



## Intermediate Level (Level 2)

### M&A Documentation: Term Sheet (Share Sale)

## Buy-Side Negotiation Points

To effectively negotiate from the buy-side (representing Global Energy Solutions Corp.) in this acquisition of SolarTech Innovations, Inc., here are some key negotiation points and strategies to consider:

### 1. Valuation and Purchase Price

- **Negotiation Leverage:** Use market comparisons and financial analysis to challenge SolarTech's proposed premium valuation. Highlight risks and uncertainties in the renewable energy market that might justify a lower price.
- **Payment Structure:** Propose a structured deal that could include a mix of cash, stock, and performance-based earnouts to protect Global Energy against potential future performance shortfalls.

### 2. Employee Integration

- **Cost Efficiency:** While recognizing the importance of job security for SolarTech's employees, emphasize the need for operational efficiency post-acquisition. Propose a phased integration plan with potential reallocations or reductions based on redundant roles or functions.
- **Key Personnel:** Identify critical personnel needed for continued innovation and offer targeted retention bonuses. This strategically limits broad guarantees of job security, focusing on essential talent only.

### 3. Royalty Payments

- **Cap on Royalties:** While agreeing to royalty payments for SolarTech's proprietary technologies, negotiate caps or sunset clauses on these payments to limit long-term

financial obligations. For example:

## Example of a Sunset Clause

- A sunset clause specifies when certain rights or obligations under a contract will expire. In the context of royalty payments for proprietary technology, a sunset clause could be formulated like this:

### Royalty Payments Sunset Clause:

*"The Buyer agrees to pay the Seller a royalty of 5% of net sales of the patented solar panel technology. This royalty payment shall be due on a quarterly basis and shall continue for a period of 10 years from the date of closing the acquisition. Following this 10-year period, all obligations to make royalty payments shall cease, irrespective of continued product sales."*

## Example of a Cap

- A cap sets a maximum limit on the financial exposure or obligation of one of the parties in a contract. For royalty payments, a cap could be implemented in various ways, such as capping the total dollar amount payable or capping the duration those payments are made. Here's an example:

### Royalty Payment Cap Clause:

*The Buyer shall pay the Seller a royalty of 5% of net sales of products utilising the Seller's patented technology. However, the total amount of royalty payments shall not exceed \$2 million over the lifetime of the agreement. Once this cap is reached, no further royalty payments will be due."*

## Combined Use of Sunset Clause and Cap

- Combining both a sunset clause and a cap can provide clear limits on both the duration and total financial liability associated with ongoing royalty payments:

### "Combined Royalty Cap and Sunset Clause:

*The Buyer shall pay the Seller a royalty of 5% of net sales of products incorporating the patented technology. These payments will continue until either:*

*A total of \$2 million in royalties has been paid, or*

*A period of 10 years has elapsed from the date of the agreement's execution,*

*whichever occurs first. After either condition is met, the Buyer's obligation to pay further royalties will terminate."*

- **Ownership of Innovations:** Push for full ownership rights to future innovations developed from existing SolarTech technology post-acquisition, minimising ongoing royalty payouts.

#### 4. Integration Process

- **Autonomy vs. Integration:** Negotiate the degree of autonomy SolarTech will retain. Propose a governance model that allows for oversight and strategic direction from Global Energy to ensure alignment with broader corporate objectives.
- **Brand Strategy:** Discuss how SolarTech's brand will be integrated into Global Energy's portfolio. Consider proposing a gradual phase-out of the SolarTech brand in favor of a unified corporate identity to streamline marketing and customer relations.

#### 5. Non-Compete Clauses

- **Scope and Duration:** Advocate for broad and long-duration non-compete clauses to prevent SolarTech's founders and key executives from starting or joining competing ventures, protecting your investment.

#### 6. Due Diligence

- **Comprehensive Evaluation:** Insist on a thorough due diligence process to meticulously verify all of SolarTech's financial claims, technological capabilities, and legal compliances.
- **Timeline:** Propose a timeline that allows sufficient scope for detailed assessment without unnecessarily prolonging the acquisition process.

#### 7. Execution

- **Preparation:** Research thoroughly to understand not just the financials but also the strategic fit of SolarTech within Global Energy's long-term goals.
- **Negotiation Dynamics:** Enter negotiations with flexibility, recognizing that achieving all buy-side objectives may require concessions in less critical areas.
- **Final Terms:** Strive for a term sheet that protects Global Energy's interests, maximizes return on investment, and sets clear guidelines for the post-acquisition phase.

These strategies aim to balance securing a favorable deal for Global Energy Solutions Corp. with maintaining the vital assets and personnel of SolarTech Innovations for future growth.