

CONTRACTS

(Keys to a Successful Project)

Tamara A. Stidham

Sasser, Bolton, Stidham & Sefton P.C.
100 Colonial Bank Boulevard, Suite B200
Montgomery, Alabama 36117
334/532-3411
tstidham@sasserlawfirm.com

What is a Contract?

A Contract is

- A legally binding agreement between the parties that identifies the rights and obligations of each.

Keys to Negotiating a Contract

It's All in Who You Know

- Know the Players
- Know the Requirements
- Know the Goal
- Know the Contract

The Players

- The Business Owner
- The Vendor
- The Project Manager
- The Lawyers

The Roles

(According to the Lawyer)

The Business Owner

- Identify the Company Need
- Identify the Company Requirements
- Identify the Product
- Identify the Vendor
- Participate in Contract Process

The Vendor

- To Make the Deal

The Project Manager

- Facilitate the Transaction
- Control the Parties
- Act as Intermediary
- Keep the Parties on Track
- Participate in Contract Process

The Lawyer

- Review the Agreement for Legal Terms
- Facilitate the Transaction
- Participate in Negotiations

Tips for Dealing with Lawyers

- Give as much lead time as possible
- Communicate your expectations
- Communicate the needs of the company

The Requirements and The Goal

- Identification of Company Needs
- Identification of Potential Solutions
- Due Diligence (Product and Vendor)
- Selection of Product and Vendor

Contract Review

- READ the Contract
 - Verify products, services and terms
 - Identify business issues
 - Prepare list of matters to be negotiated

Contract Provisions

- Parties
- Description of Product/Service
 - Detail Required Functionality/Results
 - Product Documentation/ Statements of Work

Contract Provisions

- Professional Services – Special Considerations
 - Description of Work and Deliverables
 - Project Timetable and Milestones
 - Progress Meetings
 - Project Manager
 - Roles and Responsibilities
 - Assumptions
 - Acceptance Standards

Contract Provisions

- Permitted Uses
 - Scope of Use
 - # of users, geographic location, restricted entities
 - Use by Affiliates
 - Disaster Recovery Requirements

Contract Provisions

- Pricing
 - Payment Terms
 - Long Term Pricing Commitments
 - Caps on Increases
 - Fixed vs. Time and Materials

Contract Provisions

- Term
 - Short vs. Long Term
 - Automatic Renewal Provisions
- Termination Rights
 - For Cause
 - Notice and Right to Cure
 - For Convenience

Contract Provisions

- Acceptance
 - Standards
 - Occurs When
 - Delivery
 - Date of Service
 - Live Production
 - Specified Event or Time
 - Result of Acceptance

Contract Provisions

- Warranties
 - What is a warranty?
- Remedies
 - Repair/Replacement/Reperformance
 - Cost of Replacement
 - Cost of Third Party Repairs
 - Refund
 - Cost of Obtaining New Product

Contracts

- Warranties
 - Services
 - Workmanlike Manner
 - Best Practices
 - Training and Skilled Personnel
 - Conforms to Specifications/Statement of Work

Contracts

- Warranties
 - Products
 - Performance
 - Specifications
 - Fitness for a Particular Purpose
 - Merchantability
 - Title

Contracts

- Warranties
 - Software/Licenses
 - Operation According to Specifications
 - Title
 - Compatibility
 - Media
 - Illicit Code
 - Most Favored Customer Status
 - Regulatory Compliance

Contracts

- Disclaimer of Warranties
 - Error Free Operation
 - Implied Warranties
 - Merchantability
 - Fitness for a Particular Purpose
 - Noninfringement

Contract Provisions

- Indemnification
 - Intellectual Property
 - Bodily Injury and Property Damage
 - Claims by Vendor Employees
 - Violations of Applicable Law

Contract Provisions

- Limitation of Liability
 - Determining the Amount of the Limit
 - Fees Paid
 - Depreciated Amount
 - Fixed Amount
 - Vendor's Insurance Coverage
 - Disclaimer of Consequential Damages

Contract Provisions

- Maintenance and Support
 - Types of Support
 - Onsite
 - Telephone
 - Remote Access

 - Hours of Support

Contract Provisions

- Maintenance and Support
 - Service Levels
 - Reporting and Severity Levels
 - Response and Repair Time
 - Escalation Procedures
 - Availability Guarantees
 - Processing Deadlines
 - Processing Errors

Contract Provisions

- Maintenance and Support
 - Remedies
 - Credits, Refunds, Termination Rights
 - Versions, Releases, Upgrades and Updates
 - Exclusions from Coverage

Contract Provisions

- Maintenance and Support
 - Controlling Maintenance Costs
 - Fixed Pricing
 - Caps on Increases
 - Set Professional Services Fees

Contract Provisions

- Confidentiality and NonDisclosure
 - Proprietary Information
 - Customer Information
 - Security

A Good Contract is the Result of
Time and Effort by All Parties.