

Buildings Blocks of Contracts

Media & Entertainment Law

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Building Blocks

- Introductory matter
- Definitions
- Representations and warranties
- Covenants
- Conditions precedent
- Remedial provisions
- Operative provisions
- Signature blocks

Form of contract

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Normal agreement intro

PURCHASE AGREEMENT

This asset purchase agreement is dated March 12, 2009, and is between HEXETRON NUCLEAR SYSTEMS, INC., a Delaware corporation ("Hexetron"), and VAYATOM UNDERSEA VENTURES CORP., a New York corporation ("Vayatom").

Definitions

- *or*
- -
definitions. It is bad drafting.

Representations, Warranties, and Covenants

- intended to be relied upon
- Warranty – assurance of a fact coupled with an implicit indemnification obligation if false
- Covenant – ongoing promise to act or refrain from acting, to maintain a certain factual condition

Reps and Warranties

- Little distinction in practice (because a contract usually specifies remedies in case reps and warranties are false)
- Snapshot in time
- Used to smoke out facts
 - Cf. depositions
- Used to allocate risks

Kinds of representations

- About the contract “enforcability representations”
- Subject-matter representations
- Representations about the parties

Reprentations: Exceptions

- “except for those disposed of in the normal course of business ...”
- “except for those set forth on Schedule G”

Bring downs

- Schedule F describes all of FunCo’s funnel cake stands as of the Closing Date.
- All of FunCo’s funnel cake stands are described in Schedule F or have been introduced in accordance with Section 28-6.
- All funnel cake stands are described in Schedule F, which may be updated from time to time with the consent of Hexetron, such consent not to be unreasonably withheld.

Survival of representations

- Representations may “survive the closing”
- Representations may merge or terminate at closing
 - As is / where is

Covenants

- Affirmative
- Negative (or “restrictive”)
- Financial

Covenants: Exceptions

- Carveouts
 - The Operator shall not make repairs or modifications to the vessel, except for those that are required for safe operation.
- Baskets
 - The Operator shall not make any repairs or modifications to the vessel, except for ordinary maintenance costing in aggregate no more than \$10,000.

Specification of Remedies

- Specify remedies if covenants are breached or representations are false
 - Specific performance
 - Liquidated damages
 - Time to cure
 - Penalties

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Conditions Precedent

- Conditions that must be satisfied before performance is required
- Timing issues: delayed closing
- “Outs”

Common conditions precedent

- Breach of covenants or reps
- Bringdown of representations
- Delivery of certified documents
- Evidence of corporate action
- Incumbency certificate
- Government approvals
- Third-party consents
- Legal opinions