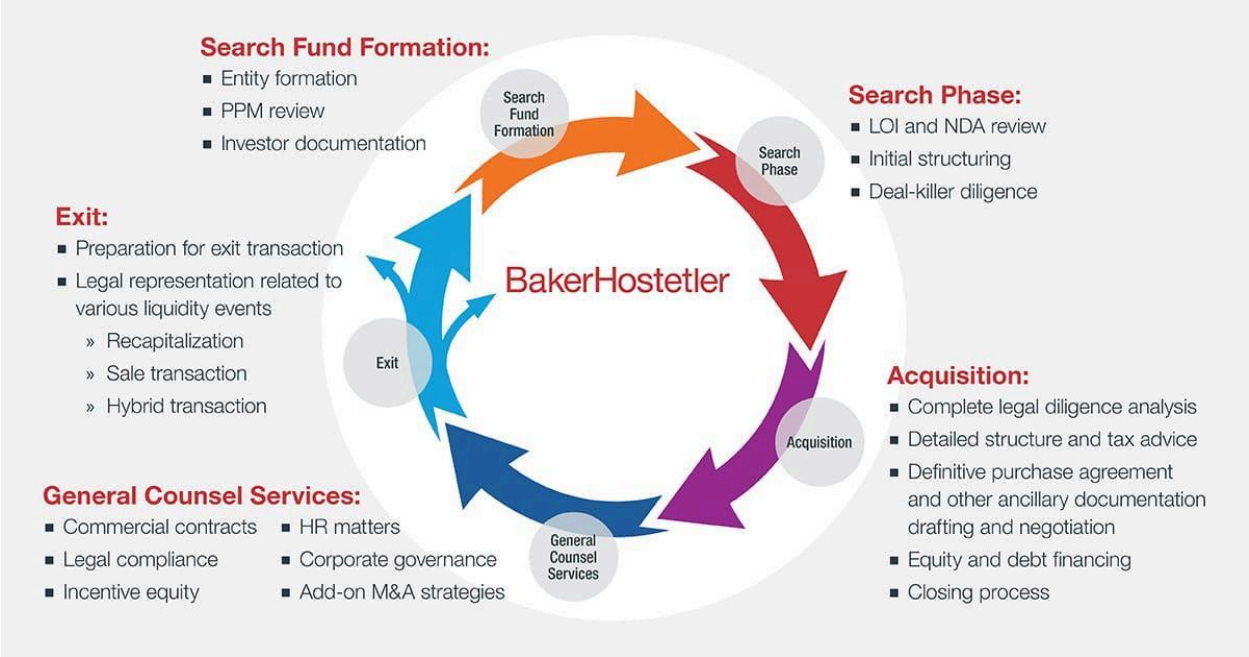
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BakerHostetler Search Funds and Entrepreneurship Through Acquisition Overview

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For questions regarding the content of this memorandum or to learn more about the BakerHostetler Search Fund and Entrepreneurship Through Acquisition team, please feel free to contact any of the following attorneys at BakerHostetler: (i) Raam S. Jani (312-416-6225; rjani@bakerlaw.com); (ii) Reed F. Leigh (713-331-8454; rleigh@bakerlaw.com); (iii) Jonathan D. Mitchell (614-462-2655; jonmitchell@bakerlaw.com); (iv) Thomas J. Paquette (513-929-3418; tpaquette@bakerlaw.com).

To: Center for Entrepreneurial Studies, Stanford Graduate School of Business

BakerHostetler

FROM: Baker & Hostetler LLP

DATE: September 19, 2025

SUBJECT: **Legal Memorandum on Mergers and Acquisition Documents**

This memorandum provides a high-level overview of key legal considerations in mergers and acquisitions ("M&A") of privately held companies in the lower-middle-market. It is intended as a practical guide for entrepreneurs pursuing acquisitions through the search fund model. While each transaction presents unique facts and challenges, certain legal issues, deal terms, and structural themes consistently arise. A working knowledge of these concepts can help search fund entrepreneurs engage more effectively with advisors, negotiate with greater confidence, and avoid common legal pitfalls.

I. Transaction Structure

M&A transactions involving privately held companies are typically structured in one of three ways: (A) asset purchase; (B) stock (or equity) purchase; or (C) statutory merger. In the lower-middle-market, asset and stock purchases are more common than statutory mergers. Each structure carries distinct legal, financial, and tax implications. For example, asset purchases may allow buyers to selectively assume liabilities and achieve a step-up in the basis of the assets for tax purposes without additional restructuring, while stock purchases may offer a simpler path to acquiring the entire business entity. Statutory mergers, though less common in this space, can be used in certain jurisdictions or for specific strategic reasons, including simplified approval processes for selling entities with a large number of equityholders (often state law only requires a majority vote) or in situations requiring heightened review under state corporate law or, in some cases, federal securities regulations.

Because structure selection affects everything from deal economics to post-closing operations, it is critical to engage legal, financial, and tax advisors early in the process to evaluate the most advantageous approach for the transaction.

A. Asset Purchase

In an asset purchase, the buyer acquires specified assets and assumes only designated liabilities of the target company. This structure provides the buyer with flexibility to pick and choose assets while leaving behind unwanted obligations. From a risk-allocation perspective, asset purchases are particularly attractive in situations where the buyer has concerns about certain contingent liabilities.

Buyers also typically benefit from a step-up in the tax basis of the acquired assets, which does not require any restructuring in an asset sale and enables amortization of goodwill and other intangible assets, often translating into significant tax savings over time. However, the administrative burden of assigning contracts, transferring permits, transferring employees, and re-titling property can be substantial, especially if numerous third-party consents are required.

For sellers, asset sales can be less favorable. They may trigger adverse tax consequences, such as recognition of ordinary income on certain asset classes (whereas as in a stock (or equity purchase), the seller would receive lower capital gains tax rates), and, in the case of C corporation target companies, potential double taxation upon distribution of proceeds to shareholders. Sellers also remain responsible for liabilities not expressly assumed by the buyer, which may complicate post-closing wind-down efforts.

Advantages of an Asset Purchase Structure:

- Selective acquisition of assets and assumption of liabilities, giving the buyer greater control over the scope of the deal.
- Targeting of specific business lines or units in carve-out transactions.
- Potential avoidance of unwanted liabilities, such as certain contractual obligations or litigation (note that despite an asset purchase structure, there is a potential for successor liability for certain seller liabilities, such as environmental or tax).
- Reduced exposure to need for indemnification claims against seller, as liabilities can be excluded from the transaction.
- Approval typically required only from holders of a majority of the seller's equity, unless a higher threshold applies under state law or governing documents.
- Step-up in the tax basis of acquired assets, without restructuring, creating significant tax benefits for the buyer.

Disadvantages of an Asset Purchase Structure:

- Retention of residual liabilities by the seller, which must be addressed post-closing.
- Adverse tax consequences for the seller, including ordinary income treatment on certain assets.
- Potential for double taxation in C corporation sales, which can substantially reduce net proceeds.
- Need to transfer each asset individually, adding complexity compared to an equity transfer.
- Requirement for third-party consents to assign contracts, titles, permits, and intellectual property.
- Despite an asset purchase structure, there is still a potential for successor liability for certain liabilities of the seller, particularly where there is a mere continuation of the prior business.

- Reduced appeal for private equity sellers, who may be left with liabilities after closing.

B. Stock (Equity) Purchase

In a stock (or equity) purchase, the buyer acquires ownership interests directly from the target's equityholders. This approach allows the buyer to assume control of the company as a going concern without the need to retitle assets or reassign contracts, licenses, or permits (except where change-of-control provisions apply). For sellers, stock sales are generally more favorable because they provide a cleaner exit and are typically taxed at capital gains rates.

The key drawback for buyers is that, absent contractual protections, they inherit the target's full history, including both known and unknown liabilities. In lower-middle-market deals, where diligence resources may be constrained, this risk can sometimes be material. Buyers commonly mitigate these concerns through detailed representations and warranties, indemnification provisions, and, escrow arrangements or, when available, representation and warranty ("R&W") insurance.

Advantages of a Stock (Equity) Purchase Structure:

- Complete exit for the seller, providing a clean break from the business.
- Simpler process compared to individually transferring assets.
- Single level of taxation for the seller, generally at favorable capital gains rates.
- Potential transfer of favorable tax attributes of the target company to the buyer.
- Buyer may be able to achieve a step-up in basis through certain tax elections and/or having seller effectuate an F reorganization prior to closing.

Disadvantages of a Stock (Equity) Purchase Structure:

- Automatic assumption of the entire history of the target company, including unforeseen risks.
- Exposure to contingent or unknown liabilities, the latter of which cannot easily be excluded.
- Heightened due diligence is recommended because all liabilities will be transferred.
- Goodwill is generally not deductible for tax purposes.
- Practical challenges in transactions with numerous equityholders, where a merger may achieve the same result more efficiently.

C. Statutory Merger

Although less common in lower-middle-market transactions, statutory mergers can be a useful structuring tool. Mergers are particularly advantageous when the target has numerous shareholders, as the statutory framework compels all equityholders to participate in the transaction, subject to appraisal rights. This can prevent "holdout" issues that may otherwise complicate a stock purchase.

That said, mergers involve additional complexity under state corporate law, and in some cases may trigger appraisal or dissenters' rights litigation or require heightened review under state corporate law or federal securities regulations. Buyers may still need to negotiate separate agreements with key shareholders to obtain covenants such as noncompetition or non-solicitation. As a result, mergers are often reserved for transactions where shareholder coordination or structural efficiency outweighs the added complexity.

Advantages of a Statutory Merger:

- Suitable structure for acquiring public companies or private companies with many equityholders.
- Elimination of the need to coordinate tender offers with numerous equityholders, though subject to appraisal or dissenters' rights.
- Favorable for private equity sellers, as typically only the operating or holding company is a party, insulating fund entities from post-closing risk.
- Resolution of potential "holdout" problems by preventing minority equityholders from blocking the transaction.

Disadvantages of a Statutory Merger:

- Increased complexity due to compliance with state law and, in some cases, SEC and exchange requirements.
- Potential for appraisal or dissenters' rights claims, which can complicate the closing and post-closing process.
- Similar exposure to risks as equity transactions, but not all stockholders are required to sign the acquisition agreement.
- Additional complexity if separate indemnification or noncompetition agreements are needed from equityholders.

II. Common Legal Issues in Acquisition Transactions

In addition to transaction structure, a number of recurring legal issues frame negotiations and materially influence risk allocation in private company acquisitions. While every transaction is unique, the following themes arise with particular frequency in lower-middle-market deals.

A. Letters of Intent and Exclusivity

Most transactions begin with a letter of intent ("LOI"), term sheet, or similar document. Although typically non-binding with respect to an obligation to close, LOIs establish the key economic and structural terms, and often grant the buyer a period of exclusivity during which the seller may not solicit competing offers. Exclusivity is particularly important in search fund transactions, where the buyer invests significant time and resources into diligence and financing. Importantly, LOIs may include binding provisions, such as confidentiality, exclusivity, and governing law, which are frequently carefully negotiated. Overly broad or imprecise drafting can unintentionally create binding obligations to consummate the deal.

B. Purchase Price and Mechanics

The purchase price in private company acquisitions is rarely a simple cash payment. Instead, the purchase price in lower-middle-market acquisitions often involves a mix of consideration designed to balance liquidity, valuation gaps, and risk allocation. Typical purchase price components include: (i) cash consideration paid at closing; (ii) seller financing (seller note); (iii) rollover equity; (iv) earnouts; (v) holdbacks; and (vi) escrows. Each component is further detailed in (i)-(vi) below.

For entrepreneurs, it is essential to understand that each component affects not only the economics of the transaction but also the post-closing relationship between buyer and seller. Seller financing, rollover equity, and earnouts may reduce upfront cash requirements, but they heighten the importance of clearly defined contractual terms, covenants, and dispute resolutions mechanisms.

i. Cash Consideration

Cash at closing remains the most straightforward component of the purchase price. In search fund acquisitions, cash is typically funded through a combination of equity raised from investors and third-party debt financing. Because many sellers prefer maximum certainty and liquidity at closing, cash consideration often serves as the anchor for negotiations. However, the buyer's ability to deliver significant upfront cash is usually tempered by lender requirements, investor expectations, and the target's projected cash flows.

ii. Seller Financing (Seller Note)

Seller financing (seller note) is a common tool to bridge valuation gaps and reduce the buyer's immediate cash outlay. Seller notes are promissory notes issued by the buyer to the seller, typically subordinated to acquisition debt. They are often unsecured, leaving sellers exposed to the buyer's credit risk, and may accrue payment-in-kind (PIK) interest, which allows the note to compound rather than requiring immediate cash servicing. Buyer covenants under the seller note are generally limited, but frequently restrict dividends or non-tax distributions to Buyer's equityholders while the note is outstanding. Acceleration rights for sellers are narrowly drafted to preserve stability for the buyer's capital structure. From the seller's perspective, promissory notes represent an extension of trust in the buyer's stewardship of the business post-closing; from the buyer's perspective, they can provide essential financing flexibility at the cost of ongoing repayment obligations.

iii. Rollover Equity

In many lower-middle-market transactions, sellers are asked (or choose) to reinvest a portion of their proceeds into equity of the post-closing entity. Rollover equity aligns incentives by ensuring that sellers share in both the risks and rewards of the company's future performance. Structurally, rollover equity may be *pari passu* (i.e., on equal footing) with equity of buyer's investors, or subordinated in a junior class, with rights and preferences that may impact its value. Proper structuring can qualify rollover equity for tax-deferred treatment, avoiding immediate gain recognition, and preserving value for sellers. Governance rights, minority protections, and exit mechanics (e.g., tag-along and drag-along rights) can be critical points of negotiation if the rollover equity is not structured in a *pari passu* manner. For buyers, rollovers help reduce upfront capital needs and ensure seller cooperation post-closing; for sellers, they provide continued participation in the company's upside, albeit with illiquidity and minority exposure risks.

iv. Earnout

Earnouts are contingent payments tied to the target's post-closing performance, commonly measured against EBITDA, revenue, or milestone achievements. They are frequently used in transactions to reconcile differences in valuation expectations, particularly where historical financial performance does not fully capture the business's growth potential. Earnouts, however, are also among the most litigated deal provisions, with disputes often arising over ambiguous drafting or conflicting operational expectations. Delaware courts have repeatedly emphasized contractual clarity, rejecting reliance on implied duties, and treating efforts standards such as "best efforts," "commercially reasonable efforts," and good faith" as largely interchangeable unless specifically defined.

To reduce litigation risk, earnouts should (1) define the performance metrics with precision; (2) clarify the buyer's operational discretion while including targeted covenants to prevent manipulation (e.g., prohibiting the combination of financial records during the earnout period); and (3) incorporate objective dispute-resolution mechanisms, such as independent accountant determinations for calculation disputes. Acceleration provisions (i.e., those triggered by events such as change of control or refinancing) are also heavily negotiated. While earnouts can align incentives, entrepreneurs should approach them with caution, recognizing the significant potential for post-closing disputes if expectations are not carefully managed.

v. Holdbacks

Holdbacks are a buyer-controlled mechanism for deferring a portion of the purchase price post-closing. Unlike escrows, which involve a neutral third party, holdbacks remain entirely within the buyer's control, making them a more direct, but potentially contentious, tool for managing post-closing risk. Sellers typically prefer escrows over holdbacks.

In lower-middle-market transactions, holdbacks are often used when R&W insurance is unavailable or cost-prohibitive. They serve as a buffer against indemnification claims, working capital shortfalls, or other contingent liabilities. For buyers, holdbacks offer flexibility and immediate access to funds in the event of a claim so long as proper setoff provisions are included

in the definitive agreement. For sellers, however, they represent delayed payment and increased uncertainty, prompting negotiation around the duration, scope, and release mechanics.

Typical holdbacks range from 5% to 15% of the purchase price and are held for 12 to 24 months, often mirroring the survival period for non-fundamental representations. Sellers may seek staged releases or automatic return provisions if no claims are made within a defined timeframe. When used alongside escrow or insurance, holdbacks should be coordinated to avoid overlapping coverage and conflicting recovery procedures.

vi. Escrows

Escrows provide a neutral, third-party solution for holding a portion of the purchase price after closing. Funds are deposited with an independent escrow agent under a formal agreement that outlines how and when the money can be released. This structure is especially useful in search fund transactions, where buyers may lack a long operating history and sellers want assurance that funds will be handled impartially.

Escrows are commonly used to secure indemnification obligations, purchase price adjustments, and other post-closing contingencies. They typically involve 5% to 15% of the purchase price and remain in place for 12 to 24 months, aligning with the survival period of general (non-fundamental) representations and warranties.

A well-drafted escrow agreement should clearly define the process for submitting claims, resolving disputes, and releasing funds. It should also address issues such as interest allocation, investment of funds, and tax reporting. While escrows add some administrative complexity and cost, they enhance deal stability and reduce the risk of payment disputes.

C. Working Capital and Purchase Price Adjustments

In most private company acquisitions, the purchase price is subject to adjustments designed to reflect the target's financial condition at closing. The most common approach is a "cash-free, debt-free" structure coupled with a requirement that the company deliver a normalized level of working capital. These adjustments ensure that the buyer receives the business in the expected condition and with sufficient liquidity to continue operations immediately after closing.

The adjustment mechanism typically modifies the purchase price based on several financial components of the target company at closing. Common adjustments include increases for cash on hand, reductions for outstanding debt and transaction expenses, and further modifications based on whether actual working capital deviates from an agreed target. That working capital target is often derived from historical averages, adjusted for seasonality and unusual items, and is intended to reflect the level of capital required for the business to operate in the ordinary course. These adjustments ensure that the buyer receives the business in its expected financial condition and help align the final purchase price with the target's actual closing balance sheet. For example, in a transaction with a $25 million headline purchase price, if the target company has $5 million of outstanding debt and the agreed working capital target is $2 million, but actual working capital at closing is only $1.5 million, the seller's proceeds would be reduced by $500,000 to reflect the working capital shortfall (either at closing, if the shortfall

was identified at such time, or post-closing, through the adjustment mechanism). After accounting for both debt and the adjustment, the net payment to the seller would be $19.5 million.

Because small differences in accounting treatment can materially impact the adjustment, disputes frequently arise over methodology. Agreements may require compliance with GAAP, consistency with past practices, or a hybrid standard, and ambiguity on this point is one of the most common sources of post-closing conflict. To provide further certainty, many agreements incorporate a "collar" around the working capital target. A collar sets a negotiated range above and below the target within which no adjustment is made. This approach minimizes disputes over immaterial variances while still protecting the buyer if working capital falls meaningfully short of expectations. Similar mechanisms may also include true-up thresholds, materiality qualifiers, or agreed tolerance bands that define the point at which an adjustment will be triggered.

For buyers, these provisions function as a safeguard against the risk that sellers might manipulate operations in anticipation of closing (e.g., by accelerating collections or delaying payables to inflate apparent liquidity). For sellers, by contrast, they can feel like an erosion of the negotiated price, particularly when buyers push for aggressive targets or narrow collars. For entrepreneurs, the lesson is that working capital adjustments are not technical details but fundamental economic terms. Careful diligence, realistic benchmarking, and precise drafting, particularly with respect to collars and calculation methodologies, are critical to preserving deal value and avoiding costly post-closing disputes. It is especially important for buyers to raise the topic of working capital early in the process, particularly when dealing with first-time or unsophisticated sellers who may not fully understand how these adjustments work or how they affect proceeds. Early education and transparency can help prevent misunderstandings later on and reduce friction during negotiations.

D. Representations and Warranties

Representations and warranties are among the most heavily negotiated provisions in an acquisition agreement. They serve as contractual assurances from the seller regarding the condition, operations, and legal compliance of the target company, and they form the foundation for the buyer's ability to seek post-closing recourse. In essence, they bridge the gap between what a buyer can confirm through diligence and what the seller is willing to stand behind contractually.

From a practical standpoint, entrepreneurs should understand that representations and warranties are not a substitute for diligence, but rather a contractual backstop. They provide recourse if undisclosed or unexpected issues emerge post-closing, but their utility depends on precise drafting and robust indemnification rights. In lower-middle-market transactions, these provisions take on heightened importance because due diligence resources are often more limited. In some deals, R&W insurance may be used to shift post-closing risk from the seller to an insurer, significantly influencing negotiations by reducing seller exposure and providing buyers with a direct recovery source—through exclusions, premiums, and retention thresholds must be carefully evaluated.

Each of the key features of representations and warranties is further detailed in (i)-(v) below.

i. Scope and Subject Matter

Typical representations cover a wide range of issues. Core "fundamental" representations address authority, ownership and capitalization, and title to assets. Broader representations extend to matters such as financial statements, material contracts, customer and supplier relationships, compliance with law, labor and employment, employee benefits, intellectual property, data privacy, environmental compliance, and real estate (some of the foregoing are often considered fundamental representations depending on the nature of the target's business). Together, these provide a comprehensive portrait of the business as presented by the seller.

ii. Disclosure Schedules

Representations are tailored by the disclosure schedules, which sets forth exceptions to the representations a seller is making in the definitive acquisition agreement. The interplay between the representations and disclosure schedules defines the "four corners" of the seller's obligations and provides critical context for evaluating risk. For buyers, careful review of the disclosure schedules is just as important as negotiating the representations themselves.

iii. Fundamental vs. Non-Fundamental Representations

Not all representations are treated equally. "Fundamental representations", such as authority, capitalization, and ownership, are considered so central that they often carry longer survival periods, higher liability caps, or even unlimited liability. By contrast, "non-fundamental" representations (covering business operations, compliance, or contracts) typically survive for a shorter period and are subject to lower monetary limits. That said, the 'fundamental representations' categories may expand to include additional representations and warranties based on the facts and nature of the business (e.g., in the acquisition of a software company, the intellectual property representation may receive fundamental treatment). This bifurcation directly impacts indemnification rights and is often a focal point in negotiations.

iv. Materiality and Knowledge Qualifiers

Representations are frequently qualified by terms such as "material" or "to the seller's knowledge," which can significantly narrow the seller's exposure. Buyers generally seek to limit or eliminate such qualifications, arguing that they undermine the certainty the representations are intended to provide. One common buyer-favorable approach is the use of a materiality scrape, which disregards materiality qualifiers when determining whether a breach has occurred or calculating damages—ensuring that even immaterial breaches can trigger indemnification. Sellers, in turn, push for broader qualifiers to avoid liability for minor or unknown issues.

v. Interaction with Indemnification

Because breaches of representations and warranties are one of the primary grounds for indemnification, the scope and survival of these provisions directly influence the buyer's ability to recover losses post-closing. R&W insurance, if utilized, may further shift risk allocation by

allowing buyers to recover directly from insurers rather than pursuing the seller. However, the product's limitations, particularly exclusions for known issues, mean indemnification remains a critical companion to the representations themselves.

E. Indemnification

Indemnification provisions allocate post-closing risk by requiring one party (most often the seller and/or the equityholders of the seller) to bear responsibility for specified losses incurred by the other. In private company transactions, indemnification is nearly universal and serves as the buyer's principal remedy for breaches of representations, warranties, covenants, and certain identified liabilities. For entrepreneurs, indemnification is critical because it defines not only the scope of post-closing recourse but also the practical limits of protection, determining whether a buyer has a meaningful recovery path if the target's business is not delivered as promised.

i. Scope of Coverage

Indemnification customarily covers breaches of representations and warranties, breaches of covenants, pre-closing taxes, and specified "line-item" liabilities identified during diligence or disclosed on the schedules (such as pending litigation or environmental issues). This scope ensures that risks known at signing and those discovered post-closing can be allocated between the parties.

ii. Monetary Limitations

Because sellers seek to avoid open-ended exposure, indemnification obligations are almost always subject to monetary limitations. These limitations typically take the form of baskets and caps, supplemented in many deals by mini-baskets and carve-outs.

1. Baskets

A basket sets a threshold that losses must exceed before the buyer can recover. There are two common types: deductibles and tipping (or first-dollar) baskets.

With a deductible concept, the buyer bears all losses up to the negotiated threshold amount, and only amounts in excess of such amount are indemnifiable. For example, if the threshold amount is $250,000 and the buyer suffers $400,000 in covered losses, only $150,000 would be recoverable. By contrast, in a tipping (or first-dollar) basket, once losses exceed the threshold, the buyer recovers all losses, including those below the threshold (i.e., back to the first dollar). If a tipping basket concept is agreed to, the buyer would recover the full $400,000 once losses exceed $250,000.

Deductibles and tipping baskets filter out immaterial claims, encourage buyers to absorb minor risks, and protect sellers from "nuisance" claims. Negotiations typically focus on the size of the threshold number (commonly 0.5% - 1% of purchase price) and whether it is structured as a deductible or tipping basket.

2. Caps

A cap establishes the maximum liability of the sellers for indemnification claims, expressed commonly as a percentage of the purchase price. For "non-fundamental" representations (such as contracts, compliance with law, or intellectual property), caps may range from 5-20% of the purchase price. For "fundamental" representations (such as authority, capitalization, and title to assets), caps are often much higher and may be set at 100% of the purchase price (or 100% of the purchase price actually received by seller), reflecting their central importance to the transaction. In practice, parties may also negotiate additional representations into the "fundamental" category, such as tax, employee benefits, or environmental, depending on the nature of target's business and the buyer's specific concerns.

3. Mini-Baskets

Sometimes the parties will also agree in the definitive acquisition agreement to impose a claim threshold for individual breaches (e.g., $10,000 - $25,000), requiring that claims exceed this minimum before they can be aggregated and count towards the deductible or tipping basket. Mini-baskets are typically considered "seller-friendly" concepts as they further eliminate de minimis claims that could be brought by a buyer.

4. Carve-Outs

Baskets and caps are frequently subject to exceptions. Fraud is universally excluded, meaning there is no monetary limit on recovery for fraudulent conduct. Other carve-outs often include breaches of fundamental representations, pre-closing tax liabilities, and specified line-item indemnities (e.g., pending litigation). These carve-outs reflect areas where buyers expect full protection and sellers have less leverage to resist.

Together, baskets, caps, mini-baskets, and carve-outs establish the economic contours of indemnification. For entrepreneurs, the key lesson is that these terms directly affect the practical value of indemnification – determining whether protections in the agreement will provide meaningful recourse in the event of a breach.

iii. Survival Periods

Representations and warranties generally survive for 12-24 months post-closing, while certain categories, such as tax, employee benefit, environmental, or fundamental representations, survive longer, sometimes indefinitely. Survival periods are negotiated to balance the buyer's need for protection with the seller's desire for finality. When an escrow is contemplated, the survival and escrow periods are often intertwined.

iv. Sources of Recovery

Buyers may recover indemnification obligations through multiple sources: (1) direct recourse against sellers (i.e., cash); (2) escrow funds held by a third-party escrow agent; (3) holdbacks from the purchase price; (4) set-off rights against post-closing obligations, such as seller notes, earnouts, or rollover equity; or (5) R&W insurance, if utilized by the parties. Escrows are especially common in lower-middle-market deals, as they provide a reliable fund for claims (i.e., solve the cash flow problem that may otherwise exist) and mitigate concerns about a seller's post-closing creditworthiness.

F. Closing Conditions

i. Closing Conditions Generally

In search fund transactions, bifurcated signings and closings (i.e., where the acquisition agreement is signed before all closing conditions are satisfied) are relatively uncommon. Most deals are structured as simultaneous sign-and-close transactions to streamline execution and reduce uncertainty.

Where a gap between signing and closing does exist, closing conditions serve as safeguards to ensure the deal proceeds only if key requirements are satisfied. Common conditions include the accuracy of representations and warranties at closing, compliance with covenants, and the absence of a material adverse effect. Buyers may also require third-party consents or ancillary agreements, such as employment or non-compete arrangements, to be finalized before closing. Financing conditions occasionally appear in search fund deals, particularly if debt arrangements are still being finalized at signing.

Ultimately, closing conditions balance the buyer's need for protection with the seller's desire for deal certainty.

ii. Termination

Termination provisions are uncommon in search fund transactions, as most deals are structured to sign and close simultaneously, minimizing execution risk and avoiding prolonged pre-closing periods. In the few cases where signing and closing are bifurcated, termination rights may be negotiated to allow either party to exit the transaction under specific circumstances (e.g., mutual consent, failure to close by agreed "outside date," or uncured material breach).

While these provisions are more common in larger or complex deals, they are generally unnecessary in the search fund context, where deal certainty and simplicity are prioritized. If included, termination clauses should be narrowly tailored and coordinated with any surviving obligations, such as confidentiality or exclusivity, to avoid unintended exposure.

G. Covenants

Covenants are contractual promises that regulate how the parties conduct themselves before and after closing. When there is a bifurcated signing and closing, sellers are typically required in the interim period (i.e., the period between signing and closing) to operate the business in the ordinary course, preserve relationships with employees, customers, and suppliers, and avoid extraordinary actions such as incurring new indebtedness, altering compensation structures, or entering into material contracts without the buyer's consent. These interim covenants protect the buyer from unexpected changes in the business that could erode its value before ownership transfers. Sellers, however, often seek flexibility to respond to operational needs, and negotiations in this area frequently involve balancing the buyer's need for stability against the seller's desire to continue running the business pragmatically.

After closing, covenants usually focus on protecting the buyer's investment and ensuring continuity. Non-competition and non-solicitation covenants are particularly significant,

preventing the seller from starting or joining a competing business or recruiting employees and customers for a period that typically ranges from three to five years. Confidentiality obligations also survive closing, ensuring that sellers cannot misuse proprietary information, and many agreements include general releases to prevent sellers from asserting claims against the buyer or the company. In some cases, buyers also covenant to pursue regulatory approvals, maintain separate books and records, or provide sellers with access to information needed for tax filings or rollover equity. For entrepreneurs, covenants are especially important because they shape the stability of the business both in the critical interim period and in the years following the acquisition, directly affecting the value and protectability of the investment.

H. Miscellaneous

Although commonly grouped as "miscellaneous," these provisions are typically placed at the back of the purchase agreement, and still carry meaningful weight. Governing law and forum selection clauses determine where disputes will be resolved and what state law will be used to govern such disputes. Delaware is common, though parties in lower-middle-market deals sometimes prefer the law of the state where the business is primarily located. Integration clauses confirm that the written agreement is the complete understanding (and supersedes all prior negotiations or understandings), while amendment and waiver provisions set limits on future changes. Assignment restrictions frequently appear as well, with sellers trying to prevent assignment and buyers preserving flexibility to transfer rights to affiliates or lenders.

Other boilerplate terms (e.g., notice requirements, counterparts, and electronic signatures) may seem routine but can affect enforceability if overlooked. For entrepreneurs, the takeaway is that even these back-end provisions shape how disputes are resolved and how the agreement functions after signing, making them more than just boilerplate.