Why Purchase Representations and Warranties Insurance?

Why Buyers Request Coverage:

- **Buyer is unable to obtain desired level of seller indemnification:** the buyer wants to increase the aggregate indemnification amount provided for in the acquisition agreement (e.g., buyer is in a weak negotiating position, a competitive auction situation, or acquiring a business from a financially-distressed seller or an investment fund that is being liquidated).
- **Buyer is unable to obtain the duration of indemnification it wants:** the buyer wants to extend the survival periods provided for in the acquisition agreement (e.g., from one year to three years).
- **Buyer wants to distinguish its bid over other bids in competitive auction:** by requesting a lower than customary level indemnification, a buyer can distinguish its bid in an auction.
- **Buyer is concerned about its ability to collect on the indemnity:** the seller is having, is expected to have, or may have financial difficulties. Pursuing claims for indemnification may be fraught with practical difficulties and may be expensive (e.g., the seller(s) may be geographically dispersed or otherwise difficult to locate, outside the reach of the relevant court(s), or may have dissolved or otherwise ceased to exit post-closing.
- **Buyer wants to protect its deal:** the buyer wants to avoid the risk of losing a critical deal by entering into a long and contentious negotiation with the seller over the appropriate level of indemnification. The buyer believes insurance will be less costly than the increased consideration the seller will demand to provide an equivalent level of indemnification.
- **Buyer wants to protect key relationships:** the buyer values its pre-existing commercial relationship with the seller and/or its affiliates and wants to avoid a long and contentious negotiation with the seller over the appropriate level of indemnification and having to sue the seller in the event of a breach. The buyer may also want to avoid making a claim against those key employees/shareholders (e.g., a founder) that it now employs.
- **Buyer wants to supplement its due diligence efforts:** the buyer is entertaining a new and unfamiliar line of business or geographical area and wants protection above and beyond the seller's indemnity.

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Why Sellers Request Coverage:

- **Seller wants to reduce the risk of contingent liabilities:** the seller wants to "lock in" its return on investment (e.g., a financial seller) or wants to make a "clean break" and reduce the risk of contingent liabilities associated with the sale (e.g., a seller that wants to completely exit a line of business).
- **Seller wants to distribute sale proceeds:** the buyer wants to extend the survival periods provided for in the acquisition agreement (e.g., from one year to three years).
- **Seller is motivated by strategic considerations:** the seller wants to get a better price for the company by expanding the pool of potential buyers by offering an indemnity greater than it would otherwise be willing or able to provide or the seller wants to eliminate obstacles to completion of sale.
- **Seller wants to supplement its due diligence and disclosure process:** the seller is concerned about unintentional non-disclosure and has not controlled, or has not been actively involved in the management of, the business for a substantial period of time.
- **Seller is motivated by financial considerations:** the seller desires greater certainty in the sale price and wants to reduce the risk of contingent liabilities associated with the sale.
- **Seller needs to address stakeholder concerns:** the seller wants to provide additional comfort to its board of directors, lenders, advisors, and other stakeholders.

To learn more about transactional insurance products:

Why Sellers Request Coverage:
MAInsurance@aig.com

Visit:
www.aig.ca/mergersandacquisitions

Contact:
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