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307 – A Play-by-Play Guide to Creating a Contracts Playbook

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Caterpillar Inc

Gemma Heckendorf

Corporate Counsel
IHS Inc.

Jack O'Neil

Senior Consulting Counsel
Western Group, Inc.

Sarena Straus

Senior Counsel
Boehringer Ingelheim

Faculty Biographies

Karla Bookman

Both a seasoned U.S. attorney and a pioneer of new services in the legal outsourcing industry, Karla Bookman heads the Pangea3 corporate and compliance solutions department. As vice president, Ms. Bookman is responsible for overseeing and managing governance, risk and compliance and corporate transactional projects, including quality control and process improvement. She also plays a pivotal role in supporting the U.S.-based legal solutions team in engineering services for Pangea3 clients. Splitting her time between Mumbai and New York, Ms. Bookman ensures close alignment between client needs and Pangea3 governance, risk and compliance and corporate transactional services, as well as continuity from the start of a client engagement to the ultimate delivery of work product. She has been at the forefront of developing new services and service implementations, helping to ensure that Pangea3 quickly adapts to the changing needs of both regulatory compliance and contract management clients.

Prior to joining Pangea3, Ms. Bookman practiced law at Kasowitz Benson, Torres and Friedman. She has also completed short-term assignments at the Southern District of New York, and the World Intellectual Property Organization. She is a co-author of *Medical Tourism in Developing Countries*.

Ms. Bookman graduated from the University of Pennsylvania and holds a JD from Columbia Law School.

Byron Buck II

Byron G. Buck II is senior corporate counsel for Caterpillar Inc. His practice has included counseling on a broad range of issues generally facing U.S. corporations operating globally. He currently manages the legal strategic support group and focuses on improving processes through which legal work is performed and creating greater flexibility in getting work done.

Mr. Buck earned his bachelor of electrical engineering degree (BEE) from Georgia Institute of Technology, and JD from South Texas College of Law. He became a Licensed Professional Engineer (currently inactive status) in the state of Texas, and registered to practice before the U.S. Patent and Trademark Office.

Mr. Buck began his professional career as an engineer for Transcontinental Gas Pipe Line Corporation in Houston, TX. After becoming a member of the Texas Bar and prior to coming to Caterpillar, he was an associate at Tobor & Goldstein, L.L.P., in Houston, TX. He was Caterpillar's intellectual property representative for the Asia-Pacific region, and afterwards he led Caterpillar's legal team in Beijing, China. He returned to Peoria and

managed the commercial legal group supporting procurement of IT software, IT hardware and travel and professional services.

Gemma Heckendorf

Gemma Heckendorf joined IHS Inc. in Englewood, CO, and as senior corporate counsel her responsibilities include managing the company's intellectual property portfolio, serving as lead legal counsel for M&A activities, and providing legal counsel to all areas of the business including procurement, real estate, HR, tax, finance, and risk management.

Prior to joining IHS, Ms. Heckendorf served as a corporate attorney for Vodafone Australia, where she advised on IT procurement, regulatory compliance, infrastructure disputes, global supplier relationships, and risk management. She commenced her legal career at Allens Arthur Robinson in Sydney, Australia as an IP/IT attorney.

Ms. Heckendorf currently serves as programs vice chair on ACC's Law Department Management Committee, and is involved with the ACC Colorado Chapter committee's pro bono efforts.

Jack O'Neil

John W. (Jack) O'Neil is the senior consulting counsel, and was general counsel for Western Construction Group, Inc. Western Construction Group, Inc. is headquartered in St. Louis, MO. Prior to joining Western he was in private practice in St. Louis.

Mr. O'Neil served as president of ACC's St. Louis Chapter. He is active in the Forum on the Construction Industry of the American Bar Association and is a Steering Committee member for Division 11, In-House Counsel.

He is a graduate of Saint Louis University School of Law.

Sarena Straus

Sarena Straus is a director and senior counsel II for Boehringer Ingelheim Pharmaceuticals. Her responsibilities include providing legal counsel to the organization on FCPA and PDMA issues as well as conducting government negotiations. She is also counsel for products in the cardiovascular and respiratory franchises and counsel to the global sourcing organization. She's the responsible legal person for selection and implementing of contract management solutions for the entire U.S. organization.

Ms. Straus has been in the healthcare industry several years having begun her career as general counsel to a medical management company and then moving on to Bristol-Myers

Squibb, where she started in the employment group, working on counseling and M&A issues and then moved to the contracts center of excellence where she was part of a team that selected and rolled out a contracts management system and global contracts optimization project. She began her career in the Bronx district attorney's office prosecuting domestic violence, sex crimes and crimes against children.

Ms. Straus is a published author, blogger and frequent talking head on issues pertaining to law and child safety. She is also on the editorial board of the *ACC Docket*. She is on the board of The Hudson Valley Center for Contemporary Art and pro bono counsel to The Manitou School

Ms. Straus received her BA from Barnard College and her JD from Forham University School of Law.

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Agenda

- I. Introductions
- II. Perspectives on the Playbook Creation Process
 - a) Why Create One?
 - b) Who Is It For?
 - c) How Will It Be Used?
- III. How To's
 - a) Where to Begin
 - b) Tools to Use
 - c) Playbook Implementation
- IV. Conclusion
 - a) Audience Q&A
 - b) Top Tips

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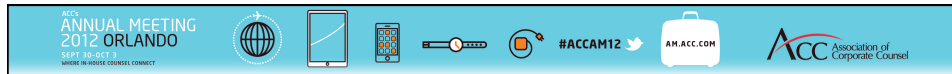
Introductions

Moderator:

- Karla Bookman
Vice President, Corporate and Compliance Solutions
Pangea3 LLC, Thomson Reuters

Panelists:

- Byron Buck II
Senior Corporate Counsel
Caterpillar Inc
- Gemma Heckendorf
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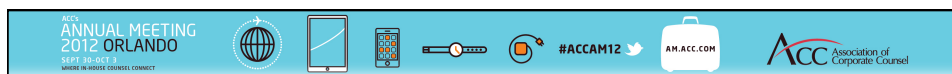
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Why Create One?

- Why should we create a playbook?
- Optimize use of your attorneys and leverage a larger team for the review.



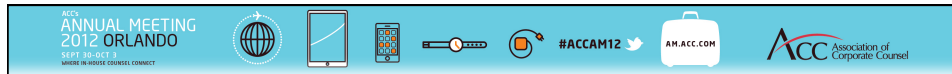
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Who Is the Playbook For?

- Who will be using the playbook?
 - Legal? (internal/external)
 - Sales
 - Contract Administration
 - Project Management
 - Sourcing/Purchasing organization
 - Others?
- Different Versions for different users?



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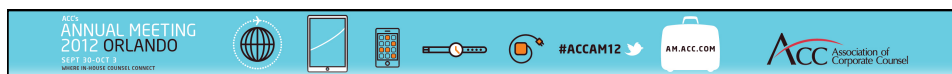
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How Will It Be Used?

- How is the playbook used to address risk evaluation?
 - Methods for decision making OR
 - Statement of hard and fast do's and don'ts



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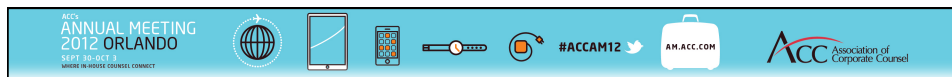
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How Will It Be Used?

- What's to stop my playbook from becoming obsolete very quickly? How do I ensure it remains an evergreen document?
 - Dynamic document that requires continuous updates.
 - Maintain deviation trackers to monitor change of policies/regulations/laws, business, strategies, and clauses that are commonly disputed, and publish updated versions to all concerned.
 - Other Methods?



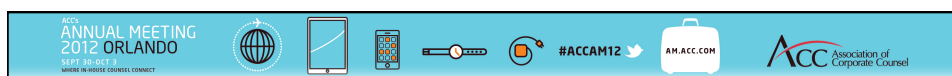
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How To: Where to Begin

- Preliminary Research:
 - Examine company experience on what has caused problems
 - How are contracts currently managed?
 - Do a road show – speak to business about needs, commonly negotiated clauses, etc.
 - Industry examples
 - Are you starting from Scratch, or doing an extensive update
 - What contract terms are most often contentious




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How To: Where to Begin

- What contracts do you want to include in this playbook?
 - Above a certain dollar amount
 - Particular transactions (high risk)
 - Different playbooks for different uses, e.g. Sales vs. Purchasing
 - Third Party Paper (The other party's form) or your own template




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How To: Where to Begin

- In creating a playbook, what aspects of our current process should I consider? What is the existing workflow for the start to finish of a contract?
 - Which clauses require legal intervention?
 - Which clauses require business approval only?
 - What are the tipping points when internal stakeholders such as risk management, insurance, supplier diversity, HR, finance, IT require to sign-off?



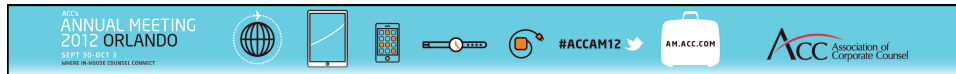
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How To: Where to Begin

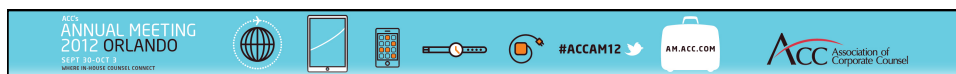
- What different approach do you take with contracts on your forms, and on the other party's forms?
 - Shouldn't your people have some idea what the forms they send out to others have in them?
 - Other's forms. Quick checklist for hot button, high risk issues.



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How To: Where to Begin

- How do you anticipate and explain the positions likely to be taken by the other party?
 - How do you know what they are?
 - What can you tell from their contract forms?
 - What can you tell from the changes they request to your forms?








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How To: Where to Begin

- Is there playbook variation, depending on the type of contract?
 - Yes—elements that could impact playbook variation include:
 - The presence of unfamiliar issues vis-a-vis the user base
 - Variability of what can be bought using the same template
 - Extent to which negotiations take place on other party's paper
 - The form of the contract and the form in which changes are made in the course of negotiations


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How To: Tools to Use

- What specific elements in my playbook will increase the efficiency and efficacy of reviews?
 - sample language and context around omission and commission
 - must haves; nice to haves; can't haves (red/yellow/green)
 - deal breakers
 - Fallback
 - Sample language and context around omission and commission
 - Approved deviations
 - Sample language and context around omission and commission
 - Approval authority/escalation matrix
 - Jurisdiction/Regulation specific clauses (sample language) and their subsequent risk-approved deviations.
 - Checklist to ensure a final sanity-check


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How To: Playbook Implementation

- What kind of training do you do on contracts?
What goes in the blanks (you will be surprised at what people don't know.)
 - Classroom training
 - Internet training
 - Newsletters, etc.


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How To: Playbook Implementation

- Do you communicate qualifications up front, or wait to react to a contract that is presented?
 - On issues that are common and often disputed, start with your position.
 - Do you require an initial review before the contract goes to legal?
 - If so, by whom?


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How To: Playbook Implementation


- Do you have a NO GO List of issues?
- When a NO GO comes up, what happens?

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Top Tips


1. Cater your playbook to its audience – i.e. a one-size fits all approach might not work, and you may need different playbooks for different parts of organization.
 - It helps to align template language across the organization as much as possible & to create a uniform look & feel for your organization templates.
2. Start with high-volume, low-complexity agreements, but don't end there. High volume, high-complexity agreements need playbooks too.
3. Begin by identifying your business's hot-button issues (where do you tend to stick and where do you usually give in?).
4. Identify red-yellow-green provisions to highlight those areas that present the greatest business risk.
 - Consider how to apply. I.e. do green never require legal review and red always do?
5. Provide fallback language.
6. Provide risk training to complement the roll-out of your playbook.
 - Counsel users on how to use fallback positions – when to hold their ground & when to give so they don't always default to the fallback.

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Top Tips Continued

7. Change is good: make your playbook a constantly-evolving document. Set a process for recalibration.
 - Create a change management calendar and process with deadlines to submit changes.
 - Review commonly negotiated clauses – is there a place where we always give? Should that be original position & not a fallback?
 - Have things happened that require reevaluation of template/playbook language such as issues with vendors or changes in the law?
8. Decide whether and to what extent your playbook will be used for negotiating on your own template, marking the other side's paper, only the initial pushback or multiple iterations.
9. Demarcate in the playbook issues you would proactively raise from issues you would address only reactively.
10. Include escalation process, approvals or inputs required for significant or high-risk deviations from standard positions.
11. Consider both fallbacks i.e., positions less preferred than your standard clauses but acceptable, and alternatives i.e., positions that may be appropriate to address certain specific risks but not otherwise. Then train on use.
12. A playbook may not always be enough or what you need. Think about checklists, process manuals or training material. Consider newsletters or FAQs for business to refer to for answers or for tips and tricks.

Complete all highlighted areas, remove all comments/notes (including this Page and all text in GREEN contained in the template) and then save the "clean" document before providing to third-party for review. If unknown by the XX business unit (BU), information related to the Vendor's contact and billing information may be completed by the Vendor (or alternatively provided to the BU) for completion.

The Agreement must be executed before any services are provided.

PLEASE NOTE:

The attached template may not be appropriate for your transaction, therefore, please check with your legal counsel before using this template if you are unsure.

This page is intended for XX internal use only and is intended to provide you with an overview of this template. This page SHOULD NOT be sent to the vendor whose services you are seeking to engage.

If it is determined that this template is appropriate for your transaction please note that you need to enter certain information into the template and its attachments prior to sending the document to the vendor. If you have any questions about the information to insert into the template, please contact your manager or your legal counsel.

Summary of: MARKETING SERVICES AGREEMENT

Last Update – February 29, 2012

Scope - To be used when any US vendor is being retained to perform a single project for Global Sourcing Marketing and Sales through XXX pursuant to one Statement of Work. If it is anticipated that more than one Statement of Work will be issued to the vendor, the Master Marketing Services Agreement template should be used instead.

Not to be used for individual services providers.

Structure - The Agreement is structured as a means to enter into a defined engagement with a vendor for services related to marketing and sales under a single Statement of Work. This Agreement is not designed for use with celebrity or other spokespersons, medical education services or advertising agency services. There is a specific template for each of those types of services.

Special Notes –

1. Before providing an initial draft to the vendor, you should provide a completed Statement of Work or a proposal describing the services to be performed, along with a draft of the agreement, to your legal counsel to ensure the template includes provisions appropriate for the services contemplated.
2. All required fields in the template should be completed (e. g. also headline and footer, signature lines, etc.) before providing to the vendor. All editors notes and comments,

including all text in **GREEN** in the template, and alternative texts should be removed before providing to the vendor.

3. Please make sure that all changes in this template have been accepted in WORD before sending the first draft to the vendor by accepting the changes, not just changing the view for the document.
4. The template should always be obtained from [Centralized Database] and used to create an agreement for the vendor. Previous agreements with the same or a different vendor should never be used as the starting point for the draft of an agreement.
5. Please insist that the vendor make all requested changes to the agreement in the “track changes” mode so that all changes are clearly marked. Beginning with the initial response from the vendor, any further changes made by either XXX or the vendor to the document have to be indicated with the track changes mode as well.
6. If vendor proposes changes to the template document, those changes should be reviewed by your legal counsel prior to execution.

[COMPANY X] Procurement Contract Playbook

INTRODUCTION

This Contract Playbook is supplemental to the [COMPANY X] Procurement and Purchasing Policies. Its purpose is to provide additional guidance to the Procurement Team regarding:

- Best practices for contract management;
- Using contracts and [COMPANY X] templates;
- Timelines for engaging the Legal Department; and
- Preferred negotiating positions that best protect [COMPANY X] from risk and promote its business purposes.

Please note that this document is for the [COMPANY X] Procurement Team's INTERNAL USE ONLY and it should not be shared with anyone outside the [COMPANY X] Procurement Team or [COMPANY X] Legal.

CONTRACT MANAGEMENT BEST PRACTICES

The following are the essential components related to creating and maintaining enforceable contracts that are in [COMPANY X]' best interests:

- Use [COMPANY X] paper whenever possible
- Maintain consistency in negotiating positions and processes
- Ensure complete contract documentation
- Maintain contracts for contract compliance, management and archival purposes
- Regularly evaluate "lessons learned" and "best practices" for continuous improvement

[COMPANY X] Paper

Whether using the [COMPANY X] Purchase Order form or an [COMPANY X] template contract, using [COMPANY X] documentation is the best way to ensure consistency in terms with all vendors. [COMPANY X] documents have terms that have been reviewed by the key [COMPANY X] stakeholders to promote [COMPANY X]' business goals and protect it from risk. Vendor documentation will be written to favor the vendor. Care should be taken not to allow ancillary vendor documents (e.g., acknowledgements, Statements of Work, proposals, timecards, etc.) to override the agreed contract terms.

Consistency

[COMPANY X] is a global company. Ad hoc arrangements with vendors are expensive to create and maintain and may expose the company to unacceptable risk or fail to meet global initiatives. Using consistent processes and negotiation positions eases contract administration and enables [COMPANY X] to treat vendors equally and fairly.

Complete Contract Documentation

Attention to detail can make or break the enforceability of a contract. To be enforceable, a contract must be signed by both parties. All blanks must be filled in and any Addenda and Exhibits attached. Redlines and editing comments may confuse interpretation so should not appear on final documents.

While original signatures and company seals (chops) are required in some countries, in the US, facsimile and electronic signatures are enforceable. Counterpart signatures may be problematic if both parties do not sign the exact same version of the document, so they are discouraged. Signature pages alone should not be exchanged by facsimile or scan to expedite the signature process.

Document security: Submitting pdf format templates discourages the most changes by Vendors, but sometimes negotiations require the exchange of Word files. When exchanging drafts of Word documents with a vendor, a few precautions are recommended:

- [COMPANY X] employees should rename any document before sending it to remove metadata related to prior revisions.
- Documents should be secured with passwords to prevent unmarked changes during negotiations.
- Final documents should be secured with passwords to prevent any changes if sent electronically. Conversion to pdf format is also advised.

Contract Maintenance and Archival

Contracts should be maintained in a manner that allows access by the appropriate business stakeholders in order to facilitate compliance with the terms. They should not be accessible to anyone else in the company or outside the company. Some countries require maintenance of the original paper documents with signatures but scanned originals are enforceable in the US.

Contracts must be maintained while in effect and afterwards according to the Records Retention Policy.

Lessons Learned and Continuous Improvement

Best practices require learning from experience. If vendors will never accept certain terms, templates and negotiation positions should be reevaluated. When vendor relationships do not work out, a review should be done to determine whether the due diligence process, the contract terms and/or the contract management process needs adjustment.

In addition, business goals and markets change so templates and processes need to change with them.

PURCHASE ORDER VS. CONTRACTS

The [COMPANY X] Procurement Policy requires the use of Purchase Orders for all transactions greater than \$[x] USD with vendors. Contracts are required for vendor relationships with the following characteristics:

- + [COMPANY X] will make one or more purchases for products against any one Vendor with an aggregate **annual value in excess of \$[x] USD**;
- + The purchase is for **Services** (including training, engineering, installation, contract labor, consulting, etc.) regardless of value;
- + The purchase is for **Software**, regardless of value;
- + The purchase involves any issues associated with **intellectual property** (e.g. software development) or a conveyance of rights regardless of value.

[COMPANY X] Legal has identified the following additional areas of risk that would recommend using a contract over a Purchase Order alone:

- + A term of one year or more;
- + Potential health, safety or environmental risks;
- + Business critical goods or services;
- + Goods or services having no alternative source of supply;
- + Unique (made to order) products;
- + Disclosure of trade secrets or other confidential or proprietary information;
- + Storage of company or customer data off-site;
- + Leases or rentals

In addition, [COMPANY X] Legal should be consulted if a transaction involves any of the following:

- + A corporate guaranty;
- + Real estate interests;
- + The parties reside in different countries or the contract requires payment in a currency other than that of the [COMPANY X] location;
- + Intercompany agreements;
- + Vendors or purchases presenting unique business or legal risk; and
- + Storage of personal data originating in the EU, outside the EU

[COMPANY X] CONTRACT TEMPLATES

[COMPANY X] templates should be used whenever possible. [COMPANY X] has the following standard forms of procurement contracts:

1. Master Services Agreement and Statement of Work;
2. Short Form Services Agreement
3. Mutual Nondisclosure Agreement
4. Master Software License and Services Agreement;
5. Software as a Service Subscription Agreement; and
6. Master General Contractor Agreement.
7. Master Short Form Construction Services Agreement

[COMPANY X] LEGAL REVIEW

[COMPANY X] Legal may need to review contracts or terms in the following situations:

- The vendor insists on using its own contract form
- There is no suitable [COMPANY X] template available
- The vendor will not accept [COMPANY X]' template default or compromise terms
- The vendor wants to negotiate a term indicated as requiring [COMPANY X] review in the table below.

In each case, [COMPANY X] Legal will be able to respond more efficiently if the Procurement team has already reviewed the contract and/or terms against the [COMPANY X] standards, discussed them with the vendor to understand the vendor's positions and can provide all relevant documentation to [COMPANY X] Legal.

[COMPANY X] Legal will use its best efforts to respond to all requests within two weeks of receipt of complete information. More complex contracts and those requiring review of vendor forms may require three weeks. Please use the form in Appendix C when requesting legal review.

PREFERRED NEGOTIATING POSITIONS

Our template agreements contain [COMPANY X] preferred (default) negotiating positions which may differ depending upon the nature of the purchase. Templates contain consistent terms where appropriate. Procurement must use its judgment and take advice from the business stakeholders when negotiating terms. The following negotiating positions are suggested in order to maintain consistency and minimize risk. These positions were developed with the advice of [COMPANY X] Legal, Procurement, Accounting and Tax. Certain terms should not be negotiated without consulting [COMPANY X] Legal or other business unit as indicated below.

Term	Default	Alternates (in order of preference)	Positions to Avoid	Additional Resources Seek Advice
Acceptance				
Arbitration				
Audit Rights				
Compliance with Laws (inc. export, immigration, permits, etc.)				
Confidentiality				
Counterparts				
Data Protection				
Dispute Resolution				
Entire Agreement				
Exclusivity				
Fax & Electronic Signatures				
Force Majeure				
Governing Law				
[COMPANY X] Affiliates				
[COMPANY X] Property Ownership				
Indemnification - General				
Indemnification -				

Infringement				
Insurance				
Limitation of Liability				
Minimum Purchase Commitments				
Non-compete				
Non-solicitation				
Payment Terms				
Publicity				
Relationship of Parties				
Rights of Setoff				
Subcontractors				
Taxes				
Termination Rights				
Time is of the Essence				
Warranties				
Warranty Remedies				

Appendix A
Software License Checklist

Appendix B
SAAS Questionnaire

Appendix C
Form to be completed when requesting Legal Contract Review

Excerpt: Supplier's Sample Playbook for Redlining Customer's Draft
Contracts

PANGEA3 PROPRIETARY DOCUMENT

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PANGEA3 PROPRIETARY DOCUMENT

CHAPTER 1 PARTIES AND FORMS OF AGREEMENT

This chapter deals with issues related to: (i) Permitted contracting parties, (ii) Preferred form or structure of agreement, (iii) Permitted and preferred form of acceptance of agreement, (iv) Order of precedence, (v) Rights and liabilities of affiliates and (vi) Assignment of rights or obligations under the Agreement.

1.1 SUPPLIER INFORMATION (PUT IN IF ABSENT)

Based on the country of incorporation of the Buyer fill in the correct Supplier entity's name and address using information from the subsidiary list.

1.2 CONCEPT OF PURCHASE ORDER: (PUT IN IF ABSENT)

Ensure that the Agreement is structured in the form of a master document and transactional documents such as a 'Statement of Work' or 'Purchase Order' (by whatever name referred to):

- i) containing a description of the Products that Supplier is obliged to provide, and
- ii) executed by both parties.

Sample Language

SL1 "...one or more purchase orders executed by authorized representatives of both the parties and incorporating a description of the Products requested by Buyer (each a "Purchase Order")." **OR**

SL2 "The parties may from time to time execute orders describing the Products to be provided by Supplier to Buyer under this Agreement (each an "Order")."

1.3 ASCERTAIN CONTRACTUAL TERMS

Ensure that no other terms and conditions (other than those in the immediate contract) will apply

Sample Language

"This Agreement and the terms on the face of Purchase Orders (excluding any form terms and conditions wherever located) constitute the entire Agreement between the parties concerning the subject matter hereof and supersede all previous communications, oral or written. No such terms contained in either party's proposal, quotation, acknowledgement, invoice or other documentation shall be part of this Agreement or binding on the other party unless agreed by a writing executed by Buyer and Supplier."

1.3.1 Terms incorporated by reference

If the Agreement refers to the Buyers standard terms and conditions or purchase manual or contains a hyperlink or otherwise incorporates external terms by reference then:

- i) incorporate agreed portions of such document as an attachment to the Agreement,
- ii) Put in a comment for the Buyer to provide you with a copy of such terms for review.

Sample Markup

(i) "All **Purchase Orders** shall be subject to the terms contained in the portions of the **Buyer** purchase manual mutually agreed by the parties and attached to the Agreement as Attachment 1 ("Purchase Manual")."

(ii) "[*Note to Buyer: Please provide a copy of the Purchase Manual for our review.*]"

1.4 ORDER OF PRECEDENCE (PUT IN IF ABSENT)

Make sure that the 'Master' document contains an order of priority that reflects that document's priority and all terms and conditions of the Master are incorporated into every Purchase Order.

Sample Language

This **Agreement** shall control in the event of any conflict between the terms and conditions of this **Agreement** and any terms or conditions set forth in the **Buyer's Purchase Order**.

1.5 AFFILIATES ENTERING INTO PURCHASE ORDERS:

If the draft provides for the provision of Products pursuant to Purchase Orders entered into directly by the Buyer's affiliates then ensure that Supplier affiliates have the option of directly entering into such Purchase Orders with Buyer or Buyer's affiliates under the master Agreement.

Sample Language

"Any **Affiliate** of **Supplier** may itself provide **Products** to **Buyer** and any **Affiliates** of **Buyer** under this Agreement by executing **Purchase Orders** in its own name and only for the purposes of any such **Purchase Orders** shall be considered "Supplier" as that term is used in this Agreement. Any **Affiliate** of **Buyer** may enter into **Purchase Orders** with **Supplier** or any **Affiliate** of **Supplier** and, only for the purposes of any such **Purchase Orders**, shall be considered "Buyer" as that term is used in the Agreement."

1.6 SUBCONTRACTING RESTRICTIONS:

If the Agreement contains an implied or explicit prohibition on Supplier from delegating or subcontracting its obligations under the Agreement or is contingent upon Buyer's approval then (i) provide that Buyer approval for subcontracting will not be unreasonably withheld, conditioned or delayed,

(ii) ensure such prohibition carves out or specifically include Buyer's authorization for the provision of Goods or performance of Services by Supplier's affiliates,

Sample Language

(i) "which **approval/consent** shall not to be unreasonably withheld, conditioned or delayed" **AND**

(ii) **SL 1** "Buyer hereby authorizes the provision of **Goods** (or performance of **Services**) by **Supplier's Affiliates**."

OR
SL 2 "provided that **Supplier's Affiliates** may provide the **Products** without **Buyer's** prior consent."

1.6.1 Subcontractors vs. Sub-suppliers

Ensure that any restrictions on "subcontract" or "subcontractor" are narrowly drafted so as to permit Supplier to use "sub-suppliers" or vendors in relation to provision of Goods.

Sample Language

“Seller reserves the right to use **qualified sub-suppliers** in connection with the provision of the **Goods**, and shall provide **Buyer** with a list of such sub-suppliers upon **Buyer**’s request.”

1.6.2 Buyer specified Sub-suppliers

If Buyer requires or reserves the right to require the use of specific sub-suppliers say that:

(i) Seller will have the right to propose alternatives provided such alternatives will not have an adverse impact on the performance required by the Agreement:

(ii) Carve out Supplier’s liability in case of breach by Buyer specified sub-suppliers.

Sample Language

“If **Buyer** requires or reserves the right to require the use of specific sub-suppliers and such sub-suppliers are not qualified and approved by **Seller**, **Seller** may propose alternatives, provided that **such alternatives will not have an adverse impact on the quality and delivery performance** required by the Agreement and Seller will not be liable for breach of this **Agreement** or resulting damages to the extent resulting from the acts or omissions of such Buyer specified sub-suppliers.”

1.7 ASSIGNMENT OF RIGHTS:

1.7.1 Unrestricted rights to the Buyer

If the draft contains an unrestricted right for the Buyer to assign the Agreement to any entity without consent then:

(i) Restrict assignment to affiliates or parties acquiring Buyer’s business or put in a consent requirement,

(ii) with regard to such permitted entities, add that such entity must agree in writing to assume and be bound by Buyer’s obligations under the Agreement,

(iii) Ensure that Buyer must in any event provide prior written notice and

(iv) Disallow assignment to competitors of the Supplier.

Sample Language

“(i) (but without any obligation to obtain the consent of such other **party**), assign this **Agreement** or any of its rights hereunder **to any affiliate of such party, or to any entity who succeeds (by purchase, merger, operation of law or otherwise) to all or substantially all of the capital stock, assets or business of such party**” AND

(ii) “if such entity agrees in writing to assume and be bound by all of the obligations of such party under this **Agreement**” AND

(iii) “upon prior written notice to **[Supplier]** [the other **party**]” AND

(iv) “provided that such entity is not a competitor of Supplier”

1.7.2 Restrictions on the Seller

Ensure that Seller may, upon notice, assign its rights:

- (i) to an Affiliate or a party acquiring Seller's business,
- (ii) to receive payments under the Agreement.

Sample Language

(i) Use Sample Language in 1.7.1 above; **AND**

(ii) "**Seller** shall have the right at all times to assign to third parties any and all credits under this **Agreement** subject to prior notification in writing to **Buyer**".

NON-DISCLOSURE AGREEMENT

THIS NON-DISCLOSURE AGREEMENT (this "Agreement") is made as of [EFFECTIVE DATE] (the "Effective Date") by and between [PARTY1 NAME] [PARTY 1 TYPE OF ORGANIZATION], with its principal place of [PARTY1 BUSINESS OR RESIDENCE] at [PARTY ADDRESS], and [PARTY2 NAME] [PARTY2 TYPE OF ORGANIZATION], with its principal place of [PARTY2 BUSINESS OR RESIDENCE] at [PARTY2 ADDRESS] ("PARTY2 NAME"), (sometimes collectively referred to as the "Parties").

1. **Purpose.** The purpose of this Non-Disclosure Agreement is to define the conditions under which any confidential information will be disclosed between the Parties in connection with [PURPOSE OF DISCLOSURE].

2. **Confidential Information.** "Confidential Information" means:

(a) any information disclosed by or on behalf of a party ("Disclosing Party") to the other party ("Receiving Party") whether provided orally or in writing and on whatever medium, concerning the disclosing party's business and/or operations and includes without limitation any materials, trade secrets, know-how, formulas, processes, algorithms, ideas, strategies, inventions, data, designs, flow charts, drawings, proprietary information, business and marketing plans, financial and operational information, and all other non-public information, material or data relating to the current and/or future business and operations of the disclosing party; and

(b) any analyses, compilations, studies, summaries, extracts or other documentation prepared by the receiving party or a third party based on the Information disclosed by the disclosing party.

3. **Non-Confidential Information.** Confidential Information shall not include any information that:

(a) is already in the public domain at the time of disclosure or later becomes available to the public through no breach of this Agreement by the Receiving Party or its employees;

(b) is lawfully in the Receiving Party's possession, without an obligation of confidentiality, prior to receipt hereunder;

(c) is received independently by the Receiving Party from a third party who was free to lawfully disclose such information to the Receiving Party; or

(d) is independently developed by the Receiving Party without the use of Confidential Material as evidenced by the Receiving Party's business records.

[4. **Marking.** All information disclosed under this Agreement is deemed Confidential Information whether or not it is so marked. It is the intent of the Parties to mark information as confidential and/or proprietary prior to release to the Receiving Party

OR

All Confidential Information provided in tangible form will be marked as such.]

[5. **Use of Confidential Information.** The Receiving Party agrees that:

(a) the Information shall be used solely for the purpose described in the preamble to this Agreement;

(b) it will not use any Information disclosed hereunder for any other purpose; and

(c) it will not distribute, disclose or disseminate Information to anyone except its employees and agents with a need to know and who, in each case, have been informed of the confidential nature of the Information and have agreed to be bound by the terms of this Agreement.]

6. **Non-Disclosure Obligations.** Unless otherwise agreed to in writing by the Disclosing Party, the Receiving Party agrees:

(a) to make use of the Confidential Information only for the Purpose of the disclosure and for no other purpose;

sstraus 8/3/12 9:09 AM
Comment [1]: Insert appropriate organizational guidelines for how broad or narrow the Purpose should be, dos and don'ts, etc.

sstraus 8/3/12 9:10 AM
Comment [2]: Give a context to use or remove this section – i.e. For use only for agreements that relate to sharing of trade secrets.

sstraus 8/3/12 9:10 AM
Comment [3]: Again – give context around use

(b) to keep all Confidential Information separate from all of its other documents and records and to destroy or return to the disclosing party all Confidential Information if it so requests;

(c) to hold all Confidential Information in the strictest confidence and not to disclose any part of the Confidential Information to any third party; and

(d) not to make copies of Confidential Information unless those copies are strictly required for the Purpose of the disclosure.

7. Confidentiality of Discussions and Relationship. Except as required by law or as permitted by Required Disclosure, neither party nor its Representatives will, without the prior written consent of the other party, disclose to any person:

(a) the fact that Confidential Information has been made available to Receiving Party;

(b) the fact that discussions or negotiations are taking place or have taken place between the parties concerning a possible business transaction or business relationship between the parties; or

(c) any of the terms, conditions or other facts with respect to any such potential or actual business relationship or transaction, including the status of any discussions.

8. Protection. The Receiving Party shall use the same degree of care and protection to protect the Confidential Information received by it from the disclosing party as it uses to protect its own Confidential Information of a like nature, and in no event such degree of care and protection shall be of less than a reasonable degree of care.

9. Required Disclosure

(a) **Notice.** In the event that the Receiving Party is requested or required by subpoena or other court order to disclose any of Disclosing Party's Confidential Information, the Receiving Party will provide immediate notice of such request to the Disclosing Party and will use reasonable efforts to resist disclosure, until an appropriate protective order may be sought, or a waiver of compliance with the provisions of this Agreement granted.

(b) **Review.** If, in the absence of a protective order or the receipt of a waiver hereunder, the Receiving Party is nonetheless, in the written opinion of its counsel, legally required to disclose Disclosing Party's Confidential Information, then, in such event, the Receiving Party may disclose such information without liability hereunder, provided that the Disclosing Party has been given a reasonable opportunity to review the text of such disclosure before it is made and that the disclosure is limited to only the Confidential Information specifically required to be disclosed pursuant to the written opinion of Receiving Party's counsel.

10. Ownership. All the Confidential Information disclosed to, delivered to, or acquired by Receiving Party from Disclosing Party hereunder shall be and remain the sole property of Disclosing Party.

11. Representations and Warranties

(a) Representations

(i) **Authority.** Each party warrants that it has the authority to enter into this Agreement for itself and its corporate affiliates and subsidiaries.

(ii) **No Violations.** Each party hereby represents to the other that the disclosure of the Confidential Information, as may be the case, will not violate any proprietary rights of third parties, including, without limitation, confidential relationships, patent and copyright rights, or other trade secrets, and that the disclosure between the parties will not violate any contractual obligations which the parties may have to any third party. Each party further warrants that it has the right to disclose all Confidential Information that it discloses to the other party pursuant to this Agreement.

(b) Warranties

(i) **No Reliance.** Except as otherwise provided herein, neither party makes any representation or warranty, express or implied, with respect to any Confidential Information and Receiving Party agrees that it is entitled to rely solely on the representations and warranties made to it by Disclosing Party in any final definitive agreement regarding a possible Transaction.

(ii) **No Warranty.** Confidential Information is provided "as is" with all faults and Disclosing Party shall not be liable for the accuracy or completeness of the Confidential Information. Moreover, unless and until a definitive agreement is entered into, neither Disclosing Party nor Receiving Party will be under any legal obligation of any kind whatsoever with respect to such Transaction except for the matters specifically agreed to in this Agreement.

12. **Return of Property.** Upon Disclosing Party's written request, all or any requested portion of Confidential Information (including, but not limited to, Notes) will be promptly returned to Disclosing Party or destroyed, and Receiving Party will, if requested, provide Disclosing Party with written certification stating that such Confidential Information has been returned or destroyed.

13. **No Obligation.** Neither party has any obligation under this Agreement to purchase from or furnish to the other party any products or services, or to enter into any other agreement.

14. **Term.** [Both any Review Material and] the Confidential Information will be kept confidential [NON-DISCLOSURE TERM] [for a period of [x] years from the date of disclosure of the Confidential Information/ until such time as all Confidential Information becomes publicly known and made generally available through no action or inaction of the Receiving Party].

15. **Remedies.** The Parties hereby acknowledge and agree that money damages would not be a sufficient remedy for any breach of this Agreement and that the Disclosing Party shall be entitled to seek injunctive or other equitable relief to remedy any such breach or threatened breach by the Receiving Party. Such remedy shall not be deemed to be the exclusive remedy for any breach of this Agreement, but shall be in addition to all other rights and remedies available at law or in equity.¹⁵

16. General Provisions

(a) **Entire Agreement.** This Agreement expresses the entire agreement and understanding of the parties with respect to the subject matter and supersedes all prior oral or written agreements and understandings. This Agreement shall not be modified or changed in any manner except in a writing signed by both parties.

(b) **No Assignment.** Neither Party may delegate its obligations hereunder or assign its rights as a Receiving Party without the prior written consent of the other Party, and any purported assignment or delegation in violation of this Agreement will be void and deemed a breach of this Agreement.

(c) **No Waiver.** No failure or delay by any Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder.

(d) **Governing Law.** This Agreement shall be governed, construed, and enforced in accordance with the laws of the [GOVERNING LAW STATE], without regard to principles of conflicts of law.

(e) **Severability.** If any provision of this Agreement is determined by any court of competent jurisdiction to be invalid or unenforceable, such provision shall be interpreted to the maximum extent to which it is valid and enforceable, all as determined by such court in such action, and the remaining provisions of this Agreement will, nevertheless, continue in full force and effect without being impaired or invalidated in any way.

(f) **Notices.** All notices, demands, requests or other communications given under this Agreement shall be in writing and be given by personal delivery, certified mail, return receipt requested, or nationally recognized overnight courier service to the address set forth below or as may subsequently in writing be requested.

sstrauss 8/3/12 9:12 AM

Comment [4]: In this section, you can set default terms and fallback positions. For example, default is 10 year but business can reduce to 7 years without consulting legal. Any terms shorten than 5 years must be approved by legal.

sstrauss 8/3/12 9:13 AM

Comment [5]: Another place for fallback positions, i.e. "Default is New York, but we will also accept New Jersey, Connecticut, Delaware or California. Any other jurisdictions require legal review.

If to [PARTY1 NAME]:
[PARTY1 NAME]
Attention: [PARTY1 CONTACT NAME]
[PARTY1 ADDRESS]

If to [PARTY2 NAME]:
[PARTY2 NAME]
Attention: [PARTY2 CONTACT NAME]
[PARTY2 ADDRESS]

(g) **Counterparts.** This Agreement may be executed in any number of counterparts, all of which taken together will constitute one and the same agreement, and the Parties hereto may execute this Agreement by signing such counterpart.

IN WITNESS WHEREOF, the Parties have each executed and delivered this Agreement as of the Effective Date.

[PARTY1 NAME]

By:

(Name)

(Title)

(Date)

[PARTY2 NAME]

(Name)

(Title)

(Date)

Executive Contract Summary

Sourcing Representative

[Name]

Business Requestor

[Name]

Date

[Date]

Outside Attorney

[Name/Number/Email]

Internal Attorney (If Any)

[Name]

First Signature Executive Name

[Name]

Second Signature
Executive 2 Name

[Name]

LEGAL REVIEW: All contracts above \$XXX in value are reviewed by legal. All high risk transactions have legal review (incl. SOWs), even if the template is not modified.

SUPPLIER NAME:
CONTRACT NUMBER:
 MSA SOW Amendment

AGREEMENT START AND END DATE (For SOW reference underlying Agreement):
IS AGREEMENT PERPETUAL (Evergreen Contract, No expiration date): YES NO [If yes, provide business justification.]

SUMMARY: [Provide a short description of the purpose of the contract, key deliverables included in the contract.]

LEGALLY APPROVED TEMPLATE: YES NO; WHICH TEMPLATE:
IF NO, WHY: [Use of non-company templates should be limited to the greatest extent possible.]

WERE ANY CHANGES MADE:

[Explain any substantive changes to the company template, key fall back positions taken or alternative terms agreed to. Include information, if applicable, on who was consulted regarding changes that relate to internal company process or policy.]

KEY BUSINESS RISKS: [Outline any key business risks, unusual payment schedules, if the vendor is also a client, etc.]

NON STANDARD TERMS: [Outline any unusual or non-standard terms agreed to during the negotiation process etc.]

PROJECT TEAM MEMBERS:
BUDGET APPROVED? YES NO
HAS THE REQUISITION BEEN APPROVED? YES NO; Requisition Number XXX

ESTIMATED CONTRACT VALUE FOR LIFE OF CONTRACT:
DOES Company OWN ANY IP REGARDING THIS AGREEMENT THAT NEEDS TO BE PROTECTED [If SOW note if additional protections are required not covered by Contract]? **If yes, explain:**
FOR SOW, DOES MSA CONTEMPLATE THIS TYPE OF WORK? EXPLAIN:
MISC PROBLEMS/ISSUES/DELAYS: [i.e. delays getting info response from internal/external resources, etc]

TO BE COMPLETED BY COUNSEL

SUMMARY OF CONTRACT CHANGES/NEGOTIATIONS

[Explain any substantive changes to the Company template. Include information, if applicable, on who was consulted regarding changes that relate to internal company process or policy. This should be written as an executive summary which can be used by the Business Requestor and provided to the Business Signatory to summarize any issues that a signor would want or need to know]

MISC PROBLEMS/ISSUES/DELAYS

[i.e. Wrong Template Provided, Delayed waiting for Vendor or internal response to issue, etc.]

RELATED DOCUMENTS

[Summarize any related documents consulted in conjunction with this agreement such as proposals, SOWs, MSAs, prior contracts with vendor, etc].

Using Your Contract Playbook as a Training Aid.
Jack O'Neil
Western Construction Group, Inc.

Playbook is no good if no one uses it. You can create a great and very thorough Contract playbook, but if sits on the shelf or in the bottom drawer, it is doing no good, and you have wasted a lot of time. One way to get beyond that is to require certain reports, or something like that, to be completed and submitted with each contract, using the procedures outlined in your playbook. A better approach is to take your playbook and hit the road, hallway, or company intranet and visit with the people who are supposed to use it, and show them how it really helps them make better and smarter deals.

The use it or else approach may get it off the shelf, especially when someone from the corporate office visits, but it makes the playbook, and the people who created it, a pain in the whatever. It becomes one more bureaucratic exercise they have to go through that is a distraction from their "real business." So if you are not getting the enthusiastic response you wanted or expected, ask the following questions.

If it is not being used, why not?

Too complicated or tedious? It covers all the issues in great detail, but does not really answer the questions they have. They don't want or need to know all the ins and outs of the theories of offer and acceptance, they just want to know if that Faxed signature is "legal."

Too legalistic? (Perhaps another way of saying the same thing.) They don't care about *Hadley v Baxendale*, they just want to know what to put in the blanks in Paragraph 6 of the form.

Don't want to be bothered with all that legal stuff. (nobody reads this stuff anyway). In too many cases, the contract is an after thought in the transaction. While it is supposed to be a memorandum of the agreement, it is viewed as a necessary evil that is a required piece of paper in the file.

It is a deal killer. It takes too long, alienates customers, and deals with things people just don't want to be bothered with.

Points to make at the outset.

Contracts do not cause the problems. They can make it harder or easier to get a good resolution. You can have a great contract, but if the execution of the work is not right, then you have problems, and the contract won't fix it. If you do great execution, but the contract shifted an inordinate amount of risk to you, you may still get burned.

Contracts are fifty shades of grey in a world where people want black and white answers. The language is supposed to express the intent of the parties, but many times one party or both parties don't even know what the contract says.

Is that legal? This is a frequent question. So be able to deal with why the answer is always "it depends." It depends on what? Often it depends on what the contract says.

Playbooks as training aids.

Think of contract training, and the Playbook as a better understanding of the rules of the game in which your company is involved. You can build your training book as rule book, but be careful that it does not come off as a set of inflexible policies. That removes risk analysis, and business decision making from the parties who are supposed to exercise it.

Explain contract language in the context of your business. If possible use real situations that your people are likely to have experienced. Examples may include Indemnification, assignment, waiver of liens, limitation of liability, time is of the essence, Liquidated damages, confidentiality and non disclosure.

War stories. Pick out some issues where your company has been involved in litigation, and explain the impact of the contract language on that situation. Leave out names, and identifying factors, so no one who is still around gets a black eye. But if the operating unit did things right, and got a good result, it is ok to give them the credit. Operations folks will listen to a good story about the kind of things they run into every day. Perhaps the liquidated damages provision was used to limit the exposure on a complicated job, where the buyer wanted to make all kinds of claims that would go beyond that.

Does it really matter? What contract issues seem very onerous, but in fact are not a big concern to your company. If your company provides a service that does not involve intellectual property in any way, mention it, but don't spend any time on it. For instance, tuck pointing a 50 year old masonry building is very unlikely to infringe on anyone's patent. But if you are selling goods that have nothing to do with construction or repair of structures, spending time on mechanics liens, may lose your audience.

Look for the "**gothcas**" that may be lurking in the Terms and Conditions, and alert your people to them, so they can act accordingly. Extremely short notice provisions which can lead to a waiver of claims is common. If you don't give the customer written notice within 24 hours of the beginning of any delay in performance caused by forces beyond your control, you waive any claim to an extension of time to complete the contract. Is 24 hours really necessary? Or, will 3 business days do just as well.

Put together some one page helps that you can use to make the whole process simpler. People love checklists, because it creates an easy way to look at a lot of information. The risk is that it makes things look black and white, so add some explanation where appropriate. (Examples attached)

Contract review by Legal. Use every contract review by the Legal department as a training opportunity. Don't just say yes or no, or send back the contract with stuff scratched out, or scribbled in. This applies even if you use a red line program instead of the older scratch in the margins technique. Tell them why you are making these changes, and why it is important to their operation, and bottom line. The sales team is not going to eventually cease needing legal advice from you just because you explain things. If you do it right, they will come to appreciate you more, and get a better understanding of why the items you point out also should be of concern to them.

It may not be tomorrow, but eventually, your sales people, project manager, and the like will become more attuned to the risks represented by the contract language they are being asked to sign, and they will make better informed business decisions.

Responding to reactions rather than reasoning. How many times do you hear: "our legal department says we can't agree to that?" What is the first thing that comes to mind? "Why not? What are your concerns?" If you can get you folks to ask that question, rather than just signing anyway, they and the other party have a different respect for, what the contract represents, and the attention to detail that you pay in making business deals.

If you are the only lawyer in the company, and more so if you are the first, you are breaking new ground. You are pushing the business folks beyond the old feeling that contracts are just for the lawyers. Keep nudging, it takes time, but you can get results. Look for them in fewer claims, reduced litigation, and better collections.

SAMPLES TRAINING AIDS

The attached documents have been derived from training aids specifically geared to the operations of a specialty contractor with operations concentrated on in the construction industry, more particularly restoration and waterproofing of masonry and concrete structures.

Therefore, they are offered as examples only, and may not be applicable to other industries or companies.

RULES OF THE GAME

Owners make the rules for most construction projects. They may do it themselves, or it may be based on the recommendations of lawyers, engineers or architects. Many of these recommendations are drawn from bad experience that someone has had with a contractor in the past.

HERE ARE SIX BASIC RULES AND HOW THEY SHOW UP IN CONTRACTS

NO SURPRISES IN SCOPE.

- ✓ Scope includes everything to give the desired result.
- ✓ Requirement to notify of problems with Plans and Specs.
- ✓ Representations that you have inspected site, plans specs and contract documents. and you know what you are doing.
- ✓ Time limit to submit requests for changes.

FINISH ON TIME.

- ✓ Liquidated Damages.
- ✓ No Damage for Delay.
- ✓ No excuses for ordinary bad weather.
- ✓ No work stoppage.
- ✓ Supply sufficient men and equipment to do the job on time.

FIRM OR PREDICTABLE PRICE.¹

- ✓ No price changes without prior written change order.
- ✓ Limited mark-up on extras.
- ✓ Lump Sum Prices.
- ✓ Agreed estimates for Unit Price.
- ✓ "Not to exceed" prices for T&M work.

NO CLAIMS.

- ✓ Indemnification.
- ✓ Insurance requirements.
- ✓ Additional insured.
- ✓ Up Front Lien Waiver.
- ✓ Defend or bond off any liens.

DO IT RIGHT.

- ✓ Execute the work in accordance with all plans and specifications.
- ✓ Comply with all laws, codes and regulations.
- ✓ Work and material of highest quality, unless otherwise specified.
- ✓ Produce intended results.

BACK IT UP.

- ✓ Warranty, to repair or replace defective work or material.
- ✓ Manufacturer's warranty on material.
- ✓ Protect work until job completed.
- ✓ Repair any defective work.

¹ Contracts with property managers, and subcontracts also have "pay if paid" clauses.

CONTRACT BASICS CHECKLIST

THIS IS NOT ALL THE THINGS YOU SHOULD CONSIDER AT THE BEGINNING OF A PROJECT, BUT IT IS A BASIC MINIMUM.

- Do you have a complete original of the contract signed by the other party?
- Have you and the other party initialed any changes to a preprinted form?
- If there was a proposal and response, do you have a final agreement on what is included?
- Are there any Addenda, "side" agreements or amending letters that need to be incorporated?
- Have you reviewed any other documents referred to in the contract as being "incorporated by reference?" Exhibits, Riders, Attachments etc.
- Are there any last minute amendments to the Contract?
- Have you included the same terms in contracts with subcontractors?
- If manufacturer's warranties are called for, are they available from the manufacturer?
- Do you have bonds, if needed?
- Has Contract been qualified to meet bond limitations, e.g. warranties, alternates?
- Do you have bonds from subcontractors?
- Have you sent the insurance requirements to Risk Management for review.
- Do you need a special insurance certificate?
- Do you have an insurance certificate from each subcontractor?
- Do you know what payment requests are needed?
- Do you know what the time limits are for claims, changes, and time extensions?
- Are their special wage, EEO or affirmative action requirements?
- Do you have any mechanics lien notice requirements at the beginning of the job in the state where the project will be performed? Check state law.
- Have you read the document you are signing?
- Have you sent this contract to Legal for review?

Manger: _____

Project: _____

Date: _____

SOME THINGS TO CHECK BEFORE YOU SIGN THE CONTRACT.

<p style="text-align: center;">CONTRACT DOCUMENTS. <i>Do you have?</i></p> <ul style="list-style-type: none"> <input type="checkbox"/> Clear understanding of Scope and Customer Expectations? <input type="checkbox"/> All Attachments, Addenda, Riders, Exhibits that are referred to in the Contract, Including reference to your Proposal? <input type="checkbox"/> All Bonds that are needed? <input type="checkbox"/> Any Special Insurance Requirements? <input type="checkbox"/> List of T&M rates and Unit Prices incorporated into the Contract? <p><i>Have you?</i></p> <ul style="list-style-type: none"> <input type="checkbox"/> Read what you are signing? <input type="checkbox"/> Included any Negotiated Changes on an Addendum? <input type="checkbox"/> Checked for Supplemental Conditions? <input type="checkbox"/> Asked for help from Legal Department? <input type="checkbox"/> Filed any Pre lien Notices required at the beginning of the job? (Check State Law?) 	<p style="text-align: center;">CHANGES, CLAIMS AND DELAYS. <i>Do you have?</i></p> <ul style="list-style-type: none"> <input type="checkbox"/> An agreed form for Change Orders? <input type="checkbox"/> A definite time allowed to do the work? <input type="checkbox"/> Agreement for time extension when additional quantities or additional work is ordered? <input type="checkbox"/> A plan to deal with problem issues typical to the type of work? <input type="checkbox"/> A pre-job inspection agreed to record conditions before you start? <p><i>Do You Know?</i></p> <ul style="list-style-type: none"> <input type="checkbox"/> Who must be notified on any Changes or Claims? <input type="checkbox"/> Time to notify Customer that Change Order is needed? <input type="checkbox"/> Time to make a claim for extra time due to delay? <input type="checkbox"/> Whether you can get damages for a Customer caused delay? <input type="checkbox"/> What date triggers any Liquidated Damages?
<p><u>INSURANCE AND INDEMNITY.</u> <i>Do You know?</i></p> <ul style="list-style-type: none"> <input type="checkbox"/> What your indemnification obligation is? <input type="checkbox"/> Is there an Additional Insured Requirement? <input type="checkbox"/> If there are any other special Insurance Requirements for this Job? <input type="checkbox"/> Whether this job is covered by a Wrap-Up? 	<p><u>WARRANTIES.</u> <i>Have you?</i></p> <ul style="list-style-type: none"> <input type="checkbox"/> Checked the Contract and Specifications for Warranty Requirements? <input type="checkbox"/> Confirmed the availability of required Manufacturer's Warranties? <input type="checkbox"/> Checked terms and conditions for Company warranties? <input type="checkbox"/> Checked for hidden tie ins to Manufacturer Warranty?
<p style="text-align: center;">PAYMENT AND CLOSEOUT. <i>Do you have?</i></p> <ul style="list-style-type: none"> <input type="checkbox"/> An agreed form for Lien Waivers partial and final? <input type="checkbox"/> Specified Payment request form? <input type="checkbox"/> All backup documents required by the Contract? <p><i>Do You Know?</i></p> <ul style="list-style-type: none"> <input type="checkbox"/> If the Contract requires up front lien waivers? <input type="checkbox"/> What the last day to file for liens is? <input type="checkbox"/> If there are limitations on the Owners payment Obligations? <input type="checkbox"/> If special EEO, or affirmative action reports apply to this job? <input type="checkbox"/> Whether this is a prevailing wage job, and what the rates are? 	<p style="text-align: center;">SUBCONTRACTING. <i>Do you have?</i></p> <ul style="list-style-type: none"> <input type="checkbox"/> A signed copy of a subcontract for each subcontractor? <input type="checkbox"/> An insurance certificate from each subcontractor? <input type="checkbox"/> Payment and performance bonds from your sub, if required? <input type="checkbox"/> A copy of any warranty that the Sub will be responsible to deliver at the end of the job? <p><i>Do You Know?</i></p> <ul style="list-style-type: none"> <input type="checkbox"/> If your contract requires you to pass certain specific obligations on to the Subcontractors? <input type="checkbox"/> If your Sub will be able to make his payroll, if payment is held up?