

DEAL STRUCTURE INFORMATION

Hold-back of Proceeds

A holdback is a portion of the purchase price that is not paid at the closing date. This amount is usually held in a third-party escrow account (usually the seller's) to secure a future obligation, or until a certain condition is achieved.

Holdbacks are very common in purchase and sale agreements. Most sellers require them to provide certainty around matters which are not fully known at the closing date. Most of the time, these holdbacks relate to achieving a specific working capital threshold or in the event there is litigation outstanding at closing.

Seller Financing

A seller note is a type of take-back financing used to bridge the gap between the purchase price and the cash available from the buyer. When companies do not have sufficient cash to complete the sale transaction, buyers will provide the seller with a note bearing a set interest and terms of repayment. This strategy essentially results in having the seller self-finance all or part of the transaction.

Performance Payments

A buyer may require a portion of the sales price to be earned through performance payments. Or they may offer performance payments as an incentive to a seller who stays on in a management role after the sale. Examples of performance requirements would be maintaining sales volumes, maintaining profit levels, or achieving new product sales goals.

Earn-Out Provision

An earnout is a financing arrangement for the purchase of a business in which the seller finances a portion of the purchase price, and payment of this amount is contingent on achieving a predetermined level of future earnings. An earnout is often used to bridge a valuation gap. The seller only gets paid if the predetermined level of future EBITDA or other financial targets are achieved.

Non-Competition Agreement

Many business sale transactions will include a Non-Compete and Intellectual Property Agreement. A typical Non-Compete will be for a minimum of 2 years and protection under an IP Agreements will be for a much longer period.

Employment Agreement and/or Consulting Agreement

Often the buyer will structure a deal so that the owner will be receive the benefit of ongoing compensation for a specified period. This Agreement's purpose may be to assure the seller stays on in the business and/or a way to provide cash flow to the seller.

Contingent and Unknown Liabilities

Unfunded pension liabilities, lawsuit settlements, company income taxes owed or other contingent liabilities will likely be include in any defined hold-backs at the time of the sales transaction.