

Explanation and Guide

Form	Due Diligence Checklist for Acquisition of a Business
Purpose of Form	This is a form to be used in connection with a due diligence investigation of a company. It is in the nature of a request for various kinds of documents from the company.
Use	A form such as this can be used in connection with a due diligence investigation for the purchase of a privately held company.

DUE DILIGENCE CHECKLIST

In connection with a potential acquisition transaction, please provide us with the following materials or information relating to _____, and any subsidiaries (together the “Company”). Upon review, we may request additional documents. If compiling any of the requested items would be unduly burdensome, please let us know so that we may arrange a less burdensome alternative. If you have already delivered any of the information, please so indicate and you need not provide an additional copy.

(A) Corporate Documents of the Company and Subsidiaries

- (1) Articles of Incorporation and all amendments thereto.
- (2) Bylaws and all amendments thereto.
- (3) Minutes of all Board of Directors, committee and shareholder meetings and all consents to action without meeting.
- (4) List of states and jurisdictions in which qualified to do business and in which the Company has offices, holds property or conducts business.
- (5) Material information or documents furnished to shareholders and to directors during the last two years.
- (6) Most recently obtained good standing certificates for all states and jurisdictions where the Company is qualified to do business.

(B) Previous Issuances of Securities

- (1) All applications and permits for issuance/transfer of securities.
- (2) Sample copy of stock certificates, warrants and options.
- (3) Stockholder information, indicating number of shares held, dates of issuance and consideration paid.
- (4) All stock option, stock purchase and other employee benefit plans and forms of agreements.
- (5) List of any outstanding stock options and warrants.
- (6) Any voting trust agreements, buy/sell agreements, stockholder agreements, warrant agreements, proxies or right of first refusal agreements.
- (7) Any registration rights or pre-emptive rights agreements.

- (8) Powers of attorney on any matter.
- (9) Convertible debt instruments.
- (10) Other contracts, arrangements or public or private documents or commitments relating to the stock of the Company.
- (11) Any debt arrangements, guarantees or indemnification between officers, directors or the shareholder and the Company.

(C) Material Contracts and Agreements

- (1) List of banks or other lenders with whom Company has a financial relationship (briefly describe nature of relationship – lines of credit, equipment lessor, etc.)
- (2) Credit agreements, debt instruments, security agreements, mortgages, financial or performance guarantees, indemnifications, liens, equipment leases or other agreements evidencing outstanding loans to which the Company is a party or was a party within the past two years.
- (3) All material correspondence with lenders during the last three years, including all compliance reports submitted by the Company or its accountants.
- (4) List of major clients and their locations.
- (5) Any other material contracts.

(D) Litigation

- (1) Copies of any pleadings or correspondence for pending or prior lawsuits involving the Company or the Founders.
- (2) Summary of disputes with suppliers, competitors or customers.
- (3) Correspondence with auditor or accountant regarding threatened or pending litigations, assessment or claims.
- (4) Decrees, orders or judgments of courts or governmental agencies.
- (5) Settlement documentation.

(E) Employees and Related Parties

- (1) A management organization chart and biographical chart.
- (2) Summary of any labor disputes.
- (3) Correspondence, memoranda or notes concerning pending or threatened labor stoppage.
- (4) List of negotiations with any group seeking to become the bargaining unit for any employees.
- (5) All employment and consulting agreements, loan agreements and documents relating to other transactions with officers, directors, key employees and related parties.
- (6) Schedule of all compensation paid to officers, directors and key employees for most recent fiscal year showing salary, bonuses and non-cash compensation (i.e. use of cars, property, etc.).
- (7) Summary of employee benefits and copies of any pension, profit sharing, deferred compensation and retirements plans.

- (8) Summary of management incentive or bonus plans not included in (7) above, as well as other non-cash forms of compensation.
- (9) Confidentiality agreements with employees.
- (10) Description of all related party transactions which have occurred during the last three years (and any currently proposed transaction) and all agreements relating thereto.

(F) Financial Information

- (1) Audited financial statements since inception (unaudited if audited financials are unavailable).
- (2) Quarterly income statements for the last two years and the current year (to date).
- (3) Financial or operating budgets or projections.
- (4) Business plan and other documents describing the current and/or expected business of the Company including all material marketing studies, consulting studies or reports prepared by the Company.
- (5) A description of all changes in accounting methods or principles during the last three fiscal years.
- (6) Any materials relating to material write-downs or write-offs other than in the ordinary course.
- (7) Revenue, gross margin and average selling price by product or service.
- (8) Management letters or special reports by auditors and any responses thereto for the last three fiscal years.
- (9) Letters of counsel to the Company delivered to auditors for the last three fiscal years.
- (10) Aging schedules for accounts receivable for the last two years.
- (11) Breakdown of G&A expenses for the last two years.
- (12) Copies of any valuations of the Company's stock.
- (13) Description of all contingent liabilities.

(G) Property

- (1) List of real and material personal property owned by the Company.
- (2) Documents of title, mortgages, deeds of trust and security agreements pertaining to the properties listed in (1) above.
- (3) All outstanding leases with an original term greater than one year for real and personal property to which the Company is either a lessor or lessee.
- (4) Documents pertaining to proprietary technology developed/owned by the Company, including any copyright or patent filings. This will also include information confirming that the Company's systems, software and technology is owned solely by the Company and does not infringe on any other party's rights.

(H) Taxation

- (1) Any notice of assessment, revenue agents' reports, etc. from federal or state authorities with to any currently "open" years.
- (2) Federal and state income tax returns for the last three years.
- (3) Evidence of Company being current on sales tax, unemployment, social security and other tax payments.

(I) Insurance and Liability

- (1) Schedule or copies of all material insurance policies of the Company covering property, liabilities and operations, including product liabilities.
- (2) Schedule of any other insurance policies in force such as "key man" policies or director indemnification policies.
- (3) All other relevant documents pertaining to the Company's insurance and liability exposure, including special reserve funds and accounts.

(J) Acquisition, Partnership or Joint Venture Agreements

- (1) All acquisition, partnership or joint venture agreements.
- (2) Documents pertaining to potential acquisitions or alliances.
- (3) Any agreements regarding divestiture or assets.

(K) Governmental Regulations and Filings

- (1) Summary of OSHA inquiries for past three years.
- (2) Summary of federal and state EPA, EEO or other governmental agency inquiries during the past three years (e.g., OSHA, EPA).
- (3) Copies of all permits and licenses necessary to conduct the Company's business.