Contract Checklist for a Service or Customized Deliverable

Reminder: Contracts have three purposes, and this checklist is designed to help you with all three.

1. **To preserve the relationship.** Most contracts are between friends, family, and colleagues. Even when this deal is over (and even if it doesn’t go well), it is possible to keep the relationship -- if you agree to what will happen, ahead of time.

2. **To have the deal go well.** Transactions go badly because of assumptions. Unspoken expectations. Let’s get everything in writing now about what you’re going to do, and what they’re going to do, and what happens if or when things get wonked up.

3. **To quickly settle any dispute.** Litigation is freaking expensive in money, time, and energy. Let’s avoid that by creating a clear agreement, so even if one or both sides become unreasonable, you can still work out your differences without calling in the lawyers (or, if you need to start litigation, it goes as quickly and easily as possible, in your favor).

Before we get started, let’s make sure we’re on the same page.

- This contract checklist is for a service or customized deliverable, not a product, software license, joint venture, or membership program.
- This checklist doesn’t include *everything* and I don’t guarantee or warranty that by using this checklist you’ll have a perfect contract. That’s impossible, because every situation is different. But, this checklist will help you get most of the big stuff addressed and make a ton of progress.
- This checklist also assumes that your business is located and/or incorporated in the United States.

Hope it helps you!

~ Elizabeth
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*Disclosure: This checklist doesn’t create an attorney-client relationship between you and me, and it’s not legal advice. It’s provided for informational and educational purposes, so you can get started on what you’ll need to do. What that means is you need to do your own legal research, and/or seek advice of counsel.*

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1. **Parties: Who is in this contract?**

   Who are the parties to this contract?

   What are their legal names?

   Individual or a LLC or a corporation and/or a DBA?

   Where incorporated or located?

2. **Date.**

   What’s the effective date?

   Does the contract start on a particular day, or just when all the parties sign?

3. **Preamble: What are you doing here?**

   Why are you both doing this contract?

   Who is Party 1 and what do they do?

   Who is Party 2 and what do they do?

   Who wishes to do what for whom, and why?

4. **Service/Deliverable: What are you going to do?**

   What is Party 1 going to do?

   What is Party 2 going to do?

   What is Party 1 *not* allowed to do?

   What is Party 2 *not* allowed to do?

   What is neither party allowed to do?

   What is *not* included in this contract?
Is this project ongoing or a one-time thing?

Are there other documents that need to be incorporated by reference?

Specific timeline or deliverables?

Does a Party have to personally do the work?

Is there a specific place the work will happen?

Are there specific days and/or times the work will happen?

5. **Term: How long are you going to do this?**

How long will this contract last - until the work is done, or a specific time frame or date?

Is the contract renewable?

Is the contract terminated upon a material breach (is the contract over if someone does not do an important thing required by the contract)?

If the contract is terminated because of a material breach, is there notice and an opportunity to cure (to fix the problem)?

Can a party terminate the contract for a good reason? For no reason?

Do any of the paragraphs in the contract survive termination (are they binding on a party even after the contract is over)?

6. **Compensation: How much money?**

How much money, when will it be paid, based on time or milestones or invoice, via what method? Royalties or Commissions?

Is there a deposit? Is the deposit refundable?

What if the payment is late?

What if the contract is terminated early?
What if the service or deliverable does not meet standards or is rejected?


Who owns what is created?

Do rights over the creations get assigned or licensed? Exclusive or non-exclusive license? Any rights reserved or licensed-back?

Who gets the licenses or buys the stuff (fonts, graphics, photos, music, video) to be used in the deliverables?

Do parties have to execute other documents to do the assignment/license?

8. Non-Disclosure & Confidentiality: Secrets

What confidential information or trade secrets are shared? By/to one party or both?

What can’t they do with the confidential information or trade secrets?

What happens if this is violated?

9. Non-Competition Agreement (check if allowed in your state(s))

Scope of non-complete (location, time frame, industry)?

10. Indemnification: Will they have your back if you get sued?

Does one party or do both parties indemnify the other from their breaches or other things that could happen?

11. Warranty

Does one party or do both parties warranty or guarantee anything? At any specific or industry standards?
Do they expressly say that they *don’t* warranty anything? (What about the default UCC warranties, if they apply to this situation?)

12. **Waivers: What if you don’t enforce it every time?**

Do you want a clause saying that the parties can’t waive their rights under the contract? Or that if you choose to not enforce one right under the contract, it doesn’t mean that you waive your rights to enforce on another occasion?

13. **Assignments**

Can this contract be assigned (or sold) to others?

14. **Insurance**

Are the parties required to have insurance? Who pays for it?

Does someone have to prove up insurance (via a certificate or letter)?

15. **Relationships**

Are the parties partners or in a joint venture?

Is one party an employee or an independent contractor of the other party? (See if your state has language that is required to be in the contract, to make it a valid independent contractor relationship.)

16. **Other Legal Stuff**

Is this the entire agreement?

Are section headings part of the document?

Are the clauses severable from each other (a court could throw out one section, and keep the others)?

What if there is a disaster or war/terrorism or “act of God?”
What law applies (country and state)? Where can a lawsuit be filed (country, state, county)?

Is mediation and/or arbitration required?

Who pays the attorneys’ fees if there is a lawsuit?

17. Notices and Signatures

If there is notice required under the contract, to whom does it go (name, address, email, phone, etc.) and how should it be delivered (in person, phone, mail, certified mail, email)?

Who can sign the contract on behalf of the company (and do you have proof that they are authorized to bind the company)?

How can the contract be executed / how can the signatures be done (in writing only, via email or facsimile, electronic, at the same time or not)?
About Elizabeth Potts Weinstein & EPW Small Business Law PC

You’re running a small business, helping people, creating, writing, connecting ... changing your part of the world.

I’m a small business attorney, and I partner with you to get your legal ducks-in-a-row, creating a real business from your big ideas. I’m on your side — so you can do it right the first time around.

BTW, this isn’t the place for people who want an old school, attack-dog, lawyer-in-a-suit. I don’t even own a suit.

This is the place for using all the legal stuff (contracts, incorporation, trademarks, copyrights) to create relationships in partnership, to support your work, and to stay in integrity with who you are and what you’re doing with your business.

Because law can be used for good.™

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