Minding your M and As
Representations and Warranties in Deal Documents

[Companies] should pledge themselves to nothing; for reflection makes a liar of their resolution.

---Sophocles

Although Sophocles takes a particularly dim view of humanity’s ability to stick to promises, it is true that many M&A deals foundering on the shoals of reps and warranties. When a deal has gone pear-shaped and the recriminations begin, reps and warranties offer fertile ground for causes of action. Even before that, much of the battle to get a deal closed may center upon the wording, scope, and solidity of the reps and warranties sections of an agreement. The following examples are not intended to be comprehensive, but provide a general introduction into the representations and warranties that one may expect to see in an agreement to purchase a company or its assets. General points for you to consider as you read through these examples:

- **Contract language is in sans serif.** For readability, examples that came directly from legal documents are written in a different font.
- **Provisions can stack.** Generally speaking, the separate provisions of a given rep and warranty are intended to fit together, one after the other.
- **The more detailed a representation is, the more likely it favors the non-representing party.** Regardless of whether you are a buyer or a seller, each rep and warranty from your side can be strongly worded and particular, or more general and diffuse in its description. More detail provides more opportunities to inadvertently misrepresent the Company, or bind the Company to a representation that will serve as the basis for a lawsuit.
- **Disclosures are essential.** Dovetailing the previous point, details that impact the truth of a particular representation should be disclosed. Disclosures are typically scheduled in an exhibit to the purchase agreement.
- **Reps and warranties should mirror due diligence.** If a rep and warranty regarding intellectual property (for example) is the first time anyone has raised the topic of IP, consider how necessary that particular rep and warranty is. Was there a gap in the diligence process, or is this actually not a concern?

**Common Reps and Warranties:**

These reps and warranties are almost always included in purchase agreements, based on their nearly-global applicability to any type of deal. Note that most of these are seller representations, but that some are applicable to (and included for) both parties.

**1. Organization and Authority of a Party.**

In its simplest form, this is often one sentence:

The Company is a corporation duly organized, validly existing, and in good standing under the laws of the State of _______, and has the power and authority to enter into this transaction.
There are sometimes additional qualifications to the concepts of “good standing” and “validly existing.” Most often, these are specific to franchise fees, registration fees, and other state & federal filing requirements:

The Company is a corporation duly organized, validly existing, and in good standing under the laws of the State of ________, and no reports, registrations, license fees, or other fees are due or pending to any federal, state, regional, or local governmental agency. The Company has the power and authority to enter into this transaction.

Depending on the regulatory environment of the seller’s business, buyers might want more assurance that the Company is properly licensed:

The Company is lawfully able to carry on its business as it is now being conducted, and is qualified to do business in every jurisdiction in which the character and location of the assets owned by it or the nature of the business transacted by it requires such qualification, or in which failure to so qualify would have a material adverse impact on it.

And, you could double down on the concept that Company is properly licensed by requiring disclosure of any pending proceedings regarding the Company’s authority to do business:

No proceeding is pending, or to the knowledge of the Company, threatened, involving the Company, in which it is alleged that the nature of its business makes qualification necessary in any additional jurisdiction.

2. Authority to sell/buy.

Authority to enter into and complete the transaction is often separately warranted, even if it’s included in passing in the “Organization” section.

The Company has the full right, power, and authority to enter into this Agreement and each agreement, document, and instrument to be executed and delivered by the Company pursuant to this Agreement. No waiver or consent of any person is required in connection with the execution, delivery, and performance by the Company of this Agreement and each agreement, document, and instrument to be executed and delivered by the Company pursuant to this Agreement.

If stakeholder consent is required, this is sometimes called out separately:

The Company has called for all necessary votes of the [shareholders/members] or obtained all necessary consents of its [shareholders/members], and the [shareholders/members] have, in a majority sufficient to satisfy the Company’s [Bylaws/Operating Agreement], affirmed the Company’s decision to enter into this agreement and carry out any transactions hereto.


Yet another way to secure representations regarding the Company’s legal status and authority to act is to specify that the Company’s records, as disclosed in due diligence, are complete and accurate. This touches on both the legality of the Company’s actions as well as the compliance with stakeholder voting requirements.
Copies of the [Certificate of Incorporation/Articles of Incorporation] of the Company, and all amendments thereto, certified by the Secretary of State of [_______], and of its Bylaws, certified by the Company's Secretary, will be delivered to the Acquirer at least fifteen (15) business days prior to closing. The minute book of the Company: is and shall be complete as of the Closing Date; shall correctly reflect in all material respects all corporate actions of the Company taken at all meetings and through written actions; and shall correctly record all resolutions of the Company.

4. Capitalization.

This is a (hopefully) straightforward representation of the Company’s current ownership:

The Company’s authorized capital stock consists solely of ________ shares of common stock, of which ________ shares are issued and outstanding, and ________ authorized shares of preferred stock, of which ________ shares are issued and outstanding. All shares of Company stock are owned of record and beneficially by the shareholders in the amounts set forth in Exhibit [__]. Of the authorized common stock, ___________ shares have been reserved as a part of the Company’s [Year] Stock Incentive Plan, attached to this Agreement as Exhibit [__].

LLC capitalization reps may have different terminology:

The Operating Agreement of the Company provides for __________ Class A Common Units, __________ Class B Preferred Units and __________ Profits Interest Units. Of this amount, __________ Common Units are issued and outstanding, and __________ Class B Preferred Units are issued and outstanding. As of the Closing Date, no Profits Interest Units will have been issued.

Note that, in each case, the Company may also need to include a description of any outstanding convertible debt, as well as more detail on options plans or profits interest plans. There are additional reps that buyers should usually require, including an absence of gotchas associated with the stock they will receive in a stock purchase transaction:

There are no outstanding dividends, whether current or accumulated, due or payable on any of the capital stock of the Company. The stock to be issued to the Acquirer is, and when delivered pursuant to this Agreement will be, (i) duly authorized, validly issued, and outstanding; (ii) fully paid, non-assessable, and free of pre-emptive rights; and (iii) free and clear of any and all pledges, claims, restrictions, charges, liens, security interests, encumbrances, or other interests of third parties of any nature whatsoever. As of the Closing Date, and except as enumerated above, there are no outstanding options, warrants, rights, commitments, or agreements of any kind for the issuance or sale of, or outstanding securities convertible into, any additional shares of capital stock of any class of the Company, and there are no voting trusts, voting agreements, proxies, or other agreements, instruments, or undertakings with respect to the voting of any Company stock to which the Company or any of its shareholders is a party.
5. Financial Statements.

This is normally straightforward, and essentially says “we’re not lying,” but even boring provisions can have issues:

The Company's financial statements fairly present the financial condition of the Company at the dates of said statements and the results of its operations for the periods covered thereby and will be prepared in accordance with generally accepted accounting principles and practices consistently applied and consistent with the books and records of the Company.

Emphasis on GAAP because many sellers will not have kept their books in strict accordance with GAAP. This may be a frequent source of disclosures, or it could simply be edited out if the buyer is satisfied with the state of the books. However, even if not insisting on full GAAP, buyers can insert a “no gotchas” provision that relies on GAAP as a standard for conduct in financial reporting:

To the knowledge of the Company, as of the dates of the Company's financial statements, the Company had no liabilities, either accrued or contingent, of a nature required to be reflected in the financial statements in accordance with generally accepted accounting principles, and whether due or to become due, which individually or in the aggregate are reasonably likely to have a material adverse effect on the Company.

6. Title to Properties and Assets; Liens; Condition of Equipment.

This representation can be quite extensive, depending on the nature of the business being acquired. The representation will change significantly depending on the importance of the equipment, physical space, or both to the strategic and commercial success of the enterprise after acquisition. The following is a baseline representation:

(a) Exhibit [__] presents an accurate and complete list of all of the Company's leasehold interests in real and material personal property and, if applicable, all liens, mortgages, or other encumbrances upon each leasehold interest. All leases to which the Company is a party are currently in full force and effect, and no party thereto is in default.

(b) The Company owns the equipment, furniture, fixtures, improvements, and personal property set forth on Exhibit [__]. The Company has good title to all of such assets and none of the assets of the Company are subject to any mortgage, pledge, lien, conditional sales agreement, security interest, encumbrance, or other charge except as specifically reflected in the Exhibit [__].

(c) All equipment owned or leased by the Company is in good repair and in working order, except for ordinary wear and tear.

This can and should become more complex if you represent the buyer. For example, a representation regarding the warranty terms for equipment, service agreements with vendors or third parties, and other agreements or records relevant to the proper functioning of the equipment might be appropriate. The buyer may be assuming leases, or the buyer may be leasing space from the seller in an asset sale. In either case, a representation regarding the provision of full and accurate documents regarding transfer or assignment of both leasehold interests in real property and secured lease agreements for equipment might be useful.
7. Taxes.

Again, there can be complexities in this provision that this survey cannot cover in sufficient depth. Buyers will want to paint with a broad brush, and should also consider an indemnity against tax liabilities originating from the time before the closing date. Sellers would rather sell the company “as is.” A fairly balanced rep & warranty might look like this:

(a) Returns and Payments. The Company has filed all tax returns required to have been filed. All such tax returns were correct and complete in all material respects. All taxes owed by the Company (whether or not shown on any tax return) have been paid or provided for in the Company’s financial statements. The Company currently is not the beneficiary of any extension of time within which to file any tax return. To the Company's knowledge, no claim has ever been made by an authority in a jurisdiction where the Company does not file tax returns that it is or may be subject to taxation by that jurisdiction. There are no actual, pending or, to the Company's knowledge, threatened liens, encumbrances, or charges against any of the assets of the Company arising in connection with any failure (or alleged failure) to pay any tax.

(b) Withholding Taxes. The Company has withheld and paid all taxes required to have been withheld and paid in connection with amounts paid or owing to any employee, independent contractor, creditor, shareholder, or other third party.

(c) Tax Liabilities. To the Company's knowledge, there is no dispute or claim concerning any tax liability of the Company either claimed or raised by any authority in writing.

(d) Statute of Limitations. The Company has not waived any statute of limitations in respect of taxes or agreed to any extension of time with respect to a tax assessment or deficiency.


This seller’s representation is variously called “Absence of Certain Changes,” “No Material Change,” “No Adverse Changes,” and so forth. The representation states that the “snapshot” of the Company, provided as of a specific date, is complete and accurate, and that no alterations in the condition of the Company in the time period between the snapshot date and the closing date:

Since [date], there has not been:

(a) any operation of the Company out of the ordinary course of business or any change in the financial condition, properties, assets, liabilities, business, prospects or operations of the Company which change, by itself or in conjunction with all other such changes, has been or is likely to be materially adverse with respect to the Company;

(b) any purchase, sale, license, or other disposition, or any agreement or other arrangement for the purchase, sale, license, or other disposition, of any part of the Company’s properties or assets (including any patents, trademarks and copyrights) other than purchases for and sales from inventory in the ordinary course of business;

(c) any damage, destruction, or loss, whether or not covered by insurance, to the Company’s properties, assets or business in excess of [$________] per single occurrence;
(d) any change with respect to the Company's officers, management, supervisory personnel, [or Key Personnel] other than in the ordinary course of business;

(e) any payment or discharge of a lien or liability of the Company which has been paid or incurred other than in the ordinary course of business;

(f) any obligation or liability incurred by the Company to any bank, to any officer, director, or employee of the Company, other than in the ordinary course of business; or any loans or advances made by the Company to any officer, director, employee, or stockholder of the Company, except for normal compensation and expense allowances payable to such persons;

(g) any change in the accounting methods or practices followed by the Company or any change in depreciation or amortization policies or rates heretofore adopted;

(h) any material change in the manner in which inventory of the Company is marketed or any increase in inventory levels in excess of historical levels for comparable period;

(i) any issuance of any evidence of indebtedness or creation, incurring, assumption, or guaranteeing of any indebtedness for borrowed money or capital lease obligations involving in excess of [$________] singly or [$________] in the aggregate;

(j) any delay or postponement of payment of any accounts payable or other liabilities outside the ordinary course of business, except for managing accounts payable;

(k) any declaration, setting aside or payment of any dividend or distribution with respect to its capital stock, or redemption, purchase, or other acquisition of its capital stock;

(l) any change in the employment terms or employment-related benefits for any independent sales representative or employee outside the ordinary course of business; or

(m) any agreement or understanding, whether in writing or otherwise, for the Company to take any of the actions specified in paragraphs (a) through (l) above.

The above example is tilted fairly heavily toward buyers. Sellers will want to limit their disclosure requirements on this section as much as possible. If you represent a seller, it goes without saying that a signed letter of intent is not a license to party, gamble, or otherwise fail in your fiduciary duty to the Company. As a practical matter, the representations and warranties contained in any omnibus “no material change” section will touch on aspects of many other representations and warranties. As a result, disclosures here will likely be echoed elsewhere in the disclosure schedule.


Commonly, both sides will represent and warrant that they are not paying a brokerage fee, unless such fee is already disclosed:

The Company has not incurred nor will incur or become liable for any broker’s commission or finder’s fee relating to or in connection with the transactions contemplated by this Agreement, except as described in Exhibit [__].
Deeper Dive Financial & Operational Reps:

Depending on the nature of the transaction, buyers may want as clear a picture as possible regarding specific aspects of the seller’s business operations. The representations in this section each poke at a particular aspect of the Company’s profits and losses, balance sheet, or operational capacity.

1. Accounts Receivable and Accounts Payable Reps.

The buyer may want to know the specific details of AR accounting, and not only because of the impact on the Company’s bottom line. There may be some reliance on the continuity of such accounts after the acquisition, or there may also be a need to plan and coordinate public relations and vendor relations.

**Accounts Receivable.** A complete and accurate listing of all accounts receivable of the Company as of [date] accurately reflecting the aging thereof is attached hereto as Exhibit [__].

**Accounts Payable.** A complete and accurate listing of all accounts payable of the Company as of [date] is attached hereto as Exhibit [__].

Other types of businesses may have additional or related provisions. A buyer involved in a transaction for a software-as-a-service (SaaS) company, for example, may want to have some representations around churn rate, or subscriber attrition.

2. Inventory.

Inventory-heavy sellers may be asked to represent that their inventories are suitable and properly accounted for:

All of the Company's inventories, materials, and supplies consist of items of quality and quantity, in good condition and usable or salable in the ordinary course of business. The values of the inventories stated in the financial statements reflect the Company's normal inventory valuation policies and were determined in accordance with generally accepted accounting principles, practices, and methods consistently applied.


This should arguably be in the “Standard” section, and certainly if you represent a buyer you would prefer for something of this type to be included. Sellers would probably rather produce this information as a diligence item, without being bound to a full blown rep and warranty.

Except for contracts, commitments, plans, agreements and licenses listed in Exhibit [__], the Company is not a party to or bound by any written or oral contract which calls for any of the following: (a) delivery of any goods or services at a cumulative value in excess of [$________] per year, or which obligates the contracting party for a fixed term; (b) loans, credit, financing agreements, promissory notes, or other evidences of indebtedness (including all agreements for any commitments for future loans, credit or financing); (c) any guaranty pledging Company assets, equipment, or accounts receivable as security for a form of indebtedness; or (d) any contract, commitment, or arrangement where the default or breach of the Company would result in the loss of equity, property, equipment, or other assets to a degree that would have a material adverse impact on the Company.
If you do include a material contracts provision, make sure that the definition of “materiality” is clear and concise. The example above establishes three types of “material contracts,” and then features a catch-all provision.

4. Shenanigans.

More often titled “Absence of Questionable Payments,” “No Inside Dealing,” or a similar “affirmation of absence of wrongdoing” heading, these provisions say that there no graft has occurred, that the officers, directors, employees, and agents of the Company have clean hands, and so forth.

The Company has not used any corporate or other funds for any unlawful contributions, payments, gifts, or entertainment, or made any unlawful expenditures in any way relating to any political activity, government officials, or others. Neither the Company, or any affiliated entity, nor any director, officer, agent, or employee or other person authorized to act on behalf of the Company, or any affiliated entity, has accepted or received any unlawful contributions, payments, gifts, or expenditures.

**Intellectual Property and Trade Secrets:**

The content of IP reps and warranties can change dramatically based on industry. Circling back to our SaaS example, the vast majority of the Company’s value may rest within its IP portfolio. By contrast, a bakery may have some trade secrets, and some brand value, but the IP reps and warranties may be substantially less involved.

1. Intellectual Property.

The following is a vanilla IP provision, to which you may add additional provisions in favor of buyer.

(a) All domestic and foreign patents, patent applications, copyrighted works, copyright applications, and registrations, trade names, trademarks and service marks, registered trademarks, and trademark applications, registered service marks and service mark applications which are used by, owned by or licensed to the Company (collectively, the "Intellectual Property") are listed in Exhibit [___], which schedule indicates, with respect to each, the nature of the Company's interest therein and the expiration date thereof or the date on which the Company's interest therein terminates.

(b) To the knowledge of the Company, (i) use of the Intellectual Property and any other intellectual property used by the Company does not require the consent of any other person and the same is freely transferable (except as otherwise provided by law or pursuant to the applicable license or use agreement); (ii) the Intellectual Property is owned exclusively by the Company, free and clear of any attachments, liens, encumbrances, or adverse claims; and (iii) neither the Company's present or contemplated activities, products, or services infringe, misappropriate, dilute, impair, or constitute unfair competition with respect to any patent, trade name, trademark, copyright, or other proprietary rights of others.

(c) To the knowledge of the Company, no other person has an interest in or right or license to use, or the right to license others under, the Intellectual Property. To the knowledge of the Company, there is no infringement of any of the Intellectual Property by others, nor is any of the Intellectual Property subject to any outstanding order, decree, judgment,
stipulation, settlement, lien, charge, encumbrance, or attachment. No claim or demand has been made and no proceeding has been filed or, to the knowledge of the Company, is threatened to be filed charging the Company with infringement of any patent, trade name, trademark, service mark, or copyright. To the knowledge of the Company, there are no royalties, fees, or other payments payable by or on behalf of the Company to any person with respect to any of the Intellectual Property.

A critical area of concern for both buyers and sellers of software companies is the inclusion of open source code, libraries, architecture elements, and other code snippets. If you are a software company that aspires to one day be acquired, or you are a company in the habit of acquiring software companies, then the records concerning the origin, licensing, and interaction of open source components with the Company’s code base is one of the single most important due diligence items in any transaction. As a potential seller, you can save a great deal of later work by maintaining a log of your codebase and alterations to the codebase over time. As a potential buyer, the absence of such a log means that the rep and warranty above is substantially less useful than it might otherwise be. All of the provisions are constrained by “the knowledge of the Company,” and if the Company doesn’t know, then these reps are not worth much. One solution is to require a code audit, but this can delay or even derail closing. As an additional protection, you can consider a provision specifically addressing open source:

A complete and correct list of code, libraries, database architectures and protocols, and any other packaged code snippets distributed under an open source license (collectively, “Open Source Components”) is attached as Exhibit [__]. To the knowledge of the Company, each license for any such Open Source Component: requires no licensing fee or royalty in connection with the use of the Open Source Component in a commercial or proprietary software product; permits the use of the Open Source Component in the development of commercial, limited license, or proprietary code, programs, or other products; and establishes duplication, distribution, and sublicensing rights that permit the subsequent distribution of the Open Source Component in a software product or other application. Exhibit [__] includes a complete and correct log of the alterations to the Open Source Components that the Company [reasonably] believes to be its own Intellectual Property.

This is by no means perfect, and is no substitute for due diligence.

2. Trade Secrets, Customer Lists, and other elements outside the definition of IP.

This will often have more relevance to a non-software transaction:

The Company owns or has the right to use, free and clear of any claims or rights of others, all trade secrets, inventions, developments, customer lists, software, and other information and know-how (if any) used in its business. To the knowledge of the Company, the Company is not making any unlawful use of any confidential information, copyrighted materials, know-how, or trade secrets of any third party, including, without limitation, any former employer of any present or past employee of the Company.

Depending on circumstances, buyers might want to consider additional representations and warranties that individuals who are leaving the Company as a result of, or as a condition to, the control of the Company have executed valid covenants not to compete, and to hold the Company’s trade secrets as confidential.
Employment and Employees:

This section focuses on commonplace reps and warranties regarding employees, and does not pretend to be comprehensive. There are significant considerations relating to employees, including:

- Subsequent to the acquisition, who is responsible for the administration and management of payments to already-retired employees pursuant to a pension or retirement plan.
- The promises of a defined set of Key Employees to either stay in their present positions, or take on roles at the acquiring company.
- The status and sufficiency of non-competition, non-solicitation, and other protective agreements between the Company and its employees.
- Assurances that the Company will continue to employ people post-acquisition (or the lack of any such assurances).

Some of these topics are touched on below, but the example provisions may change dramatically depending on context.

1. Employee Benefit Plans.

The implications surrounding benefit plans could fill an hour on its own. The following language protects the buyer from any irregularities in plan administration that may give rise to tax liability under the IRC or ERISA. It is extremely unlikely that these are the only considerations. Buyers are cautioned to consider:

- whether there are nonqualified plan liabilities lurking behind the Company’s hiring incentives or “signing bonuses;”
- whether executive compensation agreements are “plans” or simply features of specific employment agreements;
- what, if any, impact that union requirements or collective bargaining agreements might have on the provision of benefits into the future;
- whether the buyer can simply terminate all the plans and start fresh; and so on.

(a) All employee benefit plans, as that term is defined in Section 3(3) of ERISA, and fringe benefit plans, as that term is defined in Section 6039D(d) of the Internal Revenue Code, which now are or ever have been maintained by the Company or to which the Company now has or has ever had an obligation to contribute (the "Employee Benefit Plans") are listed in Exhibit [__]. No event has occurred nor has there been any omission which would result in violation of any laws, rulings, or regulations applicable to any employee benefit plan. There are no claims pending or, to the knowledge of the Company, threatened with respect to any employee benefit plan, other than claims for benefits by employees, beneficiaries, or dependents arising in the normal course of the operation of any such plan.

(b) Each Employee Benefit Plan that is intended to be qualified under Section 401(a) or 401(k) of the Internal Revenue Code is identified as a "Qualified Plan" on the schedule of employee benefit plans and has in fact been so qualified from the effective date of its establishment and continues to be so qualified. No event or omission has occurred which would cause any such plan to lose its qualification under Section 401(a) or 401(k) of the Internal Revenue Code, or which would cause the Company to incur liability for any excise tax under the Internal Revenue Code with respect to the maintenance, operation, or any other aspect of any such Qualified Plan.

(c) With respect to each "group health plan" (as defined in Section 607(1) of ERISA) that has been maintained by the Company, all notices required pursuant to Section 606 of
ERISA have been provided on a timely basis and each such plan has otherwise complied in all material respects with the requirements of Sections 606 through 608 of ERISA.

(d) With respect to each Employee Benefit Plan (as that term is defined in Section 3(3) of ERISA) maintained by the Company within the three years preceding the Closing Date, complete and correct copies of the following documents have been delivered to the Purchaser: (i) all documents embodying or governing such Employee Benefit Plan; (ii) the most recent IRS determination letter with respect to such Employee Benefit Plan; (iii) the three most recently filed IRS Forms 5500, with all applicable schedules attached thereto; (iv) the three most recent actuarial valuation reports completed with respect to such Employee Benefit Plan; (v) the summary plan description for such Employee Benefit Plan; and (vi) any insurance policy related to such Employee Benefit Plan.

2. Labor Relations; Employee Disputes.

As discussed above, the following example does not cover hold-over or employment agreements specific to certain key employees. Rather, it is a more generic rep and warranty that the Company is not a terrible place to work, that there are no pending lawsuits, investigations, or other proceedings regarding employees, whether individually or as a group.

The Company generally enjoys a good employer-employee relationship. Each employee of the Company who is compensated in the aggregate in excess of $________ annually and his or her current rate of compensation is listed, together with a list of any employment agreement, in Exhibit [__]. The Company is not delinquent in payments to any of its employees for any wages, salaries, commissions, bonuses, or other direct compensation for any services performed for it to the date hereof or amounts required to be reimbursed to such employees. Upon termination of the employment of any of the Company's employees, the Company will not be liable to any of such employees for "severance pay" or any other payments. To the knowledge of the Company, the Company is in compliance with all applicable laws and regulations respecting labor, employment, fair employment practices, terms and conditions of employment, and wages and hours. To the knowledge of the Company, there are no charges of employment or age discrimination, sexual harassment or unfair labor practices, claims by employees against the Company or strikes, slowdowns, stoppages of work or any other concerted interference with normal operations existing, pending, or threatened against or involving the Company. No question concerning representation exists respecting the employees of the Company. No grievance or any arbitration proceeding arising out of or under collective bargaining agreements is pending, and no claim therefor has been asserted. No collective bargaining agreement is in effect or is currently being or is about to be negotiated by the Company.
**Litigation and Other Bad Things:**

The Company may be expected to warrant that no actions are outstanding against it. Depending on the size and complexity of the deal, these may all be treated as “standard” reps and warranties, but if you are the seller, some of these are unpleasant.

1. **Litigation.**

The simplest versions of these simply state that there are no pending suits:

There are no lawsuits, actions or administrative, arbitration or other proceedings or governmental investigations pending or threatened against or relating to the Company or the Company’s properties or business. The Company has not entered into or been subject to any consent decree, compliance order, or administrative order with respect to any property owned, operated, leased, or used by the Company. The Company has not received any request for information, notice, demand letter, administrative inquiry, or formal or informal complaint or claim with respect to any property owned, operated, leased, or used by the Company or any facilities or operations thereon.

In circumstances where environmental responsibility is an issue, it is standard to (at a minimum) call out a lack of interest from the EPA:

The Company has not been named by the U. S. Environmental Protection Agency or a state environmental agency as a potentially responsible party (or similar designation under applicable state law) in connection with any site at which hazardous substances, hazardous materials, toxic substances, oil, or petroleum products have been released or are threatened to be released.

One choice in drafting is whether to also bundle in product liability or warranty issues, or to have separate reps and warranties for each. The below language wraps such issues into the “Litigation” rep & warranty:

There are no existing or, to the knowledge of the Company, threatened product liability, warranty, or other similar claims, or any facts upon which a claim of such nature could be based, against the Company for services or products which are defective or fail to meet any service or product warranties which could reasonably be expected to have a material adverse effect on the Company.

2. **Separate Reps & Warranties for Product Liability, Warranty, and Recall Issues.**

In manufacturing or consumer product contexts, it is often in the buyer’s interest to separately identify warranty and product liability claims against the Company.

**Warranties and Products.** The Company has not sold, or received written notice of, any product or group of products, service or type of services which are defective or nonconforming to the warranties, contractual requirements or covenants expressly made with respect to them by the Company to its customers which have not been repaired, replaced, or corrected prior to the Closing Date.
**Product Liability Claims.** To the Company's knowledge, the Company is not subject to any known asserted claims for liability on account of products sold or services rendered on or prior to the Closing Date, which are not fully covered, including all costs of defense and investigation related to such claims, by its or its vendors' general liability insurance policies.

**No Recalls.** To the Company’s knowledge, there have been no voluntary or administratively enforced recalls of the Company’s products, based on (i) consumer reports to the Company or any regulatory authority; or (ii) actual or inferred knowledge of a defect that would subject a product to mandatory recall, prior to or on the Closing Date. To the Company’s knowledge, no proceeding, investigation, or enforcement action is pending or threatened regarding a mandatory recall as of the Closing Date.

3. **Compliance with Laws.**

This often overlaps with other reps and warranties, particularly those in the “Standard” section above. In highly regulated industries, it is in buyer’s interest to ensure that this provision is specific to the regulations in question, and that it calls out any unique aspects or requirements of compliance.

The Company is not in material violation of any laws, rules, or regulations which apply to the conduct of its business or any facilities or property owned, leased, operated, or used by the Company. There has never been any citation, fine, or penalty imposed, asserted, or threatened against the Company under any foreign, federal, state, local, or other law or regulation relating to employment, immigration, occupational safety, zoning, or environmental matters and the Company is aware of no current circumstances likely to result in the imposition or assertion of such a citation, fine, or penalty.

4. **Insurance.**

Buyers will want this representation to remain valid up to and including the closing date, but sellers will not want to remain responsible for payments of premiums post-closing. It’s common to split financial responsibility down the middle on the closing date, with buyer responsible for all costs afterward, and seller for all costs before.

The physical properties and assets of the Company are insured to the extent disclosed in Exhibit [__]. All such present policies of insurance are, and will be on the Closing Date, in full force and effect. The Company is not in default in the payment of any premiums with respect thereto, and the Company is in compliance with the terms thereof. The workers’ compensation insurance of the Company complies with applicable statutory requirements as to the amount of such coverage.