SALE AND PURCHASE AGREEMENT

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WHAT IS A SPA?

A **Sales and Purchase Agreement** (SPA) is a binding and legal contract between two parties that rules the transaction between the **buyer** and the **seller**.

WHAT IS USED FOR?

SPA is used for the acquisition of **shares** and **assets** of an other company. The sale and purchase agreement can be referred to the whole company (as the 100% of the corporation stock) or just a percentage that allows the control of the company.

The SPA reflects all the obligations, agreements and procedures for the **negotiation** between the buyer and the seller.

It's the expected last phase of an M&A process. After the entire **due diligence procedure**, and when a buyer had analyzed the seller's representations of the target company for sale, it is finally time to draft the agreement and sale price of the company.

WHY IN ENGLISH?

- in Italy there's no SPA domestic regulation,
- seller and purchaser can be based in different countries;
- the contract in English enables parties to access international and popular jurisdictions, such as London and New York;
- many consultants of different countries can be involved in the procedure;
- It refers in some aspects to the common law of business contracts.

. . . BEFORE THE CONTRACT

The Parties use to sign separated documents that might be attached to the final agreement:

- NDA, non-disclosure agreement (confidentiality agreement)
- LOI, Letter of Intent
- Lock-out (or Exclusivity Agreement)

CONTRACT

DUE DILIGENCE

Due diligence is the investigation that a reasonable business is expected to take before entering into an agreement or contract with another party.
The party (buyer) will performe the DD process as a detailed examination of the **target company** or its assets for the acquisition.

The due diligence process can be divided into different audit's areas:

- Integrability,
- Financial and Tax,
- Real estates,
- Legal/environmental,
- Marketing, Production, Quality and Management.

KEY ELEMENTS

- Recitals and Definitions;
- Description of the transaction;
- Terms of the agreement;
- Representations and warranties;
- Limitations on Responsibility;
- Conditions;
- Annexes and attached.

R&W

A Representation is a statement of fact which is relied on by the receiving party and induces them to enter into the contract.

Warranty is an obligation of taking responsibility of the material effect of any undisclosed event.

"Where any representation or warranty included in this Agreement is expressly qualified by reference to the "best of the Seller's knowledge", this shall mean the actual and effective knowledge, as of the date hereof, of the Seller."

"The representations and warranties of the Company contained herein shall be true and correct on the date hereof and on and as of the Closing Date or the Additional Closing Date, as the case may be."

WHAT HAPPENS IF THE REPRESENTATIONS ARE INACCURATE, UNCORRECTED OR UNTRUTHFUL?

The Buyer of the company can be compensated for the caused damage, a contingency or a loss. For this purpose liability warranty clauses are established.
In many cases, a portion of the purchase price is withheld to warrant these contingencies.

Thanks for your attention!