

# EARNEST MONEY CONTRACT

1. **PARTIES:** \_\_\_\_\_ (Seller)  
agrees to sell and convey to \_\_\_\_\_ (Buyer)  
and Buyer agrees to buy from Seller the assets of that certain business known as \_\_\_\_\_  
located at \_\_\_\_\_.

2. **CONTRACT SALE PRICE:**

- A. Cash Payable from Buyer's Personal and/or Company Funds at Closing..... \$ \_\_\_\_\_
- B. Sum of all Notes, Debts and Assumptions described in Section 3 below..... \$ \_\_\_\_\_
- C. Total Contract Sales Price (Sum of 2A and 2B) ..... \$ \_\_\_\_\_

3. **FINANCING:** The sum described in paragraph 2B above shall be paid as follows (Check applicable boxes below):

**A. ASSUMPTION OF PROMISSORY NOTE:** Buyer shall assume the unpaid principal balance of a promissory note payable to \_\_\_\_\_ dated \_\_\_\_\_, which unpaid balance at closing will be \$ \_\_\_\_\_. Buyer's initial payment shall be the first payment due after closing. The cash payable at closing shall be adjusted by the amount of any variance in the loan balance(s) stated above; provided, if the total principal balance of all assumed loans varies at closing from the total of the amount(s) stated above by amount greater than \$250.00, then the cash payable at closing shall be adjusted by the amount of any variance of the note/debt obligation. If the noteholder on assumption requires modification of the loan documents which are unacceptable to Buyer, or the noteholder refuses to allow assumption of said note, Buyer may terminate this contract and the Earnest Money shall be refunded to Buyer.

**B. ASSUMPTION OF EQUIPMENT LEASES:** Buyer shall assume Seller's indebtedness on equipment leases in the amount of \$ \_\_\_\_\_. Buyer's initial payment shall be the first payment due after closing. The (check one):  cash payable at closing, or  Buyer's note to Seller shall be adjusted by the amount of any variance in the Seller's indebtedness by an amount greater than \$250.00. If the Lessor refuses to allow assumption of said indebtedness, Buyer may terminate this contract and the Earnest Money shall be refunded to Buyer.

**C. THIRD PARTY FINANCING:** A third party first lien note of \$ \_\_\_\_\_ payable in monthly intervals for not less than \_\_\_\_\_ years with the initial interest rate not to exceed \_\_\_\_\_% simple interest per annum. Buyer shall apply for all third party financing within \_\_\_\_\_ calendar days after effective date of this Contract and shall make every reasonable effort to obtain the same. Buyer must provide Seller with a copy of a preliminary loan approval letter no later than fifteen (15) calendar days after the effective date of this Contract. In the event said letter is not provided to Seller by said date, Seller may terminate this Contract. In order to facilitate the loan application, Seller shall timely furnish to Lender any information requested by Lender. If such financing is not obtained within \_\_\_\_\_ calendar days after the effective date hereof, this Contract shall terminate and the Earnest Money shall be refunded to Buyer.

**D. SELLER FINANCING:** A Secured Promissory Note from Buyer to Seller of \$ \_\_\_\_\_ (Principal Amount), bearing \_\_\_\_\_ % interest per annum and payable as follows (check one):

**Single Payment Note:** The Principal Amount, plus accrued interest shall be due and payable in one-single payment \_\_\_\_\_ days after the date of the note; or

**Installment Payments** of \$ \_\_\_\_\_ payable (check one):  monthly; or  other \_\_\_\_\_ including interest, with the first payment beginning (check one):  30 days after the date of the note; or  other \_\_\_\_\_ and continuing thereafter in equal installments for \_\_\_\_\_ months when the entire balance of the note shall be due and payable.

Any Seller financed note may be prepaid in whole or in part without penalty. Any prepayments are to be applied to the payment of the installments of principal last maturing and interest shall immediately cease on the prepaid principal. This note shall be subject to a right of offset. The lien securing payment of such note will be inferior to any lien securing any other note described in paragraph 3A, 3B or 3C above. Buyer shall guarantee the financing, or if Buyer is an entity, then the direct legal owner(s) of the Buyer shall guarantee the financing. Buyer shall furnish Seller with a financial statement within seven (7) days after the effective date of this contract. If Buyer's credit history or financial statement is not reasonably acceptable, Seller may terminate this contract within five (5) days after receipt of such information by giving written notice to Escrow Agent and the Earnest Money shall be refunded to Buyer. If Seller does not give notice of termination in writing within the time provided, Seller shall be deemed to have approved Buyer's credit. Buyer hereby authorizes Buyer's credit report to be furnished to Seller.

4. **EARNEST MONEY:** \$ \_\_\_\_\_ is herewith tendered and is to be deposited as Earnest Money with Lawyers Escrow Company as Escrow Agent, upon execution of the contract by both parties. Additional Earnest Money, if any, shall be deposited with the Escrow Agent on or before \_\_\_\_\_, in the amount of \$ \_\_\_\_\_.

5. **ASSETS INCLUDED:** The following assets are included in the sale of the business herein (check all that are applicable):  
 Business Trade Name;  Domain Name(s)/Website(s);  Furniture, Fixtures and Equipment;  Leasehold Improvements;  
 Lease Rights;  Contract Rights;  On-Hand Inventory;  Business and/or Fax Telephone Numbers;  Customer List;  
 Computer Software;  Other: \_\_\_\_\_
6. **ASSETS EXCLUDED:** The following assets are specifically excluded in the sale of the business herein. (check all that are applicable):  Cash on Hand  Accounts Receivable;  Lease Deposit;  Utility Deposits;  Other: \_\_\_\_\_
7. **RIGHTS OF ASSIGNMENT:** Buyer reserves the right to assign the rights and responsibilities under this Contract to a corporate entity to be formed by Buyer prior to closing date. In such event, Buyer agrees to personally guarantee all obligations under this Contract.
8. **INVENTORY, TRADE RECEIVABLES, AND COMPLETED WORK IN PROCESS:**
- A. Sales Price will increase or decrease according to variation in the values herein (check all that are applicable):  
 (a)  Inventory (stock held for resale) in the amount of \$\_\_\_\_\_ is included in the Sales Price. Buyer and Seller shall agree on the actual inventory value at the time of closing and the Sales Price shall be adjusted by the amount that the actual inventory value is above or below the amount stated above, with the understanding and agreement that Buyer is not obligated to accept more than \$\_\_\_\_\_ of inventory at closing;  
 (b)  Trade Accounts Receivable less Trade Accounts Payable above or below \$\_\_\_\_\_; and/or  
 (c)  Profit associated with the completed portion of Work in Process above or below \$\_\_\_\_\_.
- B. Any adjustment to the Sales Price because of a variation above or below the values stated in 8.A. (a), (b), or (c) above will increase or decrease (check applicable box):  
 (a)  cash due at closing; or  
 (b)  the principal amount and installments payable on the Promissory Note from Buyer payable to Seller.
- C. The values stated in 8.A. (a), (b), or (c) above shall be determined by Buyer and Seller jointly on or before the Closing Date. Inventory value, at cost, shall be determined by using (check applicable box):  
 (a)  original invoice costs; or  
 (b)  \_\_\_\_\_(\_\_\_\_\_% ) percent of retail price; or  
 (c)  a professional inventory firm.
- D. If a professional inventory firm or other professional consultant is employed to determine the value of 8.A. (a), (b), or (c) above, the cost of the professional inventory firm's services will be paid one half (1/2) by Buyer and one half (1/2) by Seller.
9. **LEASE** (check which is applicable):
- A. Seller agrees to transfer the existing lease to Buyer, and Seller agrees to obtain the Landlord's written consent, if Landlord's consent is required to the transfer of the existing lease to Buyer, on or before the Closing Date. This transfer may be an assignment or sublease. Buyer agrees to furnish all information (Financial Statement, Credit References and Resume) requested by the Landlord. Buyer agrees to be interviewed by the Landlord, if required, to obtain the Landlord's written consent to the transfer. Buyer agrees to reimburse Seller, at closing, for any lease deposits not refunded by Landlord to Seller, the same being transferred from Seller to Buyer. If Buyer is an entity, then the direct legal owner(s) of Buyer agree to guarantee the tenant obligations under the Lease. This Earnest Money Contract is conditioned upon Landlord's written consent to the following revisions, amendments, or extensions to Seller's existing lease \_\_\_\_\_
- B. This Earnest Money Contract is conditioned upon Buyer obtaining a new lease under terms and conditions satisfactory to Buyer.
- If Buyer cannot obtain a lease under the terms specified in A. or B. above, this Contract shall terminate and the Earnest Money shall be refunded to Buyer less any expense incurred on Buyer's behalf.
10. **INSPECTION OF RECORDS:** This Earnest Money Contract is contingent upon Buyer being satisfied during the inspection period as to Seller's financial representations and all other aspects of the business. Seller agrees to allow Buyer to inspect all accounting records and other records of the business. Buyer agrees to complete the inspection of the records within \_\_\_\_\_ calendar days after the Effective Date of this Earnest Money Contract. Buyer and Seller agree that if Buyer, after inspecting the records of the business, is not satisfied with the business for any reason, Buyer may withdraw from this Earnest Money Contract by giving written notice to the Escrow Agent within the \_\_\_\_\_ day period after the Effective Date of this Earnest Money Contract. Upon receipt of said written notice, Escrow Agent will refund the Earnest Money received herein, less any expenses incurred on Buyer's behalf, and this Earnest Money Contract shall be deemed null and void. **Buyer's failure to give said written notice within this agreed period will be deemed as Buyer's waiver of this contingency.**
11. **RESTRICTED COMPETITION:** At Closing, Seller and the direct legal owners of Seller agree to sign a covenant not to compete in same or similar business as an employee, partner, owner, stockholder, or in any other manner, within a \_\_\_\_\_ mile radius of the present business location for a period of \_\_\_\_\_ consecutive years from the Closing Date.

12. **TRAINING:** Seller or Seller's representative shall provide Buyer with training in all aspects of the business at no additional cost. Training shall start immediately after closing and continue for \_\_\_\_\_ calendar days thereafter. Seller shall provide consulting to Buyer by telephone, as needed, for an additional \_\_\_\_\_ days.
13. **CLOSING DATE:** The closing of the sale shall be on or before \_\_\_\_\_ 20\_\_\_\_\_, at the offices of \_\_\_\_\_, located at \_\_\_\_\_.
14. **POSSESSION DATE:** Buyer possession shall be at closing. The assets of the business shall be delivered to Buyer in their present condition, ordinary wear and tear excepted.
15. **EFFECTIVE DATE:** The effective date of sale shall be at closing and funding, unless agreed to otherwise in writing.
16. **PRORATIONS:** The following items shall be prorated as of the Closing Date:  Rent  Taxes  Other:\_\_\_\_\_.
17. **LIABILITIES TO BE ASSUMED:** The following liabilities shall be assumed by Buyer at the Closing Date herein (check which will be applicable):  
 None; or  Other:\_\_\_\_\_. Said liabilities shall be guaranteed by Buyer and direct legal owner(s) of Buyer.
18. **WARRANTY:** Seller warrants, at closing (a) the business and assets being sold and conveyed to Buyer will be transferred free and clear of all debts, encumbrances, taxes (including payroll, sales and excise taxes) except for those debts to be assumed by Buyer as stated herein; (b) the business is in compliance with all laws, rules and regulations regarding the operation of the business and its facilities; and (c) at the time of physical possession is delivered to Buyer, all equipment will be in working order and the premises will pass all inspections necessary to conduct such business.
19. **INSPECTION:** Buyer has personally examined the business and assets and has relied upon his personal examination in making this offer, and not upon any statements or representations by the Broker or agents of the Broker. Buyer is hereby informed that the Broker has not verified the accuracy of any information, including financial representations, provided by Seller to Broker.
20. **CASUALTY LOSS:** If any part of the business or assets are damaged or destroyed by fire or other casualty loss, Seller shall restore the same to its previous condition as soon as reasonably possible, but, in any event, by Closing Date; if Seller is unable to do so by Closing Date, without fault, this contract shall terminate and the Earnest Money shall be refunded with no Broker's fee due.
21. **DEFAULT:** If Buyer fails to comply herewith, Seller may, at Seller's option, either enforce specific performance or terminate this Contract and claim, after payment to Escrow Agent for any costs involved, the balance of the Earnest Money as liquidated damages. Escrow Agent shall pay one-half (1/2) of the balance amount to the Seller and one-half (1/2) of the balance amount to the Broker (but not exceeding the Broker's Fee as specified in the Listing Agreement). If Seller is unable without fault to deliver the proper lease documents or is unable without fault to secure the approval of any creditor to any debt assumption called for herein, Buyer may terminate this contract and receive the Earnest Money after payment to Escrow Agent of any costs involved as the sole remedy and no Broker's Fee shall be earned. If Seller fails to comply herewith for any other reason, Buyer may (a) terminate this Contract and receive the Earnest Money, after payment to the Escrow Agent for any costs involved, thereby releasing Seller from this contract, or (b) enforce specific performance hereof, or (c) seek such other relief as may be provided by law. If completion of sale is prevented by Buyer's default, and Seller elects to enforce specific performance, the Broker's Fee is payable only if and when Seller collects damages for such default by suit, compromise, settlement or otherwise, and after first deducting the expenses of collection, and then only in an amount equal to one-half (1/2) of that portion collected, but not exceeding the amount of Broker's Fee.
22. **ATTORNEY'S FEES AND COURT COSTS:** Any signatory to this contract who is the prevailing party in any legal proceeding against any other signatory brought under or with relation to this contract or transaction shall be additionally entitled to recover court costs and reasonable attorney fees from the non-prevailing party. Escrow Agent, as interpleader, shall not be liable for court costs or attorney's fees, and shall be entitled to recover court costs and attorney fees incurred as a result of any interpleader action from any amount that has been interpleaded.
23. **ESCROW AGENT:** In order to facilitate closing of this sale, an Escrow Agent shall be employed to receive, deposit and distribute funds for the parties, do a lien and tax search, engage a licensed attorney to prepare the closing documents evidencing the terms and conditions of this sale by and between the respective parties, prepare and obtain execution of escrow instructions, see to the execution and distribution of the closing documents and see to the proper closing of sale, recordation of documents and distribution of funds. Buyer and Seller each agree to appoint Lawyers Escrow Company as Escrow Agent for this sale and each agrees to pay one-half (1/2) of the Escrow Agent's fees and expenses, including but not limited to the attorney's fee for document preparation. Earnest Money shall be deposited with Escrow Agent, based on the understanding the Escrow Agent (i) does not assume or have any liability for performance or nonperformance of any part (ii) has the right to require the receipt, release and authorization in writing of all parties before paying the deposit to any party and (iii) is not liable for interest or other charges on the funds held. If any party unreasonably fails to agree in writing to any appropriate release of Earnest Money, then such party shall be liable to the other parties to the extent provided in paragraph 22. At closing, Earnest Money shall be applied to any cash down payment required,

