

BUYING & SELLING YOUR SMALL BUSINESS

A practical guide for local small businesses

- Evaluating a business to purchase
- How to find the right buyer
- Valuation Techniques

Negotiating and legal considerations

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FORWARD

This handout has been written to assist local businesses with information on how to buy and sell a small business. While there has been much written on the subject, most sources are directed at larger businesses, and require much more research and time to ferret out the key points a small business would require. We have attempted to take much of this information, and condense it into a short overview. Once an individual has decided on a course of action, or is pursuing a sale, they can gather more in-depth information or utilize outside consultants to assist with the sale or purchase.

The author is not an expert in business sale situations, but rather, has observed primarily from the standpoint of assisting in transactions with local small businesses. The following information is intended only to assist buyers and sellers in gaining insight into the process and direct their process of research and analysis.

INTRODUCTION – BUYERS VS. SELLERS.

Much of the information in this handout is directed to both buyers and sellers. To fully appreciate the requirements to sell your small business, one must know what is required of a buyer. While most of the information is conveyed from the buyers standpoint, the seller has much to gain from understanding this process. In general, buyers want to start a small business with the benefit of it being an existing operation. The buyer wants to purchase the key assets of the business, it's existing customers and best employees. At the lowest price possible. The seller, on the other hand, is selling his or her livelihood. It's really priceless, but given the need to put a number on it, it must be worth much more than the mere value of the assets. And not just anyone should be able to take the reins of this team. This person needs to be able to get along with the employees and customers to continue the success that took years to build. Sound familiar? The process of a buy-sell of a small business can be much more complicated than just price. The key is to arrive at a comfort level between parties that will allow a successful transfer and create a "win-win" situation between parties.

BUYING YOUR OWN BUSINESS.

We'll take the buyers first here. Don't stop reading if you're a seller, however. This information is important to you, also. Understanding how a buyer should approach a sale will help you in how you handle your role.

DETERMINING THE RIGHT BUSINESS FOR YOU.

The first step as an individual interested in purchasing a business is to determine the right business for you. It helps if you have looked at yourself first. What are your strengths and weaknesses? Different businesses have different requirements for skills from the owner. Do you have the skills required? The SBDC has an Entrepreneurial Survey that can be used to determine your specific strengths and weaknesses and general entrepreneurial potential. If you are weak in an area, like dealing with people, then you should consider the employees of the business you are buying carefully in this area. The "fit" of the business can be best determined if you know yourself first.

Another important consideration is your experience with the business. Do you have a background that will help you be successful? I ask you to consider two things before making a choice on what business to buy. First, look at what you are already good at. You are the sum total of all your experiences to date, and you should consider building upon that experience base in purchasing your new business. This will obviously help make you a better businessperson in that particular field, especially if you choose a field where you have had direct experience already doing that job. For example, you are working as an auto mechanic and choose to purchase your own shop. The linkage between skills and business is usually not that direct or obvious, however. If you like working with your hands, and are particularly good at building things, you might consider buying a business in the building trades. If you currently are unhappy at your job, it is wise to reconsider your skills and decide on something that will make you happier.

Secondly, and most importantly, do what you like to do. Buying a new business is a difficult undertaking, and the one thing that will keep you going when times get tough is a love for the business. The expression "life is too short" applies to those who have not found a career they love. You simply must consider the task at hand and whether you are suited to the business. For example, if you love working on cars in your spare time you might consider buying an automotive service shop.

TYPES OF BUSINESS TO BUY.

Your capital to invest may be a key factor in determining the type of business to buy. Do you still have the notion that you can't start a business today without a mountain of cash? In certain industries this can be true enough. But if your pocketbook is light you might consider a service industry. Unlike retailers or manufacturers you don't require a large investment in inventory or plant, machinery or equipment. And this is one of the most rapidly growing segments of our economy today, which represents more opportunity. Often people find that they don't have to have a lot of experience in the field to excel either. You may be able to get into a franchise and get the training you need, also. A large contingent of service businesses have been started by employees of others who decide to take their skills 'public'. Your former employer might eventually be your best customer, finding it preferable to pay you hourly for the same job you were formerly paid a salary for. The advantage to you will be working with other clients to make more money, and the freedom of working independently as your own boss.

FRANCHISING.

Franchising is one of the best opportunities for a small business to be successful. The failure rate for franchise outlets is much less than for independents within the same industry. A franchise will often provide an economy of scale in providing supplies, inventory, advertising and promotion and staff training that an independent cannot equal on their own. In certain industries it is difficult to compete with the successful franchises, such as fast food restaurants. Customers prefer the franchise outlets because they are a known variable, and independents will vary from operation to operation. On the other hand, franchises are more expensive to purchase. Rarely are you able to purchase a franchise as cheaply as an independent, and the fees paid a franchiser are usually based on sales and can be substantial. In your deciding whether to go franchise or independent it is good to study the franchise and look at your industry. How successful are independents in general? Do the franchises dominate? These factors, along with your individual marketplace and start-up capital, can weigh heavily on your decision.

THE THREE KEY FACTORS FOR SUCCESS. The U.S. Small Business Administration lists three factors that are key to any small business startups success. They are:

Character: Your background in the industry and experience are very important to the success of the business. If your resume doesn't reflect direct experience in the industry, consider gaining experience by working for a period of time in the industry. You might even work out an arrangement to manage the business you are interested in before you buy. Another consideration is your credit record. If you are looking to finance a purchase you should have a good credit report that shows that you are good at handling credit arrangements with others.

Equity: To finance the purchase of a business you will usually need 20% of the purchase price at a minimum. With seller financing you may get by with less, but rarely will anyone sell you their business without a substantial stake to prove you are committed and will make things go.

The Business Plan: A well-written business plan is key in finding a lender to back your purchase. This includes a financial analysis of the business you are buying, along with projections showing your plans and the impact after your purchase of debt and other changes.

BUYING FROM RELATIVES.

Buying from family can be a tricky situation. It's often in the case of a family relationships that too little is said about future plans for the business. If you are in this situation, and have not made any arrangements, you may be subject to disappointment in the future. It is my suggestion that you address the subject as soon as possible. The worst-case scenario is that you will not be able to take over your family business; the best case is that this will lead to estate planning and make the business transition a smooth and easy process. If buying your family business proves to be impossible it is best that you do this up-front rather than continue in the business for years and be disappointed later to find out that you cannot purchase the business. In this situation you may want to pursue starting your own business in another manner.

BUYING VS. STARTING FROM SCRATCH.

While it is usually cheaper to start a business from scratch, purchasing an existing business is a lower risk manner of getting started. Either way you are a start-up business, which is a high-risk to an investor or lender, but the learning curve is much steeper for those starting from scratch. Often when you're buying an existing business you are buying the expertise of the owner, the employees, the goodwill of the customers, and inventory and supplies that make the business run. Starting from scratch can be much more difficult, and requires much more time and effort, especially in the first few years.

METHODS TO ASSIST IN THE PURCHASE. There are a few things you can do to better evaluate a purchase. Don't rely on instinct or feelings to make a decision. The more "due diligence" you do prior to purchase, the less likely you are to have problems. Some suggestions are:

Walk and talk. This is the most important small business research. Here you are doing the most basic of research. Visit other businesses in your industry. Talk to customers, suppliers, bankers, insurance agents and others about your industry. Using discretion, you can find a lot out about the firm you are interested in purchasing without letting people know that you are interested in buying the business. Often this is the best way to fully understand a seller's motive for selling. Like a reporter, sometimes you need to do some digging to find the true story.

Business Brokers. This group can be a source of information and assistance. They often represent the seller, such as a real estate broker, but can be very helpful in getting you the information you require. Having an intermediary can often be helpful, especially if the seller is hesitant to give information to you until they deem you worthy to purchase their business. Using a broker to sell your business can also be disappointing, especially if the broker doesn't understand the business or your specific requirements. The last thing you want is to sell your business, only to have to take it back because the buyers can't make it work. Their success is your success.

Classifieds. Both buyers and sellers can utilize this method to generate leads. You will get a lot of attention with any classified. Unfortunately, you will also have to work harder to ferret out serious buyers from wanna-be's. To purchase a business takes equity, which in most cases translates into cash. Unless a buyer has means, it is often a great waste of time to pursue a sale transaction.

Other Sources. Professionals such as accountants, attorneys, bankers, insurance agents and others can be a valuable resource. Often they represent firms that may want to sell, but don't really know how to go about finding the right buyer.

WHAT YOU NEED TO EVALUATE THE BUSINESS

Gathering information is a key to success in putting together a sale.

Profile of the seller. Determining why the business is for sale is one of the most important variables in analyzing a purchase. There are many typical reasons businesses are sold, including retirement of the owner with no heir apparent, loss of interest or burnout, the business needs more capital than the owners have to sustain growth, estate tax and liquidity concerns, and other reasons. Understanding the motive for selling can be best understood by putting together a profile of the seller.

Financial statements & tax returns. Profit and cash flow are usually the most important financial considerations for the buyer. To properly evaluate a purchase you will need at a minimum two to three years of profit & loss statements. In the beginning, the seller may not be willing to provide this information, until they determine you are a qualified buyer. You may have to provide some personal financial information before they will be willing to open up their books to you. Also, they may ask you to sign an agreement guaranteeing that you will keep this privileged information secret. Bottom line is until you receive the financial statements you shouldn't proceed with the sale. And lack of proper record-keeping is seldom a situation that works out well for a buy-sell. You simply must have an indication of the financial history to properly evaluate the business for your future!

Financing the Purchase. One method of evaluating whether the business will work for you is to look at the businesses ability to repay debt that you will have to acquire to make the purchase. Many small businesses are difficult to obtain conventional financing for, which makes their purchase difficult without financing. Using a 20% down payment will the cash flow from the business pay back a term loan on the balance? The answer to this question will often tell you that you may be able to do the purchase.

BUYING ASSETS VS. GOODWILL.

What exactly are you purchasing with your small business? With most small businesses you are primarily acquiring assets. Be wary of paying too much for customer loyalty and brands (also called Goodwill). They cannot be financed, and often the business changes when the ownership changes, and you may have a large debt to pay off from a changed business situation. For corporations you can purchase the corporate entity or shares of stock rather than assets. You also will normally inherit the debt of the corporation, so you will want to be thorough in understanding what liabilities are, and other contingent liabilities such as lawsuits.

SELLING YOUR OWN BUSINESS.

The information above for buyers nearly always applies to the sellers, also. In order to sell your business effectively you will need to understand the buyers perspective. Finding a buyer that will successfully take over your business is the key. Especially if you have to carry back debt, or lease your facility, you should be concerned with the success of the buyer.

WHAT IS YOUR BUSINESS WORTH?

Almost always the business is worth more to the founder than it is to any buyer. Why not? You spent years building the business into a successful enterprise. You put your heart and soul into it. It has to be worth more to you! But at the end of the process of selling, you will probably find that it is worth more to you than to the buyer. The key is probably to find a buyer willing to pay a "reasonable" price to give you a fair return, and not too high so as to make success for your buyer improbable. Specific valuation methods are discussed later in this handout. You can start by doing the math yourself, based on your financials. This is always a good starting point, and is grounded in reality because any buyer that requires financing will have to justify the value to their lender or investors.

HOW DO I MARKET THE BUSINESS?

This is not always the same description included above under the buyers side. Finding a buyer is a difficult process for most small businesses. Start by looking for a buyer that will be a good fit for your business. Often, this is not an employee or family member. For one thing, often the preceding do not have the money or talent to take over for you. If your buyer doesn't have the investment in the business – ie: the

money – they won't have the commitment to the business. To borrow the funds from a bank with an SBA Guaranty usually requires a minimum of 20% in equity. Other factors to consider are the personality of the owner and their "fit" in your business. This can be important because if they are not suited to the business they probably will not be able to sustain it in the long run. If you happen to carry back debt this might mean you have to take things back and try selling it again. Rarely does this end up being a positive experience for the seller.

CARRY BACK VS. CASH OUT – PROS AND CONS.

Initially you might think that you want to sell for cash only. But upon closer inspection you might change your mind on this one. For one thing it is difficult to find outside financing for most startups, and your buyer will probably fall into this category. Also, you might consider the tax implications of capital gains on sale, and reduce your taxes by taking the gain over time via payments. Often a seller is selling to retire, and taking funds gradually can be better than in a lump sum.

ADVISORS IN THE PROCESS

We have spoken previously about the importance of using professionals in the purchase process. As a seller you will need to have a good relationship with the following:

Attorney. Your attorney will be an important part of any sale process. In addition to the required legal documents (copies which are included as appendices to this workbook) your attorney can assist with negotiations, tax matters, and protect you from pitfalls in selling such as covenants not to compete.

Accountant. Your accountant can be another important ally. They can be particularly helpful in finding a buyer. Accountants often talk to other businesspersons that are interested in growing or changing their business, that can be potential buyers. Also, the tax implications of your sale, along with the best way to accomplish the buy/sell from an accounting standpoint are important considerations.

Banker. A good banker can help you pre-qualify prospects for your business. If you are looking at having a buyer finance the purchase rather than carrying back paper this is an important consideration. Also, a banker has contacts that might be potential buyers. Often they have knowledge of candidates with the financial ability, and if you have communicated your needs, they may be able to steer some potential buyers your way.

The SBDC. The Small Business Development Center can help with understanding the process, and specializes in the financial analysis. We can work with you in doing a financial analysis of your historical financial statements and help you with the valuation calculations described below.

VALUATION TECHNIQUES.

Since we deal mostly with clients looking at Small Business Administration (SBA) guaranteed loans, our valuation techniques described here are those used by the SBA. Banks will usually follow these guidelines if the purchase is utilizing an SBA loan to finance. These valuation methods mirror those used in the appraisal industry for business appraisals.

Book Value. The SBA technique is to determine an "Adjusted Book Value" (ABV). This technique does not consider past profits, is easy to compute, and is usually preferred by the seller. To calculate the ABV start by taking the net worth figure from the latest financial statement. Deduct assets not included in the purchase, add liabilities not assumed, add the fair market value to fixed assets less the book value of the assets, and add or subtract other adjustments. The fair market value of the fixed assets should be performed by an independent appraisal, but often replacement cost method is acceptable.

Discounted Future Earnings (DFE). This method determines the expected future earnings stream, and adjusts the earnings to today's dollars. This method is normally preferred by the buyer. To calculate the DFE take the five year average earnings, allowing for differences in salary for current and new owners, and come up with an average earnings. Then project for a ten year period using a moderate growth rate, say 5% per year. Then take the ten years of income data and adjust or discount by 20% (which is the typical

moderate small business risk). The total of the ten years discounted future earnings would be the indicated value using this method.

Example: Firm with average earnings for five years = \$58K

Calculate projected growth:			
Year 1 - \$58 x 1.05	=		\$61
Year 2 - \$61 x 1.05	=		\$64
Year 3 - \$64 x 1.05	=		\$67
Year 4 - \$67 x 1.05	=		\$70
Year 5 - \$70 x 1.05	=		\$74
Year 6 - \$74 x 1.05	=		\$78
Year 7- \$78 x 1.05	=		\$82
Year 8 - \$82 x 1.05	=		\$86
Year 9 - \$86 x 1.05	=		\$90
Year 10 - \$90 x 1.05	=		\$95

Calculate net present value of projected earnings:

Year 1 - \$61 x .8333*	=	\$51
Year 2 - \$64 x .6944	=	\$44
Year 3 - \$67 x .5787	=	\$39
Year 4 - \$70 x .4822	=	\$34
Year 5 - \$74 x .4018	=	\$30
Year 6 - \$78 x .3349	=	\$26
Year 7- \$82 x .2790	=	\$23
Year 8 - \$86 x .2325	=	\$20
Year 9 - \$90 x .1938	=	\$17
Year 10 - \$95 x .1616	=	<u>\$15</u>

Indicated Value \$299K

*Factors based on 20% risk typical for small businesses

Capitalized Adjusted Earnings (CAE). This method is based on historical earnings power, with adjustments for extraordinary and non-recurring matters. To calculate the CAE take five years of earnings, and give a weight of five to the latest year, four to the next latest year, and so on, to one to the five year old earnings. Add the earnings times the weight for each year, and add the total for five years. Then divide by the sum of the weights to determine the average weighted earnings. Divide this by the Capitalization Rate of 20% (the typical moderate small business risk) to determine the value indicated by this method.

Example: Firm with historical earnings as follows:

Year	Earnings	Weight	Adj. Value
1985	\$50K	x 1	= \$50K
1986	35	x 2	= 70
1987	65	x 3	= 195
1988	60	x 4	= 240
1989	80	x 5	= 400
	\$290	15	\$955 divided by 15 =
			\$63.7
			\$63.7 divided by .20 Cap rate =

Indicated Value

\$318.5

Multiple of Earnings (MOE). This method is based on the latest years gross revenues, does not consider the value of assets, and normally is used for professional-type businesses. With this method you use the gross revenues and multiply times a factor typical for the industry. Called a Median Multiplier, these are used by MAI Appraisers, and are generated based on industry averages. This determines the value indicated by this method.

Which method is best? The best answer to this question is “a range.” The seller wants to use the highest value, while the buyer wants the lower. In the end, the methods allow the buyer and seller to evaluate the reasonableness of the asking price.

NEGOTIATIONS BETWEEN PARTIES.

Negotiations need to take a course that is based on the readiness of the parties to proceed with a buy/sell. If you start negotiations before the buyer has performed all the required analysis you may find that the parties become disenchanted later on in the process. With these transactions often the seller sets the price and the buyer sets the terms. If one or the other parties comes to an impasse; where you have a “take it or leave it” ultimatum, there are many good techniques to get things moving again. If you can get both parties to start talking again, you will usually find other issues or points to give and take your way back to finding an agreement. Classic haggling sometimes takes place in these transactions, and we have even seen differences settled with the toss of a coin in the event of an impasse. The key is to get both in synch with each other; to create a win-win situation between both parties.

DOCUMENTING THE TRANSACTION.

It is customary for the buyer to draft the purchase and sale agreements. This is traditionally a closing cost to be borne by the buyer, but could be a negotiation point on the sale. The key issue is that your attorney should represent you, and usually cannot look after the interest of buyer and seller on the same transaction. Also, in most cases you should retain the services of an attorney on these matters. The samples shown are for informational purposes only, to educate you on what might be appropriate in your documentation.

Letter of Intent (LOI). The LOI is a written agreement that converts the preliminary understandings into a basic agreement. A sample LOI is shown as Appendix B attached to this workbook. Needless to say, the more facts and figures that you can put into your LOI the better. This means you will have less to put into your final purchase agreement.

Confidentiality Agreement. It is not unusual for a seller to have a buyer sign such an agreement that requires that the buyer keep the information they receive confidential. A sample Confidentiality Agreement is shown as Appendix A attached to this workbook.

Covenant Not to Compete. This type of agreement prohibits the seller from starting or operating a similar business in the area, for a specific period of time from the purchase date. Often a small business is dependent upon the reputation and work of the owner, and in these situations this agreement is particularly important.

Sample Asset Purchase Agreement. This is the final purchase document, which should be very detailed and specific. A sample agreement is shown as Appendix C attached to this workbook.

Appendix A

Confidentiality Agreement

In connection with our interest in purchasing the assets and/or stock of _____ (the _____ Company), we have requested that we be permitted to examine the financial and other business records of the Company. We understand and agree that the information contained in these records is of a confidential nature and that it will be used by us solely for the purpose of making an offer for the assets and/or stock of the Company. We will not disclose, nor will our agents, servants, employees, or attorneys disclose any of the information contained in these financial and other business records, including the identity of the company, to any other person except to such investors, bankers, attorneys, or other persons necessary to consummate the sale to the undersigned.

Signed: _____ Date: _____
(Print)

Appendix B

Letter of Intent

Esterbrook Corporation Incorporated proposes to purchase all the assets of Mercury Security Corporation (MSC) of Boston, Massachusetts, including goodwill, customer list, and all other intangible and balance sheet assets, to be substantially the same as those set forth on the balance sheet of MSC as of 1-1995 (Exhibit A). The name Mercury Security Corporation or any derivation of the word mercury is not transferable.

1. *Purchase Price:* The purchase price for the assets will be \$_____ payable in cash at closing.
2. *Noncompetition Agreement:* The principals of **MSC agree** not to **compete**, directly or indirectly, with the business of Esterbrook as it pertains to MSC in any of its markets for a period of five years after closing. For such consideration, Esterbrook will pay \$_____ per year for five years to John Smith.
3. *Lease of Building Space:* It is agreed that MSC will use its best efforts to transfer the lease to Esterbrook at current or market rental as permitted by lease.
4. *General and Specific Liabilities:* Esterbrook will assume the liabilities as shown on the balance sheet dated I but will not assume any other liabilities past, present, or future.
5. *Audit:* Esterbrook will cause an audit to be conducted by Esterbrook's auditors at Esterbrook's expense as of a date to be selected.
6. *Expenses:* a) The stockholders, Esterbrook, and MSC will each pay their own expenses, including legal expenses, up to the time of the closing. b) Esterbrook and MSC agree that no intermediary is involved in this transaction other than _____, of whose compensation is the responsibility of msc.
7. *Letter of Intent:* This letter of intent is nonbinding and may not be construed as an agreement on the part of any party. In the event that the parties are unable to agree on a mutually satisfactory definitive agreement providing for the transactions contemplated by this letter of intent, none of the parties shall be liable to any other party or to any other person. The conclusion of any definitive agreement will be subject to the following: a) Approval of all matters relating thereto by counsel for Esterbrook and MSC; b) Review of all business, legal, and auditing matters related to MSC, the results of which are acceptable to Esterbrook; c) Approval of all matters related thereto by the Board of Directors of Esterbrook and MSC and the voting shareholders of each company, if required; d) Completion of such financing as Esterbrook may require to effect a closing; e) Preparation and completion of all closing documents; f) The closing date to take place in or within 90 days of the execution of this agreement.
8. *Continuing obligations:* Until termination of the letter of intent, MSC shall not, and all of MSC's officers, directors, employees, agents, or representatives (including, without limitation, brokers, advisers, investment bankers, attorneys, and accountants) shall not, directly or indirectly, without prior written consent of Esterbrook, entertain negotiations with or make disclosures to any corporation, partnership, person, or other entity or group in connection with any possible proposal regarding a merger, consolidation, or sale of capital stock of MSC, or of all or a substantial portion of the assets of MSC, or any similar transaction.
9. *Confidentiality:* Both Esterbrook and MSC agree to maintain complete confidentiality of all confidential material each company exchanges with each other as outlined in separate confidentiality agreements.

All documents in respect to this transaction will be prepared by an attorney or law firm selected by Esterbrook, subject to such documents being reviewed by and being acceptable to legal counsel for MSC.

Mercury Security Esterbrook Corporation Corporation Incorporated

By _____ By _____

Title _____ Title _____

Date _____ Date _____

Appendix C

Asset Purchase Agreement

This is an agreement among RST, Inc., formerly known as Carlisle Inc., a Massachusetts corporation with a place of business at _____

('Seller'); -John Doe of _____,

('Stockholder'); and Carlisle Inc., a Massachusetts corporation with a place of business at _____ ('Buyer'). For consideration paid each other, the parties covenant and agree as follows:

1. Assets to be sold.

Seller will sell, transfer, and deliver to Buyer free and clear of any liens or other encumbrances, Seller's business and the assets and properties of **Seller**, tangible **and** intangible as listed herein. **Except as otherwise expressly provided** in this agreement, the assets shall include only the following assets owned by Seller at the time of closing.

- A. Machinery and Equipment All machinery and equipment, furniture and fixtures, and the like as set forth in Exhibit B attached hereto.

- B. Tools, Dies, and - fixtures. All tools, dies, and fixtures owned by the Seller.
- C. Inventories. All inventory, including raw materials, work-in-process, finished goods, repair parts, and supplies; all inventory records; and all outstanding purchase and sales orders.
- D. Accounts Receivable. The Buyer will use best efforts to collect all accounts receivable and pay those receivables as collected to the Seller within 90 days of closing in accordance with an agreed-upon list of such receivables as found on Exhibit E as of the date of closing. Upon demand of Seller, Buyer will reassign for collection of uncollected receivables 90 days after the closing.
- E. Corporate Name a. All processes, patents, patent applications, trademarks, signs, advertisements, trade names, copyrights, drawings, and logos, including the name 'Carlisle, Inc.'
- F. Customer Lists. All customer lists, files excepting accounting records, licenses, permits, contract rights, and sales backlog as found on Exhibit C, and telephone and fax number. Seller will provide buyer with access to Seller's accounting records upon reasonable notice for customary business purposes.
- G. Goodwill. The goodwill of the Seller.

Excluded from the sale shall be all cash, bank accounts, utility security deposits, and prepaid expenses and the land and buildings, which shall be leased to Buyer by Seller in accordance with the Lease attached hereto as Exhibit A.

- 2. Liabilities. Buyer agrees to assume up to \$ _____ of Accounts Payable in accordance with Exhibit J. Buyer is specifically not assuming any other liabilities whatsoever of Seller, including without limitation, all taxes of whatever kind or nature, accrued or payable by Seller to any taxing authority prior to and including the closing date, all of which the Seller agrees to pay.
- 3. Closing Date. The closing will take place no later than 1:00 P.M., at the offices of Seller or at such other time and place as the Buyer and Seller may hereafter agree upon. Adjustments and prorations shall be made effective the end of business

Purchase Price

- A. Price. The purchase price to be paid for the Assets is Five Hundred Thousand (\$500,000) Dollars, which sum shall be paid as follows:

Certified or bank check at closing	\$200,000		
Buyer's promissory note		per paragraph 6	\$200,000
		Accounts Payable per paragraph 2	100,000
		TOTAL	
		\$500,000	

- B. Allocation. The purchase price for the Assets shall be allocated as follows:

	Inventories		
	\$ 100,000		
	Machinery and Equipment		200,000
	Goodwill		
50,000			
	Accounts Receivable per paragraph (D)	150,000	
	TOTAL	\$ 500,000	

- 5. Personnel Agreements,
 - A. Noncompetition Agreement. Stockholders will enter into a noncompetition agreement with the Buyer, in the form attached as Exhibit D.
- 6. Buyer's Note at Closing Date. In part payment of the purchase price, Buyer shall make and deliver to Seller at the Closing Date a negotiable promissory note in the amount of TwoHundred Thousand (\$200,000) Dollars, bearing annual interest at eight (8.0%) percent, for sixty (60) months and requiring equal monthly installments of interest and principal beginning thirty (30) days after the closing contemplated herein. Such note shall be secured by a first security interest in Machinery and Equipment acquired and shall be personally guaranteed by Buyer in the form attached as Exhibit H. The form of said note and security agreement, and UCC financing statements are attached hereto as Exhibits F and G.
- 7. Seller's Use of Name. It is understood and agreed that Seller will not use the name 'Carlisle Inc.' to pursue any business interests nor will Seller sell, lease, or convey usage of its name to any entity or individual.
- 8. Seller's Representations and Warranties,
 - A. Corporate Authority. Seller is a corporation duly organized, validly existing, and in good standing under the laws of the State of Massachusetts and has the right and authority to enter into this agreement and carry out the terms and conditions hereof applicable to it and the execution, delivery, and performance of this agreement will not violate or conflict with the provisions of the Articles of organization or Bylaws of the Seller.
 - B. Agreement Default. Seller as a result of the Closing will not be in default under any agreement or other commitment to which it is a party or by which it is bound.

- C. Financial Statements to Buyer, Seller has delivered to Buyer the Financial Statements through _____. Said Financial Statements are true and complete. Seller shall provide interim financial statements for the period ending as soon as practicable after closing.
- D. No Material Change, Since I there has not been, to Seller's knowledge, any material change in financial condition, assets and liabilities, or business, other than changes in the ordinary course of business.
- E. Tax Returns, Audits, and Tax Payments, Within the times and in a manner prescribed by law, Seller has, and shall have through the closing date, filed all federal, state, foreign, and/or local tax returns required by law and has paid all taxes (including without limitation, income, franchise, sales, use, meals, transfer, payroll, and ad valorem taxes), assessments, and penalties due and payable with respect to the Business of the Seller. The Seller is not delinquent in the payment of any other governmental tax, assessment, or other charge.
- F. Marketable Title, Upon the transfer of the assets at closing, Buyer shall acquire title to such property free of all liens and encumbrances and free of all claims of third parties.
- G. Good Condition, To Seller's knowledge and except to the extent disclosed to Buyer or known to Buyer, all Seller's equipment and similar tangible personal property are in good condition and repair, consistent with the age and remaining useful life thereof, and their use is in conformity with all applicable laws, ordinances, and regulations. The Assets are being sold in ,as is, condition, and any and all warranties from manufacturers or dealers in existence at date of sale are included in the sales price. Buyer acknowledges that Buyer has been provided a full and complete opportunity to inspect the Seller's machinery and equipment and similar tangible personal property, is satisfied with the results of all such inspections, and that the Seller and Stockholders have made no warranties or representations with respect thereto.
- H. Customer Commitments, Attached as Exhibit C is a list of all presently existing customer commitments to which Seller is a party or by which it is bound. To Seller's knowledge, all such commitments are valid and enforceable in accordance with their terms.
- I. Litigation, To the Seller's knowledge, there is no pending

or threatened action, arbitration, suit, notice, order, real estate tax contest, or legal, administrative, or other proceeding before any court or governmental agency, authority, or body, against, or affecting Seller, either directly or indirectly, with respect to the Assets pending or threatened that will survive the closing. There is no order, writ, injunction, or decree of any federal, state or local, or foreign court, department, agency, or instrumentality that directly or indirectly relates to the Assets. Seller has complied and is complying in all material respects with all law, ordinances, and government rules and regulations applicable to it and its properties, assets, and business.

- J. No Untrue Representation, To Seller's knowledge after inquiry, no representation or warranty by Seller in this Agreement, or certificate furnished or to be furnished to Buyer pursuant hereto or in connection with the transaction contemplated hereby, contains or will contain any untrue statement of a material fact.
- K. Continuation of Truth, The representations, warranties, and covenants set forth in this agreement will continue to be true in all respects as of the closing date and shall survive the Closing.
- L. Licenses Obtained, All government licenses, permits, and authorizations necessary for the ownership of Seller's properties and the conduct of its business as currently conducted are listed on Exhibit I, and Seller has all such licenses, permits, and authorizations.
- M. Liabilities, At the closing there will be no liabilities, commitments, or contingencies of Seller whether accrued, secured, or determinable that encumber the assets other t than those expressly assumed by Buyer under the terms of this Agreement.
- M. Continued Business, Seller is not aware of any reason why its customers, subcontractors, or suppliers will not continue to do business with the Buyer after the closing in the same manner in which they have done business with the Seller prior to the Closing. This does not assure or imply that the existing customer base will be retained after the closing.
- N. Stock Ownership, The Stockholder named herein owns one Hundred (100%) Percent of the outstanding stock of the Seller.
- O. Absence of Certain Changes, Since the date of this Agreement and as of the Closing, there shall not have been any: (a) Transactions by Seller affecting the Assets except in the ordinary course of business. (b) material adverse physical change in the Assets.
- P. Profits Pending Closing, Profits from the date of this Agreement up to and including _____ shall be the property of the Seller.

9. Buyers Representations and Warranties.

- A. Corporate Authority, Buyer is a corporation duly organized, validly existing, and in good standing under the laws of the State of Massachusetts and has the right and authority to enter into this agreement and carry out the terms and conditions hereof applicable to it and the execution, delivery, and performance of this agreement will not violate or conflict with the provisions of the Articles of Organization or Bylaws of the Corporation.
-) Payment, Buyer's delivery to Seller at the Closing Date of payment in the amount of Two Hundred Thousand (\$200,000) Dollars payable by Certified or Bank check without intervening endorsements.
 - (b) Buyer's Note, Buyer's delivery to Seller at the Closing Date as defined herein of a promissory note in the amount of Two Hundred Thousand (\$200,000) Dollars.
 - (c) Security Agreement and Financing Statements, Buyer's delivery to Seller of a security agreement and UCC financing statements as set forth in paragraph 6 and Exhibits F and G.
 - (d) Buyer's Guarantee- Buyer's delivery to Seller of a Guarantee from _____ as included in Exhibit H.

- (e) Detail Accounts Receivable Listing. Buyer's and Seller's written agreement of the detail accounts receivable as of date of closing as set forth in Exhibit E is included herein.
- (f) True and Complete. The representations and warranties of Buyer shall be true and complete in all respects, and Buyer shall have performed and complied with all agreements and conditions required by this agreement.

B. Conditions of Buyer's obligations. At the closing shall be conditional upon the following:

- (a) True and complete. The representations and warranties of Seller shall be true and complete in all respects, and Seller shall have performed and complied with all agreements and conditions required by this Agreement.
- (b) Bill of sale. Seller's delivery to Buyer of a bill of sale and all other instruments necessary to convey to Buyer good and marketable title to the Assets.
- (c) Noncompetition. The signing of a Stockholders' noncompetition agreement in the form of Exhibit D.
- (d) Lease. The signing of a Lease acceptable to Buyer and Seller in the form of Exhibit A.
- (e) At the closing Seller will deliver to Buyer.
 - (1) List of commitments and customers. An updated list of contracts relative to Exhibit C, which list shall not vary significantly from its present form except in the ordinary course of business.
 - (2) Instruments. Appropriate instruments, including Bills of Sale, and assignments transferring and conveying to Buyer, good and marketable title to the Assets.
 - (3) Vote of stockholders. A certificate of Vote, duly executed by the Clerk of Seller, as to the due adoption by the Stockholders and the Board of Directors of Seller of a resolution authorizing the transactions contemplated of Seller by this agreement.

- 12. Seller's Conduct of its Business Prior to closing. Seller agrees that it will make no changes in the Assets and will incur no liabilities or obligations between the date of this agreement and the closing date except changes, liabilities, and obligations arising or occurring in the ordinary course of business. Seller agrees that it will use its best efforts prior to the closing to maintain and preserve its business and to retain good working relationships with its suppliers, distributors, customers, and others with whom it deals.
- 13. Bulk Sales Agreement. The Seller has provided Exhibit J setting forth all creditors, claimants, or others that may have claims or liens upon any of the assets to be transferred herein. Notification will be given to creditors of record. The parties agree to waive compliance with all the provisions of Article 6 of the Uniform Commercial Code dealing with bulk transfers.
- 14. Broker's or Finder's Fee. Buyer and Seller agree that no broker or finder is involved in the sale of assets other than of and of a broker's commission of \$ _____ to _____ shall be paid at the closing by Seller if the sale hereunder contemplated is consummated and the purchase price is received by Seller.

15. General.

- A. Written Notice. All notices and other communications hereunder shall be in writing, and given by delivery or mail (by overnight carrier providing a receipt or facsimile followed by first-class mail, postage prepaid) to a party at its address set forth at the beginning of the Agreement or at such changed address as a party may have furnished to the other party in writing at least ten (10) days prior to the effective date thereof.
- B. Severability. If any provision in this Agreement shall be deemed unenforceable or void as a matter of law, such circumstance shall have no effect on the surviving portions of the Agreement, each of which shall have full force and effect. Buyer and seller shall be required to use their best efforts to agree upon and replace any provision that has been declared legally void or unenforceable.

16. Miscellaneous.

- A. Binding effect. This agreement is binding not only upon Seller, Stockholders, and Buyer, but also upon Seller's, Stockholders', and Buyer's respective successors, heirs, executors, administrators, and assigns.
- B. Governing law. The laws of state of _____ as of the date appearing below shall govern the interpretation and enforcement of this agreement.
- C. Modification. No modification of this agreement shall be binding unless in writing and executed by all parties with the same formality as this Agreement.
- D. Entire agreement. This agreement represents the entire and integrated agreement of the parties and supersedes all prior oral and written negotiations and agreements.
- E. Liquidated Damages. Upon failure of the Buyer to fulfill Buyer's obligations under this Agreement, the deposit may be retained by the Seller as liquidated damages for any such default. Such deposit will be held by counsel for the Seller.

Effective as of

Witness RST, Inc. FKA a Carlisle Inc.

President

Witness

Stockholder of RST

Witness

Buyer

Exhibits contained herein:

-Lease -Machinery & Equipment -Customer Lists & Contracts -Noncompetition

-Listing of Accounts Receivable -Buyer Note & Security Agreement
-UCC Financing Statements -Guarantee -Licenses & Permits -List of Creditors