



# Promise to Purchase Enterprise excluding any immovable

## Recommended form

Amendments 2006

**CAUTION:** This form has been amended following a review by the Forms Committee of the Association des courtiers et agents immobiliers du Québec.

### Clause 1 – Identification of the buyer and the seller

This clause has been amended in order to add space to identify of all those representing the sellers and the buyers.

### Clause 4 – Price and selling conditions

This clause has been amended to include the breakdown of the purchase price (4.2), inclusions (4.3) and exclusions (4.4), which used to be entered under clauses 8, 11.4 and 11.5 of the old form.

The former clause regarding the deposit is now captured under clause 4.5. However, the wording has been modified to allow the broker-trustee to require that the request for refund of the deposit be made in writing.

### Clause 7 – Balance of sale price

This clause now requires specification of the guarantee securing the balance of sale price (movable hypothec, immovable hypothec, surety, etc.). In addition, the clause regarding non-alienation until the balance of sale price has been paid in full has been eliminated.

### Clause 8 – Declarations and obligations of the buyer

Clauses 8.1 to 8.3 are identical to former clauses 9.1 to 9.3.

Clauses 9.4 and 9.5 of the old form regarding document remittance and permit or contract renewal or transfer have been eliminated on the new form. These provisions are now included in the new version of form "Annex B – Enterprise".

Clause 8.4 deals with labour relations within the enterprise and captures the wording of the first sub-section of clause B2.4 of form "Annex B – Enterprise", which will be removed from the new version.

Clause 8.5 replaces former clause 15.1 concerning the broker's right to compensation in the event that the sale does not take place through the buyer's fault.

### Clause 9 – Declarations and obligations of the seller

This clause has undergone major revision in terms of both content and presentation.

Clause 9.1 as well as sub-sections 2°, 6°, 7°, 8°, 10°, 11° and 13° of clause 9.2 are new. They regard the existence of an exclusivity clause that could undermine the operation of the enterprise, the existence of a right of first refusal, compliance with the lease of the immovable in which the enterprise is operated and compliance with the environmental laws and regulations. Sub-sections 10° and 11° capture the content of the second and third paragraphs of clause B2.4 of form "Annex B – Enterprise", which will be removed from the new version.

### Clause 11 – Other declarations and conditions

This clause captures former clauses 12.1 and 13.1.

Clause 11.3 has been added to allow the promise to purchase of the enterprise to be conditional to the acceptance of a promise to purchase on the immovable in which the enterprise is operated and to the signing of the act of sale of such immovable concomitantly to the signing of the act of sale of the enterprise.

### Clause 12 – Conditions of acceptance

The notification obligation regarding the seller's reply has been removed from clause 12.1. Thus acceptance of the promise to purchase by the seller within the deadline indicated by the buyer is sufficient to legally bind the parties.

### Signatures

The consent of the seller's spouse is required only if the matrimonial regime is community of property.





**IMPORTANT! In the event that the sale of the enterprise herein described is accompanied by the sale of the immovable in which this enterprise is operated, a separate promise to purchase shall be completed for this immovable.**

**1. IDENTIFICATION OF THE BUYER AND THE SELLER**

NAME: BUYER 1 _____ ADDRESS AND TELEPHONE NUMBER _____ REPRESENTED BY _____ NAME: BUYER 2 _____ ADDRESS AND TELEPHONE NUMBER _____ REPRESENTED BY _____	NAME: SELLER 1 _____ ADDRESS AND TELEPHONE NUMBER _____ REPRESENTED BY _____ NAME: SELLER 2 _____ ADDRESS AND TELEPHONE NUMBER _____ REPRESENTED BY _____
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(hereinafter called the BUYER) (hereinafter called the SELLER)

**2. OBJECT OF THE CONTRACT**

2.1 The BUYER hereby promises to purchase through \_\_\_\_\_, real estate broker, represented by \_\_\_\_\_, the enterprise described hereinafter, at the price and under the conditions stated below. CERTIFICATE/MEMBER NO. \_\_\_\_\_

**3. SUMMARY DESCRIPTION OF THE ENTERPRISE**

3.1 The ENTERPRISE is known and operated under the name: \_\_\_\_\_ and is located at the following address: \_\_\_\_\_ (hereinafter called the ENTERPRISE)

3.2 In the case of an enterprise operated in an immovable under a lease, the monthly rent is: \_\_\_\_\_  
No notice liable to modify the lease has been sent by either party and no proceedings are pending.

3.3  The lease has been recorded in the land register.

**4. PRICE AND SELLING CONDITIONS (TAXES EXTRA)**

4.1 The purchase price shall be \_\_\_\_\_ dollars ( \$ \_\_\_\_\_ ). Any tax that may be imposed as a result of the sale of the ENTERPRISE (GST, QST, other) and that is to be collected by the SELLER shall be remitted to the SELLER by the BUYER, unless the BUYER is already registered with the appropriate government authorities.

4.2 The purchase price breaks down as follows :

1° name and goodwill evaluated at :	\$ _____
2° all movable property, apparatus and equipment used for operating the ENTERPRISE, evaluated at:	\$ _____
3° all merchandise in stock, the value of which is computed at _____% of the cost paid for each merchandise, the whole evaluated at approximately:	\$ _____

The nal value of this merchandise shall be determined at the inventory taken jointly by the parties before the signing of the act of sale.

**TOTAL : \$ \_\_\_\_\_**

4.3 Included in the sale, where applicable, are: 1) name; 2) goodwill; 3) all rights and privileges related to the identification of the ENTERPRISE (telephone numbers, signs, advertising, trade marks, etc.); 4) all movable property, apparatus and equipment used for operating the ENTERPRISE (see attached list); 5) all merchandise in stock.

4.4 Excluded from the sale, where applicable, are : 1) receivables; 2) payables; 3) bank accounts; 4) movable property and merchandise on consignment (see attached list); 5) the following leased apparatus and equipment (see attached list):

4.5 With this promise, the BUYER remits to the broker referred to above, as an instalment on the sale price, the sum of \_\_\_\_\_ dollars ( \$ \_\_\_\_\_ ) by cheque payable to the order of "\_\_\_\_\_ in trust" (hereinafter called the TRUSTEE). Following the acceptance of this promise, the cheque may be certified and shall be given to the TRUSTEE, who shall, without delay, deposit it in a trust account until the signing of the act of sale, whereupon that sum shall be applied against the purchase price. As soon as he has deposited that sum into a trust account, the TRUSTEE shall give the depositor a receipt. Should this promise become null and void, the TRUSTEE shall refund the deposit to the BUYER upon request, without interest. The TRUSTEE may require that this request be made in writing. Otherwise, the TRUSTEE may use that deposit only in accordance with this promise or the law.

**5. METHOD OF PAYMENT**

5.1 Deposit paid in accordance with 4.5: \$ \_\_\_\_\_

5.2 Upon the signing of the act of sale, the BUYER shall pay, by certified cheque payable to the order of the acting professional in trust, an additional sum, subject to the determination of the final value of the inventory in accordance with 4.2 par. 3°, of approximately: \$ \_\_\_\_\_  
That sum shall include any amount to be obtained in the form of a new loan, as per clause 6.

5.3 The BUYER shall reimburse to the SELLER, in accordance with clause 7, the balance of the sale price, which is: \$ \_\_\_\_\_

**TOTAL PRICE OF ENTERPRISE:** \$ \_\_\_\_\_  
(subject to the determination of the final value of the inventory in accordance with 4.2 par. 3°)

**6. NEW LOAN**

6.1 The BUYER undertakes to take in good faith, as soon as possible and at his expense, all necessary steps to obtain a loan of \$ \_\_\_\_\_ under terms satisfactory to the BUYER.

6.2 The BUYER undertakes to notify the SELLER in writing before \_\_\_\_\_ this condition is met or before waiving this condition.

6.3 In the absence of receipt of the notice provided in 6.2 within the deadline stipulated, this promise to purchase shall become null and void.

**7. BALANCE OF SALE PRICE**

7.1 The BUYER shall reimburse the SELLER the balance of sale price as referred to in 5.3, which shall be secured by: \_\_\_\_\_; that balance of sale price, shall bear the rate of \_\_\_\_\_% per year, and shall be payable as follows: \_\_\_\_\_  
The BUYER shall have the right at any time to reimburse in advance without penalty, all or part of the balance, as long as such reimbursement is by instalments of \$ \_\_\_\_\_ or multiple thereof.

**8. DECLARATIONS AND OBLIGATIONS OF THE BUYER**

- 8.1 Unless stipulated otherwise hereinafter, the BUYER has examined the ENTERPRISE and declares that he is satisfied therewith. \_\_\_\_\_  
\_\_\_\_\_
- 8.2 The BUYER undertakes to assume the cost of the act of sale and, where applicable, the registration cancellation declaration and the new registration declaration, as well as of the required copies of these documents.
- 8.3 The BUYER undertakes not to sell, assign or otherwise alienate his rights in this promise to purchase without obtaining the prior written consent of the SELLER.

- 8.4 The BUYER declares that he has acquainted himself with the individual employment contracts, certification and collective agreements covering the SELLER's staff, where applicable, and agrees to respect them in accordance with the provisions of labour law governing the disposal or total or partial assignment of commercial enterprises.
- 8.5 In the event that, through the BUYER'S fault, no act of sale is signed for the ENTERPRISE, the BUYER undertakes to compensate directly the broker bound to the SELLER by brokerage contract, by paying the compensation that the SELLER would otherwise have had to pay to him.

**9. DECLARATIONS AND OBLIGATIONS OF THE SELLER**

- 9.1 The SELLER declares that the information contained in this promise to purchase is accurate and that he will provide to the BUYER any additional information regarding the ENTERPRISE as soon as he becomes aware of it.
- 9.2 The SELLER also declares, **unless otherwise stipulated, including in 11.1 or any annex forming part of this contract, that:**
  - 1° he is not aware of any factor relating to the ENTERPRISE and liable to significantly reduce the value thereof, reduce the income generated thereby, increase the expenses relating thereto or restrict the operation thereof;
  - 2° he is not aware of any exclusivity clause that could undermine the operation of the ENTERPRISE;
  - 3° the ENTERPRISE is operated in accordance with current laws and regulations and that he has not received any notice of non-compliance for the ENTERPRISE with which he has not complied;
  - 4° he is not a non-resident of Canada within the meaning of the provincial and federal taxation laws;
  - 5° he is the sole owner of the ENTERPRISE, or is duly authorized to sign this promise;
  - 6° his community of property spouse consents and, if need be, concurs in this promise to purchase and shall intervene in the act of sale;
  - 7° the ENTERPRISE is not the subject of any agreement to sell, exchange or rent it, or of a third-party right of preference or right of first refusal;
  - 8° the ENTERPRISE is operated in accordance with the lease of the premises where it is located, if applicable;
  - 9° the name of the ENTERPRISE has been published in accordance with the law;
  - 10° he is not aware of the existence of any collective agreement governing labor relations of the ENTERPRISE, of any union certified therein, and that no action to obtain certification or to conclude, execute or implement a collective agreement is pending;
  - 11° on this date, no claims are currently or may be pending for which the BUYER may be held jointly responsible with him under Section 96 of the *Labour Standards Act* (R.S.Q., c.N-1.1) (a list showing seniority and working conditions of employees shall be attached hereto);
  - 12° the ENTERPRISE, including its merchandise inventories, apparatus and equipment is free of any loan, debt, obligation or security;
  - 13° he is not aware of any non-compliance with environmental protection laws and regulations relating to movable property, apparatus and equipment used for operating the ENTERPRISE, merchandise inventories and the immovable in which the ENTERPRISE is operated.

- 9.3 The SELLER agrees, under penalty of an indemnity of \$ \_\_\_\_\_ per day of contravention, not to operate, directly or indirectly, within a radius of \_\_\_\_\_ km of the enterprise and for a period of \_\_\_\_\_ year(s) from the signing of the act of sale, an enterprise in competition with the ENTERPRISE.
- 9.4 The SELLER promises to sell the ENTERPRISE to the BUYER and, unless stipulated otherwise hereinafter, undertakes to deliver the ENTERPRISE in the condition that it was in when the BUYER examined it.
- 9.5 The SELLER agrees to make the ENTERPRISE available for occupancy and operation by the BUYER as of \_\_\_\_\_, and to remove therefrom any property not included in this promise to purchase, failing which the BUYER may have it removed at the SELLER's expense.
- 9.6 Should the parties be notified, before the signing of the act of sale, of any defect or irregularity whatsoever affecting the declarations and obligations of the SELLER contained in this promise, the SELLER shall, within 21 days following receipt of a written notice to that effect, notify the BUYER, in writing, that he has remedied that defect or irregularity at his expense or that he is unable to remedy it.  
Within 5 days following receipt of a notice from the SELLER to the effect that he was unable to remedy the defect or irregularity, or if he does not receive notice within 21 days, the BUYER may notify the SELLER in writing:
  - a) that he is purchasing with the alleged defects or irregularities, in which case the SELLER's obligations shall be reduced accordingly, or
  - b) that he renders this promise to purchase null and void, in which case the fees, expenses and costs reasonably incurred until then by any of the parties shall be borne only by the SELLER.
 Where the BUYER has not availed himself of the provisions of paragraph a) or b) above within the period stipulated, this promise to purchase shall become null and void, in which case each party shall bear the respective fees, expenses and costs incurred by them up to that point.
- 9.7 Where rendered necessary by his matrimonial regime, the SELLER undertakes to remit to the BUYER, as soon as this promise is accepted, either a document evidencing his spouse's consent and, where applicable, his spouse's concurrence and an undertaking by his spouse to intervene for the same purposes in the act of sale, or a copy of a judgment authorizing him to sell the ENTERPRISE without his spouse's consent. Failing that, the BUYER may, by giving written notice to that effect, render this promise to purchase null and void.

**10. DECLARATIONS AND OBLIGATIONS COMMON TO THE BUYER AND THE SELLER**

- 10.1 The BUYER and the SELLER undertake to sign an act of sale before Me \_\_\_\_\_ (lawyer or notary), on or before \_\_\_\_\_. The BUYER shall be the owner upon the signing of the act of sale.
- 10.2 Upon the signing of the act of sale, all the adjustments with respect to taxes, permits, insurance premiums, fuel reserves, income and expenses relating to the ENTERPRISE, rents, lease agreements for apparatus and equipment as well as to the value of merchandise, shall be made as of \_\_\_\_\_.
- 10.3 The BUYER and the SELLER irrevocably instruct the professional referred to in 10.1 to withhold from the proceeds of the sale and to pay directly to \_\_\_\_\_, broker, the compensation provided for in the brokerage contract awarded by the SELLER. Notwithstanding the above, the acting professional shall pay a portion of this compensation to the broker collaborating to this transaction where the listing broker has given the professional written instructions to this effect.

**11. OTHER DECLARATIONS AND CONDITIONS**

11.1 \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**11.2 ANNEXES The conditions set forth in the annexes designated below form an integral part of the promise:**

Annex B : **AB** - [ ] [ ] [ ] [ ] [ ] [ ] Annex G - General : **AG** - [ ] [ ] [ ] [ ] [ ] [ ] Other: \_\_\_\_\_

11.3 This promise to purchase is conditional to the acceptance, \_\_\_\_\_ days following acceptance of this promise at the latest, of promise to purchase **PA** - [ ] [ ] [ ] [ ] [ ] [ ] for the sale of an immovable and to the signing of the act of sale of this immovable concomitantly to the signing of the act of sale of the ENTERPRISE in accordance with this promise to purchase. Where the promise to purchase for the sale of the immovable becomes null and void, this promise to purchase shall also become null and void.

**12. CONDITIONS OF ACCEPTANCE**

**12.1** The BUYER and the SELLER declare that their consent to this promise is not the result of any representation or condition not contained herein. The BUYER is irrevocably committed until \_\_\_\_\_ o'clock, on \_\_\_\_\_. If the SELLER accepts this promise by that deadline, it shall constitute a contract that is legally binding upon the BUYER and the SELLER until its full execution. If the SELLER does not accept it by that deadline, this promise shall become null and void. **Any refusal or counter-proposal by the SELLER shall render this promise null and void.**

**13. GENERAL**

**13.1** Unless the context indicates otherwise, the masculine form includes the feminine form and vice versa, and the singular includes the plural and vice versa.

**13.2** This contract is governed by the laws of Québec.

**14. ARBITRATION CLAUSE (OPTIONAL)**

**14.1** With the exception of claims coming under the jurisdiction of the Court of Quebec, Small Claims Division, within the meaning of the Code of Civil Procedure of Quebec, if the BUYER and the SELLER initial the boxes below, any dispute arising from this contract shall be submitted to arbitration, excluding the jurisdiction of the courts. The dispute shall be submitted to a single arbitrator designated jointly by the parties. The arbitrator's decision shall be binding on the parties and shall be final and without appeal. Unless incompatible with this clause, the provisions of the Civil Code of Quebec and the Code of Civil Procedure of Quebec in matters of arbitration shall apply.

BUYER 1 BUYER 2

SELLER 1 SELLER 2

**SIGNATURES**

The BUYER acknowledges having read and understood this promise, **including the Annexes**, and having received a copy thereof.

The SELLER acknowledges having read and understood this promise, **including the Annexes**, and having received a copy thereof.

He hereby  \_\_\_\_\_ this promise  
(ACCEPTS OU REFUSES)  
 submits Counter-Proposal CP- [ ] [ ] [ ] [ ] [ ] [ ]

Signed in \_\_\_\_\_,  
on \_\_\_\_\_, at \_\_\_\_\_ o'clock.

Signed in \_\_\_\_\_,  
on \_\_\_\_\_, at \_\_\_\_\_ o'clock.

SIGNATURE: BUYER 1  
SIGNATURE: WITNESS  
NAME OF WITNESS (PLEASE PRINT)

SIGNATURE: SELLER 1  
SIGNATURE: WITNESS  
NAME OF WITNESS (PLEASE PRINT)

Signed in \_\_\_\_\_,  
on \_\_\_\_\_, at \_\_\_\_\_ o'clock.

Signed in \_\_\_\_\_,  
on \_\_\_\_\_, at \_\_\_\_\_ o'clock.

SIGNATURE: BUYER 2  
SIGNATURE: WITNESS  
NAME OF WITNESS (PLEASE PRINT)

SIGNATURE: SELLER 2  
SIGNATURE: WITNESS  
NAME OF WITNESS (PLEASE PRINT)

The BUYER acknowledges having received a copy of the SELLER's reply.

The SELLER's community of property spouse consents to and, where applicable, concurs in the acceptance of this promise, **including the Annexes**, and undertakes to intervene in the act of sale to this effect.

Signed in \_\_\_\_\_,  
on \_\_\_\_\_, at \_\_\_\_\_ o'clock.

Signed in \_\_\_\_\_,  
on \_\_\_\_\_, at \_\_\_\_\_ o'clock.

SIGNATURE: BUYER 1  
SIGNATURE: WITNESS  
NAME OF WITNESS (PLEASE PRINT)

SIGNATURE: SPOUSE OF SELLER 1  
SIGNATURE: WITNESS  
NAME OF WITNESS (PLEASE PRINT)

Signed in \_\_\_\_\_,  
on \_\_\_\_\_, at \_\_\_\_\_ o'clock.

Signed in \_\_\_\_\_,  
on \_\_\_\_\_, at \_\_\_\_\_ o'clock.

SIGNATURE: BUYER 2  
SIGNATURE: WITNESS  
NAME OF WITNESS (PLEASE PRINT)

SIGNATURE: SPOUSE OF SELLER 2  
SIGNATURE: WITNESS  
NAME OF WITNESS (PLEASE PRINT)