

Sample Due Diligence Request Checklist

Set forth below is a preliminary list of documents and information regarding [Company Name] (together with all subsidiaries and any predecessors, collectively, the “Company”) which must be reviewed by Buyer, Inc. (“Buyer”) and its counsel and advisors in connection with a possible transaction with the Company. This is not a definitive list, and as the review proceeds, additional items may be requested. Please assemble and deliver the documents and information requested below for our review as soon as possible. To expedite our review, we suggest you provide responsive materials on a rolling basis as soon as they are available for production.

Unless otherwise indicated, documents should be made available for all periods subsequent to [XX] years and should include all amendments, supplements and other ancillary documents. Unless otherwise indicated, the word “material” means an item involving payments (to or from the Company) or liabilities in excess of \$[XX,000].

To the extent that you have already provided Buyer information or documents that are responsive to any of the requests, please note this next to the applicable item in the attached list. Please provide all other requested information or documents. If any of the items requested does not exist or is not relevant to the Company, please note this by placing the words “**NONE**” or “**NOT APPLICABLE**” below the listed item. Additionally, it will expedite our review if you would mark each document that you furnish to us in response to this list with the item number to which that document corresponds.

If there is any change in circumstances arising after you respond to any of the requests below, you should promptly notify us and provide us with any additional documents that may be necessary. Although we have attempted to be comprehensive in our initial due diligence request, we anticipate that the due diligence process will cause us to identify additional items that we will need to request and review.

Please direct your responses to these inquiries and/or any questions you may have to K&L Gates LLP, c/o Shiao Yen Chin-Dennis at shiauyen.chin-dennis@klgates.com (503.226.5765) or Bud Baker at bud.baker@klgates.com ((919) 743-7318).

A. ORGANIZATION OF THE COMPANY

1. Describe the corporate or other structure of the legal entities that comprise the Company. Include any helpful diagrams or charts. Provide a list of the officers and directors of the Company and a brief description of their duties.
2. Long-form certificate of good standing and articles or certificate of incorporation from Secretary of State or other appropriate official in the Company's jurisdiction of incorporation, listing all documents on file with respect to the Company, and a copy of all documents listed therein.
3. Current by-laws of the Company.

4. List of all jurisdictions in which the Company is qualified to do business and list of all other jurisdictions in which the Company owns or leases real property or maintains an office and a description of business in each such jurisdiction. Copies of the certificate of authority, good standing certificates and tax status certificates from all jurisdictions in which the Company is qualified to do business.
5. All minutes for meetings of the Company's board of directors, board committees and stockholders for the last [five] years, and all written actions or consents in lieu of meetings thereof.
6. List of all subsidiaries and other entities (including partnerships) in which the Company has an equity interest; organizational chart showing ownership of such entities; and any agreements relating to the Company's interest in any such entity.

B. OWNERSHIP AND CONTROL OF THE COMPANY

1. Capitalization of the Company, including all outstanding capital stock, convertible securities, options, warrants and similar instruments.
2. List of security holders of the Company (including option and warrant holders), setting forth class and number of securities held.
3. Copies of any voting agreements, stockholder agreements, proxies, transfer restriction agreements, rights of first offer or refusal, preemptive rights, registration agreements or other agreements regarding the ownership or control of the Company.

C. ASSETS AND OPERATIONS

1. Annual financial statements with notes thereto for the past three fiscal years of the Company, and the latest interim financial statements since the end of the last fiscal year and product sales and cost of sales (including royalties) analysis for each product which is part of assets to be sold.
2. All current budgets and projections including projections for product sales and cost of sales.
3. Any auditors (internal and external) letters and reports to management for the past [five] years (and management's responses thereto).
4. Provide a detailed breakdown of the basis for the allowance for doubtful accounts.
5. Inventory valuation, including turnover rates and statistics, gross profit percentages and obsolescence analyses including inventory of each product which is part of assets to be sold.
6. Letters to auditors from outside counsel.
7. Description of any real estate owned by the Company and copies of related deeds, surveys, title insurance policies (and all documents referred to therein), title opinions, certificates of occupancy, easements, zoning variances, condemnation or eminent domain orders or proceedings, deeds of trust, mortgages and fixture lien filings.
8. Schedule of significant fixed assets, owned or used by the Company, including the identification of the person holding title to such assets and any material liens or restrictions on such assets.
9. Without duplication from Section D below, or separate intellectual property due diligence checklist, schedule of all intangible assets (including customer lists and goodwill) and proprietary or intellectual properties owned or used in the Company, including a statement as to the entity holding title or right to such assets and any material liens or restrictions on such assets. Include on and off balance sheet items.

D. INTELLECTUAL PROPERTY

List of all patents, trademarks, tradenames, service marks and copyrights owned or used by the Company, all applications therefor and copies thereof, search reports related thereto and information about any liens or other restrictions and agreements on or related to any of the foregoing (without duplication from attached intellectual property due diligence checklist).

E. REPORTS

1. Copies of any studies, appraisals, reports, analyses or memoranda within the last [three] years relating to the Company (i.e., competition, products, pricing, technological developments, software developments, etc.).
2. Current descriptions of the Company that may have been prepared for any purpose, including any brochures used in soliciting or advertising.
3. Descriptions of any customer quality awards, plant qualification/certification distinctions, ISO certifications or other awards or certificates viewed by the Company as significant or reflective of superior performance.
4. Copies of any analyst or other market reports concerning the Company known to have been issued within the last [three] years.
5. Copies of any studies prepared by the Company regarding the Company's insurance currently in effect and self-insurance program (if any), together with information on the claim and loss experience thereunder.
6. Any of the following documents filed by the Company or affiliates of the Company and which contain information concerning the Company: annual reports on SEC Form 10-K; quarterly reports on SEC Form 10-Q; current reports on SEC Form 8-K.

F. COMPLIANCE WITH LAWS

1. Copies of all licenses, permits, certificates, authorizations, registrations, concessions, approvals, exemptions and other operating authorities from all governmental authorities and any applications therefor, and a description of any pending contemplated or threatened changes in the foregoing.
2. A description of any pending or threatened proceedings or investigations before any court or any regulatory authority.
3. Describe any circumstance where the Company has been or may be accused of violating any law or failing to possess any material license, permit or other authorization. List all citations and notices from governmental or regulatory authorities.
4. Schedule of the latest dates of inspection of the Company's facilities by each regulatory authority that has inspected such facilities.
5. Description of the potential effect on the Company of any pending or proposed regulatory changes of which the Company is aware.
6. Copies of any information requests from, correspondence with, reports of or to, filings with or other material information with respect to any regulatory bodies which regulate a material portion of the Company's business. Limit response to the last [five] years unless an older document has a continuing impact on the Company.
7. Copies of all other studies, surveys, memoranda or other data on regulatory compliance including: spill control, environmental clean-up or environmental preventive or remedial matters, employee safety compliance, import or export licenses, common carrier licenses, problems, potential violations, expenditures, etc.
8. State whether any consent is necessary from any governmental authority to embark upon or consummate the proposed transaction.
9. Schedule of any significant U.S. import or export restrictions that relate to the Company's operations.
10. List of any export, import or customs permits or authorizations, certificates, registrations, concessions, exemptions, etc., that are required in order for the Company to conduct its business and copies of all approvals, etc. granted to the Company that are currently in effect or pending renewal.
11. Any correspondence with or complaints from third parties relating to the marketing, sales or promotion practices of the Company.

G. ENVIRONMENTAL MATTERS

1. A list of facilities or other properties currently or formerly owned, leased, or operated by the Company and its predecessors, if any.
2. Reports of environmental audits or site assessments in the possession of the Company, including any Phase I or Phase II assessments or asbestos surveys, relating to any such facilities or properties.
3. Copies of any inspection reports prepared by any governmental agency or insurance carrier in connection with environmental or workplace safety and health regulations relating to any such facilities or properties.
4. Copies of all environmental and workplace safety and health notices of violations, complaints, consent decrees, and other documents indicating noncompliance with environmental or workplace safety and health laws or regulations, received by the Company from local, state, or federal governmental authorities. If available, include documentation indicating how such situations were resolved.
5. Copies of any private party complaints, claims, lawsuits or other documents relating to potential environmental liability of the Company to private parties.
6. Listing of underground storage tanks currently or previously present at the properties and facilities listed in response to Item 1 above, copies of permits, licenses or registrations relating to such tanks, and documentation of underground storage tank removals and any associated remediation work.
7. Descriptions of any release of hazardous substances or petroleum known by the Company to have occurred at the properties and facilities listed in response to Item 1, if such release has not otherwise been described in the documents provided in response to Items 1-6 above.
8. Copies of any information requests, PRP notices, "106 orders," or other notices received by the Company pursuant to CERCLA or similar state or foreign laws relating to liability for hazardous substance releases at off-site facilities.
9. Copies of any notices or requests described in Item 8 above, relating to potential liability for hazardous substance releases at any properties or facilities described in response to Item 1.
10. Copies of material correspondence or other documents (including any relating to the Company's share of liability) with respect to any matters identified in response to Items 8 and 9.
11. Copies of any written analyses conducted by the Company or an outside consultant relating to future environmental activities (i.e., upgrades to control equipment, improvements in waste disposal practices, materials substitution) for which expenditure of funds greater than [\$XX,000] is either certain or reasonably anticipated within the next [five] years and an estimate of the costs associated with such activities.

12. Description of the workplace safety and health programs currently in place for the Company's business, with particular emphasis on chemical handling practices.

H. LITIGATION

1. List of all litigation, arbitration and governmental proceedings relating to the Company to which the Company or any of its directors, officers or employees is or has been a party, or which is threatened against any of them, indicating the name of the court, agency or other body before whom pending, date instituted, amount involved, insurance coverage and current status. Also describe any similar matters which were material to the Company and which were adjudicated or settled in the last [ten] years.
2. Information as to any past or present governmental investigation of or proceeding involving the Company or the Company's directors, officers or employees.
3. Copies of all attorneys' responses to audit inquiries.
4. Copies of any consent decrees, orders (including applicable injunctions) or similar documents to which the Company is a party, and a brief description of the circumstances surrounding such document.
5. Copies of all letters of counsel to independent public accountants concerning pending or threatened litigation.
6. Any reports or correspondence related to the infringement by the Company or a third party of intellectual property rights.

I. SIGNIFICANT CONTRACTS AND COMMITMENTS

1. Contracts relating to any completed (during the past 10 years) or proposed reorganization, acquisition, merger, or purchase or sale of substantial assets (including all agreements relating to the sale, proposed acquisition or disposition of any and all divisions, subsidiaries or businesses) of or with respect to the Company.
2. All joint venture and partnership agreements to which the Company is a party.
3. All material agreements encumbering real or personal property owned by the Company including mortgages, pledges, security agreements or financing statements.
4. Copies of all real property leases relating to the Company (whether the Company is lessor or lessee), and all leasehold title insurance policies (if any).
5. Copies of all leases of personal property and fixtures relating to the Company (whether the Company is lessor or lessee), including, without limitation, all equipment rental agreements.
6. Guarantees or similar commitments by or on behalf of the Company, other than endorsements for collection in the ordinary course and consistent with past practice.
7. Indemnification contracts or arrangements insuring or indemnifying any director, officer, employee or agent against any liability incurred in such capacity.
8. Loan agreements, notes, industrial revenue bonds, compensating balance arrangements, lines of credit, lease financing arrangements, installment purchases, etc. relating to the Company or its assets and copies of any security interests or other liens securing such obligations.
9. No-default certificates and similar documents delivered to lenders for the last [five] (or shorter period, if applicable) years evidencing compliance with financing agreements.
10. Documentation used internally for the last [five] years (or shorter time period, if applicable) to monitor compliance with financial covenants contained in financing agreements.
11. Any correspondence or documentation for the last [five] years (or shorter period, if applicable) relating to any defaults or potential defaults under financing agreements.
12. Contracts involving cooperation with other companies or restricting competition.
13. Contracts relating to other material business relationships, including:
 - a. any current service, operation or maintenance contracts;
 - b. any current contracts with customers;
 - c. any current contracts for the purchase of fixed assets; and
 - d. any franchise, distributor or agency contracts.
14. Without duplicating Section d above or the intellectual property due diligence schedule hereto, contracts involving licensing, know-how or technical assistance arrangements

including contracts relating to any patent, trademark, service mark and copyright registrations or other proprietary rights used by the Company and any other agreement under which royalties are to be paid or received.

15. Description of any circumstances under which the Company may be required to repurchase or repossess assets or properties previously sold.
16. Data processing agreements relating to the Company.
17. Copies of any contract by which any broker or finder is entitled to a fee for facilitating the proposed transaction or any other transactions involving the Company or its properties or assets.
18. Management, service or support agreements relating to the Company, or any power of attorney with respect to any material assets or aspects of the Company.
19. List of significant vendor and service providers (if any) who, for whatever reason, expressly decline to do business with the Company.
20. Samples of all forms, including purchase orders, invoices, supply agreements, etc.
21. Any agreements or arrangements relating to any other transactions between the Company and any director, officer, stockholder or affiliate of the Company (collectively, "Related Persons"), including but not limited to:
 - a. Contracts or understandings between the Company and any Related Person regarding the sharing of assets, liabilities, services, employee benefits, insurance, data processing, third-party consulting, professional services or intellectual property.
 - b. Contracts or understandings between Related Persons and third parties who supply inventory or services through Related Persons to the Company.
 - c. Contracts or understandings between the Company and any Related Person that contemplate favorable pricing or terms to such parties.
 - d. Contracts or understandings between the Company and any Related Person regarding the use of hardware or software.
 - e. Contracts or understandings regarding the maintenance of equipment of any Related Person that is either sold, rented, leased or used by the Company.
 - f. Description of the percentage of business done by the Company with Related Persons.
 - g. Covenants not to compete and confidentiality agreements between the Company and a Related Person.
 - h. List of all accounts receivable, loans and other obligations owing to or by the Company from or to a Related Person, together with any agreements relating thereto.

22. Copies of all insurance and indemnity policies and coverages carried by the Company including policies or coverages for products, properties, business risk, casualty and workers compensation. A description of any self-insurance or retro-premium plan or policy, together with the costs thereof for the last [five] years. A summary of all material claims for the last [five] years as well as aggregate claims experience data and studies.
23. List of any other agreements or group of related agreements with the same party or group of affiliated parties continuing over a period of more than six months from the date or dates thereof, not terminable by the Company on 30 days' notice.
24. Copies of all supply agreements relating to the Company and a description of any supply arrangements.
25. Copies of all contracts relating to marketing and advertising.
26. Copies of all construction agreements and performance guarantees.
27. Copies of all secrecy, confidentiality and nondisclosure agreements.
28. Copies of all agreements related to the development or acquisition of technology.
29. Copies of all agreements outside the ordinary course of business.
30. Copies of all warranties offered by the Company with respect to its product or services.
31. List of all major contracts or understandings not otherwise previously disclosed under this section, indicating the material terms and parties.
32. For any contract listed in this Section I, state whether any party is in default or claimed to be in default.
33. For any contract listed in this Section I, state whether the contract requires the consent of any person to assign such contract or collaterally assign such contract to any lender.

NOTE: Remember to include all amendments, schedules, exhibits and side letters. Also include brief description of any oral contract listed in this Section I.

J. EMPLOYEES, BENEFITS AND CONTRACTS

1. Copies of the Company's employee benefit plans as most recently amended, including all pension, profit sharing, thrift, stock bonus, ESOPs, health and welfare plans (including retiree health), bonus, stock option plans, direct or deferred compensation plans and severance plans, together with the following documents:
 - a. all applicable trust agreements for the foregoing plans;
 - b. copies of all IRS determination letters for the foregoing qualified plans;
 - c. latest IRS forms for the foregoing qualified plans, including all annual reports, schedules and attachments;
 - d. latest copies of all summary plan descriptions, including modifications, for the foregoing plans;
 - e. latest actuarial evaluations with respect to the foregoing defined benefit plans; and
 - f. schedule of fund assets and unfunded liabilities under applicable plans.
2. Copies of all employment contracts, consulting agreements, severance agreements, independent contractor agreements, non-disclosure agreements and non-compete agreements relating to any employees of the Company.
3. Copies of any collective bargaining agreements and related plans and trusts relating to the Company (if any). Description of labor disputes relating to the Company within the last [three] years. List of current organizational efforts and projected schedule of future collective bargaining negotiations (if any).
4. Copies of all employee handbooks and policy manuals (including affirmative action plans).
5. Copies of all OSHA examinations, reports or complaints.
6. The results of any formal employee surveys.

K. TAX MATTERS

1. Copies of returns for the three prior closed tax years and all open tax years for the Company (including all federal and state consolidated returns) together with a work paper therefor wherein each item is detailed and documented that reconciles net income as specified in the applicable financial statement with taxable income for the related period.
2. Audit and revenue agents reports for the Company; audit adjustments proposed by the Internal Revenue Service for any audited tax year of the Company or by any other taxing authority; or protests filed by the Company.
3. Settlement documents and correspondence for last [six] years involving the Company.
4. Agreements waiving statute of limitations or extending time involving the Company.
5. Description of accrued federal, state and local withholding taxes and FICA for the Company.
6. List of all state, local and foreign jurisdictions in which the Company pays taxes or collects sales taxes from its retail customers (specifying which taxes are paid or collected in each jurisdiction).

L. MISCELLANEOUS

1. Information regarding any material contingent liabilities and material unasserted claims and information regarding any asserted or unasserted violation of any employee safety and environmental laws and any asserted or unasserted pollution clean-up liability.
2. List of the ten largest customers and suppliers for each product or service of the Company.
3. List of major competitors for each business segment or product line.
4. Any plan or arrangement filed or confirmed under the federal bankruptcy laws, if any.
5. A list of all officers, directors and stockholders of the Company.
6. All annual and interim reports to stockholders and any other communications with security holders.
7. Description of principal banking and credit relationships (excluding payroll matters), including the names of each bank or other financial institution, the nature, limit and current status of any outstanding indebtedness, loan or credit commitment and other financing arrangements.
8. Summary and description of all product, property, business risk, employee health, group life and key-man insurance.
9. Copies of any UCC or other lien, judgment or suit searches or filings related to the Company in relevant states conducted in the past [three] years.
10. Copies of all filings with the Securities and Exchange Commission, state blue sky authorities or foreign security regulators or exchanges.
11. All other information material to the financial condition, businesses, assets, prospects or commercial relations of the Company.