



How to Write a Letter of Intent for a Business Acquisition That Actually Closes

Thinking of buying or selling a founder-owned business? The Letter of Intent (LOI) is the foundation that can determine your deal's success before due diligence even begins.

Swipe through to discover the strategic role of LOIs, key components, binding vs. non-binding clauses, and how to avoid common pitfalls that derail acquisitions.

The Strategic Role of LOIs



Validate Deal Feasibility

Confirms both parties are aligned on key points before incurring the cost of due diligence and legal drafting.



Secure Exclusivity

The seller agrees to a "no-shop" period, pausing talks with other potential buyers while you conduct due diligence.



Set the Tone

A well-structured LOI establishes a cooperative tone and roadmap for negotiations, whereas a vague one breeds mistrust.

Remember: "A clear LOI equals momentum; a vague one equals a mess waiting to happen."

Essential Components of an Effective LOI

Deal Structure

Specify whether it's a share purchase (buying the company) or asset purchase (buying specific assets). This has significant tax and liability implications.

Purchase Price & Terms

Clearly state the price and payment method—cash, equity, seller financing, or earnouts. Include specific conditions for any deferred payments.

Exclusivity Period

The "no-shop" clause preventing the seller from negotiating with others, typically 45–60 days for SME deals.

Binding vs. Non-Binding: What's Enforceable?

Non-Binding Terms

The commercial terms (price, structure, payment) are generally non-binding proposals. The LOI should explicitly state that these are not legally binding until a final purchase agreement is signed.

This gives both sides an "out" if due diligence uncovers issues or if final agreement can't be reached.

A well-drafted LOI will segregate binding provisions under a separate heading to avoid any confusion about what's enforceable.

Binding Terms

Certain provisions are typically binding:

- Exclusivity
- Confidentiality
- Governing law and venue
- Expenses

These should be clearly separated in the document to avoid ambiguity.

Common Pitfalls to Avoid



Vague or Incomplete Terms

Omitting crucial details like working capital adjustments or earnout specifics can lead to misunderstandings and eroded trust.



Overlong Exclusivity

Being tied up too long (e.g., 6 months) can allow the deal to drift and give the buyer leverage to renegotiate price downward.



Not Separating Binding vs. Non-Binding

Muddling which provisions are binding can lead to unintended legal obligations and disputes.



Neglecting the Human Element

Approaching the LOI as a purely legal checklist and ignoring the relationship with the founder-seller can derail deals.

UK vs. US: Key Differences in LOI Practices

Enforceability

US LOIs often create an implied binding obligation to negotiate in good faith. Under English law, there is no automatic duty to negotiate in good faith—either you have a contract or you don't.

Terminology

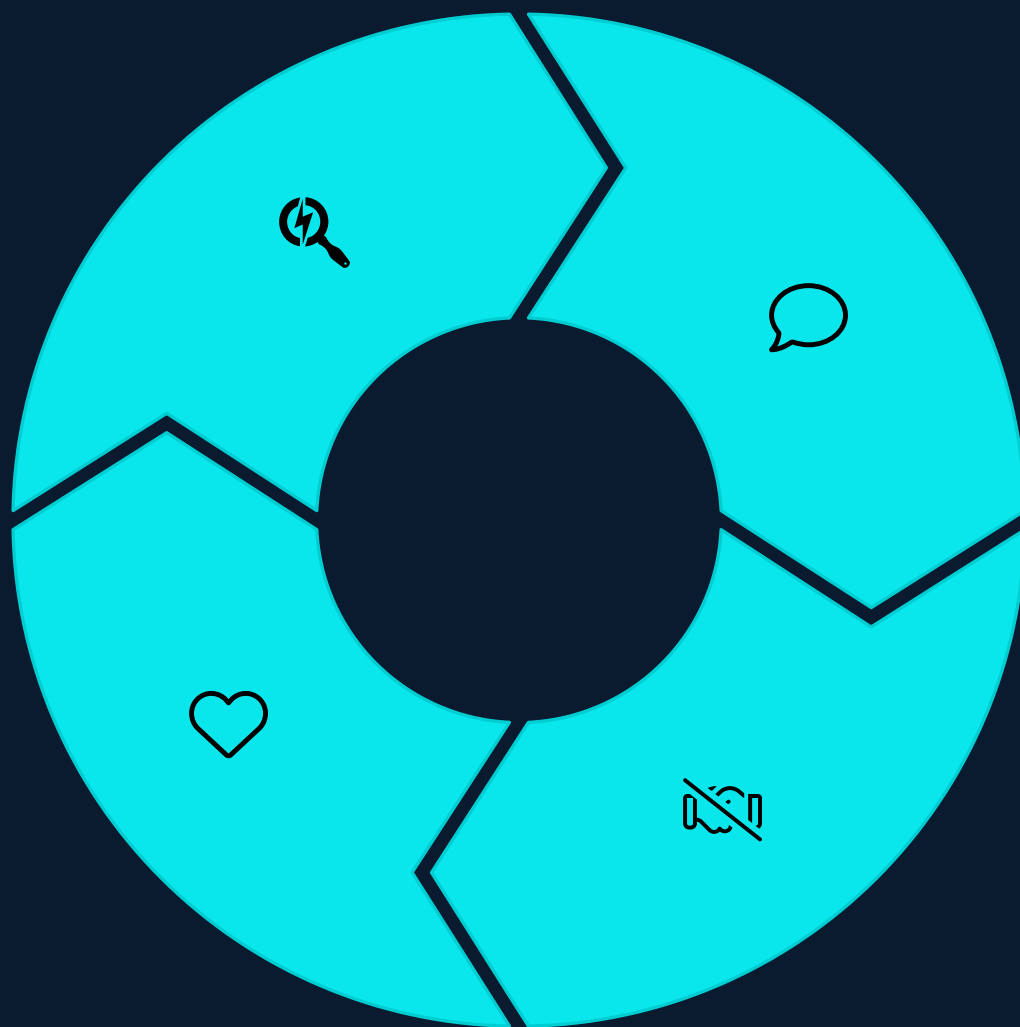
In the UK, documents are often called "Heads of Terms" rather than LOI, and almost always contain "Subject to Contract—not legally binding" headers.

Content Differences

US LOIs typically include more detail on legal terms. UK Heads of Terms stay more high-level and more commonly use "Locked Box" pricing mechanisms.

In cross-border deals, always specify the governing law in the LOI and get local legal advice to bridge these differences.

Presenting an LOI to a Founder-Seller



Do Your Homework

Gather enough preliminary information to make a credible offer that shows you understand their business.



Explain Key Terms

Proactively explain why certain terms are standard and in both parties' interest, especially for first-time sellers.



Be Flexible

Be prepared to negotiate the LOI within reason, showing you're listening to concerns and building goodwill.



Acknowledge Emotions

Recognize that selling is deeply personal for founders and give them psychological space to digest the LOI.

Remember: The goal to presenting an LOI to a founder-seller is to secure the deal AND start a positive relationship.

Your LOI Checklist for Success

When drafting or reviewing an LOI for a founder-owned business acquisition, ensure you include:

- Deal structure (share vs. asset deal)
- Purchase price and payment terms
- Cash-free, debt-free adjustment (or locked box)
- Key assets and excluded items
- Founder's transition role
- Non-compete/non-solicit terms
- Exclusivity period (typically 45-60 days)
- Target timeline and conditions to close
- Clear separation of binding vs. non-binding provisions

A well-structured LOI creates a framework that greatly influences the trajectory of the acquisition. Don't rush this critical step!



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