WINDSOR DRAKE

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The Deal Structure Report

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About this report

This report examines the structure of private technology acquisitions, what the headline price actually contains, how much of it is contingent, and how the components are negotiated. It documents the rising use of earnouts and other contingent and holdback mechanisms, introduces the Windsor Drake Structure Spectrum and Real-Proceeds Framework, and sets out how a founder should evaluate and negotiate the structure of an offer, not only its price.

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OVERVIEW

The headline price is not the price

When a founder is told their company sold for a given number, that number is rarely what the founder receives. It is the top of a structure, a stack of cash, stock, rollover equity, earnouts, escrows, and adjustments, and how that structure is built determines how much of the headline ever reaches the seller, and when.

The structure has been getting more contingent. The most comprehensive study of private-target deal terms finds that roughly one third of 2024 deals included an earnout, a sharp increase of more than fifty percent over the prior year, and that the median earnout grew to forty-three percent of the closing payment, up from thirty-two percent a year earlier.[1] In other words, in a growing share of deals, a large slice of the price is not paid at closing at all; it is promised, contingent on future performance, and a meaningful portion of it is never earned. The headline number and the realized number have drifted apart.

This report takes the structure apart. It sets out the anatomy of a private technology deal component by component, documents the rise of the earnout and the other contingent and holdback mechanisms, and introduces two Windsor Drake frameworks for making sense of an offer: the Structure Spectrum, which ranks deals from certain to contingent, and the Real-Proceeds Framework, which traces the headline price down to what a founder actually keeps and when. The argument is simple and consequential: in the current market, a founder who negotiates only the headline price, and ignores the structure, is negotiating the smaller half of the deal.

A growing share of the price is no longer paid at closing. It is promised, made contingent, and partly never earned. The headline and the realized number have drifted apart.

The report moves from anatomy to the earnout, then to the two frameworks, then to a component-by-component guide to negotiation, the variation by buyer type and deal size, and the practical implications for founders. Throughout, the message is that structure is where much of the value, and most of the risk, in a deal actually lives, and that it deserves at least as much attention as the price on the cover of the term sheet.

THE MARKET IN BRIEF

The numbers behind the structure

~1/3 Share of 2024 private-target deals that included an earnout, up more than 50% year over year.[1]	**43%** Median earnout as a share of the closing payment, up from 32% in 2023.[1]	**42%** Share of 2024 deals that used representations and warranties insurance.[1]
88% Share of RWI deals that still include a separate purchase-price-adjustment escrow.[1]	**~1%** Median size of the separate PPA escrow as a share of transaction value.[1]	**$505B** Total value of the 2,200+ private-target deals analyzed in the underlying study.[1]

Windsor Drake view: each of these numbers represents a way the headline price is held back, made contingent, or put at risk. Read together, they show that the structure of a deal now routinely determines a double-digit percentage of what a founder ultimately receives.

The anatomy of a deal

A purchase price is an assembly of parts, some paid now, some later, some never. Understanding each part, and which way it cuts for the seller, is the precondition for evaluating any offer.

EXHIBIT 1

The components of a private technology deal

COMPONENT	WHAT IT IS	EFFECT ON THE SELLER
Cash at close	Paid to the seller at completion	Certain; the most valuable dollars
Stock	Buyer equity in place of cash	Value depends on the buyer's shares
Rollover equity	Seller reinvests into the buyer or platform	Upside if the platform grows; illiquid
Earnout	Future payment contingent on performance	At risk; often partly unearned
Escrow / holdback	Part of price withheld against claims	Delayed; may be reduced
Working capital adjustment	True-up to a target level of working capital	Can lower net proceeds
Indemnification	Seller's liability for breaches after close	Contingent exposure; capped or insured
RWI	Insurance covering reps and warranties	Reduces seller indemnity exposure

Source: Windsor Drake, from standard private-target deal structure.

The certain dollars and the contingent ones

The first division a founder should make is between dollars that are certain and dollars that are not. Cash at close is certain. Everything else carries a discount: stock depends on the buyer's share price, rollover is illiquid and tied to a future exit, earnouts are contingent on performance the seller may no longer fully control, and escrows and holdbacks are delayed and can be reduced by claims or adjustments.[1] Two offers with the same headline number can be worth materially different amounts depending on how much of each is certain. A higher headline with a large earnout can be worth less than a lower headline paid mostly in cash.

The dimension of time

A component that is often missed entirely is time. Even consideration that is certain to be paid is worth less the longer a founder waits for it, and the structure determines the timeline as much as the amount. Cash at close arrives immediately. Escrow is typically released over twelve to eighteen months, sometimes longer. Earnouts pay out over their measurement period, often one to three years, and only if earned. Rollover equity is realized only when the platform itself is sold, which may be years away and is not within the founder's control. Two deals with the same risk-adjusted total can still differ in value because one front-loads the cash and the other defers it, and a founder comparing offers should weigh not only how much is certain but how soon it arrives. The time value of money is not a footnote in these deals; with multi-year earnouts and rollover, it is a material part of the comparison.

The deductions hiding in the structure

Beyond the split between certain and contingent, several components quietly reduce the number. The working capital adjustment trues the price up or down to a target level of working capital at close, and a seller who has not managed working capital carefully can see net proceeds fall. Escrows withhold a portion against future claims, typically released over time. Indemnification exposes the seller to liability for breaches of representations, capped in most deals and increasingly shifted onto insurance.[1] None of these appears in the headline, and all of them affect what the founder keeps. The anatomy in this section is the map a founder needs to read an offer for what it actually pays.

02 · THE TREND

The rise of the earnout

The most important structural shift in recent private deals is the growth of the earnout, both in how often it appears and in how large it has become. It is the clearest expression of a market that increasingly makes the seller share the risk of the future.

The data is striking. Earnouts appeared in roughly a third of 2024 private-target deals, a jump of more than fifty percent over the prior year, and the median earnout reached forty-three percent of the closing payment, up sharply from thirty-two percent.[1] Put plainly, in a deal with an earnout, nearly half as much again as the closing payment is now typically dangled as contingent consideration. A founder who reads only the headline of such a deal is reading a number that includes a large slice they may never receive.

43%

Median earnout as a share of the closing payment in 2024, up from 32% a year earlier.

Why earnouts are growing

Earnouts grow when buyers and sellers disagree about the future. They are a tool for bridging a valuation gap: the seller believes the business will perform, the buyer is not sure, and rather than splitting the difference on price, they make part of the price contingent on the performance actually happening.[1] The recent surge reflects a market in which buyers, more disciplined and more cautious about growth durability, have pushed risk onto sellers, and in which sellers, facing that discipline, have accepted contingent structures to reach the headline numbers they want. The earnout is the negotiated meeting point between a confident seller and a cautious buyer.

The buyer's view

It helps to understand why buyers favor earnouts, because it points to where a founder has leverage. For a buyer, an earnout does three things: it lowers the certain price paid at close, it shifts the risk of underperformance onto the seller, and it retains and motivates a founder who stays to run the business. Those are real benefits, and a disciplined buyer will reach for an earnout whenever it is uncertain about the future or wants to keep the founder engaged. But the earnout also creates problems for the buyer, administrative burden, the risk of disputes, and a seller whose incentives may distort the business toward the earnout metric, and many buyers would accept a modestly higher all-cash price to avoid them. That trade, a lower certain number in exchange for removing the earnout, is often available to a founder who asks, and for a founder who values certainty it can be the most valuable concession in the deal.

The uncomfortable truth about payout

The discomfort with earnouts is that a meaningful share of the contingent consideration is never earned. Earnouts are typically tied to performance targets, revenue, earnings, milestones, over a defined period, and businesses frequently fall short of the targets set in the optimism of a deal, particularly once the founder no longer fully controls the company inside a larger acquirer. Earnouts are also a leading source of post-closing disputes, when seller and buyer disagree about whether targets were met or whether the buyer's actions impaired the seller's ability to meet them. A founder should treat the earnout portion of a price not as deferred payment but as a contingent, at-risk bet, and value it accordingly.

> *Treat the earnout not as deferred payment but as a contingent bet. A large share of it is never earned, and it is the most common source of post-closing disputes.*

How earnouts go wrong, and how to avoid it

Earnouts fail in a few recurring ways, and each is foreseeable. The most common is loss of control: once the founder's company sits inside a larger acquirer, the buyer makes the decisions, on investment, pricing, resourcing, that determine whether the targets are met, and a seller whose earnout depends on performance they no longer drive is exposed. The second is measurement: vague or manipulable metrics invite disagreement, and an earnout tied to a figure the buyer can influence through accounting or allocation is an earnout at risk. The third is integration: when the acquired business is merged into the buyer's operations, isolating its performance to measure the earnout becomes contentious. These failure modes are why earnouts are a leading source of post-closing litigation.

Avoiding them is a matter of drafting and protection. A founder should insist on objective, clearly defined metrics that the buyer cannot easily influence, the shortest practical earnout period, achievable targets set on realistic rather than aspirational projections, and covenants requiring the buyer to operate the business in good faith and not to act in ways that impair the earnout. Where the founder will remain to run the business, securing the authority and resources needed to hit the targets is as important as the targets themselves. An earnout with these protections is a contingent asset worth negotiating for; one without them is a number the buyer may never have to pay.

The rise of the earnout is the single best illustration of this report's thesis. The headline price has become a less reliable guide to the realized price precisely because so much of it is now contingent. The next sections give a founder the tools to see through the headline: a spectrum for ranking how contingent a deal is, and a framework for tracing the headline down to real proceeds.

03 · THE FRAMEWORK

The Windsor Drake Structure Spectrum

Not all deals at a given price are equal. The Structure Spectrum ranks an offer by how much of its value is certain, from a clean cash deal at one end to a heavily contingent structure at the other, and gives a founder a single lens for comparing offers that look similar on the cover.

EXHIBIT 2

The Structure Spectrum: from certain to contingent

STRUCTURE	COMPOSITION	CERTAINTY TO SELLER	TYPICAL BUYER
Clean cash	All or nearly all cash at close	Highest	Perpetual holder
Cash plus rollover	Cash at close plus equity in the platform	High on cash, upside on rollover	Private equity
Cash plus earnout	Cash at close plus contingent earnout	Partial; earnout at risk	Strategic / cautious buyer
Stock-heavy	Significant buyer equity in place of cash	Depends on the buyer's shares	Strategic / hyperscaler
Heavily contingent	Large earnout, holdbacks, deferred terms	Lowest; much at risk	Gap-bridging deal

Source: Windsor Drake Structure Spectrum. A single deal can blend categories; the spectrum locates its center of gravity.

The spectrum is useful because it forces a founder to compare offers on certainty, not just on the headline. A clean cash offer from a perpetual holder at a slightly lower number can be worth more than a higher offer loaded with earnout and holdback, once the contingency is discounted. The right comparison is never headline to headline; it is risk-adjusted value to risk-adjusted value, and the spectrum is the first step in making it.

Using the spectrum well means putting a number on the discount. A practical approach, refined with advisers for the specific deal, is to treat cash at close at full value, escrow at close to full value but adjusted for delay and the probability of claims, buyer stock at a discount reflecting share-price risk and any lock-up, rollover at a discount for illiquidity and the uncertainty of the eventual exit, and the earnout at a substantial discount reflecting the real probability the targets are met. The exact discounts are a matter of judgment and circumstance, but the discipline of applying them, rather than counting every component at face value, is what turns the spectrum from a description into a decision tool. A founder who discounts honestly will often find that the offers cluster very differently than their headlines suggest.

The spectrum also maps to buyer type, which makes it predictive. Perpetual holders tend to offer clean cash; private equity tends to offer cash plus rollover; strategics and cautious buyers reach for earnouts to bridge valuation gaps; the largest strategic and hyperscaler deals often carry significant stock and retention.[1] Knowing the buyer's archetype, a theme developed in the firm's companion report on acquirers, lets a founder anticipate the structure before the term sheet arrives, and prepare to negotiate the parts that will matter most.

The real-proceeds framework

The Structure Spectrum tells a founder how contingent a deal is. The Real-Proceeds Framework tells them what it is actually worth: the path from the headline number down to the cash that lands, and when, after every contingency, deduction, and cost.

The framework walks the headline price through four stages. First, separate the certain from the contingent. Second, discount the contingent parts for the probability they are realized. Third, subtract the deductions, working capital, fees, and the expected cost of indemnification. Fourth, apply taxes and the time value of money to what remains. What survives is the real, risk-adjusted, after-tax value of the deal, and it can differ from the headline by a wide margin.

EXHIBIT 3

From headline to realized: an illustrative $50M deal

LINE	AMOUNT	NATURE
Headline price	$50.0M	As announced
Cash at close	$30.0M	Certain
Escrow / holdback	$5.0M	Delayed; mostly returned
Earnout (potential)	$12.5M	Contingent; often partly earned
Rollover equity	$2.5M	Illiquid; future upside
Working capital adjustment	−$1.0M	True-up at close
Advisory and legal fees	−$2.0M	Transaction cost
Risk-adjusted value (pre-tax)	~$40M	After discounting contingency

Source: Windsor Drake illustration. Hypothetical structure for demonstration; contingent items discounted for realization probability. Not a quote or a benchmark.

The illustration makes the gap concrete. A fifty-million-dollar headline, with a quarter in earnout and a tenth in escrow, resolves on a risk-adjusted basis to something closer to forty million before tax, because the earnout is discounted for the real chance it is not fully earned, the escrow is delayed and may be reduced, the working capital true-up and fees come out, and the rollover is illiquid.[1] Two deals with the same fifty-million headline can sit ten million apart on this framework depending only on how they are structured. The founder who optimizes the structure can keep more from a lower headline than one who chases the highest number without regard to its composition.

A fifty-million-dollar headline with a quarter in earnout can be worth forty on a risk-adjusted basis. Two identical headlines can sit ten million apart on structure alone.

Tax turns the comparison further. The structure affects not only how much a founder receives and when, but how it is taxed, and the differences can be large. Cash, stock, rollover, and earnout consideration can carry different tax treatment and timing, ordinary versus capital, deferred versus immediate, depending on how the deal is structured and the seller's circumstances, and a structure that looks attractive pre-tax can be less so after tax, or vice versa. This is squarely the domain of tax counsel, and the point here is only that the real-proceeds comparison is incomplete until it is run after tax. A founder should never choose between offers on a pre-tax basis when the structures differ, because the after-tax ranking can reverse the pre-tax one.

The framework is also a negotiating tool. Once a founder can quantify the discount on each contingent component, they can negotiate to shift value toward the certain end, more cash at close, a smaller earnout, a shorter escrow, even at the cost of a slightly lower headline, and improve the real outcome. The headline is what gets announced; the real-proceeds number is what the founder lives on, and the work of a good process is to maximize the second, not the first.

WORKED COMPARISON

Two offers, the same headline

The frameworks become vivid when two real-shaped offers are placed side by side. Here a founder faces a choice between a clean, lower headline and a higher, contingent one, and the Real-Proceeds Framework decides it.

Consider a founder with two offers. Offer A comes from a perpetual holder: forty-six million dollars, almost entirely cash at close, with a small escrow and no earnout. Offer B comes from a strategic buyer: fifty-two million dollars on the cover, but composed of cash, a large earnout, an escrow, and some stock. The headline says Offer B is six million dollars better. The structure says otherwise.

EXHIBIT 4

A clean offer versus a contingent one

COMPONENT	OFFER A (HOLDER)	OFFER B (STRATEGIC)
Headline	$46.0M	$52.0M
Cash at close	$43.0M	$26.0M
Escrow / holdback	$2.0M	$5.0M
Earnout (potential)	None	$18.0M
Stock	$1.0M	$3.0M
Risk-adjusted value (pre-tax, est.)	~$45M	~$40M

Source: Windsor Drake illustration. Earnout discounted for realization probability; escrow and stock adjusted for delay and price risk. Hypothetical, not a benchmark.

On a risk-adjusted basis, the lower headline wins. Offer A delivers forty-three million in certain cash today and resolves to roughly forty-five million in risk-adjusted value, while Offer B, despite the higher cover price, delivers only twenty-six million in certain cash and resolves to roughly forty million once the large earnout is discounted for the real chance it is not fully earned. A founder who chose on the headline would take Offer B and likely end up several million dollars worse off, having traded certain money today for a contingent promise that may not pay.

The higher headline lost. A founder choosing on the cover price would have traded certain cash for a contingent promise and ended up millions worse off.

This is not an argument that the clean offer always wins; a strongly protected earnout, or rollover into a platform with real upside, can tip the comparison the other way. It is an argument that the comparison must be made on risk-adjusted value, not on the headline, and that the structure routinely overturns the ranking the headline implies. The founder's job, with their advisers, is to run this comparison on every offer, and to negotiate each toward the certain end before choosing between them.

IN DEPTH

The holdbacks: escrow, working capital, and indemnity

The earnout draws the attention, but the quieter mechanisms, escrow, the working capital adjustment, and indemnification, erode the realized price in ways founders routinely underestimate. Each deserves its own scrutiny.

Escrow and holdback

An escrow withholds part of the price at close, held by a third party and released over time, to secure the buyer against post-closing claims and adjustments. Even where representations and warranties insurance is used, the great majority of deals still include a separate escrow for purchase-price adjustments, typically around one percent of value, and deals without insurance carry larger indemnity escrows on top.[1,2] For the seller, an escrow is delayed money that may be reduced, and the negotiation is about its size, its duration, and the conditions for release. A smaller, shorter escrow with clear release terms keeps more of the price within the founder's reach and on a faster timeline.

The working capital adjustment

The working capital adjustment is the most overlooked deduction and one of the most consequential. Deals are typically struck on a cash-free, debt-free basis with a target level of working capital to be delivered at close, and the price is trued up or down against that target.[4] The peg, the target level, is where the money is. A peg set too high obliges the seller to leave more working capital in the business, reducing net proceeds, and a seller who does not manage working capital in the months before close can find the true-up turning against them. Setting a fair peg and managing working capital deliberately ahead of a sale is among the highest-return preparation a founder can do.

Indemnification

Indemnification is the seller's promise to compensate the buyer for losses arising from breaches of the agreement's representations, and it is the contingent liability that can follow a founder after the deal closes. The key terms are the cap (the maximum exposure), the basket or deductible (the threshold before claims count), and the survival period (how long the exposure lasts). Representations and warranties insurance, now in over forty percent of deals, has reshaped this area by shifting much of the risk onto an insurer and allowing lower caps and escrows for the seller.[1,5] Negotiating a low retained cap, a meaningful basket, and a short survival period, ideally backed by insurance, protects the realized price from being clawed back later.

The earnout gets the attention; the working capital peg quietly moves as much money. The deductions a founder ignores are the ones that cost the most.

Together these three mechanisms can withhold or erode a double-digit percentage of a deal's value, and all three are negotiable and largely preparable in advance. A founder who focuses only on the earnout and treats escrow, working capital, and indemnity as boilerplate is leaving the quieter half of the structure unmanaged. The realized price is protected by attention to all of it.

05 · THE COMPONENTS, NEGOTIATED

Negotiating the components

Each component of the structure is negotiable, and each has a small number of terms that decide how it cuts for the seller. The guidance below is where a founder, advised by counsel, should focus.

Cash at close

Maximize it. Cash at close is the only fully certain consideration, and every point shifted from contingent components into cash at close raises the real-proceeds number. Where a buyer insists on contingency, the question is what the seller gets in exchange, a higher total, better earnout terms, for accepting it.

The earnout

If an earnout is unavoidable, the terms matter more than the amount. Negotiate the metric (clear, objective, hard to manipulate), the period (shorter is better), the targets (achievable, not aspirational), and, critically, the seller's protections against the buyer impairing performance, covenants to operate the business in the ordinary course and to support the earnout. An earnout with weak protections is a number on paper; an earnout with strong protections is a real, if contingent, asset.

Escrow and holdback

Negotiate the size and the duration. Escrows of around one percent of value for purchase-price adjustments are common, with larger amounts where indemnification is not insured.[1,2] A founder should push for a smaller, shorter escrow, and, where representations and warranties insurance is in place, for the insurance to bear most of the indemnity risk so less of the price is withheld.

Working capital adjustment

The peg is everything. The working capital target set in the agreement determines whether the adjustment adds to or subtracts from the price, and a poorly set peg can quietly cost a seller a meaningful sum. Founders should engage their advisers early to set a fair target and to manage working capital in the run-up to close so the true-up does not become a deduction.

Indemnification and RWI

Representations and warranties insurance, now used in over forty percent of deals, shifts much of the seller's post-closing liability onto an insurer, lowering the indemnity cap and the escrow a seller must accept.[1,5] Where the deal size supports it, RWI is usually in the seller's interest, and negotiating its use, and a low retained liability cap, protects the realized price from being eroded by post-closing claims.

Rollover equity

Where a buyer offers rollover, evaluate it on its merits rather than discounting it to zero or accepting it at face value. The relevant questions are the quality and trajectory of the platform, the terms of the rollover (the same class as the sponsor, or a worse one), and the realistic timeline and prospects of the eventual exit. Good rollover into a strong platform can be the most valuable part of a deal; poor rollover is a way to dress up a low headline.

The order of negotiation

Sequence matters as much as substance. The most effective approach negotiates the headline and the cash-at-close proportion first, because those anchor the deal, then the earnout terms and protections, then the escrow and indemnity, and finally the working capital peg, which is technical and often settled close to signing. A founder who concedes the contingent terms early, before locking the cash and the headline, loses leverage on the parts that protect realized value. The strongest position is to treat the whole structure as one negotiation, trading concessions on terms the founder cares less about for improvements on the ones that move real proceeds, rather than settling each component in isolation as the buyer presents it.

The common thread is that structure is negotiated component by component, and that a founder who treats each component deliberately, shifting value toward certainty and protecting the contingent parts, captures real value that a founder fixated on the headline leaves on the table. This is detailed, technical work, and it is where experienced advice earns its cost many times over.

06 · THE VARIATION

How structure varies by buyer and size

Structure is not random. It varies in predictable ways by the type of buyer and the size of the deal, and a founder who knows the pattern can anticipate the offer and prepare for the negotiation that matters.

By buyer type

Each buyer archetype favors a characteristic structure. Perpetual holders tend to offer clean, mostly cash deals, because their model values certainty and simplicity and they are not trying to bridge a growth bet. Private equity buyers frequently offer cash plus rollover, aligning the seller with the platform's eventual exit. Strategics and more cautious buyers reach for earnouts to bridge valuation gaps, especially where they are unsure about the durability of the target's growth. The largest strategic and hyperscaler deals often carry significant stock and retention, tying the seller to the acquirer.[1] Knowing the archetype across the table, a founder can predict the likely structure before negotiations begin.

By deal size

Size shapes structure too. Smaller deals tend to carry proportionally more contingency, larger earnouts and escrows relative to value, because the buyer has less certainty about a smaller business and less reputational cost in pushing risk onto the seller. Larger deals more often use representations and warranties insurance and carry lower escrows, because the size supports the insurance and the parties are more sophisticated.[1,5] A lower-middle-market founder should therefore expect more contingency than the headline figures from large-deal studies suggest, and should plan to negotiate it down rather than accept it as standard.

EXHIBIT 6

Characteristic structure by buyer archetype

BUYER	TYPICAL STRUCTURE	CONTINGENCY	SELLER'S FOCUS
Perpetual holder	Mostly cash at close	Low	Price and working capital
Private equity	Cash plus rollover	Low–moderate	Rollover terms and platform quality
Strategic	Cash plus earnout	Moderate–high	Earnout terms and protections
Hyperscaler / AI	Large, stock and retention	High	What is truly the seller's, and when

Source: Windsor Drake. Generalizations across archetypes; see the firm's companion report on acquirers.

Smaller deals carry more contingency, not less. The lower-middle-market founder should expect more earnout and escrow than the big-deal averages suggest, and negotiate accordingly.

The practical use of this variation is preparation. A founder selling a profitable niche business to a holder should prepare for a clean cash negotiation focused on price and working capital. A founder selling a growth company to a strategic should prepare for an earnout negotiation focused on terms and protections. Matching the preparation to the predicted structure, rather than reacting to a term sheet, is how a founder enters the negotiation ready rather than surprised.

BY SECTOR

How structure differs across sectors

The components are the same everywhere, but their typical weighting differs by sector. A founder should expect a different structure depending on what kind of company they are selling, and prepare for the parts most likely to dominate.

EXHIBIT 5

Typical structure emphasis by sector

SECTOR	WHAT TENDS TO DOMINATE	WHY
Software / SaaS	Cash plus rollover; cleaner deals	Recurring revenue supports certainty; sponsors offer rollover
Fintech	Holdbacks and compliance-linked terms	Regulatory, chargeback, and risk exposures need protection
Artificial intelligence	Earnouts, stock, and retention	Uncertain durability; value tied to people and future
Cybersecurity	Premiums with retention; earnouts on growth	Strategic premiums for leaders; integration and continuity

Source: Windsor Drake analysis. Generalizations; individual deals vary widely.

Software and fintech

Software deals tend toward the cleaner end of the spectrum, because recurring revenue gives buyers confidence and reduces the need to bridge a growth bet with an earnout; where a sponsor is the buyer, rollover is common, offering certain cash plus a share of the platform's upside. Fintech adds a layer of holdback driven by its risk profile: regulatory exposures, chargeback and fraud liabilities, and compliance contingencies often justify additional escrow or indemnity protection, and payments businesses sometimes see volume-linked earnouts. A fintech founder should expect the buyer to seek protection against the sector's specific risks and should prepare to demonstrate that those risks are well managed.

Artificial intelligence and cybersecurity

AI deals sit at the most contingent end. With value tied to people and to an uncertain future, AI acquisitions lean heavily on earnouts, buyer stock, and retention packages, and a large share are structured as talent-led transactions in which much of the consideration reaches founders as employees rather than as shareholders, a dynamic examined in the firm's AI Acquihire Report. A founder selling an AI company should expect a structure weighted toward contingency and retention, and should scrutinize how much of the headline is truly theirs and on what conditions. Cybersecurity, by contrast, can reach the cleaner end for category leaders sold into competitive strategic processes, where the premium is paid in cash, while smaller or less differentiated security companies see more earnout and retention tied to integration and continued growth.[1]

The regulatory and cross-border overlay

Two further factors cut across the sectors and reshape structure. The first is regulation. In fintech especially, but increasingly in AI and data-heavy businesses, the buyer inherits the target's regulatory and compliance posture, and structures the deal to protect against it, through larger indemnities, specific escrows for regulatory exposures, and conditions tied to licenses or approvals. A founder in a regulated business should expect the buyer to seek protection here and should prepare by putting compliance in order well before a process, because unresolved regulatory questions translate directly into holdbacks and reduced certainty.

The second is the cross-border dimension. When buyer and seller sit in different jurisdictions, structure grows more complex: tax considerations multiply, regulatory approvals lengthen the timeline and add closing conditions, and the choice of consideration, cash, stock, or rollover, carries different consequences across borders. Cross-border deals also tend to carry larger escrows and longer survival periods, reflecting the added difficulty of pursuing claims internationally. A founder selling across borders should build these realities into both the expected structure and the timeline, and should engage advisers who handle cross-border transactions specifically, because the structural complexity is materially greater than in a domestic deal.

The practical takeaway is to match expectations to the sector. The same forty-million-dollar company will be offered a meaningfully different structure depending on whether it is framed as durable software, regulated fintech, talent-driven AI, or strategic security, and a founder who anticipates the sector's typical weighting, and the regulatory and cross-border overlay, can prepare the right protections and negotiate the components that will actually dominate their deal.

07 · APPLICATION

What it means for founders

The structure of a deal is where a large share of its value and most of its risk reside. The principles below follow directly from the data and the frameworks in this report.

Negotiate the structure, not just the price

The headline number is the most visible term and often the least informative. A founder should negotiate the composition, how much is cash, how much contingent, on what terms, with at least as much energy as the headline, because the composition decides what the headline is actually worth.

Value certainty explicitly

Apply the Real-Proceeds Framework to every offer: separate certain from contingent, discount the contingent, subtract the deductions, and compare offers on risk-adjusted value. A disciplined comparison frequently reveals that the highest headline is not the best deal, and gives a founder the basis to choose, or to push the structure toward certainty.

Treat the earnout as a bet, and shape it

With earnouts now in a third of deals and at forty-three percent of closing payments, the earnout is often the swing factor in real value.[1] A founder should size it down where possible and, where it remains, fight for the terms, metric, period, targets, and protections, that determine whether it pays. An unprotected earnout should be valued at a steep discount; a well-protected one is a genuine, if contingent, asset.

Prepare the deductions in advance

Working capital, escrow exposure, and indemnification can each erode the realized price, and each can be managed before a process begins, by setting a fair working capital baseline, cleaning up the items that drive indemnity risk, and arranging representations and warranties insurance where the deal supports it. Preparation here directly protects net proceeds.

Get advice that covers structure, not only price

The components are technical and the differences are large, and this is where experienced M&A and legal advice pays for itself. A founder should engage advisers who will model the real-proceeds outcome of each offer and negotiate the structure component by component, rather than focusing on the headline and treating the rest as boilerplate. The structure is not boilerplate; it is the deal.

WORKSHEET

Reading an offer for its real value

STEP	WHAT TO DO
1. Split certain from contingent	Separate cash at close from earnout, escrow, stock, and rollover.
2. Discount the contingent	Apply a realistic probability to the earnout and a price risk to stock; treat rollover as illiquid.
3. Subtract the deductions	Working capital true-up, advisory and legal fees, expected indemnity cost.
4. Apply tax and timing	After-tax, and discounted for when each piece is actually received.
5. Compare on risk-adjusted value	Rank offers on the result, not the headline, and negotiate toward certainty.

Source: Windsor Drake Real-Proceeds Framework. Use with experienced legal and financial advisers.

The thread through all of this is the report's central message restated as practice: in a market where the price is increasingly contingent, the founder who understands and negotiates the structure keeps more of the deal than the founder who negotiates only the number on the cover. Structure is where the realized value is won or lost, and it deserves to be treated that way.

PROCESS

Structure and the clock

Structure is not only negotiated at the term sheet; it is shaped across the whole process, and the founder who prepares the relevant pieces in advance enters each stage with more leverage and fewer surprises.

The components that decide realized value are influenced at different points in a sale. The headline and the cash proportion are set early, in the competitive tension of the process and the term sheet, which is why running a genuinely competitive process is the foundation of a good structure as well as a good price. The earnout, escrow, and indemnity terms are negotiated through the definitive agreement, where the detail lives and where experienced counsel earns its cost. The working capital peg is typically settled late, close to signing, and is influenced by how the business has been run in the preceding months. And the realized value of contingent components, earnout and rollover, is determined long after close, over the months and years in which targets are met or missed and the platform does or does not reach its own exit.

The implication is that preparation pays at every stage. A founder who cleans up working capital, compliance, and the items that drive indemnity risk before the process begins enters negotiations able to resist holdbacks rather than concede them. A founder who has modeled the real-proceeds outcome of different structures can respond to a term sheet with specific, value-creating counters rather than reacting to the buyer's framing. And a founder who has negotiated strong earnout protections will, if they stay to run the business, be positioned to actually earn the contingent consideration rather than watch it lapse. The clock runs from long before the term sheet to long after the close, and structure is shaped across the whole of it.

Structure is shaped from long before the term sheet to long after the close. Preparation at each stage is what turns a contingent promise into realized value.

CHECKLIST

Red flags in a term sheet

Certain structural terms should prompt a closer look, because they shift value or risk toward the buyer in ways a founder may not notice while focused on the headline. None is necessarily fatal; each is a signal to negotiate.

A low cash-at-close proportion	The certain part of the price is small; much of the headline is contingent or deferred.
A large earnout with vague metrics	The contingent payment depends on figures the buyer can influence or dispute.
No ordinary-course covenant on the earnout	The buyer is not obliged to run the business in a way that supports the earnout.
A long or open-ended escrow	A larger share of the price is withheld for longer, with more chance of reduction.
An aggressive working capital peg	The target is set so the true-up is likely to reduce the price at close.
A high or uncapped indemnity	Post-closing liability exposes the seller well beyond the escrow, without insurance.
Rollover on worse terms than the sponsor	The founder's reinvested equity sits behind the buyer's in the stack.
Stock with a long lock-up	Consideration is exposed to the buyer's share price for an extended period.

Source: Windsor Drake. Each item is a prompt to negotiate, evaluated with counsel against the whole deal.

A term sheet is the buyer's opening structure, and it is written to favor the buyer. Reading it against this checklist, before responding, lets a founder identify where the structure is shifting value away and prioritize the terms worth pushing on. The goal is not to eliminate every contingency, some are reasonable, but to ensure that each one is fairly priced and protected, and that the founder has traded for it rather than simply accepted it.

CONCLUSION

The deal is the structure

A founder sells a company once. The buyer structures deals constantly. That asymmetry is largest not in the price, which both sides understand, but in the structure, which the buyer knows intimately and the seller often meets for the first time.

The data in this report describes a market that has steadily shifted value out of the certain part of the price and into the contingent part. Earnouts are more common and larger, escrows and adjustments persist, and the gap between the headline and the realized number has widened. None of this is hidden, but it is easy to overlook for a founder focused on the headline, and overlooking it is expensive. The frameworks here, the Structure Spectrum and the Real-Proceeds Framework, exist to make the structure as legible to the seller as it already is to the buyer.

The conclusion is a discipline. Read every offer for its composition, not just its size. Discount the contingent parts honestly. Negotiate the components that move the realized number, more cash, a smaller and better-protected earnout, a shorter escrow, a fair working capital peg, sensible use of insurance. And value rollover and stock on their merits rather than at face value. A founder who does this will, time and again, keep more from a well-structured lower headline than from a poorly structured higher one. The price is what is announced. The structure is what is kept, and the structure is the deal.

There is a final, encouraging point in this. Structure is the part of a deal a founder can most affect with preparation and advice, precisely because it is technical and the buyer expects to negotiate it. The headline is set largely by the market, by what the business is worth and how competitive the process is, and there is a limit to how far it can be pushed. The structure, by contrast, rewards diligence directly: a fair working capital peg, a smaller and better-protected earnout, sensible insurance, a shorter escrow, and a clear-eyed view of rollover and stock can each be won at the table, and together they can move the realized number by more than another round of haggling over the headline ever would. The founder who treats the structure as the deal does not just avoid losing value; they actively create it. That is the most useful conclusion this report can offer, and the one worth carrying into any process.

The price is what is announced. The structure is what is kept. In this market, the second matters at least as much as the first.

REFERENCE

Deal terms, defined

The terms below are the components of structure that recur throughout this report.

Earnout	A portion of the price paid only if the business meets defined future performance targets over a set period.
Escrow / holdback	Part of the price withheld at close, typically to cover post-closing claims or adjustments, and released over time.
Working capital adjustment	A true-up that raises or lowers the price to a target level of working capital delivered at close.
Rollover equity	Equity the seller takes in the buyer or combined entity in place of cash, sharing in future upside.
Indemnification	The seller's obligation to compensate the buyer for losses from breaches of the agreement, usually capped.
Representations & warranties insurance (RWI)	Insurance covering breaches of the seller's representations, shifting risk off the seller and reducing escrow and indemnity exposure.
Purchase price adjustment (PPA)	A post-closing adjustment to the price, commonly for working capital, often backed by a dedicated escrow.
Closing payment	The amount actually paid to the seller at completion, the base against which earnouts are often measured.
Real-proceeds value	Windsor Drake's term for the risk-adjusted, after-cost value of a deal, the headline less contingency, deductions, and costs.

Source: Windsor Drake. Definitions are for general orientation, not legal definitions.

THE EARLY READ

Into 2026: structure does the heavy lifting

The widening gulf between AI-native and legacy valuations, set against a tighter capital pool, made 2026 a year in which structure, not just price, closed deals. Where buyer conviction and seller expectation diverged, the contingent mechanisms this report dissects, earnouts above all, did the work of bridging the gap.

The early-2026 backdrop was built for structure. Capital tightened even as demand held, financing grew more constrained, and the dispersion between what sellers believed their companies were worth and what disciplined buyers would pay widened, particularly anywhere the AI question was unresolved. In exactly those conditions, contingent consideration becomes the deal-maker: an earnout lets a buyer pay for performance it is not yet willing to underwrite and lets a seller preserve a valuation the buyer will not pay in cash up front.

When buyer conviction and seller expectation diverged in 2026, structure closed the gap. More of the headline moved into the earnout, and the terms behind the price did the heavy lifting.

The contingent share rises

The predictable result is that more of the headline number moved into contingent form. As bid-ask gaps widened, earnouts grew larger and more common, representment-and-warranty insurance remained the norm on deals of scale, and the share of consideration a seller actually controlled at close shrank relative to the announced figure. The headline price, as this report argues throughout, increasingly overstates the certain proceeds, and in 2026 that gap widened with the valuation dispersion behind it.

What it means for founders

For a founder, a structure-heavy market raises the stakes on the terms behind the price. A larger, longer earnout shifts risk onto the seller and ties a meaningful part of the outcome to a post-close period the founder may not fully control; the protections, milestone definitions, governance of the earnout period, acceleration on change of control, become the difference between the headline and the realized number. In 2026, negotiating the structure is negotiating the price, and the frameworks in this report are the tools for doing so with eyes open.

Sources for this section: Cooley and Morrison & Foerster 2025–2026 M&A reviews (contingent consideration, RWI prevalence); CNBC, “The global M&A boom is rolling into 2026” (capital tightening); Windsor Drake deal-structure analysis.

Methodology and sources

The deal-terms data in this report is drawn principally from the SRS Acquiom M&A Deal Terms Study, which analyzes a large sample of private-target acquisitions, and from related published studies of working capital adjustments, escrows, and representations and warranties insurance. These studies describe the prevalence and typical terms of deal structures across their samples; they are not predictive of any individual transaction, and terms vary widely by deal size, sector, geography, and the parties' relative leverage. Figures cited reflect the most recent available study years as of mid-2026 and should be read as descriptive of the sampled market.

The Windsor Drake Structure Spectrum and Real-Proceeds Framework are analytical tools developed by the firm to help sellers evaluate and compare offers. The worked example in Exhibit 3 is illustrative, built on hypothetical figures to demonstrate the method, and the discount applied to contingent components reflects judgment rather than a measured realization rate for any particular deal type. Nothing in this report is investment, legal, tax, or accounting advice; deal structure in particular should be negotiated with experienced legal and financial counsel.

Endnotes and sources

1. Earnout prevalence and size, RWI usage, escrow statistics, and study base (earnouts in ~1/3 of 2024 deals, up >50%; median earnout 43% of closing payment, up from 32%; RWI in 42%; 88% of RWI deals with separate PPA escrow; median PPA escrow ~1%; 2,200+ deals, $505B, 2019–2024): SRS Acquiom, "M&A Deal Terms Study 2025."
2. Escrow and holdback trends: SRS Acquiom, "M&A Escrow Statistics: Trends From the 2025 Deal Terms Study."
3. Indemnification and private-target deal points (caps, baskets, survival): American Bar Association, Private Target Mergers & Acquisitions Deal Points Study.
4. Working capital purchase price adjustments and 2024–2025 takeaways: Fasken, "Key Takeaways from SRS Acquiom's 2024 M&A Deal Terms Study and Working Capital Purchase Price Adjustment Study."
5. RWI and earnout developments: Bilzin Sumberg / ACC, "Hot Topics Making Waves in M&A: Navigating RWI and Earnouts" (2025).

ABOUT

About Windsor Drake Research

Windsor Drake is a sell-side M&A advisory firm for founders and boards of software, financial technology, artificial intelligence, and cybersecurity companies in the lower middle market.

The firm advises technology founders through the full arc of a sale, from positioning the company and building the buyer universe to running a competitive process and negotiating terms, including the structure that determines what a founder actually keeps. Its research program exists to make the dynamics that decide outcomes legible to the people on the selling side, who face these transactions once or twice in a career against buyers who do them constantly.

This report is part of the Windsor Drake Research series, a set of independent studies on valuation, deal structure, and consolidation across the firm's sectors. Companion titles examine the most active acquirers of software companies, the cross-sector valuation premium captured by the Rule of 40, the talent-led acquisition of AI companies, and the consolidation of the cybersecurity industry. The series is intended to be read by founders, boards, investors, and the journalists and analysts who cover these markets.

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Windsor Drake maintains offices in Toronto and New York. Founders considering a transaction, and members of the press citing this research, can reach the firm through windsordrake.com.

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