

Vehicle Purchase and Sale Agreement

This “**Agreement**” is made, effective the last date written in the signature blocks below, between **INDIRA BALRAM**, a resident of Houston, Harris County, Texas, whose address for notice is ____ (“**Seller**”); and **THOMAS __ ROGERS**, a resident of Sugar Land, Fort Bend County, Texas, whose address for notice is ____ (“**Buyer**”).

EFFECTIVE DATE: It’s usually best to have the effective date be the last date signed (which is approximately the way it would work by law anyway) unless there’s a good reason to do otherwise.

BOLD-FACED CAPITALIZED PARTY NAMES help the reader quickly identify the parties at a glance; that can be very useful for a reader who has to deal with a lot of contracts.

FULL LEGAL NAMES are normally best (if available).

RESIDENCE: Reciting the city, county, and state of each party’s residence can be useful if a lawsuit is later required – it helps prove up the facts necessary to support personal jurisdiction and venue.

IN-LINE DEFINED TERMS: For an agreement this simple, it’s best to define terms “in-line” unless the document will be repeatedly used as a form, in which case it likely will be easier to define the variables in a table at the beginning.

FORMATTING OF DEFINED TERMS: It’s helpful to put defined terms in bold and italics to make them easier to spot.

RUNNING FOOTER: A descriptive running footer of the kind shown below is handy if a hard copy of the document is in a file folder with two-hole punching at the top.

1. **Purchase and sale:** At the Closing (defined below), Seller will sell to Buyer, and Buyer will buy from Seller, a 20xx red Acura model ____ with vehicle identification number (VIN) xxxxx (the “**Car**”), for \$11,000 (the “**Purchase Price**”), as set forth in more detail below.

NUMBERED PARAGRAPHS make future references easier.

EXECUTIVE SUMMARY: Note how this first paragraph serves as an executive summary of the transaction.

NO BACKGROUND SECTION: Here, a Background section would be redundant; the executive summary in this paragraph is all that’s needed.

NO “WHEREAS” CLAUSES: Enough said.

NARRATIVE FORM: The contract tells a story, in future tense – that’s often easier for a casual- or first-time reader to understand.

“AT THE CLOSING”: This phrase assigns a specific time and place to the obligation.

“(DEFINED BELOW)”: This parenthetical phrase reassures the reader that s/he hasn’t missed something.

“SELLER WILL SELL,” ETC.: “Sell” by itself is perfectly fine. Don’t use the repetitive “sell, assign, convey,” etc. While a few extra words can be cheap insurance, it’s not always necessary and sometimes makes a sentence look too legalistic.

“WILL” VS. “SHALL”: I prefer to use “will” instead of “shall” for reasons of reader psychology: The former sounds more cordial than the latter, while still being legally binding.

“WILL SELL” and “WILL BUY” – note the use of active voice.

“BUY” VS. “PURCHASE”: The former is more colloquial.

DON’T SAY “AGREES TO SELL”: Most of the time you don’t want to say “Seller agrees to sell” or “Buyer agrees to buy”; that’s implied already. *EXCEPTION:* In employment- or consumer agreements, it might make sense to use “Employee agrees to do X” to help counter an argument that the employee or consumer supposedly didn’t understand that s/he was agreeing to do X.

DON’T SPELL OUT THE PRICE: Don’t write “eleven thousand dollars (\$11,000)” – it’s unnecessary and can lead to trouble if the words are updated but not the numbers, or vice versa.

SHORT PARAGRAPHS are best – they’re easiest to read (usually).

SINGLE-TOPIC PARAGRAPHS are best when possible, because they make it easier to revise the document during negotiations. (In many cases, single-sentence paragraphs are best of all.)

SHORT, SIMPLE SENTENCES are best. (HINT: Ask yourself, “How would this sentence look on a PowerPoint slide displayed to the jury?”)

IN-LINE HEADINGS: For a contract this simple, it’s often preferable (and shortens the document) to use in-line headings instead of separate heading lines.

WHITE SPACE makes the document more readable. I like to use 1.2-line spacing for paragraphs, with 12 points above or below (but not both) each paragraph.

2. **Closing:** The “**Closing**” of the purchase and sale contemplated by this Agreement is to take place at 9:00 a.m. on March 31, 2013, at [ADDRESS], or such other place and time as Seller and Buyer agree.

“IS TO TAKE PLACE”: This phrasing is less passive than “The Closing ... will take place”

3. **Seller’s obligations at Closing:** At the Closing, Seller will deliver the following to the Buyer:

ACTION CHECKLIST: Note how the subparagraphs below serve as a handy checklist of things that Seller must be prepared to do at the Closing.

“WILL DELIVER”: Note the use of active voice.

ALIGNMENT: Note how the subparagraph numbers [letters] are aligned with the first word of the “parent” paragraph.

- (a) the Car;

INDENTED NUMBERED SUBPARAGRAPHS FOR LIST: Even though you want to try to minimize your paragraph indentations, it’s often helpful to the reader to format a list like this as a series of indented subparagraphs.

Another possibility is to do an “in-line” list such as, “Seller will deliver to Buyer: (1) the Car; (2) the keys to the Car; and (3) the electronic ‘clickers’ to the Car”

SEMI-COLONS: When you have a list of items, it’s customary to use semi-colons, not commas, to separate the list items.

- (b) the keys to the Car;

- (c) the electronic “clickers” (keyless remotes) for the Car; and

“CLICKERS”: Note the use of a colloquial but universally-understood term.

- (d) the title to the Car, duly signed by Seller to transfer ownership to Buyer.

- 4. **Buyer’s obligations at Closing:** At the Closing, Buyer will deliver the Purchase Price to Seller in the form of a certified check or other means acceptable to Seller. [BUYER’S VERSION: or other means reasonably acceptable to Seller].

FORM OF PAYMENT: In a more-complicated transaction, the form of payment might need its own section, but for this deal, it’s fine where it is.

CASHIER’S CHECK: This gives Buyer a “safe harbor,” a form of payment that Seller has definitively agreed to accept.

- 5. **Seller’s representations and warranties**

NOTE: If Seller is making only representations, or only warranties, the heading of this section would need to be changed.

WARRANTS VS. REPRESENTS: See the course notes on Representations and Warranties.

- (a) Seller warrants to the Buyer [BUYER’S VERSION: represents and warrants to the Buyer and <other parties>.] that the Car is in good operating condition, normal wear and tear excepted.

“TO THE BUYER”: A lawyer representing a warranting party (or a representing party) should always consider inserting language like this, expressly stating to whom the warranty (or representation) is made. **CAUTION:** Doing so could remind the other party’s lawyer to ask for an expanded warranty or representation.

- (b) Seller represents to the Buyer that to the best of her knowledge (based solely on the odometer reading) the Car has been driven 26,000 miles.

QUESTION: Is that too-exact a number?

- (c) Seller warrants that she owns the Car free and clear of all liens.

WARRANTS VS. REPRESENTS: Let’s discuss this in class.

DISCLAIMERS: Some students included “AS IS” disclaimers – does that fit with the stated facts in the “term sheet” of the exercise?

- 6. **Seller’s covenants:** During the period beginning on the effective date of this Agreement and ending at the Closing:

PHRASING: I think Tina Stark’s phrasing, “With respect to the period beginning” is a trap that she laid to see who would turn the sentence into plain English.

- (a) Seller will not drive the Car more than 500 miles.
- (b) Seller will keep the Car in a garage when not being driven.

QUESTION: Does that mean Seller can’t park the Car on the street even when running errands?

- (c) Seller will not paint the Car.

- 7. **Warranty disclaimer:** Seller **DISCLAIMS** all warranties, representations, conditions, and terms of quality not expressly stated in this Agreement.

CONSPICUOUSNESS: The disclaimer here is in bold-faced type with the word “disclaims” in all capitals, to make it conspicuous. I also threw in a border around the paragraph, just for added conspicuousness.

- 8. **Limitation of liability:** Seller will not be liable for any consequential, punitive, or special damages arising out of this Agreement or the transaction that it contemplates, whether in contract, tort, or any other theory.

9. **Buyer's conditions to closing:** Buyer need not close the purchase and sale contemplated by this Agreement unless:

(a) Seller has performed her covenants in Section 5 above; and

(b) Seller's representations and warranties are true at the Closing.

PLAIN ENGLISH: Note how the "walk-away" conditions are phrased in plain English. That's better than saying, for example, "Buyer's obligation to close is subject to the following conditions: Seller shall have performed her covenants"

(Again, ask yourself: How would this sentence look on a PowerPoint slide displayed to a jury?)

10. **Entire agreement:** This Agreement is the parties' complete, final, and exclusive statement of their agreement concerning the subject matter hereof.

11. **No reliance on other representations:** For the avoidance of doubt, in entering into this Agreement, neither party has made, and neither party is entitled to rely on, any representation by the other party other than as expressly stated in the Agreement.

12. **Amendments and waivers in writing:** Any amendment to or waiver of this Agreement must in a writing signed by the party against whom the amendment or waiver is sought to be enforced.

AGREED:

Indira Balram

Date signed

AGREED:

Thomas __ Rogers

Date signed

OMIT "IN WITNESS WHEREOF" Elaborate sign-off paragraphs aren't necessary; even the bare-bones "Agreed" isn't really necessary (but is useful for litigation exhibits).

DATE SIGNED: See the discussion at the beginning about the effective date.

TABLE FORMAT: An easy way to make a nice-looking signature block is to use a table of two columns and one row.