

CONTRACT DRAFTING CHECKLIST

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Title

Introduction

Parties

Exact Legal Name

DBA

Short name to be used in the contract, e.g., XYZ Corporation ("XYZ")

State of Incorporation can be helpful, but not essential

Effective Date (may be different than date signed)

Definitions

Representations

Duties of Each Party

Rights of Each Party

Price

Quantities

Delivery Date

Which Party Pays for Delivery?

Risk of Loss

Time of Payment

Method of Payment, e.g., check, certified check, wire transfer, etc.

Term of Agreement (Perpetual, fixed term)

Termination of Agreement

For cause

Without cause

Notice of Termination Required Time Period

Survival of Provisions After Termination (confidentiality, noncompetition, nonsolicitation)

Security

Interest

Rate

How compounded

Late Payment Fees

Insurance

- Types and levels of coverage
- Providing proof of coverage
- Requiring notice if coverage is cancelled

Exclusivity (franchise agreements, distributorship agreements, etc.)

Risk of Loss

Conditions Precedent

Conditions Subsequent

Statutorily Required Language (Example: Equine Liability Statute)

Indemnification (one way or mutual?)

Independent Contractor Provisions

Notice and Opportunity to Cure

Warranties

Disclaimer of Warranties

Forum Selection / Venue

Governing Law

Dispute Resolution

- Arbitration
- Mediation
- Limits on length of mediation or arbitration
- Who pays for arbitration or mediation?
- Who will be the arbitrator or mediator?

Waiver of Jury

Attorney's Fees, Expense, and Costs

Limitations on Liability (State that the limitation is reasonable and enables the party to provide the good or service at the agreed price). *Core-Mark Midcontinent, Inc. v. Sonitrol Corp.*, 300 P.3d 963 (Colo. App. 2012)

Liquidated Damages

Non-Assignability

Default

Taxes

- Property taxes
- Sales taxes
- Income taxes

Allocation of purchase price (IRS Form 8594)

Confidentiality

Personal Guaranty

Invalidity / Severability

Reading / Review of Counsel

Voluntary Agreement

Integration / Merger Clause

Modification

Rules of Construction

Authority to Bind the Business

Remedies

- Damages

- Specific performance

- Injunctive relief

Signatures

- Counterparts

- Fax / Electronic Signature

- Duplicate or Triplicate Originals

Protection of Intellectual Property

- Confidentiality

- Ownership of IP / Works for Hire

- Noncompetition Agreements (magic words from Colorado statute)

- Nonsolicitation Agreements

Exhibits / Attachments

- Incorporation of Documents via Hyperlinks

Rights and Obligations of Successors

Time is of the Essence

Renewal

- Automatic Renewal

- Option to Renew / Renewal Terms

No Waiver

Notices

- Method of notice

- Address or email address

- When notice effective

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