

SMB LAW GROUP LETTER OF INTENT TEMPLATE (EQUITY (STOCK) ACQUISITION)

PLEASE NOTE: This template is designed for an equity (stock) acquisition only. If you are pursuing an asset acquisition, please contact us at info@smblaw.group to request the appropriate form.

How to Use This Template and Unlock Exclusive Benefits:

This Letter of Intent (LOI) template has been crafted and refined through its use in *hundreds of millions of dollars' worth of M&A transactions* since SMB Law Group LLP's founding in 2022. It is specifically designed to save you time, offer a strong foundation for your deal, and integrate valuable insights gained from extensive transactional experience—helping you avoid common pitfalls and mistakes.

Have questions or ready to proceed? Reach out to us today to begin your LOI negotiations or to learn how we can support you. Email us at info@smblaw.group.

Steps to Customize Your LOI:

1. Replace all bracketed placeholders (e.g., [Buyer's Name]) with the relevant details specific to your transaction. Footnotes are included throughout this document to provide guidance on how to complete the form correctly.
2. Remove all brackets and footnotes from the document once placeholders are replaced. Use the search function ("ctrl + f" on PC or "cmd + f" on Mac) to make sure you didn't miss any brackets.
3. Tailor the template to suit your specific needs, but do not distribute, reproduce, or share it without prior written consent from SMB Law Group LLP.
4. Ensure all edits comply with applicable laws and regulations. Consult your advisors as necessary.
5. Delete this instructional cover page before finalizing the document for your use.

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CONFIDENTIAL

[Date]

[Name of Recipient]

[Seller]

[Address]

Re: Letter of Intent

Dear [Mr./Ms. Name]:

[Thank you for the opportunity to consider the acquisition of [Business Name]. The reputation and success you've built with [Business Name] are truly impressive, and we are excited about the potential to build on your achievements.]¹

This letter outlines the general terms under which [Buyer's Name], acting directly or through one of its affiliates (the “**Buyer**”), proposes to acquire [Description of Business] (the “**Company**”) from you, [Seller's Name], the owner (the “**Seller**”). The proposed transaction (the “**Acquisition**”) will be subject to Buyer's satisfactory completion of due diligence and execution of definitive agreements (the “**Definitive Agreements**”).

This document serves as a non-binding expression of interest, except as set forth in Section 14. We aim to complete diligence, negotiation, and documentation so that the Acquisition closes by [Projected Closing Date].

1. **The Acquisition.** At the closing of the Acquisition (the “**Closing**”), Buyer would purchase from Seller, and Seller would sell to Buyer, all of issued and outstanding equity interests of the Business (collectively, the “**Equity**”). The Acquisition will be structured on a debt-free, cash-free basis. The Equity would be transferred at the Closing free and clear of all liens, security interests and encumbrances, subject only to immaterial encumbrances approved by Buyer. At the Closing, Buyer would assume operating liabilities and obligations of the Business relating only to post-Closing periods unless otherwise specifically agreed upon in the Definitive Agreements.

2. **Purchase Price.**

(a) The purchase price for the Equity is \$[Total Purchase Price] (the “**Purchase Price**”), [calculated based on an earnings multiple of []x of [year earnings]]. The Purchase Price will be structured as follows:

¹ **Suggestion to Author:** Begin by including a complimentary statement about the Seller to establish a positive tone.

(i) \$[Down Payment + Debt Amount] will be paid in cash at the Closing.²

(ii) \$[Seller Note Amount], to be paid through a promissory note (the “**Promissory Note**”). The Promissory Note will: (i) be amortized over [Number] years; (ii) mature [Number] years after the Closing; and (iii) bear interest at a rate of [Percent]% per annum. [Buyer shall not be required to make any payments of principal or interest on the Promissory Note for a period of [Number] years following the Closing, after which] / [Buyer shall be required to make [monthly/quarterly/annual] payments of interest only on the Promissory Note in the amount of \$[Payment Amount] for [Number] years following the Closing, after which] [P][p]ayments will be made [monthly/quarterly/annual] in the amount of \$[Payment Amount]. [The Promissory Note will be subordinated to the Buyer’s senior SBA debt.]³ The Promissory Note will be secured solely by the assets of the Company and will not include any additional measures, such as a personal guarantee, confession of judgment, etc.⁴ [Insert terms for contingent payment feature, if applicable.⁵]

(iii) \$[Equity Rollover Amount] will be paid in the form of [description of equity interests of Buyer or Buyer HoldCo]⁶ at the Closing. Buyer and the Seller shall cooperate in good faith to structure the Equity Payment as a “tax-free rollover” under applicable federal tax law to the extent that such structure does not materially and adversely affect Buyer’s tax basis in the assets of the Company at the Closing.]

(iv) The parties agree that the transaction shall be structured, to the extent permissible under applicable law, such that the transaction will be treated as an asset acquisition for U.S. federal income tax purposes pursuant to Section 338(h)(10) of the Internal Revenue Code of 1986, as amended (the “**Code**”), or any other applicable provision of the Code. Seller agrees to cooperate with Buyer in making any necessary elections or filings required to achieve this tax treatment, including executing and delivering IRS Form 8023 (or any successor form), and any similar state or local tax election forms, at or prior to the Closing.⁷

² **Suggestion to Author:** It is unnecessary to disclose the amount of debt to the seller or broker. Their primary concern is the total amount of cash proceeds they will receive at closing. Focus on clearly communicating the cash payment terms.

³ **Note to Author:** Only applicable in SBA transactions.

⁴ **Suggestion to Author:** It is advisable to address upfront whether the promissory note will be personally guaranteed, as this is a common expectation in approximately 50% of transactions. Additionally, other mechanisms such as confessions of judgment or similar provisions should be explicitly rejected early in the negotiation process. Providing clarity on these points can help manage expectations and prevent unnecessary delays and potential busted deals.

⁵ **Note to Author:** If your note includes any contingent component, please refer to our guide on “[Structuring a Contingent Promissory Note](#)” for detailed steps and best practices on implementation.

⁶ **Note to Author:** If the Seller will be rolling equity into the deal, it is important to identify as best you can what the Seller will receive, even if you haven’t fully formulated your capital structure at this stage.

⁷ **Note to Author:** This should be discussed with tax counsel. Email us at info@smblaw.group.

3. **Working Capital.**⁸ At the Closing, the Business shall include a normalized level of working capital (the “**Target Working Capital**”) adjusted for seasonality, which will be determined upon completion of financial due diligence. For purposes of this Agreement, “**Working Capital**” is defined as (i) current assets (accounts receivable, inventory, prepaid expenses and other customary current assets excluding cash), minus (ii) current liabilities (accounts payable, deferred expenses and other customary current liabilities).

(a) An estimate of the Target Working Capital (the “**Estimated Working Capital**”) will be determined three (3) days prior to the Closing Date. The cash portion of the Purchase Price will be adjusted at Closing to account for any difference between the Estimated Working Capital and the agreed Target Working Capital.

(b) Within ninety (90) days after Closing, the actual working capital as of the Closing Date (the “**Final Working Capital**”) will be determined based on a final reconciliation of the Business’s financials as of the Closing. The Estimated Working Capital will be adjusted against the Final Working Capital. If the Final Working Capital is less than the Estimated Working Capital, the shortfall will be deducted from the Promissory Note or paid by the Seller in cash within ten (10) business days. If the Final Working Capital exceeds the Estimated Working Capital, the surplus will be paid to the Seller in cash within ten (10) business days.

4. **Definitive Agreements.** The Definitive Agreements would be in a form customary for transactions of this type and would include, in addition to those matters specifically set forth in this letter, customary representations, warranties, covenants, conditions precedent to Closing and indemnities, including the terms set forth below in Section 5. Buyer’s counsel, SMB Law Group LLP, would prepare the first draft of the Definitive Agreements.

5. **Additional Terms.**

(a) The Definitive Agreements shall include customary indemnification provisions. The Seller shall indemnify the Buyer and its representatives and affiliates (collectively, the “**Buyer Indemnified Parties**”) from all losses, damages, liabilities, claims, costs, and expenses (including attorneys’ fees) arising from (i) any breach of the Seller’s representations (including Fundamental Representations), warranties, covenants, or agreements in the Definitive Agreements, (ii) any excluded liabilities, (iii) pre-Closing taxes, or (iv) fraud or intentional misrepresentation. The “**Fundamental Representations**” shall include the Seller’s organization and authority, ownership of the Equity, capitalization table of the Company, tax and environmental matters, and any representations relating to brokers or broker fees. The Seller’s indemnification obligations shall be capped at twenty percent (20%) of the Purchase Price for breaches of any non-Fundamental Representations and at the Purchase Price for breaches of Fundamental Representations and covenants, with no cap for fraud or intentional misrepresentation. The Seller’s indemnification obligations with respect to breaches of non-Fundamental Representations shall be subject to a “tipping basket” deductible of 0.5% of the Purchase Price, whereby

⁸ **Note to Author:** The following terms reflect standard market practices for working capital adjustments, ensuring fairness and mutual accountability for both parties. If the Seller finds working capital adjustments complex, consider negotiating simplified terms, such as cash tranches or alternative mechanisms. **Warning to Author:** **Insufficient working capital post-closing can disrupt operations significantly, particularly in sectors with high working capital demands. Address this issue thoroughly to mitigate risk.**

the Seller will be liable for all losses only once aggregate claims exceed this threshold. The Buyer may offset indemnification claims against the Promissory Note.^{9 10}

(b) The consummation of the Acquisition by the Buyer would be subject to the satisfaction of various conditions, including:

(i) The Buyer's approval for and receipt of proceeds from a financing transaction in an amount necessary to finance the Purchase Price;

(ii) The Buyer's receipt of executed originals of all consents and approvals required by law or contract to be obtained by the Seller in connection with the Acquisition, which shall be determined upon completion of due diligence; and

(iii) [Include any specific conditions, in addition to customary ones, that must be met to obligate the Buyer to proceed with the transaction.]

6. **Non-Compete.** The Seller and affiliates shall agree in the Definitive Agreements that they will not compete with the Business for a period of five (5)¹¹ years following the Closing within [Geographic Region]. Furthermore, they will agree not to solicit or hire employees of the Business for a term as mutually agreed upon. The prohibited scope of services for competition will be clearly defined in the Definitive Agreements to encompass all aspects of how the Business is currently operated¹², without any exclusions or exceptions.¹³

7. **Transition Services.** We deeply respect and admire what you have built with the Business and would be honored to have your guidance and support during the transition period. To ensure a smooth and successful transition, the Seller shall provide the Buyer with transition services for the Business. [The specific services and associated costs will be determined collaboratively during the due diligence period and outlined in the Definitive Agreements.]¹⁴ These transition services shall be

⁹ **Note to Author:** If there is no promissory note, an indemnity escrow will need to be established to backstop indemnification claims. If you are considering or being asked to forego a promissory note, please consult with us at SMB Law Group for guidance.

¹⁰ **Note to Author:** The thresholds outlined here are positioned at the buyer-friendly end of the market range. You may adjust them as necessary to better align with the specifics of your transaction.

¹¹ **Recommendation to Author:** We strongly recommend insisting on a non-competition period of no less than five (5) years. This duration aligns with the requirements of most SBA lenders and is generally enforceable across all jurisdictions, unlike employment-based non-competes, which face heavier scrutiny. **Warning to Author:** Any resistance to the terms of the non-competition agreement should be treated as a potential "red flag," as it may indicate future challenges with the Seller post-closing.

¹² **Recommendation to Author:** To avoid future disputes regarding the scope of the non-compete, consider agreeing upfront on a clear and detailed description of the types of services that will be prohibited.

¹³ **Warning to Author:** Laws governing the enforceability of non-competes can vary wildly from state-to-state. It is important that you consult with legal counsel about the scope of the non-compete, especially if you intend to ask for a period of longer than 5 years or a geographic area broader than the area where the Business currently operates.

¹⁴ **Recommendation to Author:** To avoid potential challenges in defining transition services later, it is advisable to establish the role, compensation, and duration of the transition services upfront. This is especially important in the event that you intend to request that certain services be included in the Purchase Price. For guidance, feel free to email us at SMB Law Group to request a sample role scope to use as a starting point. In SBA-financed

performed in good faith and in a manner consistent with the Seller's historical provision of services to the Business. Furthermore, the transition services will be treated as a covenant under the Definitive Agreements and subject to the indemnification provisions contained therein.

8. **Due Diligence.** During the period from the date this letter is signed by the Seller (the "**Signing Date**") until the date on which either party provides the other party with written notice that negotiations towards Definitive Agreements are terminated (the "**Termination Date**"), the Seller shall provide to the Buyer (or agents as approved by the Buyer) reasonable access to the Business, its personnel, properties, contracts, books and records and all other documents and data reasonably requested by the Buyer for its due diligence investigation of the Business. The Seller acknowledges and agrees that the Buyer's willingness to enter into the Definitive Agreements is conditioned upon and subject to the Buyer's satisfactory completion in its sole discretion of its due diligence investigation. The Buyer shall be under no obligation whatsoever to continue with its due diligence investigation or negotiations regarding the Definitive Agreements and may terminate such investigation or negotiations at any time for any reason or no reason in its sole discretion.

9. **Conduct of Business.** From the Signing Date until the Termination Date, the Seller will (a) conduct the Business only in the ordinary course of business consistent with past practice, use commercially reasonable efforts to retain customers, suppliers and distributors and not engage in any extraordinary transactions with respect to the Business without the Buyer's prior written consent; (b) not dispose of or acquire any material assets of the Company, except in the ordinary course of business consistent with past practice; (c) not increase the annual level of compensation of any employee, officer, director or consultant of the Business or grant or agree to grant any severance arrangements or any unusual or extraordinary bonuses, benefits or other forms of direct or indirect compensation to any employee, officer, director or consultant of the Business; (d) not increase or decrease the current level of employees of the Business, except in the ordinary course of business consistent with past practice; (e) not defer material budgeted capital expenditures of the Business; and (f) not enter into, amend, renew or extend any material agreement related to the operation of the Business except on terms comparable to those now in existence and otherwise in the ordinary course of business consistent with past practice.

10. **Exclusive Dealing.** Until the later of (a) [90]¹⁵ days after the Signing Date (the "**Exclusivity Period**") and (b) the Termination Date, the Seller will not, directly or indirectly, and will cause its affiliates and its and their respective directors, officers, employees, members, managers, agents, advisors and representatives not to, (i) solicit or encourage any inquiries, discussions or proposals regarding, (ii) continue, propose or enter into negotiations or discussions with respect to, (iii) provide non-public information relating to or in connection with, or (iv) authorize, recommend, propose or enter into any confidentiality agreement, term sheet, letter of intent, purchase agreement or other agreement, arrangement or understanding regarding an acquisition of all or part of, an investment in, or a business combination or consolidation with, or the formation of a partnership or joint venture with, the Business, in each case other than involving only the [Buyer] or any of its affiliates (collectively, "**Exclusivity**"). Until the Termination Date, the Seller agrees to inform the Buyer promptly of any inquiry, discussion or proposal from any person or entity of the type referred to above, including the terms thereof. The Exclusivity Period shall renew in thirty (30) day periods automatically upon reaching the expiration date thereof if no written notice is provided by either party.

transactions structured as 100% buyouts, transition services must be arranged as a 1099 consulting agreement rather than as a W-2 employment relationship.

¹⁵ **Suggestion to Author:** It is uncommon to lose a deal for exceeding this number on the back end, but failing to signal decisiveness to the broker and the Seller can often jeopardize the transaction. Ensure you position yourself strategically by demonstrating both commitment and readiness to move forward efficiently.

11. **Confidentiality.** The Seller and the Buyer shall, and shall cause their respective affiliates and representatives to, keep confidential, disclose only to its affiliates or representatives and use only in connection with the transactions contemplated by this letter all information and data obtained by them from the other party or its affiliates or representatives relating to the other party or its affiliates or the transactions contemplated hereby (other than information or data that is or becomes available to the public other than as a result of a breach of this Section 11), unless disclosure of such information or data is required by applicable law.

12. **Public Announcements.** Neither the Buyer nor the Seller will make any public announcement regarding the Acquisition or the existence or contents of this letter without the prior approval of the other, subject to requirements of law or regulatory bodies or to applicable listing rules.

13. **Expenses.** Each party will be responsible for its own legal, accounting, investment banking and other expenses incurred by it in connection with the negotiation, execution and delivery of this letter and the Definitive Agreements, whether or not the Acquisition is consummated; provided, however, that the Seller shall pay all costs and expenses (including reasonable attorney's and other fees related to the recovery thereof) incurred by the Buyer in connection with the Transaction, if the Seller, or any of its respective representatives breaches the terms of Section 10 of this Agreement. Each party will indemnify and hold harmless the other party against the claims of any brokers or finders retained by the indemnifying party with respect to the Acquisition.

14. **No Commitment.** This letter, including the first paragraph hereof, is intended to express only a mutual indication of interest in the Acquisition and does not represent any form of legally binding commitment or obligation on the part of the Buyer or the Seller, except with respect to numbered Sections 10 through 18 (including this Section 14), which are intended to be binding and which are collectively referred to as the "**Binding Provisions**." Any decision by the Buyer to make an offer, and any decision by the Seller to accept such offer, relating to the Acquisition may be evidenced only by the execution and delivery by both parties of the Definitive Agreements. The parties hereby stipulate that (a) the terms set forth in this letter do not contain all material terms to be negotiated in the Definitive Agreements, (b) no oral agreement, public or private statements or course of conduct or dealings between the parties may be introduced as evidence that there exists a binding commitment or obligation between the parties with respect to the Acquisition other than as set forth in the Binding Provisions, (c) the parties shall be free to terminate discussions or negotiations at any stage prior to execution of the Definitive Agreements, for any reason or no reason in their sole discretion, (d) no joint venture, partnership, or other fiduciary relationship shall be deemed to exist or arise between the parties or their affiliates, with respect to, or as a result of, the terms of this letter, (e) neither party may bring any claim or action against the other party or any of its officers, directors, employees, consultants or advisors as a result of a failure to agree on or enter into any Definitive Agreements, or as a result of the withdrawal, cancellation or termination of this letter, and (f) neither party shall be justified in relying on any provision of this letter, other than the Binding Provisions, in connection with the Acquisition.

15. **Termination.** This letter will automatically terminate on [Outside Date]¹⁶ and may be terminated at any earlier time, and negotiations with respect to the Acquisition abandoned, upon written notice by either party to the other party, for any reason or no reason, with or without cause; provided, that the termination of this letter shall not relieve any of the parties of liability for such party's breach of any of the Binding Provisions prior to such termination. Upon termination of this letter, the parties will have

¹⁶ **Recommendation to Seller:** Choose a termination date for the LOI that is sufficiently far in the future to accommodate the completion of due diligence, negotiations, and drafting of Definitive Agreements, while ensuring the timeline reflects a commitment to progressing the transaction efficiently.

no further obligations hereunder, except that the provisions of Paragraph 11 (Confidentiality), Paragraph 12 (Public Announcements), Paragraph 13 (Expenses) and Paragraph 18 (Governing Law) shall survive any such termination.

16. **Entire Agreement; Amendments.** The Binding Provisions and the Confidentiality Agreement constitute the entire agreement between the parties with respect to the subject matter hereof and supersede all other prior agreements and understandings, both written and oral, between the parties with respect to the subject matter thereof. The Binding Provisions may not be amended, changed, supplemented or otherwise modified except by an instrument in writing specifically designated as an amendment thereto, signed on behalf of each party.

17. **Counterparts; Facsimiles; .pdfs.** This letter may be executed in counterparts, which together shall constitute one instrument. Facsimiles or .pdfs of duly executed counterpart signature pages of this letter are acceptable and shall be deemed to be originals.

18. **Governing Law; Waiver of Jury Trial.** This letter and any claims arising out of or relating hereto shall be governed and construed in accordance with the internal laws of the State of [State of the Acquisition], without reference to its conflicts of law principles. EACH PARTY TO THIS LETTER HEREBY IRREVOCABLY WAIVES ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS LETTER OR THE TRANSACTIONS CONTEMPLATED HEREBY.

[The remainder of this page is intentionally left blank.]

If you are in agreement with the foregoing, please sign and return one copy of this letter, which thereupon will constitute our agreement with respect to its subject matter. Unless this letter is signed and a copy is received by us by 5:00 p.m. [TIME ZONE] on [DATE THEY NEED TO ACCEPT BY]¹⁷, this letter is withdrawn.

Very truly yours,

Acknowledged and Agreed
as of _____:

The Seller:

[BUSINESS NAME]

By:
Name:
Title:

¹⁷ **Note to Author:** An expiration date for the offer is included mainly due to a unique feature of contract law that says an “offer” remains open until it expires or is revoked, so the expiration date is just to make sure that you don’t inadvertently leave an open-ended offer out there that. That said, due to the generally non-binding nature of an LOI, don’t overthink this. Approximately a week or so is customary.

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