

A legal contract is an important tool for businesses both large and small. Unfortunately, we live in a very litigious society and the days of the simple handshake to finalize a deal are, for the most part, over. Scrimping to save on costs at the beginning of a project may cost your company tens of thousands of dollars in the long run. Be careful of boiler plate contract forms. While they may spell out certain legal rights, they may also fail to include other vital provisions that will negate future disputes. Every contract should be read thoroughly and should you find a provision to be unclear, ask questions. If the terms of a contract are vague or excessively one-sided, you may end up unnecessarily in court. Both parties should gain value from the contract. Clear contracts make for happy profitable business relationships.

A contract should clearly define the terms of the parties and spell out exactly what the project entails. It formalizes the agreement, clarifies communications, and provides a predetermined recourse for when things go wrong. It may include payment terms or conditions, protection of trade secrets, restrictive geographic scopes, timelines, warranties, exclusions, cancellation clauses, penalty clauses, etc. A good contract keeps energies focused on the underlying project and allows the parties to get things done more efficiently. Therefore, a contract must not only be clear, it must also be concise.

A contract becomes increasingly important in times of dispute. A lack of clarity in a contract can lead to costly litigation. Remember, in a court of law, a written contract trumps an oral contract. To coin a phrase, “the written pen is mightier than the tongue.” In other words, in instances where written and oral portions of a contract contradict each other, the written portion prevails. Disputes can be minimized if the hard-line terms are negotiated and spelled out at the beginning of the relationship when the contract is being formed.

Some essentials to consider when creating a contract are as follows:

- Parties to the agreement should be spelled out
- There should be some consideration offered for the agreement
- Parties should be competent to contract. All persons are legally authorized to contract except the following:
  - Minors, who are under 18 years of age.
  - Mentally incompetent persons
  - Persons ineligible from entering into contract by law
- Free consent to the agreement
- Object of agreement should be lawful
- Detailed description of the duties and obligations of the parties
- Representations concerning warranties
- Confidentiality clauses
- The force majeure clause which generally provides that no party will be liable for non-performance arising out of an event of force majeure e.g. war, terrorist act, epidemic
- The terms of the agreement between the parties should be specific
- Events on occurrence of which the contract will be terminated should be specific
- A method of giving notice for breach and providing the breaching party a time to cure (generally a party who has suffered due to a breach of contract can claim damages that will put the non-breaching party in the position they would have been in if the contract had been performed)
- Relief available to one party on the breach of the other party
- Arbitration or mediation clause
- Termination or duration of contract

There are many forms of contracts, to be discussed in Part II of [Sealing the Deal: Contracts – A Smart Investment](#).