LEGAL KITTY™ CHEAT SHEET

Earnouts

Part of the price, paid later, if at all.

KEY PRINCIPLES

1 **Price the deal on cash at closing.**
An earnout is contingent price: rhode's merger agreement says "(if at all)." Outside life sciences, about 21¢ per headline dollar gets paid (SRS Acquiom).

2 **The metric and the books decide the number.**
Prefer revenue to EBITDA, where the buyer's costs can shrink your number. Freeze the pre-closing accounting rules.

3 **Courts enforce the efforts clause you wrote.**
Delaware enforced express efforts duties but won't invent better ones. Some buyers disclaim any duty to "achieve or maximize" the payout.

4 **Build the exit ramps before you sign.**
Acceleration on a sale, set-off only for decided claims, a neutral accountant. Tie payment to staying employed and the IRS may call it wages.

KEY EXAMPLES

Real decisions and deals, from the full guide

rhode × e.l.f.
SEC filings, 2025

$600M cash and ~$200M stock at closing, plus up to $200M on revenue targets, booked at $7.1M fair value.

FOR YOU **The buyer's own books said about 3.5¢ on the dollar.**

Fortis v. J&J
Del. Ch. 2024 · Del. 2026

J&J breached its express efforts clause (over $1B in Chancery). The Supreme Court affirmed, but reversed an implied-covenant ruling.

FOR YOU **Write the efforts standard down.**

SRS v. Alexion
Del. Ch. 2024 · 2025

Ending the program breached efforts pegged to companies "similar in size and scope": $130M, then $180.9M.

FOR YOU **A peer benchmark gives the court a ruler.**

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KEY CLAUSES

Red flag, green flag

Push back on the red. Ask for the green.

	RED FLAG · PUSH BACK	GREEN FLAG · ASK FOR
METRIC	Buyer's "then-current accounting policies"	Net revenue on your pre-closing rules
PERIOD	A missed year forfeits that payment	Cumulative, with catch-up rights
OPERATIONS	Buyer has "no obligation to operate the Business"	Past practice; no acts to dodge the payout
SALE	No acceleration on a sale or merger	Unpaid maximum due in cash on a sale
SET-OFF	Against any pending or threatened claim	Only finally decided or agreed amounts
DISPUTES	Buyer's statement final after 15 days	30-day objection; an independent accountant decides

Condensed from the EARNOUT clause library. Teaching examples, not forms.

GO DEEPER

EARNOUT, the full 18-page guide.
Free at legalkitty.com/guides

Full guide: DM **EARNOUT**
This sheet: DM **MILESTONE**

Don't sign it till you read it.

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