



## CONFIDENTIALITY AGREEMENT

The undersigned Buyer, individually and on behalf of any affiliated other buyer, hereby requests confidential information from The M&A Brokers ("Broker") on one or more businesses represented by The M&A Brokers. Buyer hereby acknowledges being first introduced to the Business by Broker or its agent. Such confidential information shall be provided to Buyer for the sole purpose of evaluating the possible purchase by Buyer of all or part the Business. As used in this agreement ("Agreement"), the term Buyer ("Buyer") applies to the undersigned and any partnership, corporation, individual or other entity with which the undersigned is affiliated. Buyer agrees as follows:

1. **NON-DISCLOSURE OF INFORMATION:** Buyer acknowledges that the owner of the Business ("Seller") desires to maintain the confidentiality of the information disclosed. Buyer agrees not to disclose or permit access to any Confidential Information, without the prior written consent of Seller, to anyone other than Buyer's legal counsel, accountants, lenders or other agents or advisors to whom disclosure or access is necessary for Buyer to evaluate the Business. Disclosure of Confidential Information shall be made to these parties only in connection with the potential acquisition of the Business, and then only if these parties understand and agree to maintain the confidentiality of such Confidential Information. Buyer shall be responsible for any breach of this Agreement by these parties, and neither Buyer nor these parties shall use or permit the use of Confidential Information in any manner whatsoever, except as may be required for Buyer to evaluate the Business or as may be required by legal process. If the Buyer does not purchase the Business, Buyer, at the close of negotiations, will destroy or return to Broker (at Seller's direction) all information provided to Buyer and will not retain any copy, reproduction or record thereof.

2. **DEFINITION OF "CONFIDENTIAL INFORMATION":** The term "Confidential Information" shall mean all information including the fact that the Business is for sale, all financial, production, marketing and pricing information, business methods, business manuals, manufacturing procedures, correspondence, processes, data, contracts, customer lists, employee lists and any other information whether written, oral, or otherwise made known to Buyer: (a) from any inspection, examination or other review of the books, records, assets, liabilities, processes or production methods of Seller; (b) from communication with Seller or Seller's broker, directors, officers, employees, agents, suppliers, customers or representatives; (c) during visits to Seller's premises; or (d) through disclosure or discovery in any other manner. However, Confidential Information does not include any information which is readily available to the public.

3. **BUYER'S RESPONSIBILITY AND DISCLAIMER OF BROKER'S LIABILITY:** The Broker has received information about the Business from the Seller which may include, but is not limited to, tax returns, financial statements, equipment lists and facility leases. Based on information provided by sellers, brokers often prepare a summary description of the business which may include a cash flow projection, an adjusted income statement or a seller discretionary cash flow statement. Buyer understands that the Broker does not audit or verify any information given to Broker. Buyer understands Broker does not make any warranty or representation as to the accuracy or completeness of the information provided to Broker by the Seller nor does Broker in any way guarantee future business performance. Buyer is solely responsible to examine and investigate the Business, its assets, liabilities, financial statements, tax returns and any other facts which might influence Buyer's purchase decision or the price Buyer is willing to pay. Any decision by Buyer to purchase the Business shall be based solely on Buyer's own investigation and that of Buyer's legal, tax and other advisors and not that of Broker.

4. **NON-CIRCUMVENTION AGREEMENT:** The Seller has entered into an agreement providing that Seller shall pay a fee to the listing broker if, during the term of that agreement or up to twenty-four months thereafter, the Business is transferred to a buyer introduced by the listing broker or a cooperating broker. Buyer shall conduct all inquiries into and discussions about the Business solely through Broker and shall not directly contact the Seller or the Seller's representatives. Should Buyer purchase all or part of the Business, acquire any interest in, or become affiliated in any capacity with the Business without Broker's participation, or in any way interfere with Broker's right to a fee, Buyer shall be liable to the listing broker and the cooperating broker for such fee and any other damages including reasonable attorney's fees and costs.

5. **FURTHER TERMS:** Neither Buyer nor Buyer's agents will contact Seller's employees, customers, landlords, or suppliers, nor linger, or otherwise observe the Business, without Seller's consent. For three years, Buyer shall not directly or indirectly solicit for employment any employees of Seller. Broker may act as dual agent representing both Buyer and Seller. Seller and Seller's successors are specifically intended to be beneficiaries of the duties and obligations of this Agreement and may prosecute any action at law or in equity necessary to enforce its terms and conditions as though a party hereto. This Agreement can only be modified in writing, signed by both Broker and Buyer. Waiver of any breach of this Agreement shall not be a waiver of any subsequent breach. This Agreement supersedes all prior understandings or agreements between the parties with respect to its subject matter. This Agreement shall be construed under and governed by the laws of the State of California. The venue for any action instituted to enforce any terms of the Agreement shall be in the county in which the office of the listing broker is located. This Agreement may be signed in counterparts and faxed and electronic signatures may be considered as originals. If Buyer is a corporation, partnership or other such entity, the undersigned executes this Agreement on behalf of Buyer and warrants that he/she is duly authorized to do so. Buyer acknowledges receipt of a fully completed copy of this Agreement.

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Cell Phone

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Business Phone

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
Email for Receiving Confidential Info

\_\_\_\_\_  
City, State, ZIP

\_\_\_\_\_  
GEORGE HICKS LIC# 01376277  
The M&A Brokers' Agent



Buyer Profile For: \_\_\_\_\_

WE PROVIDE EACH SELLER THE FOLLOWING CONFIDENTIAL FACTS ABOUT YOUR FIRM PRIOR TO RELEASING ANY INFORMATION ABOUT THEIR BUSINESS.

BACKGROUND INFORMATION:

1. What type of business is your Firm:

Private  Public, stock symbol \_\_\_\_\_

Is it a:

C Corporation  S Corporation  Limited Liability Corporation

2. In what industry is the Firm presently active? \_\_\_\_\_

Please give a brief description of the Firm's present business:

\_\_\_\_\_  
\_\_\_\_\_

3. Please list the following officers of the Firm:

Chairman \_\_\_\_\_ CEO/President \_\_\_\_\_

COO \_\_\_\_\_ CFO \_\_\_\_\_

4. Do you have a web site? \_\_\_\_\_ If so what is the address? \_\_\_\_\_

5. What are the Firm's current annual sales? \_\_\_\_\_

6. Why is the Firm looking to buy a business? \_\_\_\_\_

7. What amount does the Firm have for a down payment? \_\_\_\_\_

8. What are the Firm's down payment ability and the source of those funds that can be **substantiated** at the time of making an offer? \_\_\_\_\_

9. Firm equity [all assets minus all liabilities] exceeds \$100,000 \_\_\_\_\_ \$500,000 \_\_\_\_\_ \$1,000,000 \_\_\_\_\_ \$5,000,000 \_\_\_\_\_

10. Has firm ever filed bankruptcy? \_\_\_\_\_ Had a foreclosure? \_\_\_\_\_ Had a judgment filed against it? \_\_\_\_\_

11. Is there any reason the Firm might be declined a loan for a business acquisition? \_\_\_\_\_

12. Will anyone outside of the Firm's officers advise in the review of business records and the decision to purchase a business? \_\_\_\_\_  
If so, who? \_\_\_\_\_

13. What is the Firm's timeframe to purchase?  Immediate  No hurry

14. Will the Firm supply management for an acquisition? \_\_\_\_\_ Or, does it want management in place? \_\_\_\_\_

15. What are the Firm's geographic limitations? \_\_\_\_\_

Signature

Date

Printed Name

Title

I certify that the above information is true and correct; that I represent and warrant that I have the authority to sign this profile on behalf of said entity and its owners; and acknowledge receipt of a copy of this profile.

website: [www.themabrokers.com](http://www.themabrokers.com)

Office: [310.320.5530](tel:310.320.5530)

Fax: [213.270.9495](tel:213.270.9495)



## Agency Disclosure

Under California law, a broker can be the agent of a seller or buyer, or both the seller and buyer. Below is a portion of California Civil Code section 2079.16, which explains concepts and definitions concerning the relationship between a principal and an agent in the sale of certain residential real estate. While the listing and sale of a business is not a transaction requiring the use of the form prescribed by that Code section, the information provided is completely applicable to the business sale context as well, and you are requested to read it carefully and acknowledge that you have been advised of its contents.

*Excerpt from CALIFORNIA CIVIL CODE § 2079.16*

**SELLER'S AGENT:** *A Seller's agent under a listing agreement with the Seller acts as the agent for the Seller only. A Seller's agent or a subagent of that agent has the following affirmative obligations:*

*To the Seller: A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Seller.*

*To the Buyer and the Seller:*

- (a) Diligent exercise of reasonable skill and care in performance of the agent's duties.*
- (b) A duty of honest and fair dealing and good faith.*
- (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties. An agent is not obligated to reveal to either party any confidential information obtained from the other party that does not involve the affirmative duties set forth above.*

**BUYER'S AGENT:** *A selling agent can, with a Buyer's consent, agree to act as agent for the Buyer only. In these situations, the agent is not the Seller's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Seller. An agent acting only for a Buyer has the following affirmative obligations:*

*To the Buyer: a fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Buyer.*

*To the Buyer and the Seller:*

- (a) Diligent exercise of reasonable skill and care in performance of the agent's duties.*
- (b) A duty of honest and fair dealing and good faith.*
- (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties. An agent is not obligated to reveal to either party any confidential information obtained from the other party that does not involve the affirmative duties set forth above.*

**AGENT REPRESENTING BOTH SELLER AND BUYER:** *A real estate agent, either acting directly or through one or more associate licensees, can legally be the agent of both the Seller and the Buyer in a transaction, but only with the knowledge and consent of both the Seller and the Buyer. In a dual agency situation, the agent has the following affirmative obligations to both the Seller and the Buyer:*

- (a) A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either the Seller or the Buyer.*
- (b) Other duties to the Seller and the Buyer as stated above in their respective sections.*

*In representing both Seller and Buyer, the agent may not, without the express permission of the respective party, disclose to the other party that the Seller will accept a price less than the listing price or that the Buyer will pay a price greater than the price offered.*

*The above duties of the agent in a real estate transaction do not relieve a Seller or Buyer from the responsibility to protect his or her own interests. You should carefully read all agreements to assure that they adequately express your understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional.*

**How Dual Agency Arises:** When a broker lists a business for sale, the broker becomes an "agent" representing the seller. The same broker also often works with prospective buyers, and by the nature of that relationship, becomes a buyer's agent as well; this is called "dual agency." Conversely, a buyer's agent could introduce his or her client to a seller and become a dual agent in that transaction. When a buyer and seller are represented by different agents of the same brokerage firm, this is also a dual agency because the broker who employs each of the agents is really the agent for both parties.

**Full Disclosure:** Under California law, the buyer and the seller of a business are each required to fully and fairly disclose to the other, any and all information which is known to that party, or reasonably should be known, and which may or will be material to the other party's decision to enter into the transaction. Whether acting as an agent for only one party, or as a dual agent, an agent must make the same such disclosures to the other party, or to the other party's agent, and cannot

