7 Key Points in a Non-Disclosure Agreement

A non-disclosure agreement protects both the buyer and seller of a business. The valuation, due diligence and negotiations for the sale depend on accurate but sensitive and confidential information. An NDA explains what is covered in this confidentiality agreement - and the penalty for leaking or using the information in any unauthorized way - including to build a competitive business.



1. The name, type and location of the business: Be specific and identify multiple locations my name variations and exact addresses.

2. How long will the NDA will be in effect: While in theory it should last forever, NDAs often specify they are in effect for 2-5 years; venture capitalist Richard Harroch says, "Your NDA also needs to say that, even if the term is ended, the disclosing party isn't giving up any other rights that it may have under copyright, patent, or other intellectual property laws."

3. Identify the parties to the agreement: In addition to the buyer and seller, who is covered under the NDA, such as business appraiser, accountant, lawyer, consultant or employees.

4. What is covered in the NDA: What information is considered confidential and should not be disclosed whether it is shared in writing or verbally, such as trade secrets; business strategies and plans; names and contact information of employees, customers and suppliers; financial statements; cash flow records; contracts and agreements with employees, creditors, financial institutions, and suppliers; liabilities; and data that is important to your business.

5. What is excluded in the NDA: Non-disclosure agreements commonly exclude include information that is already known to the recipient, already publicly known, or disclosed to the buyer by some other person who is not covered in the NDA.

6. How and when the confidential information will be given to the buyer: The NDA should specify the date and location that confidential information will be provided to the potential buyer, and where any documentation will be maintained - usually in the seller's office.

7. Penalties: Your NDA should specify that if confidentiality is breached the penalty for leaking or using the information in any unauthorized way - including to build a competitive business - then you can sue for damages or other measures.