

BHUSHAN RAJARAM

· ADVOCATES & CONSULTANTS



Term Sheet, Due Diligence, SHA & SPA

A Practitioner's Framework

From pre-deal terms through definitive documents — the full architecture of a venture transaction

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About Bhushan Rajaram

A boutique advisory practice for cross-border technology transactions, venture deals and AI governance.

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Founded the firm in 2024 — a boutique practice advising founders, investors and global counterparties on the legal architecture of cross-border deals.

Earlier roles: *Senior Partner, Shardul Amarchand Mangaldas, Director, Legal — Meta (India); General Counsel — Cognizant*

Private practice focus: cross-border M&A, venture capital, technology transactions, data privacy and AI governance — for sector specialists in fintech, healthtech and SaaS.

Board Director — American International School Chennai (AISC).

\$25B+



Aggregate transaction value advised on across in-house and private practice

Dual



Qualified — California Bar and Bar Council of India

Chambers



Ranked eight consecutive years

Fulbright



Scholar — admitted to the New York Bar

Representative deal experience: Walmart–Flipkart · Reliance–WhatsApp / Facebook · Cross-border venture rounds and strategic technology investments

What This Deck Covers

Four parts, one continuous arc — from pre-deal commercial terms through the post-closing constitution.

I TERM SHEET

The contract before the contract



- Binding vs non-binding architecture
- Economic terms — valuation, preference, anti-dilution
- Governance — board, reserved matters, information
- Founder protections and real-world pitfalls

II DUE DILIGENCE

The investigation that drives every clause



- What DD is — and what it is not
- Process: 1–3 months across three phases
- Eight functional workstreams with checklists
- From findings to definitive documents

III SHA

Shareholders' Agreement — the post-closing constitution



- Board composition and reserved matters
- Information, inspection and audit rights
- Transfer restrictions — ROFR, ROFO, tag, drag
- Exit, deadlock and minority protection

IV SPA

Share Purchase Agreement — the transactional document



- Sale & purchase, conditions precedent, closing
- Reps & warranties, disclosure schedule
- Indemnities, caps, baskets, exclusions
- Governing law, termination, confidentiality

Findings drive documents. The deal flows from what diligence reveals — and survives in what the SHA and SPA say.



I

PART ONE

Term Sheet

The contract before the contract — non-binding in form, transformative in effect.

A well-drafted term sheet narrows what diligence must verify, anchors the negotiation of definitive documents, and prevents disputes about what was — and was not — agreed.

What a Term Sheet Is

A short instrument that records the principal commercial terms of a contemplated transaction. Not a contract for the deal — a contract about how the deal will be reached.



NON-BINDING IN FORM

What stays at the level of intent

- Valuation — pre-money / post-money
- Investment amount and instrument
- Liquidation preference and participation
- Board composition and observer rights
- Anti-dilution mechanic
- Founder vesting and lock-in
- Information and inspection rights
- Conditions to closing



BINDING IN SUBSTANCE

What is enforceable from signature

- Confidentiality of terms and discussions
- Exclusivity / no-shop period
- Costs and break-fee allocation
- Standstill obligations
- Governing law and forum
- Process for definitive documents
- Standstill on capital changes
- Public-announcement controls

Drafting tip: keep the binding clauses on a separate signature line — it removes ambiguity and protects against arguments that the whole instrument is enforceable.

Anatomy of the Economic Terms

Eight numbers and structural choices that decide who wins under each scenario.

01



Pre-Money Valuation

Determines investor's percentage on a fully-diluted basis — including the option pool top-up, which sits before money in.

02



Investment Amount

Total round size; commitment per investor; whether tranching against milestones with downside if missed.

03



Security Issued

Equity, preference shares (CCPS) or convertible (CCDs / SAFE-style instruments). Determines conversion economics and tax treatment.

04



Liquidation Preference

1x non-participating is market default; participating preference and stacked seniority materially shift exit waterfalls.

05



Anti-Dilution Protection

Broad-based weighted average is the negotiated norm. Full ratchet is punitive — and is increasingly being pushed back at all stages.

06



Option Pool Top-Up

Often demanded by investors to be set up pre-money — meaning founders, not investors, bear the dilution.

07



Dividend Preference

Cumulative / non-cumulative preferred dividend; usually waived on conversion; can be a hidden ratchet on valuation.

08



Pay-to-Play

Forces existing investors to participate in down rounds or lose preferred-share rights — used to align the cap table during distress.

Governance & Control Terms

How the company is run after money in — and where the founder must hold the line.



BOARD COMPOSITION

- Investor-nominated directors and observers
- Quorum requirements (founder presence required)
- Casting vote — material on a 2-2 split
- Independent director — affiliation matters
- Committee composition (audit, comp, nomination)



RESERVED MATTERS

- Investor consent over budget and business plan
- Senior hires, terminations and compensation
- Related-party transactions over a threshold
- Capital raises, M&A, asset disposals
- Constitutional changes and dividend declarations



INFORMATION RIGHTS

- Monthly MIS, quarterly accounts, audited annuals
- Annual budget and three-year plan
- Inspection rights — reasonable notice, books and premises
- Direct communication line to CFO and auditors
- Litigation, regulatory and material-event triggers

Reserved matters list is the single most-negotiated annexure in any term sheet — and the most common source of post-closing deadlock.

Liquidation Preference: How Exits Pay

Decides who gets paid first — and how much — on a sale, dissolution or deemed liquidation event.

STANDARD

1x Non-Participating

Investor receives the higher of: (a) 1x their investment back, or (b) their pro-rata share as if converted to common.

Founder-friendly — the market default in well-priced rounds.

AGGRESSIVE

1x Participating

Investor receives 1x preference AND participates pro-rata in remaining proceeds. Effectively a double-dip.

Push back hard — or insist on a cap (e.g. 2x or 3x of investment).

PUNITIVE

Multiple Preference

2x or 3x preference — sometimes participating. Creates an overhang that suppresses common-share returns until very high exits.

Reserved for distressed rounds; signals trouble in the cap table.

Stacked seniority — "last-money-in, first-money-out" — is the silent killer of founder returns at modest exits.

Anti-Dilution: Protecting Against Down Rounds

Adjusts the conversion ratio of preferred shares when the company issues new shares at a price below what existing investors paid.



PUNITIVE TO COMMON

Full Ratchet

Conversion price reset to the new (lower) issuance price — regardless of the size of the down round.

EXAMPLE

Preferred at INR 100 → new shares at INR 50. Result: preferred re-prices to INR 50, doubling investor's economic interest at the founder's cost.

Increasingly out of fashion. Founders should resist except in distressed rounds where the entire cap table is being reset.



MARKET STANDARD

Broad-Based Weighted Average

Conversion price moves only partially, and the formula accounts for the size of the new issuance against the entire diluted base.

EXAMPLE

Conversion price = $OP \times (CSO + Money/OP) / (CSO + New\ Shares)$. Bigger fully-diluted base → smaller adjustment → fairer to founders.

The negotiated norm at most institutional rounds. Narrow-based variants exclude options/warrants from CSO and skew to investors.

Tactical ask: cap anti-dilution exemptions broadly — option pool, M&A scrip, strategic partners, IPO conversions.

Founder-Side Terms

Where founders should engage actively in the term sheet — these are the levers that survive every round.



Vesting & Lock-In

Standard 4-year vest with 1-year cliff. Founders typically negotiate accelerated vesting on "double-trigger" — change of control + termination without cause.



Departure Provisions

Good leaver / bad leaver definitions matter more than the vesting schedule. Termination "for cause" should be tightly defined and require external counsel sign-off.



ESOP Pool Sizing

Resist pre-money option pool top-ups beyond what is genuinely needed for the next 12–18 months — every unused share dilutes founders, not investors.



Founder Lock-Up

Restrictions on founder share transfers, employment commitment and non-compete. Carve-out for permitted transfers (estate planning, family trusts).



Non-Compete & Non-Solicit

Geographic and temporal scope must be reasonable to be enforceable in India — Section 27 of the Indian Contract Act voids restraints in restraint of trade post-employment.



No-Shop / Exclusivity

Standard 30–60 day window. Resist unlimited extensions. Carve-out for unsolicited approaches and fiduciary duties of the board.

Term Sheet Pitfalls — Real-World Issues

Provisions that sign easily but litigate hard. Each has produced post-closing disputes, founder-investor breakdowns, or value leakage.

1 Pre-Money Option Pool

The most common silent dilution. "15% pool pre-money" before a 20% round means founders effectively give up ~12%, not 15%.

2 Open-Ended No-Shop

Exclusivity that auto-renews until investor decides to walk. Always cap with a hard outside date and a fiduciary out for the board.

3 Vague "Material" Standards

"Material adverse change," "material contracts," "material breach" — undefined materiality thresholds become litigation surface area at closing.

4 Drag-Along Without Floor

Drag-along that doesn't specify a minimum return to common shareholders forces founders to sell at any price the majority accepts.

5 Most-Favoured-Nation in Side Letters

MFN obligations to existing investors in side letters — buried, often forgotten, and trigger automatic upgrades that bind future rounds.

6 Specific Performance on Closing

Investor reservation of specific performance plus damages. Courts in India are inconsistent on specific performance for share subscription — but the leverage is real.



PART TWO

Due Diligence

The investigative discipline that decides what every clause must say.

Done well, it is the most reliable instrument for separating disclosed risk from undisclosed risk before signature. Done as a checkbox, it produces the largest post-closing disputes.

What Due Diligence Is — and Is Not

An investigative inspection by which confidential legal, financial and operational information is exchanged, reviewed and appraised. Its function is to verify what is represented, surface what is not, and inform every term that follows.



DUE DILIGENCE IS

Risk diagnostic

Quantifies contingent and undisclosed liabilities before commitment

Valuation evidence

Anchors price, earn-outs and consideration mix in verifiable findings

Negotiating leverage

Surfaces grounds for indemnities, escrows, CPs and walk-away rights

Drafting input

Translates findings into specific reps, warranties and remediation



DUE DILIGENCE IS NOT

A procedural formality

Treated as a checkbox, it creates the appearance of protection without the substance

A confirmation exercise

It exists to test the seller's narrative, not to validate the buyer's optimism

Outsourceable to advisors alone

Findings need a commercial-side reader who can convert risk into deal terms

Closed at signing

Bring-down certificates, post-closing covenants and earn-out audits all extend the discipline

The Four Functions of Diligence

Verify, reveal, value, allocate — applied in sequence, they produce an evidentiary record robust enough to defend price, structure and signature.

I



VERIFY

Confirm representations regarding ownership, authority, financials and compliance against primary documents.

II



REVEAL

Surface undisclosed encumbrances, contingent liabilities, regulatory exposure and litigation risk.

III



VALUE

Translate qualitative risk into adjustments to price, escrows, holdbacks and earn-out architecture.

IV



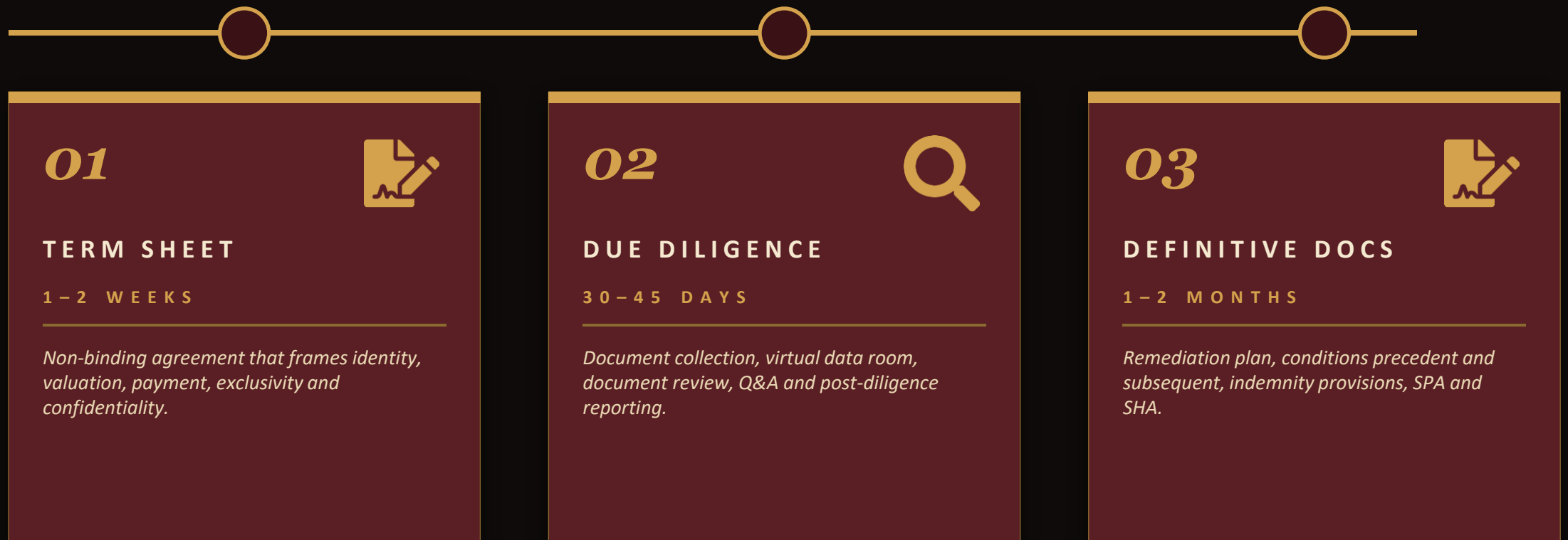
ALLOCATE

Distribute residual risk through tailored representations, indemnities, conditions precedent and termination rights.

Every clause in the SPA — and every right in the SHA — should trace back to a finding in this record.

The Process: Three Phases, 1–3 Months

Document trail end to end — a defensible chronology of what was disclosed, when, and to whom.



Total: 1–3 months — but breach of confidentiality, exclusivity or no-shop can collapse it overnight.

Inside the Diligence Workstream

Six discrete activities; each leaves an audit trail that becomes part of the disclosure record.



1

Document Preparation

Target compiles and indexes records — business plan, financials, contracts, real estate, IP, employment.



2

Virtual Data Room

Secure, audited environment for sharing, indexing, watermarking and tracking sensitive documents.



3

Document Sharing

Phased disclosure based on bidder credibility, stage of negotiations and clean-team protocols where required.



4

Document Review

Buyer's counsel works through indexed materials, builds the Q&A list, flags gaps and inconsistencies.



5

Diligence Q&A

Iterative request-response cycle, with each question routed to the right SME on the seller side.



6

Reporting & Compliance

Findings memorialised in red flag and full reports; audit trail and proof-of-disclosure preserved.

Eight Functional Workstreams

PE/VC and M&A diligence covers all eight; lending and IPO diligence emphasise a subset shaped by the financing thesis.

01



Corporate & Business

Incorporation, capital, group structure

02



Government & Filings

Licences, registrations, regulatory

03



Financing

Borrowings, security, guarantees

04



Material Agreements

Customer, vendor, partnership contracts

05



Property

Real estate, leases, equipment

06



Litigation

Disputes, awards, proceedings

07



Insurance

Cover, claims, D&O, cyber

08



Labour & HR

Workforce, KMP, compliance

Corporate, Regulatory & Financing

Foundational workstreams — gaps here cascade into every other workstream.



CORPORATE & BUSINESS

- Incorporation documents and amendments
- Share capital and beneficial ownership
- Memorandum and Articles of Association
- Group structure, branches, subsidiaries
- Promoters and persons exercising control
- Shareholder, JV and ancillary agreements
- Board and committee minutes; statutory registers
- Related-party transactions and ODI filings



GOVERNMENT & FILINGS

- Material licences, permits and authorisations
- Compliance with applicable legislation
- Validity, renewal and revocation risks
- Foreign investment registrations
- Tax registrations: PAN, TAN, IEC, GST
- Building, completion, occupation approvals
- Material correspondence with regulators
- Pending or threatened regulatory enquiries



FINANCING

- Outstanding borrowings — secured and unsecured
- Security created over assets; ROC filings
- Loans to affiliates and related parties
- Guarantees, letters of credit, indemnities
- Off-balance-sheet commitments and hedges
- Audited annual reports; management accounts
- Contingent liabilities — litigation, disputes
- Inter-creditor and intercompany arrangements

Also reviewed: registered office filings, statutory auditors' reports, schemes of amalgamation, trusts settled by the company.

Contracts, Property & Litigation

Where transactional value lives — and where most undisclosed liabilities surface.



MATERIAL AGREEMENTS

- Master list — agreements, MoUs, term sheets
- R&D, technology licences, collaboration
- Consulting and confidentiality (NDAs)
- Government contracts; high-value commercials
- Sales literature and product representations
- Loss-making or non-arm's length contracts
- Change-of-control and consent triggers
- Material correspondence and notices



PROPERTY

- Real property — title, encumbrance, certified report
- Leases and tenancies — term, rent review, options
- Hire-purchase, rental, usage agreements
- Licences to occupy — fees, duration, restrictions
- Plant, equipment, motor vehicles
- Local-authority notices and orders
- Encroachment, planning and building issues
- Enforcement notices under municipal laws



LITIGATION

- Existing claims against the company — value, status
- Existing claims by the company — recovery prospects
- Counsel opinions on merits and quantum
- Judgments, decrees, arbitration awards
- Tax disputes and revenue-authority correspondence
- Show-cause notices and statutory investigations
- Anti-trust, employment, securities allegations
- Quantified financial liability and reserves

Disclosed contingent liabilities should be tracked into the disclosure schedule with sums and counsel views.

Insurance, Workforce & Specialised

Risk transfer, people and the modern overlays — IP, cyber, ESG and data privacy.



INSURANCE

- Schedule of policies — premia, cover, renewal
- Claims history including denied claims
- D&O policy, indemnity coverage and exclusions
- Bank clauses and assignments to financiers
- Cyber-incident cover and sub-limits
- Product liability and recall cover



LABOUR & HR

- Headcount roster — employees, consultants
- Key managerial personnel; resignation pipeline
- Standard employment terms; sample contracts
- Founder agreements and management exit options
- PF / ESI / gratuity compliance
- Trade unions and collective bargaining
- Special redundancy and labour disputes
- Pending or threatened employee claims



SPECIALISED DILIGENCE

- Environmental: contamination, EHS, sustainability
- Intellectual property: registrations, ownership
- Open source software exposure and licences
- Technology and cyber: architecture, vulnerabilities
- Data privacy: collection, processing, transfers
- ESG: governance, anti-bribery, supply chain
- Cyber insurance and incident-response posture
- AI / algorithmic systems and bias exposure

Specialised diligence is no longer optional — data privacy and cyber findings now drive material reps and indemnities.

From Findings to Definitive Documents

Every diligence finding has a destination in the deal architecture. Map them deliberately — gaps here become disputes later.



Sell-Side Playbook

Diligence is harder for the seller than the buyer — records, disclosure obligations and operational burden, rarely with an in-house team built for it.



FIVE RECURRING PITFALLS

Compressed timelines

Tight diligence windows leave little room for record reconstruction or coordination

Limited M&A muscle

Outside large groups, sellers rarely have an internal M&A or business-development function

Siloed workstreams

Operations, finance and legal teams produce disclosures without coordinating with each other

Communication gaps

Inconsistent messages to bidders erode trust and slow the Q&A loop

Incomplete information

Often a record-keeping issue rather than concealment — but the buyer cannot tell the difference



FIVE DISCIPLINED MOVES

Single point of contact

One coordinator across legal, finance, operations and HR

Culture of compliance

Ongoing compliance produces fewer findings; cured findings produce fewer disputes

Documentation discipline

Resolutions, registrations, contracts, employment files — organised, indexed, accessible

Active data-room

Phased disclosure, controlled access, clear and auditable Q&A response paths

Vendor due diligence

Conduct your own VDD first; remediate before the buyer's team finds the issue

Where transparency is not feasible — pricing, counterparty names, sensitive personal data — agree NDAs, redactions and clean-team protocols before granting access.

PART THREE

Shareholders' Agreement

The post-closing constitution.

How the company is run after money in — and how shareholders' rights survive every change of management, ownership and capital structure.

What the SHA Actually Does

The operating constitution among shareholders — designed for the period after closing, referenced in disputes long after.



Defines how the company is run and how shareholder rights are protected.

Especially the rights of the minority — and the gateway through which future shareholders join. Survives changes of management, ownership and capital structure; cited in disputes long after closing.



Board Composition

Director nominations, observer rights, quorum mechanics



Reserved Matters

Decisions requiring affirmative shareholder approval



Transfer Restrictions

Lock-in, ROFR, ROFO, tag-along, drag-along



New Issuances

Pre-emptive rights and anti-dilution protection



Information Rights

Periodic financials, audit, inspection rights



Distributions

Dividend policy, capital return, leakage covenants



Valuation Methodology

For exits, buy-outs and put / call mechanics



Deadlock & Exit

Mediation, swing votes, buy-sell, liquidation preference

Board Composition & Control

Where economic ownership translates into operational control — and where founder-investor friction surfaces first.



BOARD COMPOSITION

- Promoter / founder directors
- Investor-nominated directors and observers
- Independent directors — true independence test
- Casting vote — material on a 2-2 split
- Affiliate restriction — competitor / conflict



QUORUM & DECISION RULES

- Quorum requires founder presence
- Adjourned meeting protocol — 7-day notice
- Reserved-matter quorum: investor presence
- Written resolutions and circulation rules
- Committee delegation limits



REMOVAL & REPLACEMENT

- Right to nominate, remove, replace
- Cooling-off period for replacement
- Vacancy-filling between meetings
- Termination of nominee rights below threshold
- Survival of indemnity for former directors

Tactical drafting note: the more reserved matters the investor secures, the less the board needs casting-vote rights — and vice versa.

Reserved Matters

The single most-negotiated annexure in any SHA — and the most common source of post-closing deadlock.



FINANCIAL & CAPITAL

- Annual budget and business plan approval
- Capital expenditure beyond threshold
- New borrowings or debt instruments
- Issuance of new shares or convertibles
- Buy-back, capital reduction, dividends



OPERATIONAL & PEOPLE

- Senior hires (CXO level) and termination
- Compensation policy and ESOP grants
- Material change of business or scope
- Acquisition, merger or asset disposal
- Material related-party transactions



STRUCTURAL & LEGAL

- Amendments to MoA / AoA
- Listing, delisting, qualified IPO
- Voluntary winding-up / liquidation
- Material litigation initiation / settlement
- Change of statutory auditor

Drafting tip: pair every reserved matter with a deadlock-breaking mechanism — otherwise the company stalls on routine decisions.

Information & Inspection Rights

Investor visibility into operations, financials and risks — calibrated to shareholding and seniority.



PERIODIC REPORTING

Monthly MIS

P&L, balance sheet, cash position, key operational metrics — within 15 business days of month-end

Quarterly accounts

Unaudited management accounts; investor commentary; deviation from budget

Annual budget & business plan

Submitted 30 days before fiscal year start; approved as a reserved matter

Audited annuals

Within 90 days of fiscal year-end; auditor reports and management letter

Statutory & compliance updates

ROC filings, material correspondence with regulators, litigation register



ON-DEMAND ACCESS

Inspection rights

Books, records, premises — on reasonable notice, during business hours

Direct CFO / auditor access

Communication line that bypasses the founder for clarification questions

Special audits

Investor-funded audits at cost; right to expand if material findings emerge

Material event notification

Litigation, regulatory action, key-person departure, customer loss — within 5 BD

Information rights for sale process

Heightened access in connection with a contemplated exit or fund-raise

Information rights typically taper or fall away once an investor's stake drops below an agreed threshold (often 5–7%).

Transfer Restrictions

How shareholders are restricted from selling — and how they are forced to sell when the time comes.

01



Lock-In

Founders restricted from any transfer for an agreed period — typically tied to vesting and the exit horizon.

02



ROFR

Right of First Refusal — selling shareholder must first offer the shares to existing shareholders at the third-party offer price.

03



ROFO

Right of First Offer — selling shareholder must offer to existing shareholders before approaching any third party. Faster than ROFR; market-friendly.

04



Tag-Along

Minority right to join the majority's sale on the same terms — protects minority from being stranded with a new controlling shareholder.

05



Drag-Along

Majority right to force minority to sell — typically requires a minimum threshold (e.g., 75% by value) and a price floor.

06



Permitted Transfers

Carve-outs for affiliates, family trusts, estate planning — without triggering ROFR / ROFO / tag.

Drafting friction point: drag-along thresholds, price floors and consideration mix (cash vs scrip vs earn-out) account for a disproportionate share of SHA negotiation time.

Pre-Emption & Anti-Dilution

Two distinct mechanics — one protects participation, the other protects valuation.



PARTICIPATION RIGHT

Pre-Emptive Rights

Existing shareholders entitled to participate in any new issuance, pro-rata to their existing shareholding, on the same terms as the new investor.

- Triggered by every new equity / convertible issuance
- Notice period — 15-30 days to elect
- Carve-outs: ESOP grants, M&A scrip, strategic partners
- Failure to participate dilutes shareholding without compensation



VALUATION PROTECTION

Anti-Dilution Adjustment

Triggered only on a down round — adjusts the conversion price of preferred shares to compensate for the lower issuance price.

- Broad-based weighted average — market norm
- Full ratchet — punitive, distressed-round territory
- Applies only to preferred / convertible instruments
- Carve-outs: ESOP, M&A scrip, IPO conversions, strategic

These two clauses interact: pre-emption that is fully exercised reduces the dilutive impact triggering anti-dilution adjustment.

Exit, IPO & Deadlock

Mechanisms that decide how investors get liquidity — and how the company breaks a stalemate when the cap table cannot agree.

01



EXIT MECHANICS

Investor's path to liquidity. Trade sale, secondary, IPO or buy-back — each with cooperation obligations on the cap table.

- Drag-along on majority approval
- Minimum return threshold for drag
- Reasonable cooperation in sale process
- Investor right to initiate sale post lock-in

02



QUALIFIED IPO

Triggers automatic conversion of preferred to common, fall-away of investor protections, and lock-up post-listing.

- Listing on a recognised stock exchange
- Minimum size of issue / market cap threshold
- Conversion of preferred at IPO price
- Founder / promoter lock-up obligations

03



DEADLOCK RESOLUTION

When reserved-matter votes stall the company. Tiered escalation, then a forced exit or buy-sell.

- Escalation to designated executives
- Mediation / independent expert determination
- Russian Roulette / Texas Shoot-Out
- Buy-sell at independently determined valuation

In Indian practice: Russian Roulette and Texas Shoot-Out are often theoretical — the tiered escalation almost always settles before triggering a forced sale.

IV

PART FOUR

Share Purchase Agreement

The transactional document — every diligence finding flows here.

Anchors price, allocates risk, and embeds the diligence record into reps, warranties, conditions and indemnities. The clauses below decide what survives — and what fails — at signing, closing and post-closing.

The Operative Clause

THE BEATING HEART OF THE SPA

This is the clause that actually moves the shares. Everything else in the agreement either supports it, conditions it, or allocates risk around it.

Drafting weight scales with deal complexity. A founder secondary may be three sentences. A controlled-PE buyout with deferred consideration, escrow and earn-outs can run to a multi-page schedule.

“

If a change of management control is being effected, the control mechanics typically live inside this clause too.

WHAT IT MUST SPECIFY



Number of shares

How many shares are being transferred



Purchase consideration

Price, including any adjustment formula



Effective date

Date sale & purchase legally takes effect



Mode of payment

Wire transfer, banker's draft, escrow release



Payment timing

Upfront vs deferred, holdback structures



Transfer formalities

DIS for demat / SH-4 for physical, escrow ops



Tranche structure

Single closing or staggered transfers

Sample Clause: Sale & Purchase of Shares

Annotated drafting — three operative paragraphs that together effect the transfer.

1

AGREEMENT TO SELL AND PURCHASE

Subject to the terms of this Agreement and in consideration of the Purchase Price, the Seller hereby agrees to sell, transfer and deliver the Sale Shares to the Purchaser, and the Purchaser hereby agrees to purchase, acquire and accept from the Seller the Sale Shares — constituting [x]% of the paid-up share capital of the Company — together with all rights, title, interest and advantages attached to them (including the right to receive dividends or distributions declared thereon) on the Closing Date. The sale shall be free and clear of any Encumbrances.

2

PAYMENT MECHANICS

Accordingly, the Purchaser shall, on the Closing Date, pay the Purchase Consideration to the Seller by remitting the said amount into the Seller Designated Bank Account through wire transfer or normal banking channels.

3

SIMULTANEOUS CLOSING ACTIONS

Upon payment of the Purchase Consideration, simultaneously on the Closing Date: (a) the Seller shall confirm in writing receipt of the Purchase Consideration; (b) the Seller shall sell to the Purchaser and the Purchaser shall purchase from the Seller the Sale Shares; and (c) the Seller shall place in escrow with the Escrow Agent the depository instruction slip ("Transfer Slip") pertaining to the Sale Shares, to be dealt with under this Clause and the Escrow Agreement.

Conditions Precedent: The Gating Items



Actions the Company and/or Seller must complete before Closing.

Each condition is mandatory and must be satisfied to the Purchaser's reasonable satisfaction (or expressly waived) for the share purchase to be effectuated.



Corporate Housekeeping

- Dematerialisation of all Sale Shares
- Board & shareholder approvals
- Form of Amended Articles agreed



Statutory & Regulatory

- Section 281 Income Tax certificate
- Lender consents for change of control
- Material contract counterparty consents



Transactional Plumbing

- Escrow Agreement executed
- Disclosure Schedule finalised
- No-Due certificate from exiting directors



Continuing Compliance

- No breach of SPA covenants
- No Material Adverse Effect
- Sellers Warranties remain true



Bring-Down Certificate

- Closing Date certificate from Sellers
- No injunction or restraining order
- All representations re-confirmed

Conditions Precedent: Sample Clause

"The obligation of the Purchaser to (i) purchase the Sale Shares and (ii) pay the Purchase Consideration is subject to the Sellers and the Company having completed, to the reasonable satisfaction of the Purchaser (or where permissible under Law, waiver by the Purchaser in its sole discretion), the following conditions (collectively, "Conditions Precedent"):"

- | | |
|--|--|
| <p>(a) All Sale Shares dematerialized in accordance with applicable Law</p> | <p>(g) Written consents from Material Contract counterparties for change of control</p> |
| <p>(b) Escrow Agreement executed with the Escrow Agent</p> | <p>(h) Board & shareholder resolutions in form acceptable to the Purchaser</p> |
| <p>(c) Form of Amended Articles agreed amongst Sellers, Company and Purchaser</p> | <p>(i) No Material Adverse Effect between Agreement Date and Closing Date</p> |
| <p>(d) Section 281 Income Tax Act, 1961 certificate delivered to the Purchaser</p> | <p>(j) "No Due" certificate obtained from each Exiting Director</p> |
| <p>(e) Sellers and Company in full compliance with SPA obligations; no breach</p> | <p>(k) Bring-down certificate: no injunction, full compliance, warranties true</p> |
| <p>(f) Prior written consent from each lender for execution & change of control</p> | <p>— (subject to Disclosure Schedule and Updated Disclosure Schedule)</p> |

Closing Day & Conditions Subsequent

All corporate compliances and statutory intimations to be completed on the Closing Date — the choreography of board meetings, register updates, and ROC filings under the Companies Act, 2013.



BOARD & SHAREHOLDER ACTIONS

- Register sale of Sale Shares in Purchaser's name
- Appoint Purchaser Directors with immediate effect
- Record resignation of Seller Directors
- Revoke powers granted to Seller Directors
- Adopt the Amended Articles
- Convene shareholders' meeting at shorter notice
- Update bank account authorized signatories



REGISTERS & ROC FILINGS

- Enter Purchaser in register of members
- Update register of share transfers
- Update register of Directors
- File Form DIR-12 (director appointment)
- File Form DIR-11 (director resignation)
- File Form MGT-14 (adoption of Amended Articles)



DELIVERABLES TO PURCHASER

- Certified copies of Board resolutions
- Certified copies of shareholder resolutions
- Certified copy of register of members
- Certified copy of register of share transfers
- Certified copy of register of Directors
- Evidence of all statutory filings

Between Signing & Closing

THE GAP PERIOD

A

AGREEMENT DATE

Signing

B

CLOSING DATE

Completion



POSITIVE COVENANTS

What the Sellers and Company must do

- Share confidential information with the Purchaser
- Notify the Purchaser of pending or threatened litigation
- Provide access to books and records on reasonable notice
- Continue carrying on Business in the Ordinary Course
- Notify the Purchaser of any Material Adverse Effect
- Take all action necessary to give effect to the Transaction



NEGATIVE COVENANTS

What requires prior Purchaser consent

- Incurring borrowings beyond agreed thresholds
- Amending Memorandum & Articles or charter documents
- Entering into Related Party transactions
- Declaring dividends or making distributions
- Transferring movable or immovable assets
- Mergers, restructurings, or setting up subsidiaries
- Soliciting business from existing customers / employees

Breach of these covenants typically triggers indemnification under the SPA.

Sample: Positive Covenants

"Except as required and contemplated under the Transaction Documents, each of the Company and the Sellers shall, during the period between the Agreement Date and the Closing Date —"

- (a)** Promptly supplement or amend information in the SPA where any matter becomes known that would render any disclosure or warranty inaccurate
- (b)** Cause the Company to continue carrying on its business diligently with reasonable care, in the Ordinary Course of Business
- (c)** Take prior written approval of the Purchaser if borrowings (excluding working capital utilisation in the Ordinary Course) exceed INR [x] in addition to outstanding borrowings as on the Agreement Date
- (d)** Notify the Purchaser of any event or circumstance that results in a Material Adverse Effect
- (e)** Notify the Purchaser of all notices, summons or Claims received in relation to the Business, assets, Sale Shares or operations
- (f)** Provide the Purchaser and its authorised representatives with reasonable access during business hours to all of the Company's assets, books and records
- (g)** Take all actions necessary, including exercising voting rights at any general meeting, to give effect to the transactions contemplated by the Transaction Documents
- (h)** Not directly or indirectly solicit, discuss or agree to any potential third-party acquisition, share issuance, or grant of management rights in the Company

Sample: The "Shall Not" List

"Without the prior written consent of the Purchaser, the Company shall not, and the Sellers shall ensure that the Company does not —"



Capital Structure

- Increase authorized share capital
- Declare dividends or distributions
- Redeem or buy back share capital



Charter & Governance

- Amend Memorandum & Articles
- Change composition of the Board
- Grant any power of attorney



Related Parties

- Enter Related Party transactions (other than salaries/dues)
- Modify employment policies
- Modify auditor or accounting policies



Assets & Operations

- Transfer movable or immovable assets outside OCB
- Change scope or nature of Business
- Make investments in any other Person



Litigation & Tax

- Commence arbitration / litigation (except trade debt)
- Change any tax position previously adopted
- Material change to tax procedures



Structural Events

- Mergers, consolidations or amalgamations
- Establishing or setting up subsidiaries
- Restructuring, liquidation or winding up

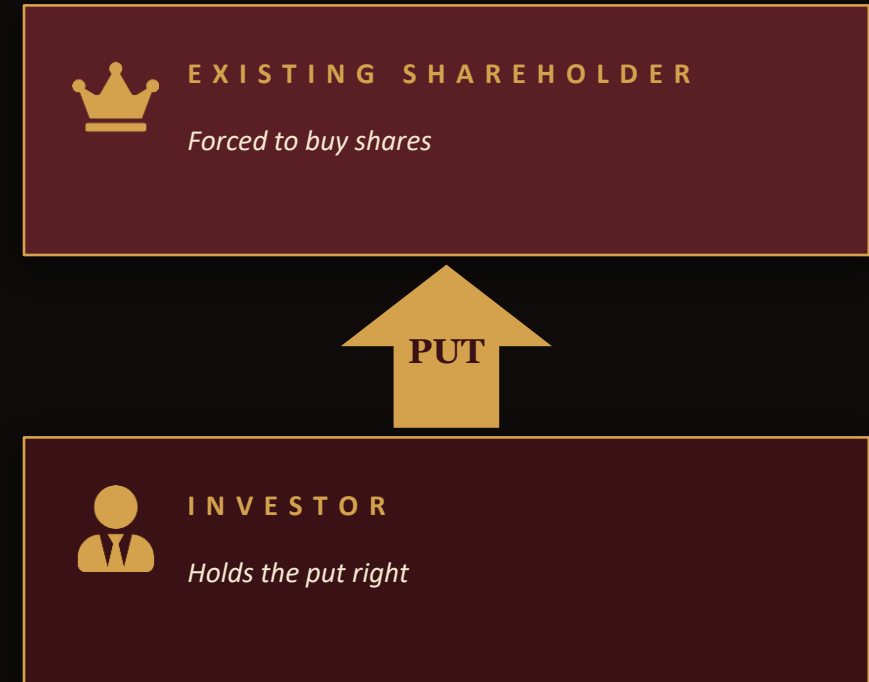
Put Option: The Forced Exit

THE INVESTOR'S EXIT TOOL

A right held by one shareholder to force another to buy its shares at a pre-determined price.

WHEN IT GETS USED

- Private equity investments where exit liquidity is uncertain
- Existing shareholder commits a default under the SHA
- Investor wants to absolve itself of liabilities caused by the existing shareholder
- Pre-agreed exit at a defined valuation or multiple



Investor pushes its shares UP to the existing shareholder at the pre-agreed price.

Sample Put Option: Mechanics

1

GRANT OF PUT OPTION

The Sellers shall, within [X] days from the date of determination of the Purchase Consideration, be entitled to exercise a put option to sell all or part of the remaining Equity Shares held by them in the Company to the Purchaser ("Put Option") in proportion to the Sale Shares already transferred. The actual number of shares to be sold shall be set out in the Put Notice ("Put Option Sale Shares"). Upon transfer, the Sellers shall either collectively hold at least [Y] Equity Shares or cease to be a holder of any Equity Shares.

2

OBLIGATION TO CONSUMMATE

The Sellers must exercise their put option and the Parties shall consummate the transactions for transfer of the Put Option Sale Shares in the manner set out below.

3

EXERCISE & CLOSING TIMELINE

To exercise the Put Option, the Sellers shall serve a written notice on the Purchaser ("Put Notice") within [Z] days from the date of determination of the Purchase Consideration. Failure to serve forfeits the right. Once served, the Purchaser shall be obligated to purchase the Put Option Sale Shares within [A] Business Days ("Put Option Closing Date") and shall pro rata apportion the Purchase Consideration between the Sellers and pay it to their Designated Bank Accounts.

4

BINDING ON PURCHASER

For the avoidance of doubt: if the Sellers exercise their Put Option, the Purchaser shall be bound to purchase the Put Option Sale Shares so offered for sale.

Call Option: The Forced Acquisition

THE INVESTOR'S TAKEOVER TOOL

The mirror of a put — a right to force another shareholder to sell its shares at a pre-determined price.

WHEN IT GETS USED

- Strategic investments aimed at eventual full control
- Existing shareholder commits a default under the SHA
- Investor wants to take over and manage the company alone
- Liquidity event or pre-agreed buyout for the existing shareholder



Investor pulls shares DOWN from the existing shareholder at the pre-agreed price.

Put vs Call: Side-by-Side

Same drafting architecture, opposite direction of compulsion.

↑ PUT OPTION

Investor sells TO existing shareholder

Existing shareholder forced to BUY

Investor exits its position

Private equity / financial investment

Default by existing shareholder · pre-agreed exit

DIRECTION

WHO IS FORCED

OUTCOME

TYPICAL CONTEXT

TRIGGER

↓ CALL OPTION

Investor buys FROM existing shareholder

Existing shareholder forced to SELL

Investor consolidates control

Strategic / acquisition-led investment

Default by existing shareholder · pre-agreed buyout

Seller Representations & Warranties



The seller's risk allocation instrument.

Detailed factual statements about the Company and the Sale Shares, given as true and correct on the Agreement Date and (where re-stated) the Closing Date. They are subject only to the Disclosure Schedule.

01

Title & Capacity

Ownership of Sale Shares free of Encumbrances · authority to sell

02

Corporate Standing

Valid incorporation · capital structure · charter compliance

03

Authorisation & Consent

Board / shareholder approvals · third-party consents · no breach

04

Books & Accounts

Indian GAAP compliance · accurate financial reporting · statutory registers

05

Liabilities & Borrowings

Disclosed obligations only · no undisclosed Encumbrances or guarantees

06

Tax & Compliance

Filings made · withholdings remitted · no pending tax proceedings

07

Assets & IP

Valid title to material assets · IP ownership / licensing · no infringement

08

Contracts & Litigation

Material contracts valid · no defaults · no litigation or insolvency

How the Warranty Engine Is Built

Seven drafting principles that turn a warranty schedule into an enforceable risk-allocation instrument.

1 **Joint and Several Liability** *Sellers represent jointly and severally — each is fully exposed for any breach*

2 **True at Two Dates** *Warranties are correct on the Agreement Date AND remain so on the Closing Date*

3 **Subject to the Disclosure Schedule** *Anything carved out in disclosures does not constitute a breach*

4 **Updated Disclosure Schedule** *Parties may agree to refresh disclosures against negotiated milestones*

5 **Notification Obligation** *Sellers must promptly notify any matter that would render warranties untrue*

6 **Each Warranty Stands Alone** *Warranties construed as separate — one cannot be read down by another*

7 **Due Diligence Does Not Limit** *Buyer's DD does not waive warranties unless expressly disclosed*

The Foundational Seller Warranties

The non-negotiable core that almost every SPA carries — warranties going to title, capacity and the integrity of the Company.



TITLE TO SHARES

- Sellers are legal and beneficial owners of the Sale Shares
- Shares acquired in compliance with applicable Law
- Full voting and economic rights subsist
- Good and marketable title, free of Encumbrances
- Sale Shares duly authorised, validly issued, fully paid
- Upon transfer, Purchaser becomes registered legal owner



CORPORATE INTEGRITY

- Private limited company validly incorporated under the Act
- Duly organised, in good standing, no breach of charter docs
- No subsisting subsidiaries (or as disclosed)
- Authorised share capital and capital structure as specified
- No outstanding options, warrants, pre-emptive rights
- All allotments / transfers compliant with applicable Law



AUTHORITY & ENFORCEABILITY

- Each Seller has full authority to execute the SPA
- All required corporate actions taken or to be taken by Closing
- No additional governmental consent required for execution
- No conflict with Memorandum, Articles, applicable Law
- No breach of any contract or governmental order
- Transaction Documents constitute valid binding obligations

Operational & Compliance Warranties

Warranties going to the day-to-day reality of the business — what the Purchaser is actually buying.



Approvals & Licences

- Material approvals obtained and valid
- No breach of approval conditions
- No notice of cancellation or revocation



Books & Accounts

- Statutory books accurate and up to date
- Accounts prepared per Indian GAAP
- Internal controls in place and effective



Liabilities & Borrowings

- No undisclosed material liabilities
- Compliant with all financing documents
- No event of default or accelerated repayment



Tax

- All filings made and paid on time
- TDS/TCS withheld and remitted
- No pending tax proceedings or disputes



Assets, IP & Contracts

- Good title to all material assets
- IP ownership / valid licences in place
- Material contracts valid; no defaults



Litigation & Solvency

- No pending or threatened proceedings
- No insolvency or liquidation events
- No injunctions, judgments or default orders

Purchaser Representations & Warranties

Purchasers give fundamental warranties only — narrow, transactional and capacity-focused.



The asymmetry is deliberate — the Seller has lived with the Company; the Purchaser is buying it on the strength of the Seller's representations and its own due diligence.

A

Valid Incorporation

Juristic entity duly incorporated and existing under applicable Laws

B

Legal Capacity

Right, power and authority to enter into and perform the SPA and Transaction Documents

C

Corporate Authorisation

Execution duly authorised by all necessary corporate or other action

D

No Conflict

Performance does not breach charter, agreements, judgments or applicable Law

E

Going Concern

No receiver, provisional liquidator or liquidator appointed; no winding up

Purchaser also acknowledges no reliance on Seller statements except the Seller Warranties expressly given.

Indemnities: The Recovery Engine

Indemnities turn a warranty breach from a litigation problem into a contractual recovery — a defined right to be made whole, with defined caps and procedures.



SELLERS INDEMNIFY THE PURCHASER

Joint and several liability for breach of Seller Warranties, third-party claims arising from such breach, and failure to perform covenants.

PURCHASER INDEMNIFIES THE SELLERS

Liability for breach of Purchaser Warranties and failure to perform covenants — typically narrower scope and shorter duration.

Procedure: Direct vs Third-Party Claims

Two distinct workflows — different actors, different timelines, different control rights.



DIRECT CLAIMS

Indemnified Party suffers a Loss directly

1

Notice of Claim

Within [X] BD of becoming aware of Loss · sets out estimated amount and basis

2

Dispute Window

Indemnifying Party has [Y] BD to dispute · cooperation in determining validity

3

Deemed Acceptance

If no dispute within [Z] BD, claim is conclusively accepted

4

Payment

Settled within [A] BD after expiry of dispute window

5

Disputed Claims

Resolved per dispute resolution clause of the SPA



THIRD-PARTY CLAIMS

Claim brought by an outside party (incl. Government Authority)

1

Notification

Indemnified Party promptly notifies Sellers with legal & factual basis

2

Consultation

Indemnified Party consults with Sellers before responding to the third party

3

Conduct of Defence

Sellers (if indemnifying) may control defence; Indemnified Party may co-counsel

4

Fallback Right

If Sellers fail to assume defence within [X] BD, Indemnified Party defends and is indemnified

5

Settlement Veto

Neither party settles without the other's consent (not unreasonably withheld)

Limitation of Liability

Where the heaviest negotiation happens — caps, baskets, de-minimis thresholds and exclusions.



OVERALL CAP

100%

of Purchase Consideration

Aggregate liability of the Sellers under the Transaction Documents shall not exceed the Purchase Consideration paid until the time of the Claim.



WARRANTY CAP

[X]%

of Purchase Consideration

A separate, lower cap typically applies to liability for breach of warranties (commonly 25 – 50%, market-dependent).



DE-MINIMIS

INR [X]

per individual claim

Sellers not liable for any single claim below the de-minimis. Filters out trivial claims that aren't worth the friction.



BASKET / THRESHOLD

INR [Y]

aggregate

Once the aggregate of qualifying claims crosses this threshold, Sellers are liable for ALL such claims (tipping basket).



EXCLUDED LOSSES

No party is liable for indirect or remote Losses — including consequential loss, loss of expected savings, opportunity costs, loss of goodwill, diminution in value of assets, contracts, profits or Sale Shares.

Term & Termination

Termination is a pre-Closing remedy. Once Closing has happened, the SPA cannot be unwound — only specific provisions survive.

01



MUTUAL CONSENT

*By written agreement of all Parties — the cleanest exit.
No fault, no fault-attribution.*

02



PURCHASER FOR CAUSE

By the Purchaser on [X] BD notice if a Condition Precedent fails (and is not waived), or if a Seller materially breaches and fails to cure within [X] BD of notice.

03



AUTOMATIC LONG-STOP

Self-executing termination if Closing has not occurred on or before [X] BD from the Agreement Date — the long-stop date.



PROVISIONS THAT SURVIVE TERMINATION

- Governing Law & Dispute Resolution
- Confidentiality
- Definitions & Interpretation
- Miscellaneous boilerplate provisions
- Indemnity (post-Closing, for periods specified)
- Accrued rights, obligations and liabilities prior to termination

Governing Law, Jurisdiction & Disputes

Three distinct levers — frequently conflated, often the most negotiated boilerplate in cross-border deals.

01



GOVERNING LAW

What law governs the contract

Determines the legal system that will be applied to the construction, validity and interpretation of the SPA. Distinct from the place of dispute resolution.

02



JURISDICTION

Which court has supervisory authority

Identifies the courts before which disputes (or interim relief in support of arbitration) can be brought. Often paired with an arbitration clause as a fallback for urgent relief.

03



DISPUTE RESOLUTION

How disputes will actually be resolved

Specifies the procedural mechanism — arbitration, mediation, litigation or a tiered combination. Includes seat, venue, language, rules and tribunal composition.

“

TYPICAL ARBITRATION FRAMEWORK

Disputes resolved by binding arbitration under the Arbitration and Conciliation Act, 1996 — three-arbitrator tribunal (one each by Purchaser and Sellers, third jointly appointed as presiding officer). Seat and venue at [X], language English. Nothing precludes a Party from seeking interim or injunctive relief from a court of competent jurisdiction.



Protects sensitive information about the target — and the deal itself.

Including financial data, customer and vendor lists, products, services, strategy, trade secrets, contractual terms and other non-public material — alongside the existence and terms of the SPA itself.



CORE OBLIGATIONS

- Treat all Confidential Information as confidential — no transfer, transmission or use except as authorised
- Restrict disclosure to affiliates, advisors, lenders and representatives on a need-to-know basis, who are themselves bound by confidentiality
- Use the same degree of care as for own confidential information, and never less than reasonable care
- Use only in furtherance of the negotiation and consummation of the Transaction
- Notify the Disclosing Party immediately of any unauthorised disclosure and use best efforts to recover and prevent further disclosure
- Confidential Information remains the property of the Disclosing Party



EXEMPTIONS FROM RESTRICTION

- Information that has lawfully entered the public domain (other than via breach of the SPA)
- Disclosure required by applicable Law, by a regulator, or in response to a valid request from a Governmental Authority
- Disclosure necessary in connection with the performance of obligations or exercise of rights (including remedies) under the SPA
- Where compelled by Law, the Receiving Party shall give the Disclosing Party prompt notice so a protective order or similar relief may be sought
- Information already known to the Receiving Party prior to disclosure (where so demonstrated)
- Information independently developed without reference to the Confidential Information



Q & A

Discussion · Clarifications · Drafting Strategy

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