

# Due Diligence Checklist

## 1) GENERAL CORPORATE MATERIALS

- a) Minutes
  - i) Minutes of Shareholders' Meetings and written consents of Shareholders in lieu of meetings.
  - ii) Minutes of Board of Directors' Meetings and written consents of Directors in lieu of meetings.
  - iii) Minutes of Committees of the Board, if any.

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- b) Charter Documents
  - i) Charter, as amended to date.
  - ii) By-laws, as amended to date.
  - iii) Long form good standing and tax certificates from states of incorporation.
  - iv) List of jurisdictions in which the Company is qualified to do business or is otherwise operating.

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- c) Organization
  - i) List of key personnel, identifying each person's capacity.
  - ii) Shareholder and option holder lists along with numbers of shares owned or optioned, along with vesting schedules, if any.
  - iii) List of investments in other corporations or partnerships.

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- d) Capital Stock Books
  - i) Securities authorized and outstanding (including stock books and records).
  - ii) Agreements relating to the purchase, sale or issuance of securities.
  - iii) Agreements relating to voting of securities, preemptive rights, restrictive share transfers, and repurchases or redemption of securities.
  - iv) Registration rights agreements.

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- e) Communications With Security Holders
  - i) Any annual or interim reports or other general communications sent to Security Holders since inception.

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- f) Shareholder Agreements

## 2) FINANCIAL STATEMENTS

- a) Financial Statements for the last 5 fiscal years.

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- b) Tax filings and returns for the last 3 years, including federal and state income, sales, use, property and franchise taxes.

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- c) Auditor's letters and opinions during the last 5 years, if any.

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- d) Reports delivered to management or the Board of Directors of the Company by its accountants during the past 5 years in connection with their audit work.

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- e) Latest internal financial statements including:
  - i) Sales register
  - ii) Payroll register
  - iii) General ledger
  - iv) Accounts payable
  - v) Accounts receivable
  - vi) Fixed assets register
  - vii) Sales backlog

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- f) Schedule for accrued expenses.

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- g) List of outstanding purchase orders.

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- h) Budget for the current year.

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- i) All correspondence related to Company's federal and state tax loss carry-forwards including correspondence to and from counsel and accountants re: same.

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- j) Availability for inspection of internally utilized books of original entry including general ledger, payroll records and ledger, sales register, accounts receivable aging, accounts payable and fixed assets listings and accompanying depreciation schedule.

3) LITIGATION: LEGAL MATTERS

- a) Schedule of threatened or pending litigation, claims and proceedings.
- b) Correspondence dealing with actual or alleged infringement of patents, trademarks or copyrights or misappropriation of trade secrets of proprietary rights by the Company.
- c) Correspondence dealing with actual or alleged infringement of the Company's patents, trademarks or copyrights or misappropriation of its trade secrets or proprietary rights.
- d) Documents evidencing waivers or agreements canceling claims or rights of substantial value other than in the ordinary course of business.
- e) Judicial or administrative decrees, orders, injunctions, judgements, settlement agreements and the like, to which the Company or any of its properties is, or at any time since inception has been, subject.
- f) Pleadings, motions, orders and correspondence in connection with all pending litigation and proceedings.
- g) Attorney's letters to accountants, if any, for past 5 years.

4) COMPLIANCE WITH LAWS

- a) Citations and notices received from government agencies.
- b) Pending investigations and governmental proceedings.
- c) Government permits and consents.
- d) Reports to and correspondence with government agencies.
- e) Material related to any suspended or revoked government permits or licenses.
- f) Any miscellaneous materials relating to state, federal or municipal regulatory matters, including environmental matters and regulatory compliance for products and services sold by Company.

5) PERSONNEL

- a) Organization chart showing all employees.
- b) Employment contracts.
- c) Consulting contracts.
- d) Copies of employee benefit, pension, health, deferred compensation and profit-sharing plans or programs.
- e) Schedule of loans and guarantees to or from directors, officers, shareholders or employees, including copies of documentation and promissory notes, if any.
- f) Stock options and deferred compensation or bonus plans or similar arrangements.
- g) List by location of all employees by state or country and briefly describe the duties of those employees.
- h) Copies of personnel policies.
- i) Payroll register.
- j) Personnel manuals and employee handbooks.
- k) Affirmative action plans.
- l) Agreements of the Company to indemnify key personnel.
- m) Non-disclosure, development assignment and non-competition agreements with any key personnel, employee, consultant or independent contractor (or, where all or most employees are a party to such an agreement, the form of agreement together with a schedule of all employees who are not parties thereto).
- n) Agreements to which key personnel are parties and which might restrict their activities for the Company in any way.
- o) Agreements or arrangements (and schedule and description of any unwritten agreements or arrangements) between the Company and any key personnel (or any entity in which any of such key personnel have a direct or indirect interest, regardless of the size of the interest) since inception, other than as identified in response to any other item of this Part V.
- p) Work for hire/assignment of inventions and developments.

- q) Severance agreements.
- r) Director and executive officer compensation agreements.
- s) Stock-based compensation plans
  - i) Phantom Stock Plans;
  - ii) Stock Option Plans; and
  - iii) Stock Purchase or Bonus Plans.
- t) A schedule of any union contracts, listing the number of employees covered by and the expiration dates of each.

6) REAL PROPERTY

- a) Deeds and mortgages, if any.
- b) Leases or subleases of real property used by the Company.
- c) Easements and other encumbrances.
- d) List of all waste treatment, storage or disposal sites.
- e) Schedule of owned or leased real estate.

7) OTHER PROPERTY

- a) Financing leases and sales and leaseback agreements.
- b) Conditional sale agreements.
- c) Equipment leases.
- d) Insurance policies (casualty, property, liability, errors and omissions, officer and directors, etc.). (To the extent coverage has changed during the last 5 years, please so indicate. Also, please summarize any claims filed during the last 5 years).
- e) Patents, trademarks, copyrights and other intangible assets and assignment and ownership documents relating thereto.
- f) Schedule of fixed assets.

8) FINANCING

- a) Loan agreements, indentures, credit agreements, notes, guarantees, sale and leaseback agreements and other evidences of indebtedness of the Company, together with all materials and related documents (including all amendments thereto) and all correspondence with any creditors for borrowed money relating to any defaults, waivers of any covenants, or termination of any such indebtedness.
- b) Work sheets showing compliance with financial covenants.
- c) Agreements, offering circulars, private placement memoranda, disclosure letters, and similar documents relating to any sales or proposed sales of the Company's capital stock or other securities since inception.
- d) Any agreement between the Company and any broker, finder or other person or entity relating to the past, present or proposed offering or sale of the Company or any of the Company's securities.
- e) Agreements, agreements in principle and letters of intent with respect to mergers, acquisitions or sales of material assets involving the Company (whether as buyer, seller or otherwise) entered into since inception (and whether or not consummated), and a summary of any such mergers, acquisitions and sales currently pending or planned by not reduced to writing.

9) OTHER AGREEMENTS AND CORPORATE MATERIALS

- a) Marketing agreements, including sales agent or representative, dealer and distributor agreements, consignment and pricing agreements.
- b) Government contracts and subcontracts, if any.
- c) Supply agreements.
- d) Purchase and requirements contracts (list outstanding purchase commitments by purchase order showing amount.)
- e) Joint venture and partnership agreements.
- f) License agreements.

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- g) Development agreements.
- h) Franchise agreements.
- i) Management, service and tax-sharing agreements.
- j) Performance guarantees and bonds.
- k) Advertising agreements.
- l) Acquisition and disposition of companies, significant assets or operations.
- m) Commission, brokerage and agency agreements.
- n) Forms of warranties.
- o) Agreements and arrangements between the Company and any affiliate since inception, other than any agreements or arrangements identified in response to Part V.
- p) Agreements to which to Company is a party that may restrict the Company's activities in any significant way and that are not identified in response to any other item.
- q) Agreements to which the Company is a party that were not entered into in the ordinary course of business and that are not identified in response to any other item.
- r) Any other documents or information that, in the Company's judgement, are significant with respect to any portion of the business of the Company or that should be considered and reviewed in making disclosures regarding the business and financial condition of the Company to prospective investors.
- s) Contracts outside the ordinary course of business.
- t) Samples of forms of purchase orders and invoices.
- u) Product brochures and literature.
- v) Nondisclosure or confidentiality agreements with third parties.
- w) Development/collaboration agreements.
- x) Supply purchase contracts.
- y) Distribution agreements.
- z) Any significant studies commissioned or reviewed by the Board of Directors of the Company during the last five years.
- aa) Press Release files of the Company.
- bb) Sales and inventory backlog reports and listing of outstanding purchase orders.
- cc) Proprietary information policy.
- dd) Trade secret protection.
- ee) Proprietary notices.
- ff) Copyright registrations.
- gg) Trademark registrations.
- hh) Escrow agreements for source code, know how, etc.
- ii) Foreign jurisdiction tax reporting.
- jj) Export/license requirements and compliance.
- kk) Environmental compliance policy.