



BASIC CONTRACTS

HOUSTON TECHNOLOGY CENTER
SERVICE PROVIDER NETWORK
BROWNBAG
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What is a Legally Enforceable Contract?

- Offer – Acceptance – Consideration
 - Battle of the Forms – Exchange of “Standard Terms and Conditions”
 - Published price lists vs. agreed discounts
 - What is “acceptance?”
- Verbal contracts are almost always enforceable
- Statute of Frauds requires some deals to be documented in writing:
 - Trust and Estate Documents (handwritten wills are ok)
 - Real Estate Transactions
 - Mortgage Loans

Kinds of Basic Contracts

- Sales and Purchases
 - Single Transactions
 - Long Term Relationships
- Leases
- Sale of Capital Assets
- Employment Agreements
- Contractor Agreements
 - Individuals
 - Corporate Services
- Licenses and Royalty Agreements



Long-Term v. Single Transaction

- **Long-term Agreements**
 - Master Services Agreement
 - Master Sales Agreement
 - Lease
 - Employment Contract
 - License/Royalty Agreement
- **Single Transaction Agreements**
 - Sale of inventory
 - Sale of capital asset
 - Single project engagement

Contract Structure

- Context and representations of parties
- Barebones Terms
- Important Terms
- Termination Clauses
- Nice-to-haves
- Boilerplate
- Signatures
- Form of Purchase Order
- Other exhibits



Barebones Terms

Who – What – When – How Much

- Parties
- Description of product or service to be delivered
- Term and/or effective date of transaction
- Consideration – value transfer



Important Terms

Why – What if - Where

- “Why” Description of context – why are we doing this
- “What if”
 - It breaks – warranty clauses
 - It doesn’t work or is the wrong color - warranty
 - One party screws up – indemnity clauses
 - The world ends – force majeure clauses
 - Someone gets hurt – indemnity clauses
 - Insurance clauses
- “Where”
 - Will performance take place
 - Will the law govern
 - Will the courts have jurisdiction



Important Terms

People Issues

- Buyer representative
- Seller representative
- Who chooses, supervises, hires, fires, trains, and prices staff for job?
- Who is on-site?
- Who is off-site?
- Who can approve work?
- Who can approve changes?



Nice to Haves

- Amendment procedures
- Termination and Damages
- Confidentiality
- Non-solicitation
- No-hire
- Non-compete/Exclusive Dealing
- Dispute Resolution
 - Mediation
 - Arbitration

Nice to Have Amendment Clauses

- Amendment Clauses – require writing signed by both parties to amend
- Verbal changes are enforceable unless the contract specifies they are not
- Course of dealing can amend contracts “accidentally”
- Amendment to “amendment clause”



Nice to Have Termination and Damages

- Who can terminate contract?
- Notice
- Damages
- Responsibilities after termination
- Can you terminate one P/O and not the whole transaction?
- Force Majeure – Hurricane Ike?



BoilerPlate

- Notices
- Entire Agreement
- Applicable Law
- Severability
- Successors and Assigns
- No third parties
- Time is of the essence
- Counterparts

Signatures

- Get the parties right
 - Who is the correct entity?
 - Who can sign for that entity?
- Notary is used when contract must be written or will be filed of record
 - Real estate and oil and gas/mineral interests
 - Wills and Trusts
 - Bank stuff – loans
 - Assignment of IP
 - Power of Attorney



Exhibits

Purchase Orders

- Purchase Orders do not replace the contract
- Use bullet points if possible
- Set out job-specific criteria
 - Product
 - Time
 - Price
 - Special terms



Other Exhibits

- Price schedules
- Internal procedures or rules applicable to transaction
- Ancillary agreements relevant to transaction
- Diagrams or detailed product/service specifications



HOW TO REACH US

General Contracts

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