

CONTRACTS 101

AGENDA FOR TODAY

- Why do we need a contracting process?
- What does the process look like?
- Contract basics – Tricky legalese, made simple for you!
- Negotiation tips sprinkled throughout

Why do we need a new contracting process?

- Grown-up company procedures for:
 - Review
 - Approval
 - Execution (signing)
 - Maintenance:
 - Keeping signed copies
 - Records resource for your team and for Accounting
 - Long run: Help with ongoing contract administration
- Legal department efficiency
 - 600+ employees v. 2 Legal Eagles

New Contracts Process

1. Business owner negotiates the business terms
 - Be honest
 - Be fully prepared
 - Be creative; think beyond price
 - Keep a running score sheet to track movement on points
 - Try not to make the first offer
 - When the other person is talking, LET THEM TALK
 - As you wind down, ask “Is this the best you can do for me?”

New Contracts Process

2. Review of the agreement:

- Business owner makes sure the contract matches the business terms
- Be the first set of eyes on the contract to have a positive impact on the legal review – eliminates the number of revisions coming out of Legal
- Once you have reviewed the contract and are comfortable that it is an accurate reflection of the deal, then send to Legal for our review

New Contracts Process (continued)

1. Business owner negotiates the business terms
2. Review of the agreement
3. Business owner confirms purchasing authority
4. Business owner confirms the expense is in budget
5. Business owner determines who can sign
6. Business owner completes the loop – get it to Legal and, if payment is needed, A/P

Getting you ready to do the first pass

- So, are you **READY** to become a closet lawyer?

PARTIES

- [Company, Inc.]
- [State] corporation
- No subsidiaries

DATES AND DEADLINES

- No backdating!
- Effective date
- End date
- Notice dates/periods
- Business versus calendar days
- Does a month = 30 days?

THE FULL MONTY

- Where are the terms and conditions?
 - Look for the fine print on Order Forms
 - In a separate documents or online?
- If it is a Statement of Work (SOW), where is the master services agreement (MSA)? And vice versa?

SCOPE OF WORK

- Who does what?
 - Rights and responsibilities
 - Obligations of the parties
 - Includes deadlines, milestones, etc.
- Are these terms easy to understand?
- Do these terms match your expectations?
 - Did the vendor tell you one thing but their lawyer documented it as something else?
 - It happens!

TERM

- Effective period of the agreement
- Automatic expiration
- Auto-renewal provisions
 - Notice required if you don't want to renew
 - Who is responsible for this?
 - What happens if you blow the deadline?
 - Can we cap the price for renewals?
 - No increase, or 5% increase? It does not hurt to ask

PRICING AND PAYMENT

- Should be easy to understand, including payment triggers and timelines
- Pricing increases / frequency of price changes
- Currency
- Payment method
- A/P must clear non-standard or special payment terms
 - Our standard is NET 30

WARRANTY/GUARANTEE/REPRESENTATIONS

- What are each of these?
- Warranty:
 - Duration of warranty
 - What does it cover?
 - Remedies for breach of warranty
- NO personal guarantees!!!

TERMINATION

- Non-cancellable for any reason—we don't like these
- Termination for convenience—we like these
- Termination for cause/breach/default
 - Opportunity to cure
 - Remedies
- What's our Plan B if they cancel on us?
- Notice of termination – timing and method

CONFIDENTIALITY

- Is there an NDA in place?
 - What are you talking about? What is an NDA?
 - When should we put one in place?
- If not, are there confidentiality provisions in the agreement?
- “Easy Button” approach: Use our standard NDA instead!

INDEMNITY/INDEMNIFICATION

- One party agrees to stand take the hit for the other party
- Is it needed/appropriate? If so:
 - Mutual or one-way?
 - IP infringement indemnity only?

LIMITATION OF LIABILITY

- 1x approach, or stated \$ cap
 - 1x during what timeframe?
- Direct damages only
 - No consequential, incidental, indirect, punitive, etc.

NON-SOLICITATION/NON-HIRE (RESTRICTIVE COVENANTS)

- These provisions deal with us stealing employees and/or customers from the other party (and vice versa)
 - Is it really needed/appropriate, and can you really promise IS will honor it?
 - Is it mutual?
 - Is there an exclusion for general solicitations?
- These are pretty “legalese” – don’t feel bad if they confuse you

EXCLUSIVITY

- We don't agree to exclusivity provisions unless there's a darn good reason
 - That's because these are a huge issue for investors and in M&A transactions
- If you see these, please flag them for us – or just tell them no!

GOVERNING LAW

- Arizona, New York or Delaware
- No California law!

ADR/RESOLUTION OF DISPUTES

- What do we prefer?
- Attorneys fees to the victor

NOTICES

- Business notices versus legal/contract notices
- Copies of legal notices need to go to Legal (duh)
- Use title/department, not name
- Email notices are OK with us (if confirmed)

MODIFICATIONS/AMENDMENTS

- What needs to happen to change something?
 - Is an email sufficient?
 - Is scribble on the document sufficient?

INTEGRATED DOCUMENTS

- “Entire agreement” or “integration” clause
 - SOWs, exhibits, attachments, riders, online terms
- If it’s not in the agreement, or at least referenced, it didn’t happen
 - Verbal agreements and side promises
 - Side agreements (emails, etc.)
- May need to address hierarchy of documents

SPECIAL TERMS

- “Other”
- What are the curve balls?
- It’s fine for you to run anything you need help with past Legal as you are negotiating – we’ll give you top priority

OK – I reviewed it – Now what?

3. Don't forget to confirm purchasing authority
4. Don't forget to confirm budget
 - And confirm with Finance if the spend is approved now (Cash is KING!)
 - Look out for multi-year agreements
5. Signatures – who can sign and who can't?
6. Copies of final signed documents to Legal
 - And to A/P (well, only if you need your vendor paid)

QUESTIONS?