

# MURDOCH PRICE

Barristers & Solicitors

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## SALE AND PURCHASE OF A BUSINESS

### Purchasers

#### Due Diligence Clauses (or how to avoid an expensive mistake)

We recommend every purchaser of a business includes a due diligence condition in the Agreement for Sale and Purchase before signing. This condition enables a purchaser to make all necessary inquiries to establish whether or not the purchaser wishes to proceed with the purchase. It also enables the purchaser to negotiate appropriate changes to the agreement before the condition is satisfied. The deposit is refunded if the condition is not satisfied i.e. the purchaser decides not to proceed.

A badly drafted due diligence clause may be a little better than not having any clause.

See us to draft a due diligence clause and discuss your agreement BEFORE you sign.

#### Issues for most business purchases

Land Information Memorandum (from council) – See vendor/purchaser information sheets in the property section

Turnover warranties

Financial viability (we recommend you see an accountant and she/he works with us to help you)

GST – zero rating and/or plus GST (if any)

Lease of premises: term – rent reviews – lease conditions - See article in this section

Plant value (for depreciation purposes)

Stock variance %

Building warrant of fitness and OSH requirements

Plant inspections by qualified persons

Vendors restraint of trade

#### Additional issues for food businesses

Food and Hygiene regulations

Council licences

#### Additional issues for service stations

Contamination

Price support schemes

#### Additional issues for manufacturing business

Trade-marks

Copyright

Customer loyalty

### Vendors

Qualify prospective purchasers before supplying accounts and other information about your business.

- e.g.
- have their accountant contact your accountant
  - insist on a signed Agreement for Sale and Purchase (see us BEFORE you sign)
  - require a deposit (up to 10%)

If the prospective purchaser has consulted a lawyer and an accountant, signs an Agreement and pays a deposit – then he/she is likely to be a serious purchaser.