***Legal Contract Tips-and-Tricks***

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**Foundations that Prevent Legal Leaks From Your Contract**

**Bringing an Efficient Contract Drafting Process to Your Lawyer**

Memorialize contracts with:

* Contracts with customers, so that they pay you, protections if they don’t, and to address and specify the terms and conditions of your delivery of your service or goods.
* Contracts with suppliers if you have mission critical supply requirements, so that you can assure delivery and price of goods.
* Contracts between the founding partners of a company (even at a minimum by email).
* Employees (when economically feasible for the business).

When:

* During or after your preliminary negotiations, but before you go too far down the path of no return, on expending time, money, energy or reputation.
* Before any money is paid or materials ordered.
* Documenting an oral discussion, and the mechanics of how the deal terms will work, can bring up deal-killing discussion points, which may not come up in the oral discussions.

How to Memorialize:

* A writing – Either a written agreement (or a written email)
* Must include the elements of a contract: Capacity, Offer, Acceptance, Consideration Exchanged, Legal Purpose, Meeting of Minds (Mutual Assent).

Tips:

* READ the agreement and understand it, and make sure you can comply with its requirements, before signing it!
* Read and understand EVERY WORD of the written agreement, and how the mechanics of the arrangement or the transaction will work. Think through the whole process or transaction from beginning to end, how the money will be calculated, what each person is required to deliver and how delivery will work.
* No side letters, unless written….just no side letters!
* Clear, concise Plain English
* Corporate Resolutions or LLC Agreement must authorize the contract to be agreed to and signed by:
	+ The signer, and
	+ The sign**ing of the contact**.
* Confirm that your incorporation or LLC’s corporate foundation documents were done correctly, including operational provisions and authorizing resolutions, so that you have the corporate capacity to contract, and your corporation standing behind your contract, rather than you personally.
	+ Especially if a non-lawyer, or non-corporate lawyer, has formed your corp.
* Reps and Warranties - Be sure you can carry out each “Rep and Warranty” in the agreement that you are agreeing to do, and that all facts you have stated are true. (For example, that you have insurance, can meet deadlines, reps are all true, etc.)
* Business issues are key – Does the arrangement or transaction work within the two parties businesses? **A contract is 80% business and 20% legal!**
* Does the contract describe the transaction as intended, and as it will really work? If not, get the attorneys to fix the contract. No side agreements.
* Obtain your own Insurance to cover indemnification
* Do negotiate terms with the other party, but please don’t negotiate terms in final before seeing lawyer and accountant, including:
	+ Selling your business, or
	+ Buying a business,
	+ Joint Venture
	+ Supply Contract
	+ Services Contract
	+ Products Contract
	+ Employment Contract
* Be aware that many contract provide for deductions from the selling price that inexperienced sellers are not aware of, which can lead to unmet expectations and relationship disruptions.
* Ownership of Intellectual Property (your ideas), and work produced under the contract:
	+ Work for Hire and Work Product issues
	+ Licensing Issues
	+ Co-development issues
* Noncompete Agreement
* Terms and conditions must be custom to this transaction, don’t use a template, customize it to your deal
* The reason a lawyer shouldn’t or wont “Just use a template, just use boiler plate”,
	+ Someone else’s Deal
	+ Someone else’s drafting
* The reason a lawyer shouldn’t or wont’ “just look over” a contract, is that the lawyer needs to learn all the facts from you about the parties and the transaction in order to set you up with the right contract, and customize it to your transaction or arrangement.

Opposing Party:

* Conduct your own Due diligence on the other party to the agreement: Whether they will be your partners, supplies, customer, client - you are judged by the company you keep
* If appropriate for the service or product they will provide to you, do they have insurance?

**Elements of a contract:**

* Recitals
	+ Name the Parties, state of formation or residence
	+ Date of Agreement
	+ State the business of each party
	+ State what they desire to do.
	+ Conclude with what we are going to do
* Definitions
* Business Provisions
* Industry provisions
* Price Payment
* Performance:
	+ Performance of services, or
	+ Delivery of goods, or
	+ Effect transaction
* Representations & Warranties
* Covenants – Future Performance - Agreements to Perform
* Conditions of Performance/ Closing
* Indemnification
* Operational and Interpretive Provisions

Basics of any services contact:

        Recitation of the parties, and what they do for a living

        Recitation of what they intend to do together

        Who does what work, for whom

        Specification of the Work to be done (include detailed Statement of Work at attachment)

        For how much,

        By When Timing of delivery of project

        Conditions to performance or nonperformance if applicable

        How and when do you get paid?

        On what conditions they can hold payment

        Mechanism for addressing scope and content changes of project

        Who owns the IP rights to the work upon completion and payment? Is it Work for Hire?

        What happens if you don’t get paid

        What happens if you don’t deliver

        Nondisclosure (and Noncompete, if appropriate), one-way, or two-way

        Legal mechanics provisions and interpretation boilerplate

        Special industry considerations would be based on your experience in your own industry of business issues you see that arise. Grab other agreements from your industry if you have been working in the industry. If you don’t have access, that’s OK.

        An incredible amount of an agreement is based on business issues that are non-legal issues.