



**PRICE & PAYMENT CONSIDERATIONS:
MAXIMIZING PRICE & GETTING PAID ON TIME**

1. ***Payment in Cash***
 - 100% at closing and/or subject to escrow/holdback
2. ***Deferred Payment via Promissory Note***
 - when payable?
 - any interest?
 - interest calculations/payment rules?
 - can borrower prepay?
 - accelerated payments upon triggering events?
 - events of default/consequences of same?
 - ongoing information rights?
3. ***Security for Repayment of Promissory Note***
 - upstream guarantee from parent/shareholders of purchaser (with or without security)
 - share pledges
 - security over all assets of purchaser and/or target company via general security agreement
 - security over specific assets (e.g., collateral mortgage)
 - irrevocable letters of credit
 - subordination/postponement to purchaser's lender?
4. ***GSA Considerations***
 - consider covenant patterns and restrictions over borrower's business
 - consider impact on other lenders of borrower
5. ***Payment in Public/Private Company Shares***
 - consider type of shares and attributes relative to other security holders
 - determine exchange ratio and relative valuations
 - consider due diligence on purchaser (vendor is both buyer and seller)
 - consider shareholder arrangements with existing shareholders of purchaser
 - consider tax issues – deferral/rollover or not?
6. ***Payment via Earn-Out Formula***
 - clarify formula and pre-determined financial targets
 - consider vendor control mechanisms (including security for payment if applicable)
 - consider tracking/measurement tools (divisional/segmented reporting)
 - consider impact of different accounting policies
 - consider inherent vendor conflicts of interest
7. ***Price Adjustments***
 - is a closing audit required? if so, what are the mechanics to deal with same?
 - consider what consideration gets adjusted – cash vs. note, etc.
 - consider how pre-closing actions impact price adjustment formulae
8. ***Price Assumptions***
 - consider conditions re minimum working capital/retained earnings
 - consider restrictions on vendor's ability to remove surplus before closing