

Letter Of Intent (aka Term Sheet)

Definition	Defines the respective preliminary understandings of the parties about to engage in contractual negotiations
Obligations	Not intended to be binding except with respect to certain limited provisions (e.g. exclusivity, confidentiality). To be 100% sure, the parties should define the terms under which it is and is not acceptable to withdraw from negotiations and, in the case of an unacceptable withdrawal, the amount of the liquidated damages
Pros	<ul style="list-style-type: none">• Set forth some binding agreements (e.g. exclusivity, confidentiality)• Ensure parties agree on principal terms before making substantial legal DD and SPA drafting expenses• Psychological effect of entering into agreement and therefore intention to close
Cons	<ul style="list-style-type: none">• If can close quickly, why bother?• Sometimes it's costly to negotiate, so better reduce it to one time (in SPA negotiations)
Time for execution	After the acquirer has completed its basic financial due diligence but before it embarks on its major legal due diligence
Drafting party	N / A

Acquisition agreement (aka SPA)

Overview

Purpose	<ol style="list-style-type: none">1. Sets forth the structure and terms of the transaction2. Discloses all the important legal and financial details of the target's operations, as well as the comments of each party prior to closing.3. Contains the conditions to each party's closing the transaction as well as the comments of each party prior to closing.4. Obligates both parties to do their best to complete the transaction5. Obligates the seller not to change the target in any significant way before the closing6. Governs what happens if, before or after the closing, the parties discover problems that were not properly disclosed
Obligations	Completely binding agreement
Negotiations objectives	<p>Sell-side:</p> <ul style="list-style-type: none">• Closing will occur as soon as possible (Conditions section in SPA)• No post-closing events will require a refund of any of the purchase price (Indemnity section in SPA) <p>Buy side:</p> <ul style="list-style-type: none">• Flexibility to abandon the transaction if any defects are discovered (Conditions section in SPA)• Full compensation for loss resulting from legal or financial problems that were not disclosed. Of course macro risks, etc. after closing are not compensated. (Indemnity section in SPA)
The risk of undisclosed flaws	<p>Two ways to deal with this risk:</p> <ol style="list-style-type: none">1. "As is" - the buyer assumes all the risk and discounts the price accordingly

	<p>2. The seller indemnifies all or part of the risk</p> <p>The second is general way, but the first might apply to create incentives for both parties to discover flaws beforehand. Also in some cases, seller may enjoy both high price and low risks (e.g. in auction)</p>
Drafting party	<p>Buy-side for the following cons o/w:</p> <ul style="list-style-type: none"> • Loss of control over pace of drafting • Seller's attorney drafts the changes and always protect the seller • Illusion of saved legal fees, while substantial redrafting will be necessary to make the agreement work anyway

Structure

1. Introductory material
2. The price and mechanics of the transfer
3. Representations and warranties of the buyer and seller
4. Covenants of the buyer and seller
5. Conditions to closing
6. Indemnification
7. Termination procedures and remedies
8. Legal miscellany

Introductory material

It is often useful in a legal document to describe the intentions of each of the parties (the legal significance of the introductory material is usually not great)

The price and mechanics of the transfer

1. Identifies the structure of the transaction as a stock disposition, an asset disposition, or a merger
2. Describes the mechanics to be utilized to transfer the property from seller to buyer
3. Optionally: the requirement for a deposit by the buyer, or other security for the buyer's obligations to close
4. Nature of the consideration to be received by the seller

5. The timing of payment
6. Provisions regarding satisfaction of net debt
7. In case of asset disposition (AL)
 - Assets are to be conveyed to the buyer
 - Liabilities of the seller will be assumed by the buyer
8. In case of merger (CABIN)
 - Composition of the board of directors
 - Articles of incorporation
 - Bylaws governing the surviving corporation
 - Identity of the surviving corporation
 - Names of the officers

Representations and warranties

Purpose	<p>As of the date of the signing the Seller makes detailed statements about</p> <ul style="list-style-type: none"> • Legal and financial condition of the target • The property to be conveyed and that the transaction will not have adverse effects upon the property to be conveyed • The ability of the seller to consummate the transaction <p>The buyer makes similar representations and warranties about its legal and financial ability to consummate the transaction (and some other)</p> <p>Representations must include those required by lenders (anticipated by the buyer)</p>
Contents	Representations and warranties, exhibits and schedules