

Contract Drafting Structure Checklist

1. Basic structure of a contract

- a. Identify the parties
 - i. Verify corporate entity name in state records
- b. Term/termination
 - i. Term=Duration of commercial agreement
 - 1. Time based; project based; relationship based
 - ii. Termination
 - 1. For cause
 - 2. Right and procedure to terminate early
 - 3. Cure
 - 4. Rights and obligations after termination.
- c. Recitals
 - i. State purpose of the contract
 - ii. Avoid overly detailed or constructing recitals
 - iii. Ensure recitals consistent with body of contract
- d. Definitions
 - i. Clarify the understanding of the parties
 - ii. Undefined terms can create ambiguity
 - iii. Can restrict or expand a dictionary definition
 - iv. Can explain terms specific to an industry or deal

- e. Terms and Conditions
 - i. Basic rights and obligations of parties
 - ii. Deal specific
 - iii. Price and payment
 - iv. Conditions – necessary for performance of obligations
 - 1. Different legal import than covenants
 - 2. Draft to avoid confusion between covenants and conditions
- f. Representations, Warranties and Indemnification
 - i. Risk allocation mechanism
 - ii. Distribute risk among the parties in predictable way
 - iii. Parties make standard reps & warranties to each other about
 - 1. Parties
 - 2. Terms of contract
 - 3. Subject of contract
 - iv. Basis for claim if a party makes misrepresentations or breaches warranty
 - 1. Can also disclaim warranties arising by operation of law (sometimes)
 - v. Avoid overly detailed warranties. Can become basis for litigation.
 - vi. Breaches of warranties and representation give rise to different damages
 - 1. Carefully distinguish in drafting
 - vii. Indemnification is express risk shifting from one party to another for anticipated costs- usually third party claims
 - 1. Duty to defend (attorney's fees & court costs)
 - 2. Duty to indemnify (pay for judgment against the other party)
 - 3. Scope- broad, intermediate, pro-rata

4. Events- breach, IP, negligence, compliance
5. Procedure- deliver notice, control of defense, choice of counsel
6. Strict construction rule in PA

g. Remedies

h. Dispute Resolution Provisions

- i. Favored and enforced by courts in PA
 1. Mediation; arbitration - define
- ii. Investigate chosen ADR organization, fees & rules before drafting
- iii. Understand how to invoke the dispute resolution provision and follow it

i. Boilerplate Provisions

- i. Severability
- ii. Attorneys fees
- iii. Governing law/jurisdiction
- iv. Entire agreement
- v. Waiver
- vi. Assignment
- vii. Force Majeure
- viii. Amendments only in writing
- ix. Counterparts
- x. Electronic signatures
- xi. Further assurances
- xii. Headings
- xiii. Relationship of the parties
 1. No franchise/agency/employment

xiv. Time of essence