

Subject: Drafting a Powerful Letter of Intent *ATTORNEY ADVERTISING*

Date: Wednesday, December 3, 2025 at 10:08:10 AM Eastern Standard Time

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How to Draft an LOI (Letter of Intent) to Make Your Deal a Success

Letter of Intent: Key Terms to Get Right From the Start.

Why does the LOI need certain terms?

You want key terms included to ensure a smooth deal process.

We will assist you in creating a term sheet that both sides of the deal will sign

off on before the LOI is drafted for signing.

Top Ten Key Considerations & Terms for the LOI When Selling or Buying a Business or its Assets.

While the Buyer will draft an LOI, it's up to the Seller to make sure the terms are correct and acceptable **BEFORE** signing and accepting the LOI.

1. Purchased Assets: define as broadly as possible, including:
 - (a) all equipment and other tangible personal property and fixtures;
 - (b) all accounts and notes receivable;
 - (c) all inventories;
 - (d) all rights under leases, licenses and other contracts, and
 - (e) all trademarks, trade names, copyrights, know-how and other intellectual property and intangible assets;
2. Liabilities in the Business and/or Assets for an Asset Purchase, identify clearly that the Buyer will not be assuming liabilities of the Seller and the Seller's obligation to discharge all debts accrued through the Closing Date. Exceptions may exist and should be noted to avoid confusion that can cause a sale to stall or be cancelled.**
3. Purchase Price: define the total purchase price for all assets (Asset Sale) or company value (Company Sale), and a summary breakdown of asset groups, and then breakdown how and when that gets paid to the Seller. Is there an Initial Purchase Price as well as post-closing Earnout Payments? If there will be Earnout Payments, define timing and amount of each one. Escrow to be held post-Closing for liabilities to be satisfied which can't be prior to Closing, to avoid a delay in the Closing? Is there going to be a Working Capital requirement paid by the Seller to the Buyer or will that be deducted from the Purchase Price?
4. Is the Seller going to provide executive services after the Closing for a period of time and/or are certain employees necessary to the deal? These terms must be at least broadly identified, including the names of those who must remain with the company after the Closing.
5. Conditions to Closing: (a) Buyer's Due Diligence Period must be identified from the time the Seller provides all requested company information and documentation - make sure there is a clear and well-defined Non-Disclosure Agreement in place to protect the Seller and its proprietary information as well as a non-solicitation clause to protect employee poaching if the deal doesn't go through!! (b) no adverse changes to assets, liabilities, etc. (c) Board of Directors Approval (d) full execution of the Asset Purchase Agreement or Stock Purchase Agreement, warranty time frame post-Closing and (e) consents and approvals from government and third parties.
6. Exclusivity: Identify the time frame to limit the Seller from "shopping" the company or assets or dispose of assets and you may limit the Buyer from seeking out similar purchases.
7. Identify the state's laws that will govern the agreement.

8. Identify Brokers and which party pays them.
9. Identify who pays for deal related expenses.
10. Expiration Date: Identify the Date by which the Seller must accept the LOI - remember the Seller can edit and/or counter the terms as presented by the Buyer in the LOI. Don't shy away from clarifying as many terms as you can, even though many details will be more formally and thoroughly presented in the actual Asset Purchase Agreement or Stock Purchase Agreement.

We are ready to guide you through the LOI drafting and reviewing process, whether you are a Buyer or Seller of assets or a company.

Pump the brakes and get it done right from the start!

Experience matters!

OUR TEAM

With over twenty-five years of experience assisting a wide array of business owners restructure and strengthen their company assets, we have a team of skilled and experienced attorneys who take an active role with every client, whether building a new business, negotiating contracts for an established business or assisting in the break-up of ownership, purchase or sale of assets or an ongoing business, licensing, trademarks, employment law and business litigation for every type of business.

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