# THIS IS ONE EXAMPLE OF A DUE DILIGENCE REQUEST LIST, WHICH WE ARE PROVIDING FOR EDUCATIONAL PURPOSES. YOU SHOULD NOT USE THIS DOCUMENT FOR DIY LAWYERING OR RELY ON THIS SAMPLE DOCUMENT (OR OUR COMMENTS TO IT) AS ANY TYPE OF LEGAL OR OTHER PROFESSIONAL ADVICE. BRAATEN WOODS, LLC IS NOT A LAW FIRM AND YOU ARE NOT OUR CLIENT. KNOW WHEN TO HIRE A GOOD LAWYER.

# SAMPLE DUE DILIGENCE REQUEST LIST

The due diligence request list that follows is a fairly comprehensive, general list. Due diligence request lists will vary considerably from industry to industry and even deal to deal. For that reason, there will be many requests on this list that would not apply to certain transactions. There may also be documents or information that are important to request when conducting due diligence in a particular industry or type of deal, but that are not on this general list. Every company is different and every M&A deal is different. Accordingly, every due diligence request list should be well-tailored to the deal. It is a common complaint from sellers when a buyer sends over a generic due diligence request list (i.e., one that was not customized to the deal at all). Keep that in mind as you go through this due diligence request list and learn from it.

# # # # #

**Due Diligence Request List**

Please provide to [BUYER NAME] (“Buyer”) the following documents and materials relating to [SELLER NAME] (the “Company”). All responsive documents and materials should be sent to Buyer at the following address:

[BUYER NAME]

[BUYER ADDRESS]

[BUYER ADDRESS]

[BUYER EMAIL]

Provide one copy of the requested documents and materials or advise where these things can be reviewed. In addition to forwarding responsive documents and materials, please indicate your response to each request—“Provided Now,” “Provided Earlier,” or “N/A.” Unless otherwise indicated, documents and materials requested should be made available for the period since the Company’s organization or incorporation.

Please interpret our requests broadly. We would appreciate your help thinking about documents and information that are relevant to our requests, even if they are not technically captured within the exact language of a particular request.

As our due diligence investigation proceeds, matters may come to our attention that require additional documents and materials not included on this Due Diligence Request List. When that happens, we will supplement this request list.

If you have questions concerning the matters or items requested, call [CONTACT NAME] at [CONTACT NUMBER].

| Requested Document/Material | PROVIDed NOW | Provided EARLIER | N/A | Notes |
| --- | --- | --- | --- | --- |
| ORGANIZATION AND GOVERNANCE |  |
| * Certificate of organization or incorporation and bylaws, operating agreement, or other governing documents of the Company |  |  |  |  |
| * Minutes of all member, manager, director, and stockholder meetings (or actions by written consent) |  |  |  |  |
| * A cap table or other schedule of the Company’s beneficial ownership and transfer ledger |  |  |  |  |
| * Stockholder agreements or other agreements that create restrictions on, or relating to, the transfer or voting of equity of the Company |  |  |  |  |
| * Agreements evidencing ownership rights, warrants, or options relating to the Company |  |  |  |  |
| * All stock purchase, asset purchase, merger, or consolidation agreements to which the Company is or was a party |  |  |  |  |
| * Stock purchase and option agreements/grants pursuant to which the Company issued securities |  |  |  |  |
| * List of each jurisdiction in which the Company (a) is qualified to do business, and (b) has offices or employees |  |  |  |  |
| * Any partnership or joint venture agreements |  |  |  |  |
| * List of any parties whose consent to a sale of the Company will or may be required and copies of all relevant documents evidencing the same |  |  |  |  |
| * All other agreements with any members, managers, stockholders, or directors |  |  |  |  |
| * Agreements with any person with respect to election or appointment as an officer, director, or manager |  |  |  |  |
| * State permits, notices of exemption and consents for issuance of transfer of the Company’s securities and evidence of qualification or exemption of applicable blue-sky laws |  |  |  |  |
| * Legal entity structure chart |  |  |  |  |
| FINANCIAL AND ACCOUNTING |  |
| * Consolidated annual financial statements of the Company and current interim financial statements, including reports of independent accountants for the last five years |  |  |  |  |
| * Accounts receivable aging report (as at latest available financial statement date) |  |  |  |  |
| * Accounts payable and accrued liabilities aging report (as at latest available financial statement date) |  |  |  |  |
| * Details of the Company’s policies regarding prepayments |  |  |  |  |
|  |  |  |  |  |
| * Describe current method for collection of receivables (e.g. lockbox, etc.) |  |  |  |  |
| * Descriptions and agreements relating to credit facilities, loans, notes and any indebtedness, and derivatives (including those relating to interest rate and foreign currency hedging), and all correspondence, notices, etc. sent or received in relation thereto |  |  |  |  |
| * Description of cash management processes and procedures |  |  |  |  |
| * Schedule of bank accounts, including names of banks and related balances |  |  |  |  |
| * Copies of all current internal financial projections, forecasts, budgets and cash flow analyses |  |  |  |  |
| * Summary of off-balance sheet commitments and contingencies indicating parties, nature of commitments and contingencies, and time periods |  |  |  |  |
| * Descriptions and agreements relating to credit facilities, loans, notes and any indebtedness, and derivatives (including those relating to interest rate and foreign currency hedging), and all correspondence, notices, etc. sent or received in relation thereto |  |  |  |  |
|  |  |  |  |  |
| * Copies of all monthly bank statements for the past four years |  |  |  |  |
| * Copies of all merchant account or credit card receipts including chargebacks and deductions for the past four years |  |  |  |  |
| * A list of all future liabilities for free or discounted services resulting from promotional offers |  |  |  |  |
| **INVENTORY AND TANGIBLE ASSETS (PERSONAL PROPERTY)** |  |  |  |  |
| * Breakdown of latest available physical inventory and book inventory at latest available financial statement date |  |  |  |  |
| * Details of costing policies |  |  |  |  |
| * Details of write-downs, provisions for slow-moving merchandise, etc. |  |  |  |  |
| * Valuation policy with respect to returns |  |  |  |  |
| * List of slow moving or obsolete inventory |  |  |  |  |
| * List of all tangible property, e.g. machinery, equipment, and leasehold improvements, including location |  |  |  |  |
| * All maintenance and service contracts involving payment to or by the Company of $5,000+ per year |  |  |  |  |
| * All security agreements related to personal property |  |  |  |  |
| * Schedule of assets used but not owned by the Company |  |  |  |  |
| **SALES AND CUSTOMERS** |  |  |  |  |
| * Monthly sales information for at least last three fiscal years and YTD by region and account |  |  |  |  |
| * Details of monthly cost of sales for at least last three fiscal years and YTD. Describe major costs included in cost of goods (overhead allocations, information systems allocation, purchasing, planning function, etc.). |  |  |  |  |
| * Samples of all advertising and marketing collateral from the past three years |  |  |  |  |
| * Returns and discount policy |  |  |  |  |
| * List of top 20 customers, with credit limits |  |  |  |  |
| * Typical credit terms |  |  |  |  |
| * Minimum Advertised Pricing policy |  |  |  |  |
| **Insurance** |  |  |  |  |
| * A schedule showing policies, deductibles/retentions, premium amounts, and other details of coverage |  |  |  |  |
| * A schedule of open insurance claims and claims closed in the past five years |  |  |  |  |
| * Any take-or-pay contracts, letters of credit, etc. binding upon the Company |  |  |  |  |
| * Details of bad debt reserves and bad debts written off in the past 12 months by the Company |  |  |  |  |
| * Descriptions of transactions which cause stated capital of the Company to differ from paid-up capital re: income tax |  |  |  |  |
| * Details of any capital commitments or proposed capital expenditure programs |  |  |  |  |
| * Description of all product warranties relating to any product sold or manufactured by the Company |  |  |  |  |
| * Product price lists |  |  |  |  |
| * Copies of all management letters from independent accountants |  |  |  |  |
| SUPPLY CHAIN, MANUFACTURING, AND DISTRIBUTION |  |
| * List of all suppliers |  |  |  |  |
| * Copies of all contracts with suppliers |  |  |  |  |
| * Manufacturing subcontractor agreements |  |  |  |  |
| * Service level performance agreements or measurements |  |  |  |  |
| * Description of any capacity constraints on either manufacturing or distribution |  |  |  |  |
| * Is distribution subcontracted or performed in-house? |  |  |  |  |
| * Do products have shelf lives, and what are they by product category? |  |  |  |  |
| * Samples of all product packaging from the past three years |  |  |  |  |
| MISCELLANEOUS CONTRACTS |  |
| * All written or oral contracts, agreements, or understandings involving loans to employees or management agreements |  |  |  |  |
| * Franchise, distributorship, royalty, merchandising, or sales agency agreements |  |  |  |  |
| * Significant contracts for the purchase of materials, supplies, services, merchandise, or equipment |  |  |  |  |
| * Standard forms for frequently consummated contracts, including order forms and purchase agreements |  |  |  |  |
| * Retainer or engagement arrangements or agreements with professionals |  |  |  |  |
| * All non-compete agreements |  |  |  |  |
| * List of any contracts which by their terms will or may require the counterparty’s consent to a sale of the Company |  |  |  |  |
| * Consulting agreements |  |  |  |  |
| * Agreements regarding obligations or liabilities as guarantor, surety, co-signer, endorser, co-maker, indemnitor, or otherwise in respect of the obligation to any other person or entity |  |  |  |  |
| Any other material contract or arrangement |  |  |  |  |
| INTELLECTUAL PROPERTY |  |
| * All patents, trademarks (including trade dress), trade names, service marks, copyrights, and domain names owned or used by the Company and all registrations thereof, pending applications therefore, licenses in respect thereof and legal opinions relating thereto. Registrations and applications should be identified by country, number, status, etc. |  |  |  |  |
| * Copies of all purchase, licensing, assignments, royalty or other agreements to which the Company is a party relating to patents, trademarks (including trade dress), trade names, service marks, copyrights, or domain names |  |  |  |  |
| * Any disputes or infringement claims with respect to intellectual property matters, including incoming and outgoing claims |  |  |  |  |
| * Work for hire agreements with consultants |  |  |  |  |
| * Intellectual property assignment and transfer agreements |  |  |  |  |
| * Copies of all joint development agreements |  |  |  |  |
| * Description of any jointly-owned intellectual property |  |  |  |  |
| * All non-competes, MFN’s, releases of intellectual property claims entered into by the Company |  |  |  |  |
| * A list of all intellectual property formerly owned by the Company |  |  |  |  |
| * All trademark searches |  |  |  |  |
| * All files relating to intellectual property or advertising litigation, oppositions/cancellations, or threats (made or received) |  |  |  |  |
| * Any documents relating to trademark quality control practices and procedures for monitoring trademark use by licensees |  |  |  |  |
| * Any uncontrolled or unlicensed uses of intellectual property by third parties known to the Company or its counsel |  |  |  |  |
| * All agreements or filings related to intellectual property (e.g., consent agreements, use restrictions, licenses, security agreements, warranties, indemnities, restriction on alienability) |  |  |  |  |
| * A list of all intellectual property created by non-employees and documents related to the assignment or licensing of such intellectual property to the Company. |  |  |  |  |
| * Any communications with government entities related to the intellectual property or advertising (such as with the USPTO, but other than SEC filings or trademark prosecution communications) |  |  |  |  |
| INFORMATION SYSTEMS |  |
| * Description of existing IS set-up: facilities, topology of existing network, staffing, organization of support, any outsourcing, service level agreements, etc. |  |  |  |  |
| * A list and description of the Company’s significant information systems |  |  |  |  |
| * List of software packages that are not operating on the most recent release from the vendors, along with the number of releases behind each is |  |  |  |  |
| * List of all computer hardware and systems in use by the Company |  |  |  |  |
| * Copy of the Company’s privacy policy |  |  |  |  |
| * Copy of the Company’s document retention or destruction policy |  |  |  |  |
| * Information security policies and procedures, including data breach policy |  |  |  |  |
| * Copies of all security assessments performed in the last three years |  |  |  |  |
| LITIGATION |  |
| * Details (including pleadings and other documents) of any pending or threatened litigation (including product liability, warranty or similar claims) or governmental investigation involving the Company and whether any claims are covered by insurance |  |  |  |  |
| * Reports to the Company’s board of directors/managers from attorneys during the last five years that relate to litigation or Company practices and risks |  |  |  |  |
| * Copies of all litigation settlement documents, including the terms of settlement or resolution of any prior litigation (including product liability, warranty or similar claims) |  |  |  |  |
| REGULATORY |  |  |  |  |
| * Permits, consents, and governmental authorizations |  |  |  |  |
| * Consent decrees, injunctions, and governmental notifications of, and any penalties assessed for, violations of law |  |  |  |  |
| * Description of any environmental issues or investigations, including all communications with, and all filings and agreements with, any federal, state, local, or foreign departments of natural resources, waste control and sewage commissions, pollution, and other environmental enforcement agencies |  |  |  |  |
| * All licenses, permits, and agreements or similar documents relating to the disposal of effluents and liquid solid wastes, including permits, stipulation agreements, licenses, and agreements |  |  |  |  |
| * Description of any issues arising under applicable federal, state, or local rules and regulations relating to the Company’s business |  |  |  |  |
| HUMAN RESOURCES |  |
| * Organizational chart and job description for management personnel |  |  |  |  |
| * List of key employees, officers and directors of the Company and each joint venture |  |  |  |  |
| * Full list of employees, including information re: duration of employment, titles, and location of employment |  |  |  |  |
| * Total headcount for all employees and breakdown by location of employment, full vs. part-time |  |  |  |  |
| * Information regarding termination and layoffs during the last 12 months, including any termination agreements |  |  |  |  |
| * Copies of employer health tax payments |  |  |  |  |
| * Information re: dealer and independent sales agents, including list of such persons and terms of agreements |  |  |  |  |
| * All employee non-compete, confidentiality, assignment of inventions, or similar agreements |  |  |  |  |
| * All collective bargaining agreements or other material labor contracts |  |  |  |  |
| * All correspondence, memos, rulings, determinations, orders, etc. relating to compliance or non-compliance with employment laws |  |  |  |  |
| * Employee compensation information (bonus and salary arrangements listed by employee) |  |  |  |  |
| * Fringe benefit plans and perquisites, including medical plans |  |  |  |  |
| * Executive benefit policies/executive compensation arrangements |  |  |  |  |
| * Contract with the Company’s payroll provider |  |  |  |  |
| * Other non-qualified plans, such as incentive compensation, cash and equity bonus and option arrangements |  |  |  |  |
| * Excess benefit plans |  |  |  |  |
| * Individual and supplemental executive retirement plans |  |  |  |  |
| * A copy of the last three funding and expense valuations (along with plan documents) for any defined benefit plans or retiree medical plan |  |  |  |  |
| * Severance plan and/or information regarding severance practices |  |  |  |  |
| * Change in control agreements |  |  |  |  |
| * Employee handbook(s) and/or copies of human resource policies, procedures, etc. |  |  |  |  |
| * Copy of new hire communications (in addition to benefits information) |  |  |  |  |
| * Written or oral employment agreements |  |  |  |  |
| * Copies of all payroll records for the past years including payroll registers and proof of remittance of all employee deductions to appropriate third parties |  |  |  |  |
| * Description of any oral employee benefit plans or arrangements |  |  |  |  |
| * All written communications to employees with respect to benefits plans and the interpretation thereof |  |  |  |  |
| * All correspondence, rulings, determinations, etc. relating to any of the above referenced plans and their compliance with applicable laws, the deductibility of contributions or distributions, their status under tax laws or audits of such plans, including Form 5500’s for the last three years, and IRS Determination Letters for tax qualified retirement plans |  |  |  |  |
| REAL PROPERTY |  |
| * List of owned real properties (including addresses) and uses thereof |  |  |  |  |
| * Details of leases already in effect, including landlord name and address, terms, basic rent, percentage rent, option periods, change of control or assignment restrictions, estimated CAM, taxes, and insurance amounts |  |  |  |  |
| * Title insurance policies and reports |  |  |  |  |
| * All appraisals of real property |  |  |  |  |
| * All deeds, mortgages, leases, construction contracts, and other commitments related to real property owned or leased. |  |  |  |  |
| TAX MATTERS |  |
| * Tax returns for the last five fiscal years (include all federal, state, and local returns for income/franchise/gross receipts, sales/use, payroll, real and personal property, business licenses, etc.) |  |  |  |  |
| * Any governmental audit reports, inquiries, revenue agent's reports or settlement documents for the Company |  |  |  |  |
| * Any waivers of the statute of limitations for the Company |  |  |  |  |
| * Copies of all correspondence, reports, and notices relating to any tax disputes or assessments with any taxing authorities for the last five years |  |  |  |  |
| * Any issues with respect to customs or import duties |  |  |  |  |
| * Copies of any tax elections |  |  |  |  |
| * Abandoned property tax reports and audit experience |  |  |  |  |
| * Tax reserves analysis |  |  |  |  |
| * Any private letter rulings, opinion letters from the IRS, accountants, or attorneys re: tax matters |  |  |  |  |
| * Analysis of income tax provision for last five fiscal years. |  |  |  |  |
| * Unemployment tax experience |  |  |  |  |
| * Contact for tax matters questions—internal/external |  |  |  |  |
| * Schedule of any tax carryovers—NOLs, credits, etc. |  |  |  |  |
| * Listing of training grants or incentives received from states. |  |  |  |  |
| * Calendar of filings |  |  |  |  |
| OTHER |  |
| * Copies of all press releases relating to the Company’s business released in the last two years |  |  |  |  |
| * Pitch decks, business plans, or other internally-prepared strategy documents |  |  |  |  |
| * Studies or other externally-prepared strategic documents |  |  |  |  |
|  |  |  |  |  |
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