Pre-Closing Negotiation Checklist

	Topics for negotiation	Considerations
☐	**What is being purchased**	Will the sale be structured as an asset sale, with the buyer acquiring only assets, which will be transferred into a new business entity? If so, will any assets be withheld? Will the sale be structured as an entity sale, with the buyer acquiring all assets and liabilities except those specifically excluded. If so, which liabilities will be listed as exclusions?
☐	**The purchase price**	Price negotiations usually result in a sale price that is 70-90% of the asking price. Owner financing often results in higher closing prices. Buyer's agreement to price allocations that provide the seller with proceeds taxed as capital gains versus ordinary income often result in the seller's agreement to price concessions.
☐	**How the price will be paid**	How much will be required as the closing day payment? How much will be required through a seller-financed loan or deferred payments through an earn-out agreement? How much will be paid in return for the sellers covenant not to compete? Have necessary legal documents been prepared?
☐	**How the price will be allocated**	How much will be allocated to each of the IRS asset classes? Involve your accountant as there are significant tax ramifications. Buyer and seller must agree on the allocation and must file an IRS Form 8594 showing identical allocations. For information, see Form 8594 for instructions. https://www.irs.gov/pub/irs-pdf/i8594.pdf
☐	**How issues discovered during due diligence will be addressed**	Which will be addressed through price concessions? Which will be addressed through actions that rectify conditions?

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	How will the transition period be handled?	Will employees be rehired? How will they be notified of the sale and their future employment? How and when to contact customers and clients? How and when to contact suppliers, vendors and distributors? How and when will the sale announcement be made? How will work-in-progress be completed? How will unknown liabilities that become apparent after the sale be addressed?
	The seller's post-sale involvement in the business	Will the seller be involved during a post-sale transition period? If so, what will be the seller's transition involvement, timeframe and compensation, if any? Will the owner be involved through a post-sale personal services contract? Will the seller sign a covenant not to compete? Have necessary legal documents been prepared?
	How contingencies will be addressed or removed	Have conditions that arose as issues during due diligence investigation been addressed, including: -Acceptable transfer of leases and contracts. -Acceptable bank financing and other contingencies detailed in the letter of agreement to purchase. -Other conditions.