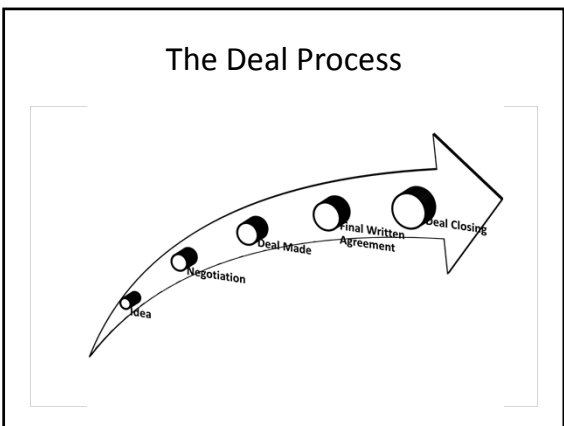


How to Turn a Term Sheet Into a Final Agreement

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Introduction



Common Deal Documents

- Confidentiality Agreement
- Term Sheet
 - Or letter of intent or MOU
- Final Agreement
- Miscellaneous Agreements
 - Employment Agreement
 - Escrow Agreement

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What is a Term Sheet?

- The nexus between the business deal and contract
- Summarizes the main deal points
- Generally a non-binding agreement
 - More like a declaration of intentions than a contract
 - Merely an "agreement to agree" on main points of the deal
 - Parties may want some provisions to be legally binding, such as Confidentiality
- Ensures that extensive legal costs involved in drafting a final agreement or contract are not incurred prematurely

What is a Final Agreement?

- The primary contract for the transaction
- Exact form depends on the transaction type
 - Asset purchase agreement
 - Stock Purchase Agreement
 - Merger Agreement

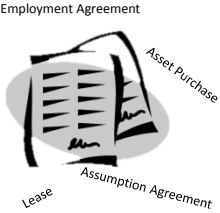
Turning Term Sheet Into Final Agreement

Consider This Hypothetical

- Beowulf, Inc., seeks to buy another company, Croft Design Group, Ltd.
- In addition to buying Croft, Beowulf wants Croft's CEO and majority shareholder, Jason Croft, to work for Beowulf.
- After a series of business negotiations, Beowulf and Croft have signed a term sheet.
- You are hired by Beowulf to turn the term sheet into a final agreement.

Step 1: Decide Which Form Agreement Is Appropriate For Deal Type

- Characterize the proposed transaction to determine which form agreement to use
 - Merger? Stock Purchase? Asset Sale?
- Who is your client and what are their goals?
 - Buyer or Seller?
- Determine whether more than one form agreement may be needed
 - Which is the primary form?



Step 2: Break Down Term Sheet into Key Contract Provisions Appropriate for Deal Type

Form M&A Agreement
Mergers, Stock Purchases & Asset Sales

- Introductory Provisions
- Deal Structure
- Consideration
- Representations & Warranties
- Pre-Closing Covenants
- Closing Conditions
- Remedies/Indemnification
- Boilerplate
- Schedules

Understanding Key Provisions


Provision	Description
Deal Structure	Describes the mechanics of the transaction.
Consideration	Describes the form and timing of payment from buyer to seller.
Representations	Statement of fact as of moment in time intended to cause reliance.
Warranties	A promise that a statement will be true in the future.

Understanding Key Provisions

Provision	Description
Pre-Closing Covenants	A promise to do or not do something; creates a duty/obligation.
Closing Conditions	A state of fact that must exist before there is an obligation to perform.
Indemnification	A requirement that seller reimburse buyer for breaches of representations and warranties discovered after closing.
Boilerplate	Standardized language in the contract.

Step 3: Start Matching	
Component	Terms from Term Sheet to Include in Agreement Draft
Introductory Provisions	Who are the parties? How are they defined?
Deal Structure	What is the transaction form? What assets or liabilities are to be acquired?
Consideration	What is the form of payment? When is the payment to be made?
Representations & Warranties	What information do we need to ensure is factually correct? What is the client's desire as to risk allocation? What are our due diligence concerns?
Covenants	What promises do we want from the Seller? Are there any reps within the Seller's control?
Conditions	Which covenants are important enough to warrant walk-away rights? What other conditions are appropriate?
Indemnification	What if something is found to be untrue after closing?


Step 4: Review the Form Agreement Carefully



- Review each and every provision
 - Eliminate Unnecessary Provisions
 - Check Cross-References
- Avoid mass copying of documents used in prior transactions
 - No two deals are ever *exactly* the same!
- Remember who the client is
 - What are their goals?

Step 6: Review Each Term in Term Sheet & Identify Gaps

- Did you forget anything?
 - Specific business or legal issues
- Are there additional provisions or language that would help protect the client?



Congratulations!

At this point, you have a first draft of the final agreement!

ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT (this “**Agreement**”) is made and entered into as of _____, _____, between Croft Design Group, Ltd. (the “**Seller**”) and Beowulf, Inc. (the “**Buyer**”).

ARTICLE III. REPRESENTATIONS AND WARRANTIES OF THE SELLER

1.1 The Seller represents and warrants to the Buyer that each statement contained in this **Article III** is true and correct, except as set forth in the disclosure schedule accompanying this Agreement, which is attached to this Agreement and is designated therein as being the “Company Disclosure Schedule” (the “**Company Disclosure Schedule**”).

ARTICLE IV. REPRESENTATIONS AND WARRANTIES OF THE BUYER

[...]

ARTICLE V. COVENANTS OF THE SELLER

1.1 During the period from the date of this Agreement and continuing until the earlier of the termination of this Agreement or the Closing Date, except (i) as set forth on **Section 6.3** of the Company Disclosure Schedule, (ii) as otherwise contemplated by this Agreement or any Ancillary Agreement, (iii) with the prior written consent of the Buyers (which consent shall not be unreasonably withheld, conditioned or delayed) or (iv) as required by applicable Law, the Company shall not (and shall cause its Subsidiaries not to) do any of the following:

(a) sell any material property or assets, except for sales of inventory in the ordinary course of business...

ARTICLE VI. COVENANTS OF THE BUYERS

[...]

ARTICLE VII. CONDITIONS TO CLOSING

1.2 Conditions to Obligations of the Buyers and the Seller. The obligations of the Buyers and the Seller to consummate the transactions contemplated by this Agreement are subject to the satisfaction on or prior to the Closing Date of the following conditions: [...].

ARTICLE X. INDEMNIFICATION.

Survival. All representations, warranties and pre-Closing covenants contained in this Agreement or in any schedule, exhibit or certificate delivered pursuant to this Agreement shall survive the Closing and shall be subject to claims for indemnification hereunder until _____, _____.

TERM SHEET

This term sheet sets forth the general terms for a proposed acquisition by Beowulf, Inc. ("Buyer") of substantially all of the assets of Croft Design Group, Ltd. ("Seller"). This term sheet is intended solely as a basis for further discussion and is not intended to be, and does not constitute, a legally binding obligation, except as otherwise expressly stated, and no legally binding obligations on the parties will be created, implied, or inferred until appropriate documents in final form are executed and delivered by all parties.

- Purpose:** To set forth the terms and conditions pursuant to which Buyer will (i) acquire substantially all of the assets of Seller and (ii) enter into an employment relationship with Jason Croft ("Croft"), currently majority shareholder and Chief Executive Officer of Seller.
- Consideration:** Consideration will consist of the following: (A) Cash consideration of U.S.\$30 million, payable as follows: (1) U.S. \$20 million payable at Closing; (2) U.S.\$ 5 million payable on or before the first anniversary of the Closing; and (3) U.S. \$ 5 million payable on or before the second anniversary of the Closing; (B) 100 shares of Beowulf, Inc.; and (B) the assumption by Buyer of the Sunning Loan (defined below).
- Assets and Liabilities:** At the Closing, Seller will transfer to Buyer all assets of Seller (including, without limitation, all intellectual property rights and regulatory submissions) relating to Seller's line of compact scissor lifts, and all customer lists and existing distribution contracts. Seller will assign to Buyer the loan agreement dated 25 March 2009 between Seller and Sunning Ltd. (the "Sunning Loan"). Buyer will not assume any other liabilities of Seller and no employees will transfer from Seller to Buyer, except as otherwise contemplated in this term sheet.
- Employment Agreement:** As a condition to closing, Buyer will enter into an employment agreement with Croft. Croft shall serve in the capacity of Chief Operations Officer of European Operations of Buyer and shall split his time between the U.S. and U.K. The initial term of employment will be five years, renewable thereafter for successive five-year terms. The initial base salary will be U.S. \$250,000/year. The employment agreement will contain customary provisions regarding annual bonuses, benefits, non-competition, termination for cause, and severance, consistent with existing employment agreements with other executives of Buyer.
- Dissolution of Seller:** Promptly following the Closing, Seller shall distribute all proceeds from the purchase price to its shareholders and take all necessary steps to dissolve and to cease business.

Exclusivity: Seller agrees that from the date of this term sheet for a period of 3 months, it will not enter into any discussions with any third parties regarding the potential sale of any of the assets or shares of Seller.

Confidentiality: This term sheet is confidential and none of its provisions or terms shall be disclosed by either party other than to its officers, directors, or other agents required to know the contents hereof for purposes of negotiating or consummating the transactions described herein.

Reps and Warranties: The definitive documentation will contain customary representations and warranties.

Covenants: The definitive documentation will contain customary covenants, including, without limitation, covenants covering maintenance of assets, cooperation, indemnification, and non-competition.

Due Diligence: The consummation of the transactions contemplated hereunder will be subject to satisfactory due diligence to be conducted by Buyer.

Expenses: Each party will bear its own legal and other expenses with respect to the transactions contemplated hereunder.

Enforceability: Except for the sections entitled "Confidentiality," "Exclusivity," and "Expenses," which are enforceable and which will survive termination, this term sheet is not and may not be asserted or construed as a binding agreement of any nature.

Definitive documentation: The parties shall use best efforts to agree on and execute an Asset Purchase Agreement, Executive Employment Agreement, and such other definitive documentation as deemed necessary in order to give due effect to the terms stated herein as soon as practicable.

Governing law: The definitive documentation will be governed by the laws of the State of California.

This term sheet is approved and agreed as of the 12 day of January, 2015 by:



Nowell Codex
CEO, Beowulf, Inc.



Jason Croft
CEO, Croft Design Group, Ltd.