assignment agreements
3. Conflict of interest declarations
4. Non competition agreements

Review all significant correspondence with labor and social security authorities for last three years.

Review any contracts with independent or self-employed consultants.

Review any agreements currently in effect between the Company and any former officer, director or employee.

Review any liability for termination payments to employees.

Review all 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.

Determine if there are any 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.

Review all correspondence with labor unions and all memoranda regarding communication with such labor unions or union employees.

Review the history for the last three years of any union negotiations, number of employees, turnover, absentee rates, and distribution.

Review any current compensation plans, including incentives and deferred compensation plans, with particular attention to the ten highest compensated employees.

Review all employment non-compete and other agreements or contracts with any employee.

Review any current proceedings before any State or Federal labor agency.

Review the Company's Code of Conduct Manual or other personnel manual and determine if procedures exist to monitor compliance with these policies.

Determine if any key management position are currently vacant.

Review information with respect to the Company's compliance with the Foreign Corrupt Practices Act.

Determine general working conditions, employee morale, and turnover.

Review the Company's policies for severance, vacations, holidays, leaves of absence, sick days, personal days, and other similar programs.

Determine the extent to which the Company Reviews 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.

Determine whether any officers or directors been involved in criminal proceedings, regulatory commission violations, or major civil litigation.

Review information with respect to any recent key personnel losses to competitors.

Review the Company's process for recruiting new employees.

Review any past or contemplated closings/layoffs and associated costs.

O. ENVIRONMENTAL MATTERS

Review all environmental litigation or proceedings currently involving the Company, including claims, amounts, names of counsel and assessment of likely outcomes.

Review a general overview of environmental legislation and requirements in the Company's jurisdiction relating to the Company's activities including determination 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. Review 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.

Review policy memoranda, programs, procedures, training courses, emergency plans etc. relating to the environment.

Review any emissions into air or water; wastewater and other discharges; noise pollution; waste produced. Review discharge production, storage and related environmental risks.

Review any studies, analyses, examinations of discharges and emissions, whether produced internally or by external consultants; description of material problems or risks.

Review removal methods of waste; cleaning methods for discharges/emissions; state of compliance with law.

Review waste removal contracts and any agreements relating to environmental matters (pollution clean up, etc.)

Review history of any accidental discharges and the results and measures taken to clean up and prevent future occurrences.

P. PERMITS AND LICENSES

Review all environmental permits and licenses required for the Company's' activities including licenses with respect to manufacture, labeling and sale of products.

Review the history and current status of permits Company's compliance with and licenses.

Review procedure for transfer of licenses or permits when the business is sold – Assets vs. Stock.

Q. 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.

R. REAL ESTATE AND EQUIPMENT

Review 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.

Review any property rented or leased by the Company; nature of leasehold interest; copy of the leases; description of significant or unusual clauses.

Check compliance with land use planning and zoning laws and any other laws affecting real estate.

Check limitation, if any on the Company's real estate or business as a result of historic preservation or similar laws or regulations.

Review any title insurance or title searches.

Review all renting/leasing agreements with respect to machinery, equipment, automobiles not owned by the Company.

Check for compliance of use of machinery and equipment with applicable laws and regulations, and in particular, safety and environmental regulations.

Review all documents evidencing liens and security interests granted on machinery and equipment.

Review the Company's depreciation policy.

Review a list of surplus or idle equipment. Summarize annual maintenance expenditures.

Determine if there are any related party transactions in connection with plant or facilities.

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

S. MISCELLANEOUS

Review all significant articles from financial or other publications including market research, consulting reports, industry newsletters and competitive analyses, concerning the Company or its competition.

Review all internal or external analysis/research regarding competitive products/technologies.

Review all customer and independent contractor complaints or demands received within the last twelve months with respect to the Company or the services thereof.

Review 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.

Review all complaints to the Company received within the last twelve months regarding any employee or agent associated with the Company.

SUNBELT BUSINESS SALES & ACQUISITIONS

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