PSMJ | Resources, Inc.®

The Ultimate A/E/C
BUY/SELL AGREEMENT

See inside for sample agreement PLUS 73 terms every agreement must include!

IMPROVING THE BUSINESS PERFORMANCE OF A/E/C ORGANIZATIONS WORLDWIDE

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About PSMJ

PSMJ Resources, Inc. is an international, leading edge provider of planning, managing and marketing information and services for the design and construction industries.

Offering a track record of excellence since 1974, the company provides expertise in such topics as ownership/leadership transition, business valuation, mergers & acquisitions, organizational structure, marketing, project management, profitability analysis, and compensation programs. These vital resources are provided through a variety of channels including consulting engagements, training and educational forums, textbooks, newsletters, surveys, conferences, tradeshows and tradeshow production services.

PSMJ's sought-after consultants are drawn from a diverse group of subject matter experts within the A/E/C industry, including legal, finance, HR, strategic planning, and management. The fundamental difference-maker that we bring to you is that each and every PSMJ consultant has enjoyed significant success in the architecture, engineering, and construction world. In addition to providing expertise in Buy-Sell Agreements and other legal documentation, we also consult on a range of critical business areas such as:

- **Business Valuation**
- **Mergers & Acquisitions**
- **Ownership/Leadership Transitions**
- **Financial Planning and Management**
- **Strategic Planning**
- **Marketing**
- **Project Management**

If you would like to speak to a consultant about one of these, or other critical business management issues, please contact Susan LeComte, Vice President, Ownership Transition, Valuation, Mergers & Acquisitions at 857.255.3205 or *slecomte@psmj.com*

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Is it time to update your Buy-Sell Agreement?

What is a Buy-Sell Agreement and why is it important? A Buy-Sell Agreement is a legal document used for the purposes of business succession planning, and it provides the “rules of the road” for both the structure and terms of how that process will be managed by all parties. When executed, it is a legally binding document that protects the interests of a company and its owners, while providing the framework and access to information for potential equity participants, so they can give thoughtful consideration to taking an ownership position.

Having a well-crafted agreement can help identify a desired exit strategy, orderly ownership succession plans, provide a roadmap in the event of a death, divorce or disability or any of a number of other unforeseen events which can derail a business. Unfortunately, like writing a Will, many business owners put off writing a Buy-Sell Agreement until after circumstances have made its utility a necessity.

Over the years, PSMJ has observed many serious problems caused by the lack of a Buy-Sell Agreement or a poorly crafted one. In conjunction with a regularly performed business valuation, a well-written Buy-Sell Agreement can prevent business owners from not realizing the full value of the businesses they have built.

Based on years of experience and hundreds of consulting engagements helping business owners plan for transitions, PSMJ believes every Buy-Sell client should be aware of and consider the application of the following list of items when developing or revising your Buy-Sell Agreement.

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Concerning Culture

1) Strategic Purpose of the Company
Organizing and operating principles defining why a company exists: including the company's objectives, values, governance and product/service offerings. Successful acquisitions typically have aligned their purposes either by similarity or complementarity.

2) "Earnings Club" vs. "Stock Appreciation" Desires
The difference between companies that, largely, distribute profits to the shareholders versus reinvesting the profits into the long-term growth of the company. The "stock appreciation" method generally creates a greater value for the firm and a greater desirability to acquirers.

3) Success Formula of Firm Defined
The broad roadmap, or operational compass, that a company uses to plan long-term strategic objectives. "If we do X, Y, and Z, we will achieve ..."

4) Performance Standards of Owners
The measurable expectations that the shareholders formally provide to management to set goals, objectives, and behaviors of the company.

5) Desired Culture of the Firm
The ideal of how a company behaves—both internally, as an environment in which the employees and management are members of a community, and externally, how the company interacts with customers, vendors, partners, and competitors.

6) Values in Priority Order
The underlying principles from which Company Culture are ultimately derived. In many companies, these values are more implicitly than explicitly stated.

7) Legacy versus Economics
A decision-making process by which a company selects between available options based on either a consistency with historic practices or with what will provide the best future outcome based on current conditions.

8) Growth Objectives
The collective criteria which a company aims to achieve and the metrics by which it measures its success. The Growth Objectives should be the basis for the target acquisition specifications, along with additional factors, such as cultural fit.

9) Partner Attitudes and Specific Expectations Stated
As with a cultural mismatch between buyer and seller, it is necessary to get agreement, motivation, and expectations with the internal partners, as well.

Definitions

10) Accounting Practices Defined
Accounting practices are the system of procedures and controls used to create and record business transactions. They should be consistently applied and clearly understood, so that management and third parties can read and understand the financial statements with no extraordinary efforts.

11) Leadership Titles Defined
Leadership titles, and leadership structure, define the reporting and responsibility within an organization. These should be fully identified and agreed to before an internal ownership transition is agreed to.

12) Book Value Defined
Traditionally, a company's book value is its total assets minus intangible assets and liabilities. In some companies, there is a pre-agreed and documented calculation for "Book Value" which identifies which assets are to be included and the method of valuing that asset, if other than the value documented in the company financials. If the company is a cash method taxpayer, the definition of book value should address whether or not an estimate of the company's deferred tax liability will be booked and reflected in the calculation of book value.

13) Founding Partner(s) Defined
A founder, generally, connotes someone who was there at or near the beginning, helped start the company, and at least initially, owned a large piece and had a major say in running it. The founders' equity in the company is largely the result of their efforts to build and grow the company (sweat equity), rather than the purchase of equity at a valuation based per share price. Since it is likely that founders will receive certain specified perquisites upon retirement identified elsewhere in the Buy-Sell Agreement, it is important to specifically identify who will enjoy those perks.

A non-founding partner may have attained an equity position of the company on an "earned-in" basis or via the purchase of an equity position, but in some companies the term "Partner" does not necessarily connote an equity position in the business.

14) Fiscal Year Defined
The Fiscal Year is the one-year period for which the company does its financial reporting, for both internal purposes as well as for tax reporting purposes. Most companies use the Calendar Year for their Fiscal Year. However, some companies will use another date as the beginning of their Fiscal Year. Typical alternatives are October 1st or July 1st. There is no restriction on the date selection, as long as it is the same date every year.

15) Goodwill Defined
Goodwill is the intangible asset value of the company above its book value. Goodwill includes the company's reputation in the market place, its client list, its project profiles of previously performed projects, its intellectual property, and its internal processes for successfully managing projects.

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