



Exclusive Brokerage Contract Sale of 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 broker and the seller

This section was extended to allow for the names of more than one seller and their representatives.

Clause 3 – Summary description of the enterprise

The content of clauses 3.1 and 3.2 of the old form are now found under clause 3.1. Clauses 3.2 and 3.3 were added for cases where the enterprise being sold is operated in an immovable under a lease.

Clause 4 – Price and selling conditions

The sale price indicated in clause 4.1 now includes the value of all merchandise inventories, which used to be included specifically under clause 4.2 of the old form.

Clause 4.2 captures the content of former clause 8.2 (10°) regarding the declaration of any existing loan, debt, obligation or security on the enterprise, including merchandise inventories, apparatus and equipment.

Clause 6 – Broker's compensation

This clause was reworded for clarification purposes.

The wording of clause 11.2 of the old form defining the expression "person who was interested in the ENTERPRISE during the term of the contract" has been moved to a box under clause 6.

Clause 7 – Declarations of the seller

The declarations of the seller are now found under clause 7, and the clause entitled "Other declarations and conditions" has been moved to clause 11 of the new form.

Sub-sections 1° to 7° and 9° of former clause 8.2 on the declarations by the seller have been maintained with minor changes. These sub-sections were moved to 7.2 under a new logical order. The declarations of the seller regarding the operation of the enterprise in accordance with the lease of the premises where it is located, the labour relations of the enterprise and compliance with environmental laws and regulations appearing in sub-sections 8°, 10° and 11° respectively, are new.

Clause 8 – Obligations of the seller

This clause captures the content of former clause 9 with a few changes, including the addition of new documents to be sent to the broker, i.e. any insurance documents, water analysis, soil analysis, environmental report, collective agreement, act of amendment of a declaration of co-ownership and by-laws of the immovable.

With the addition of sub-section 3 under clause 8.3, the seller gives the broker the exclusive right to obtain from the owner of the immovable where the enterprise is operated any information or document pertaining to the immovable.

Also, the new clause 8.5 stipulates that the seller undertakes to remit to the broker, where rendered necessary by his matrimonial regime, either a document evidencing his spouse's consent to the sale of the enterprise and, where applicable, his spouse's concurrence and undertaking regarding the act of sale, or a copy of a judgment authorizing him to sell the enterprise without his spouse's consent.

Clause 9 – Obligations of the real estate broker

This clause captures the content of former clause 10 with some minor changes.

Clause 11 – Other declarations and conditions

Clause 11.3 offers the possibility of making the sale of the enterprise conditional to the sale of the immovable referred to in another brokerage contract.

Clause 12 – Arbitration clause

The arbitration clause has been revised to specify that it does not apply to claims coming under the jurisdiction of the Court of Quebec, Small Claims Division.

In addition, provisions regarding the choice of arbitrator, the outcome of the arbitration and the applicable arbitration legislation have been added to this clause.

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 is accompanied by the sale of the immovable in which this enterprise is operated, a separate brokerage contract shall be completed for this immovable.

1. IDENTIFICATION OF THE BROKER AND THE SELLER

NAME: BROKER _____	NAME: SELLER 1 _____
ADDRESS AND TELEPHONE OF ESTABLISHMENT _____	ADDRESS AND TELEPHONE _____
REPRESENTED BY _____	REPRESENTED BY _____
CERTIFICATE NUMBER _____	NAME: SELLER 2 _____
REPRESENTED BY _____	ADDRESS AND TELEPHONE _____
CERTIFICATE NUMBER _____	REPRESENTED BY _____

(hereinafter called the BROKER) (hereinafter called the SELLER)

2. OBJECT AND TERM OF THE CONTRACT

2.1 The SELLER retains the exclusive services of the BROKER to offer the enterprise hereinafter described for sale and to act as intermediary in order to conclude an agreement regarding such sale. This contract is irrevocable until 11:59 p.m. on _____.

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: _____
and the lease expires on _____.
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 sale price asked is _____ dollars (\$ _____).
Any tax that may be imposed as a result of the sale of the ENTERPRISE (GST, QST, other) and to be collected by the SELLER shall be remitted by the prospective buyer to the SELLER, unless the buyer is already registered with the appropriate government authorities.
The selling 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 inventories are valued at approximately: \$ _____
The value of these inventories is computed at _____ % of the cost paid for each merchandise and the final value shall be determined at the inventory taken jointly by the parties before the signing of the act of sale.

4.2 Existing loan, debt, obligation or security on the enterprise including merchandise inventories, apparatus and equipment: _____
The costs related to repayment of any debt and cancellation of any hypothec shall be borne by the SELLER.

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, trademarks, etc.); 4° all movable property, apparatus and equipment used for operating the ENTERPRISE (see attached list); 5° all merchandise inventories.

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° apparatus and equipment covered by a leasing contract (see attached list).

4.5 Date or deadline for signing the act of sale: _____

4.6 Date or deadline for taking charge of operation: _____

5. MULTIPLE LISTING SERVICE

5.1 By initialing this box, the SELLER authorizes the BROKER to send the information contained in this contract to a real estate board's or other organization's Multiple Listing Service™ or similar service. The broker shall send this information to the service concerned without delay.

6. BROKER'S COMPENSATION (TAXES EXTRA)

6.1 The SELLER shall pay to the BROKER compensation of:
 _____ percent (_____ %) of the sale price established in the cases provided in 1°, 2° and 3° below, or of the price indicated in 4.1 for any transaction involving the SELLER's share capital, or in the case provided in 4° below; or
 a lump sum of _____ dollars (\$ _____) in the cases provided below:
1° where an agreement to sell the ENTERPRISE, conforming to the conditions of sale set out in this contract, is submitted to the SELLER during the term of the contract; or
2° where the ENTERPRISE is sold within 365 days following the expiry date of this contract, with a **person who was interested in the ENTERPRISE during the term of this contract**, unless, during that period, the SELLER concluded in good faith with another real estate broker a contract stipulated to be exclusive for the sale of the ENTERPRISE; or
3° where an agreement to sell the ENTERPRISE is concluded during the term of this contract, whether through the BROKER or not; or
4° where the SELLER voluntarily prevents the free performance of this contract.

6.2 Other compensation: _____

IN ADDITION TO THAT PROVIDED FOR IN 6.1 (e.g. HOURLY RATE, PROCESSING FEES, ADVERTISING FEES)

The expression "person who was interested in the ENTERPRISE during the term of this contract" found in paragraph 2) of 6.1 includes any person whose interest was initiated, renewed or increased during the term of this contract, whether or not through the BROKER.

7. DECLARATIONS OF THE SELLER

7.1 The SELLER declares that the information contained in this contract is accurate and that he will provide to the BROKER any additional information relating to the ENTERPRISE, as soon as he becomes aware of it.

7.2 The SELLER also declares that unless stipulated otherwise, **including in 11.1 or in any annex forming part of this contract**:

1° he is not aware of any factor relating to the ENTERPRISE that is liable to significantly reduce the value thereof or the income generated thereby, increase the expenses related thereto or restrict the operation thereof;

2° he is not aware of any exclusivity clause which could harm 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 relating to 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 tax laws;

5° he is the sole owner of the ENTERPRISE, or is duly authorized to sign this contract and to accept any agreement relating to the sale of the ENTERPRISE;

6° his community of property spouse consents to and, where applicable, concurs in the acceptance of any agreement relating to the sale of the ENTERPRISE;

7° the ENTERPRISE is not the subject of a brokerage contract with another broker nor the subject of an agreement to sell, exchange or lease it, or the subject of a right of preference or a right of first refusal in favor of a third party;

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° 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.

7.3 The SELLER recognizes the BROKER's right to share his compensation with a collaborating broker even if such broker has no link with the SELLER. The BROKER shall be deemed to have assigned all or part of his claim to a collaborating broker as of the date of signing of the agreement relating to the sale of the ENTERPRISE.

8. OBLIGATIONS OF THE SELLER

- 8.1 During the term of this contract, the SELLER agrees not to, whether directly or indirectly:
1° offer the ENTERPRISE for sale on his own or through a person other than the BROKER;
2° become party to an agreement concerning the sale, exchange or lease of the ENTERPRISE, in whole or in part, other than through the BROKER.
8.2 The SELLER shall supply to the BROKER, as soon as possible, the following documents in his possession: purchase contract or any other title of ownership, tax statements and receipts, insurance documents, leases and documents pertaining to the premises, apparatus and equipment, deed of assignment of leases, documents relating to loans and security, plan, water analysis, soil analysis, environmental report, service and employment contract (with employees or contractuals), collective agreement, proxy and resolution authorizing this agreement, declaration of co-ownership, any act of amendment and the by-laws of the immovable, inventory of movable property, franchise contract, permit, list of creditors, documents concerning the operations and profitability of the ENTERPRISE, declaration of registration and, generally, any document concerning the ENTERPRISE.

- 8.3 The SELLER gives the BROKER the exclusive right:
1° to show the ENTERPRISE, with appointments to be arranged directly with the SELLER. The BROKER may allow other brokers to exercise that right in whole or in part;
2° subject to the restrictions set out in 11.1 or in any annex forming part of this contract, to use any advertising that he deems appropriate. The BROKER may allow other brokers to exercise that right in whole or in part;
3° to obtain from the owner of the immovable where the ENTERPRISE is operated, any information or document pertaining to the immovable.
8.4 Upon request by the buyer, the SELLER shall provide the buyer with the documents listed in 8.2 that he has in his possession.
8.5 Where rendered necessary by the SELLER'S matrimonial regime, the SELLER undertakes to remit to the BROKER, upon request, 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.

9. OBLIGATIONS OF THE REAL ESTATE BROKER

- 9.1 In accordance with standard practice in his field, the BROKER undertakes:
1° to offer the ENTERPRISE for sale honestly, diligently and competently;
2° to submit to the SELLER, as soon as possible, any written promise to purchase the ENTERPRISE which he receives;
3° to make the usual verifications, notably regarding the information used to describe the ENTERPRISE;
4° to inform the SELLER in writing, without delay, of any interest he has or plans to acquire, whether directly or indirectly, in the ENTERPRISE;
5° to inform the SELLER in writing, without delay, that he is also representing the buyer, for compensation, where a brokerage contract with the buyer exists;
6° to notify the SELLER in writing, without delay, that the representative referred to in this contract as acting on behalf of the BROKER is no longer authorized

- 7° to do so and to provide the SELLER with the name of a replacement;
7° to notify the SELLER in writing, without delay, whether or not he agrees to terminate this contract, at the SELLER's request, where the representative designated in the contract as acting on behalf of the BROKER is no longer authorized to do so;
8° to notify the SELLER in writing, without delay, if his real estate broker's certificate is suspended, cancelled or not renewed or if he is otherwise unable to continue to act as a real estate broker.
9.2 The BROKER shall carry out faithfully the obligations imposed upon him by this contract and by law, notably with regards to any advertising that he has undertaken to make, any promises, any guarantees or any other benefits offered to the SELLER or to a potential buyer of the ENTERPRISE.

10. GENERAL

- 10.1 Unless the context indicates otherwise, the masculine form includes the feminine form and vice versa, and the singular includes the plural and vice versa.
10.2 This contract is governed by the laws of Québec.

11. OTHER DECLARATIONS AND CONDITIONS

- 11.1 _____
11.2 ANNEXES The conditions set forth in the annexes designated below form an integral part of this contract:
Annex G – General AG – [] [] [] [] [] Other: _____
11.3 The sale of the ENTERPRISE is conditional to the sale of the immovable referred to in brokerage contract BC-_____. Any promise to purchase concerning the ENTERPRISE shall be conditional to the acceptance of a promise to purchase for this 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.

12. ARBITRATION CLAUSE (OPTIONAL)

12.1 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 BROKER 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.

[Signature box for Broker or his representative]

BROKER OR HIS REPRESENTATIVE

[Signature box for Seller 1]

SELLER 1

[Signature box for Seller 2]

SELLER 2

SIGNATURES

The BROKER acknowledges having read and understood this contract, including the Annexes, and having received a duplicate thereof.

Signed in _____,
on _____

SIGNATURE: BROKER OR HIS REPRESENTATIVE

The SELLER acknowledges having read and understood this contract, including the Annexes, and having received a duplicate thereof.

Signed in _____,
on _____

SIGNATURE: SELLER 1 OR HIS REPRESENTATIVE

SIGNATURE: SELLER 2 OR HIS REPRESENTATIVE

Consent and, where applicable, concurrence of the SELLER's community of property spouse

SIGNATURE: SPOUSE OF SELLER 1

SIGNATURE: SPOUSE OF SELLER 2