

CONTRACTS

A WINNING STRATEGY FOR BUSINESS MANAGERS AND LAWYERS WORKING TOGETHER

Why do businesses enter into contracts?

- To develop, define and solidify business relationships.
- To create, protect and realize value.
- To manage risk.
- To minimize disputes.
- To create predictability and facilitate planning; to avoid surprises.
- To seize and leverage opportunities.
- To create and preserve options.

Why is the process of negotiating a contract important?

- How the process is conducted will influence the final content of the contract.
- A contract marks the beginning of an ongoing relationship. How the parties conduct themselves sets the tone for the relationship.
- If handled well, the contract process can build mutual trust and confidence and a good working relationship. If handled poorly, it can sour a relationship forever.

How should the process be handled to build a good relationship?

- Avoid surprises; be consistent.
- Demonstrate concern for other party's needs and acknowledge the goal of mutuality.
- Identify difficult issues early.
- Do not withhold information that will be discovered later. Be sure to provide accurate information.
- Be courteous, polite and responsive. Give people time to review. Always mark changes.
- Should you include a provision you know the other party will ultimately consider unfair?

How should lawyers and business managers work together to develop good contracts?

- Lawyers:
 - Understand the business terms, economics and technical aspects of the transaction.
 - Check your ego at the door; ask if you do not understand.
 - Facilitate; do not put unnecessary obstacles in the way of a business deal.

- Business Managers:
 - Bring the lawyer in early, when they can be the most helpful.
 - Educate your lawyer; be sure they have the whole picture.
 - Do not hold back information.
- Both:
 - If you have a question, ask it. Do not assume that the other person has focused on the issue. Each should let the other know it is okay to ask questions.
 - Be sure you have worked out your respective roles and responsibilities.
 - Communicate.

Why you should want to "control the document"?

- Drafting requires the discipline to think through issues, a-z.
- Opportunity to hit the "sweet spot." Drafting contracts is an art, and a form of advocacy. This applies to revisions as well as the initial draft.
- Cheaper to draft than to review and revise.
- More difficult to figure out what is missing than to see problems with what is there.
- Avoid other peoples' mistakes and omissions.

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