



INSTRUCTIONS FOR USING THE GABB FORMS G4021A&B – PURCHASE AND SALE AGREEMENT

General Comments

The **Letter of Intent (LOI)** and the **GABB Offer and Agreement to Purchase the Assets of a Business (Purchase Agreement)** can be used separately or together. We think the Purchase Agreement is one of the finest forms of its type available, one that business buyers and sellers can understand and be willing to sign. In designing any forms like this, we want the finest content possible. In addition, we want the text to be protected to avoid unwarranted changes and have blanks that can be filled in. As with any forms, the forms have limitations.

Why use the GABB Purchase Agreement

The GABB Purchase Agreement

- Is a complete document that can be used for closing. This document eliminates an attorney's creating a second Purchase Agreement for closing – and further negotiation by the parties' attorneys.
- Requires some thought by the parties before going to closing – should increase the closing rate.
- Is a fair contract offering neither side advantages over the other – eliminates a lot of stressful and possible deal-killing negotiation.
- Has GABB credibility that means a Buyer or Seller may be receptive to using the form, maybe preventing a Buyer's attorney from generating a biased form that increases legal costs.
- Written in Plain English
- Provides time for Buyer's and Seller's attorneys to review the document and make changes – easier for the parties to sign if they have an out.
- Defines the transaction in detail so the parties can understand it and reduce the surprises - should increase the closing rate.

When and How to use the Purchase Agreement

You probably should have general agreement between the parties on the price and terms before completing and presenting the Purchase Agreement. You might go directly to the Purchase Agreement if the offering price is going to be close to the list price. If not, then we recommend that you use the Letter of Intent (LOI100) which is a simpler form with minimum legal content. If the parties agree to the terms outlined in the LOI, then you can complete the GABB Offer and Agreement to Purchase the Assets of a Business (Purchase Agreement PA101) or use the LOI to instruct an attorney to generate a purchase agreement.

The Purchase Agreement is on the BBMS web site in two parts: 1) the body, which is called Purchase Agreement PA100Body, and 2) the Purchase Agreement PA100SchedulesIncReps. The Schedules and Exhibits must be added to the body to make a complete Purchase Agreement. You should treat these as two separate files and not combine these electronically because of formatting and automatic numbering which will be thrown off. You may complete the information and send the two files electronically to the parties, or you may print the documents and use hard copy.



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Completing the Body Form

The form has blanks to complete while the text is protected. Many blanks have maximum sizes permitted. For instance, an unusually long corporate name may not fit in the blank. Contact the Forms Committee Chairperson to handle this.

If you need to make changes to the contract, do it in the Special Stipulations section, the last section of the Purchase Agreement Body, as this section permits text of an infinite length.

Below are comments on a couple of sections that may need explanation:

Signature of Buyer or Authorized Agent of the Buyer – Page 2 - The Buyer is an individual who is buying the business. The Authorized Agent of the Buyer means a person authorized to sign on behalf of Buyer, like the president of a corporation or a manager of an LLC.

Guarantors – Page 2 - This term is used several places on the first two pages. The guarantor is usually the owner or owners of the buyer, but there will usually only be guarantors if there is seller financing. Without seller financing, there really is no reason for a guarantor. If there is more than one buyer, use the blanks on the first page to list the buyers. On the second page, if there is no seller financing, write NA in the Guarantor blanks – unless you need it for more buyer names.

Signature of Seller or Authorized Agent of the Seller – Page 2 - The seller can be an individual if the company is a proprietorship. Normally the person signing is an agent for the seller in that he is a president, secretary, or manager of an LLC.

Seller Financing– Paragraph 3F – If there is to be seller financing, normally all three boxes should be checked. If you decide not to check these boxes and there is seller financing, you should make sure there is a specific reason not to check them.

Disclosure of Commission, Rebate, or Direct Profit. – Page 7, Paragraph 20C – The Real Estate Commission is clear that it wants disclosure of third-party referral fees to the brokers/agents as soon as possible. If you are not accepting fees, check the appropriate box. If you are accepting fees, please list the sources as specifically as you wish, but by name is appropriate. Sometimes the sources are not known at the time the Purchase Agreement is entered into. If that is the case, temporary language may be added immediately following “. . . sources are:” and might read, “from leases, financing, insurance or other services on behalf of Buyer or Seller.” However, it is up to the broker/agent to disclose as soon as he knows the sources.

Special Stipulations – Paragraph 26 – You may add any clarifications in this section. If you are completing this form on the computer, this section will expand to allow a large amount of content. If you are using hard copy, please attach an additional page and check the box



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Completing the GABB Schedules, Exhibits, Reps, Warranties Form, Escrow Agreement

Schedule 1, Assets, is a good place to add the Equipment List and any other assets included in the purchase. If you need to refer to a hard copy equipment list that will be attached to the hard copy of the contract, state on Schedule 1 that the equipment list is attached. This Schedule 1 permits a definition for specific items. Accounts Receivable are addressed in the Body and do not need to be listed here.

Schedule 2, Excluded Assets—Most of our transactions have no excluded assets, in which case we should enter “No Excluded Assets” or words to that effect. If there are excluded assets, then we should list those. Those could be as minor as “Picture of owner’s mother” or as major as a separate company owned by the Seller. If it is complicated, you will want the attorneys to handle this point. The Body of the Purchase Agreement states that essentially all the assets are included in the sale except Accounts Receivables. You don’t have to include the Accounts Receivables on this is schedule even if you are excluding those, although it is not wrong to list those.

Schedule 3, Assumed Liabilities – Most of our transactions have no assumed liabilities, and you may write “None”. If there is an assumption, say of customer deposits or any debt, those should be listed, the more detail the better.

Exhibit A – Representations and Warranties—This section contains important legal protections. Notice that the instructions say that checking a box means that rep and warranty is not in effect. Be very careful about checking any of the boxes. Under normal circumstances, no boxes should be checked with the exception of zoning sometimes. You probably should not play lawyer with this section.

On P1, Organization, Standing, and Qualifications – requires filling in a blank that has a “?” in it. That is a drop-down menu, the only one in our forms. Choose the proper corporation type: ie “C” Corp, S Corp, LLC, etc. If you are using hard copy, just cross out the “?” and fill in the corporation type. The “?” is there because the program does not allow a blank space in a drop-down menu.

Exhibit B – Escrow Agreement – The handling of Escrow is one of the most contentious areas of our business. This form is definitive and should protect the Escrow Agent as well as inform the parties of their obligations. This form is good whether your firm or an attorney is the Escrow Agent. If you do not want to use this form, just print everything and toss this. The Purchase Agreement needs an Exhibit B, so replace it with an Escrow Agreement of your own.

Notice in Paragraph 1 that you fill in an amount handling the Escrow. The suggested amount is \$200. You will see that it is refundable if the deal goes through, or can be waived by the Escrow Agent.

Conclusion

Understanding the contents of these forms is important. They are valuable tools if used properly. As a word of caution, please remember: we are business brokers, not attorneys, and should not act as attorneys. If you have any doubts on any of the items you are completing, seek legal help.