

Smart Green Term Sheets

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01 > On the general importance of Term Sheets

- > The Term Sheet is a construction plan for the inner workings of your VC Deal
- > It provides an early outline of key financial and other terms and forms the basis for drafting and negotiating the actual investment documents
- > The Term Sheet is non-binding but still a very important part of your VC Deal
- > Nevertheless investors and entrepreneurs tend to underestimate its impact

01 > On the general importance of Term Sheets

> Investors' perspective:

„Term Sheet is important but business as usual“

„We know exactly what we are talking about“

„Lawyers come in at a later stage“

> Entrepreneurs' perspective:

„The Term Sheet is a very first roughdraft of the deal“

„The Term Sheet is unknown terrain to us“

„Nevertheless, lawyers come in at a later stage...“

„because the Term Sheet is non-binding and we can renegotiate terms anyway“

> Recommendation to both, investors and entrepreneurs:

Please, do not underestimate the Term Sheet's importance

01 > On the general importance of Term Sheets

- > The Term Sheet provides necessary structure to the Deal
 - > The Term Sheet is not a mere formality
 - > It is a pivotal point of reference for future drafting and negotiation
 - > A well structured Term Sheet will help to streamline and optimize the transaction significantly
 - > An ill-structured or superficial Term Sheet may turn negotiations into a prolonged, very complex, and potentially unpleasant process
- > Your lawyers can help you structure the Term Sheet and optimize the overall course of future negotiations. Reduce timeframe and costs

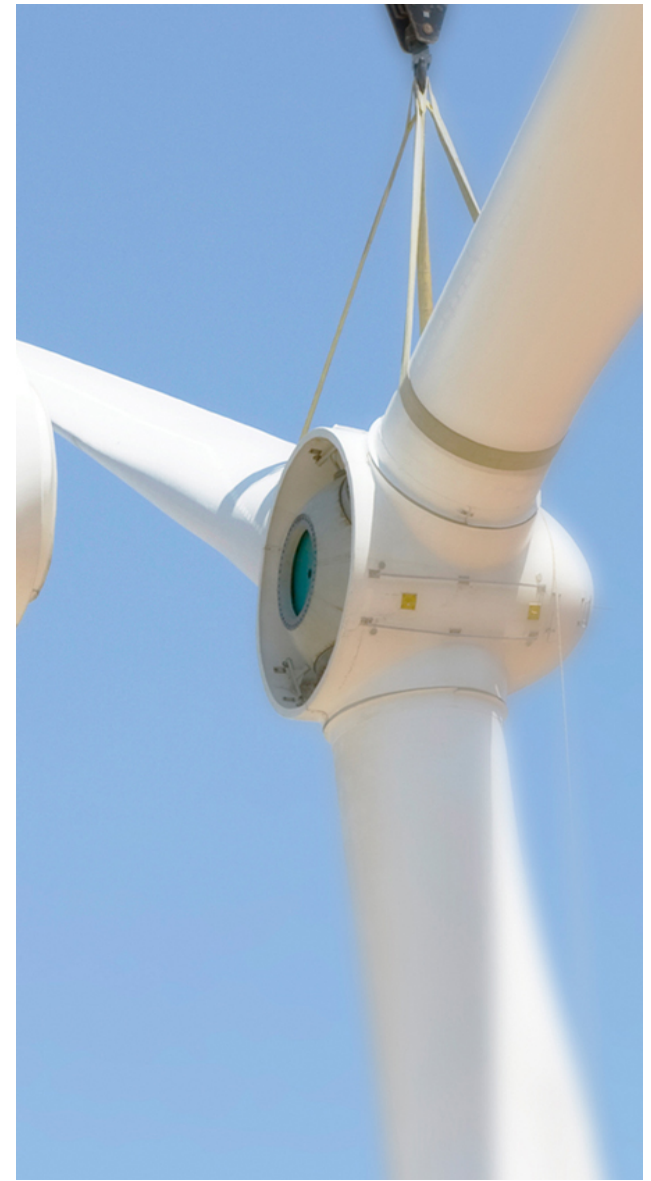
01 > On the general importance of Term Sheets

- > The Term Sheet is an important outline for the trickier and less obvious commercial conditions of your deal.
- > Look at the Term Sheet as a gold mine and a mine field at the same time.
 - > The Term Sheet is a mine full of gold nuggets:
 - > Make sure your Term Sheet reflects all the commercial potential you would like to see
 - > The Term Sheet is also a mine field:
 - > Make sure your Term Sheet is drafted in a way that it prevents certain risks
- > Experienced VC lawyers know the current market conditions from previous deals

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02 > What makes a Term Sheet Smart Green?

- > Smart Green VC deals follow the same rules and dynamics as other technology driven VC deals:
 - > Smart Green VC Investors do have a strong exit orientation
 - > Smart Green VC Investors are not (entirely) driven by environmental enthusiasm
 - > Smart Green VC investors will of course try to optimize their commercial deal like any other investor
- > Most of the provisions typical to VC Term Sheets do not have a specifically Smart Green connotation even if the target runs a Smart Green business

02 > What makes a Term Sheet Smart Green?

- > So, what drives Smart Green VC Investors specifically?
 - > A strong technology and R&D base of their target
 - > Good public funding
 - > A favourable regulatory environment
- > Smart Green VC Investors will therefore seek in particular:
 - > to reduce the specific technology risk of their investment
 - > to reduce the specific regulatory risk of their investment
 - to achieve specific Smart Green business goals

02 > What makes a Term Sheet Smart Green?

2.1. The fundamental investment or financing structure

- > The fundamental investment structure may in certain cases involve alternative financing instruments with a Smart Green background
- > For example project financing by means of Co2 Emission Permits
- > A Smart Green Term Sheet will make direct reference to such alternative investment or financing and provide the foundation for its legal structure

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2.2. The Investment milestones

- > Investors will seek to invest in tranches subject to various technical, legal and/or commercial targets (milestones)
- > Typical Smart Green milestones could include:
 - > certain technical R&D goals required for the specific Smart Green business
 - > cooperations with universities or other academic/public bodies
 - > purchase of certain technical equipment
 - > certain production capacity targets being met
 - > the payment of public subsidies or grants the development of a regulatory environment favourable for the specific Smart Green business
 - > the retention of a regulatory status quo
- > A Smart Green Term Sheet will also include provisions on the specific use of invested funds

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2.3. The Members of the Advisory Board and the Board of Directors

Investors in Smart Green businesses may seek to install advisory board members and managing directors who provide specific Smart Green skills and added value

- > This could be a Chief Technical Officer on the board of directors with Smart Green industry and technology knowledge
- > This could also be an advisory board member with a Smart Green background
- > The installation of a Technical Advisory Board is also possible
- > A Smart Green Term Sheet will include provisions on how and who shall manage the business in particular with regard to its Smart Green factors

02 > What makes a Term Sheet Smart Green?

2.4. Business operations reserved for approval by Investors

- > Typical matters of investor's approval:
 - > Sale and purchase of assets exceeding a certain volume
 - > Disposal of IP rights
 - > Concluding contracts exceeding a certain volume
 - > The business plan, annual budget and their updates
 - > Personnel matters

- > Smart Green matters could include:
 - > Any business decisions with a substantial impact on the company's Smart Green technology base
 - > The hiring and disposal of certain employees that play a key role in the Smart Green business
 - > Business measures that are potentially contrary to a Smart Green mission statement

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2.5. Information rights for Investors

- > Typical information and reporting rights and duties
 - > Annual accounts and budgets
 - > Monthly or quarterly management accounts
 - > Important acts and transactions
- > Smart Green information and reporting rights could include:
 - > Reporting duties regarding specific Smart Green technology issues, such as R&D progress or failures
 - > Reporting duties regarding other specific Smart Green issues, such as the development of the regulatory framework
- > Sometimes personal access to technical facilities is agreed in the Term Sheet

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2.6. The Warranties

- > Venture capital investors expect appropriate warranties to be provided by key founders, management and the company.
- > The warranties will typically cover areas such as:
 - > legal existence of the company
 - > company's financial statements,
 - > business plan,
 - > asset ownership (in particular intellectual property rights),
 - > liabilities
 - > material contracts, employees and litigation.
- > Smart Green warranties could include warranties that:
 - > Business in accordance with certain Smart Green parameters
 - > Assets are in working condition to support the Smart Green Business
 - > target has public permissions to conduct the Smart Green business
 - > company's insurances cover the specific risks from the Smart Green business
 - > company's Smart Green products operate Smart Green
 - > regulatory status quo allows for the Smart Green Business to operate freely

02 > What makes a Term Sheet Smart Green?

- > The Term Sheet should expressly touch upon specific Smart Green topics and not leave the details to the negotiations of the actual investment documents
- > i.e. the Term Sheet should not vaguely refer to „standard conditions“ to be negotiated later
- > This could raise doubts as to what a „standard condition“ in the field of Smart Green business actually is
- > And again, please do not underestimate your Term Sheet's importance



Thank you for your attention!

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