

サマライズ講座（要約英日文法）契約書篇

第2講 提出課題

課題文「Agreement of Purchase and Sale of Business Assets（事業用資産売買契約書）」を読み、日本語で要約文を作成して下さい。要約の方法は、本講で勉強した「内容別要約」による要約とします。

AGREEMENT OF PURCHASE AND SALE OF BUSINESS ASSETS

This Agreement of Purchase and Sale (the "Agreement") is made in two original copies, effective on February 13, 2002

BETWEEN: **ABC Company** (the "Vendor"), a company organized and existing under the laws of the State of Delaware, with its head office located at:

123 Riverdale Ave., New York, N.Y., U.S.A. 10522

AND: **International Purchase Corporation** (the "Purchaser"), a company organized and existing under the laws of the State of New York, with its head office located at:

2000 Turnpike, Fairfield, Connecticut, U.S.A. 06822

1. SUBJECT-MATTER

1.1 The Purchaser agrees to buy and the Vendor agrees to sell to the Purchaser as a going concern all the undertaking and assets owned by the Vendor in connection with the manufacturing of industrial rubber business carried on as ABC Company at 123 Riverdale Ave., New York, N.Y., U.S.A. 10522 (the "business") including, without limiting the generality of the foregoing:

- a) The furniture, fixtures and equipment more particularly described in Schedule A (the "equipment");
- b) All saleable stock in trade (the "stock in trade");
- c) All useable parts and supplies (the "parts and supplies");
- d) All leasehold interest in the lease held by the Vendor from Mr. Richard Landlord (the "lease");
- e) The goodwill of the business together with the exclusive right to the Purchaser to represent itself as carrying on business in succession to the Vendor and to use the business style of the business (the "goodwill").

1.2 The following assets are expressly excluded from the purchase and sale:

- cash on hand or on deposit
- accounts receivable and other debts due

2. PURCHASE PRICE

2.1 The purchase price payable for the undertaking and assets agreed to be bought and sold is the total of the amounts computed and allocated as follows:

- a) For the equipment – Forty Thousand U.S. Dollars (\$40,000)
- b) For the stock in trade, its direct cost to the Vendor;
- c) For the parts and supplies, their direct cost to the Vendor;
- d) For the goodwill – Ten Thousand U.S. Dollars (\$10,000)
- e) For all other assets agreed to be bought and sold—tbd.

2.2 The purchase price for the stock in trade shall be established by an inventory taken and valued after close of business on the day before the day of closing. The Vendor shall produce evidence satisfactory to the Purchaser of the direct cost to the Vendor of items included in stock in trade. The Purchaser may exclude from the purchase and sale any items which the Purchaser reasonably considers unsalable by reason of defect in quality or in respect of which the Purchaser is not reasonably satisfied as to proof of direct cost.

2.3 The purchase price for the parts and supplies shall be established by an inventory taken and valued after close of business on the day before the day of closing. The Vendor shall produce evidence satisfactory to the Purchaser of the direct cost to the Vendor of items included in the parts and supplies. The Purchaser may exclude from the purchase and sale any items which the Purchaser reasonably considers unusable or in respect of which the Purchaser is not reasonably satisfied as to proof of direct cost.

3. TERMS OF PAYMENT

3.1 The Vendor acknowledges receiving a check for Ten Thousand U.S. Dollars (\$10,000) from the Purchaser on execution of this agreement to be held as a deposit by the Vendor on account of the purchase price of the undertaking and assets agreed to be bought and sold and as security for the Purchaser's due performance of this agreement.

3.2 The balance of the purchase price for the undertaking and assets agreed to be bought and sold shall be paid by the Purchaser, subject to adjustments, by certified check on closing.

3.3 The balance of the purchase price due on closing shall be specially adjusted for all prepaid and assumed operating expenses of the business including but not limited to rent and utilities.

4. REPRESENTATIONS AND WARRANTIES

4.1 The following representations and warranties are made and given by the Vendor to the Purchaser and expressly survive the closing of this agreement:

- a) The Vendor is a resident of the U.S within the meaning of the Income Tax Act of the U.S.;

- b) The Vendor owns and has the right to sell the items listed in Schedule A;
- c) The assets agreed to be bought and sold are sold free and clear of all liens, encumbrances and charges;
- d) The equipment is in good operating condition;
- e) Until the closing date of this agreement, Vendor shall not, without the written consent of Purchaser, and Vendor will not do anything before or after closing to prejudice the goodwill;
- f) The financial statements for the business produced by the Vendor and appended as Schedule B are fair and accurate, and prepared in accordance with generally accepted accounting principles.
- g) The lease is in good standing and the Vendor has fulfilled all of its obligations under the lease and that the Vendor has obtained from the Lessor, his/her consents to Vendor's assignment of the lease to the Purchaser;
- h) The Vendor has made full and fair disclosure in all material respects of any matter that could reasonably be expected to affect the Purchaser's decision to purchase the undertaking and assets agreed to be on the terms set out this agreement;
- i) The Vendor will execute such assignments, consents, clearances or assurances after closing, prepared at the Purchaser's expense, as the Purchaser considers necessary for the proper and effective completion of this transaction.
- j) Vendor agrees to disclose to Purchaser not later than 30 days after the closing date, all trade secrets, customer lists, and technical information held by Vendor and relating to the business sold hereunder.
- k) Its board of directors has duly authorized the execution of this agreement.

4.2 The following representations and warranties are made and given by the Purchaser to the Vendor and expressly survive the closing of this agreement:

- a) It has obtained financing on terms satisfactory to it to complete the purchase;
- b) It has obtained all the permits and licenses required for it to carry on the business;
- c) Its board of directors has duly authorized the execution of this agreement.

5. RISK

5.1 The risk of loss or damage to the undertaking and assets agreed to be bought and sold remains with the Vendor until closing.

5.2 In the event of loss or damage to the tangible assets agreed to be bought and sold prior to closing, at the option of the Purchaser, the replacement cost of the assets lost or damaged or any of them may be deducted from the total purchase price.

6. SALES TAXES

- 6.1** The Purchaser shall pay any and all sales taxes payable in respect of the purchase and sale of assets pursuant to this agreement.
- 6.2** The Vendor shall pay all sales taxes payable or collectible in connection with carrying on the business up to closing and obtain and supply the Purchaser with satisfactory proof of payment within a reasonable time of closing.

7. NON-COMPETITION

The Vendor covenants with the Purchaser that, in consideration of the closing of this agreement, the Vendor will not operate a business relating to the manufacturing of industrial rubber or in any way aid and assist any other person to operate such a business in the U.S. for a period of five (5) years from the date of closing.

8. CLOSING DOCUMENTS

The Vendor shall deliver to the Purchaser, in registrable form where applicable; the following closing documents (the "closing documents"), prepared or obtained at the Vendor's expense, on or before closing:

- a) Duplicate, properly executed Bills of Sale of the equipment, stock in trade and parts and supplies together with evidence satisfactory to the Purchaser that the sale complies with any laws governing the such sales;
- b) A statutory declaration that the Vendor is a resident of the U.S. within the meaning of the Income Tax Act of the U.S. as of the date of closing;
- c) All records and financial data, including but not limited to any lists of customers and suppliers, relevant to the continuation of the business by the Purchaser;
- d) An executed assignment of the lease to the Purchaser endorsed with the lessor's consent to the assignment;
- e) Such other assignments, consents, clearances or assurances as the Purchaser reasonably considers necessary or desirable to assure the Purchaser of the proper and effective completion of this agreement.

9. CLOSING DATE

The purchase and sale in this agreement shall close on April 1, 2002.

10. HEADINGS

The capitalized headings in this agreement are only for convenience of reference and do not form part of or affect the interpretation of this agreement. In this agreement, the singular includes the plural and the masculine includes the feminine and neuter and vice versa unless the context otherwise requires.

11. SEVERABILITY

If any provision or part of any provision in this agreement is void for any reason, it shall be severed without affecting the validity of the balance of the agreement.

12. AMENDMENT

This contract shall only be amended or modified by written document executed by authorized representatives of the Vendor and Purchaser.

13. GOVERNING LAW

This agreement is governed by the laws of the State of New York.

14. ENTIRE AGREEMENT

This Agreement (including the exhibits hereto and any written amendments hereof executed by the parties) constitutes the entire Agreement and supersedes all prior agreements and understandings, oral and written, between the parties hereto with respect to the subject matter hereof.

Executed under seal on February 13, 2002.

Signed, Sealed and Delivered in the Presence of:

VENDOR

PURCHASER

Authorized Signature

Authorized Signature

Print Name and Title

Print Name and Title