

Key Founder Transaction Considerations

May 2026



Key Planning / Prep Work

- Engage advisors prior to going to market
 - Understand and resolve key diligence issues (e.g., litigation, regulatory investigation, key customer dispute)
 - If cannot resolve, work with counsel to “package” the issue in the most favorable manner possible
 - Populate and organize the data room
- Consider timing and sale strategy
 - Auction process vs. more selective/private process
 - Strategic vs. Private Equity
 - Stock vs. Asset deal structure



Key Considerations When Engaging Advisors

- Legal Counsel:
 - Regional vs. Large (National and International) firms
 - Ask for a fee quote (understand assumptions) and attorney rate cards
 - Confirm deal team members
 - Ask for “broken” deal discount
- Investment Bankers:
 - The fee should be scaled to incentive obtaining the highest EV possible
 - Carefully review how “transaction value” is being defined
 - Limit “out-of-pocket” expenses without prior consent
 - Limit the “term” and provide for termination rights in certain scenarios (e.g., for “cause” or key employee termination) without the fee being owed

Key Deal Terms

- Letter of Intent?
 - Maintain “competitive tension” as long as possible
- Purchase Agreement
 - Purchase Price provisions
 - Cash
 - Indebtedness
 - Seller Transaction Expenses
 - Earn-out
 - Include covenants requiring buyer to support the business during the earn-out period
 - Include numerical examples!
 - Differences between a simultaneous and bifurcated signing and closing
 - Hart-Scott-Rodino Act Considerations



Key Deal Terms Continued

- Representations and Warranties (fundamental vs. general business)
- Representation and Warranty Insurance (RWI)
 - Majority of deals over \$20M utilize RWI
 - Coverage Limits
 - Costs (Premium, Retention, Other)
 - Responsibility for costs
 - No subrogation against seller(s) by insurer
- Indemnification
 - Caps and baskets
 - Order of recovery
- Escrows
 - Purchase Price
 - Indemnification
 - Special Indemnification

