Contract Writing for Engineers

An Online Continuing Education Course for Engineers

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Introduction

Contracts are frequently part of an engineer's management responsibilities. They can be a handy tool for the project engineer or project manager to use for the control and advancement of his project. Although engineers are not usually trained in the legal field, the successful writing of contracts can be achieved through the use of simple and ordinary language that is logically constructed and framed. Later, it can be reviewed by the legal staff of the engineer's organization or by an independent attorney for the proper legal technicalities and conformance of the language to contract law.

History of Contracts

The origin of contracts can be traced through the historical record as far back as the Code of Hammurabi of the Sumer civilization as early as 1500 BC. It is the earliest Law Code known to exist. Those Law Codes and contract records are in the form of clay tablets written in cuneiform.

This graphically illustrates that commercial or business relationships have existed in a fairly complex form since the dawn of recorded history.

The behavior and conduct of the parties to the contract were established in a fair amount of detail by the Code of Hammurabi. In many cases very strict penalties were imposed for faulty performance by either party.

Such severe fines and punishment today would be quite unacceptable in any of our present day cultures. For example, if a contractor in Sumer constructed an apartment building and the building collapsed with loss of life to the occupant, his own life could be forfeited. In today's culture, severe punishment usually takes the form of monetary compensation. In rare cases where negligence is considered to be criminal, the punishment could take the form of incarceration in addition to a fine or civil indemnification. However, the penalty of death would not be an option today for contract enforcement.

Essential Elements of a Contract

A contract must have four essential elements to qualify as a valid contract. The four elements consist of the following:

a) Bid and Acceptance
b) Consideration
c) Competent Parties (be of legal capacity)
d) Legal purpose

An offer is a promise made by one party to do or not do a particular act. The act must be defined in a clear manner so that it can be easily understood. A bid is an offer by a contractor or other to accomplish a business related act. The submission of a bid constitutes an offer. A legal offer requires it to have the effect of establishing a legal business relationship between the offeror and the offeree. The offer must define a duty, an act, or an obligation for each party.

A consideration must be described in the contract and is usually done so in the offer but can be described in another part of the contract. A consideration is a value received for a benefit given. It can be of almost token value but is normally something of equal value to the benefit. There is a

lot of leeway as to whether the consideration and benefit have to be of equal value. When a beneficiary in a will is granted $1.00 from an estate the purpose is to show that the beneficiary was not excluded from the will, but that his benefit was carefully evaluated and he was given due consideration. If he was not mentioned in the will then he might later claim that the maker of the will had simply forgotten to do so.

Many times when property is donated, the wording of the transfer document or contract will state that the property is transferred for $1.00 and other valuable considerations. This is to satisfy the requirement that there was a payment, albeit a token one, made for the benefit received and therefore there now exists a legal and valid contract.

Both parties must be competent to perform and they must have legal capacity. For example, if a party attempts to make a contract with an untrained and unskilled person to design and construct a highway bridge, this would be an unenforceable contract because the party is not competent to perform the act.

For a contract to be enforceable, it must have a legal purpose. A legal purpose generally has a rather broad interpretation. A contract which would result in the violation of a law, such as to commit a crime or any other illegal act, by definition does not have a legal purpose and therefore is void and unenforceable.

Terms of Payment

The terms and schedule for payments need to be negotiated and put into the contract. Provisions in the event that payments are late also need to be determined and placed into the contract. Terms and schedule of payment should be reviewed with the other party to the contract prior to signing to ensure that there has been a meeting of the minds concerning this matter. Schedule of work events and milestones should also be discussed by both parties and an understanding reached of the anticipated progress.

If it is incumbent upon the receiving party to perform certain acts or to give approvals before the contractor proceeds to successive stages of effort, then these contingency events need to be contractually defined and agreed to by both parties. Here, the term "contractor" is used to mean the performing party to the contract or the party providing the services.

Contract Language

When writing the contract for the first time, use simple, ordinary language and write it initially by describing in writing what it is that you want to accomplish. Then after you have completed

this initial rough draft of the contract, divide it into categories and sections that are related to each other. This will create an organization to the contract that will give it a natural and sequential flow of language. The sections, headings and paragraphs need to be numbered and/or alphabetized so that specific areas of the contract can be identified and referenced in future separate documents or correspondence.

Do not be overly concerned about, nor too eager, to inject legalese jargon into the contract such as: whereas, party of the first part, upon due consideration received, wherefore, wherein, etc.

When an untrained non-legal person uses such terms, it may lead to confusion as to the intent of the contract. If such terms are truly required, the attorney or legal staff can insert them in appropriate places when they give a final review to the contract. Try to avoid undue complexity when you are writing the contract. The easiest contracts to enforce in a court of law are those contracts that are framed and couched in the simplest of language.

If you use a word which has an ambiguous meaning, try to make another word selection. However, if you must use that word, make an attempt to clarify the ambiguity so that your interpretation of the word is clearly defined. This can be of particular importance if it is a technical word that is subject to a variance of meaning. Write in short sentences; they are easier to interpret and to understand.

When you are dealing with Metric units of measurement, rather than the English system, be sure to make that distinction clear. And of course, the converse is true as well. Normally when you are dealing with engineering matters within a country, it may be assumed that the units of measurement will be of that country. As in all situations when assumptions are made, it is frequently desirable to commit such an assumption to an interpretive writ within the contract.

Circumstance could arise where you are having a product manufactured in a foreign country that uses a measurement system different from your own. In such cases, it is quite essential that the units of measurement be clearly specified and defined within the body of the contract as well as on any relevant assembly, manufacturing or descriptive drawings.

When writing contracts it can be helpful to engage in "what if' considerations. If you can conceive of a situation, which has a reasonable chance of arising that could put your organization in financial or technical jeopardy, you should put a protective clause in the contract to circumvent that possibility. Review past contract history of similar situations to assess the prospect of recurrence. Evaluate trending events occurring in the areas of concern in your contract and use this information to make an informed prediction of adverse future events.

For example, if petroleum shortages seem likely to occur in the future, and your contract is involved with that subject, write the protective clauses necessary to ensure your client against

future adverse market forces that may move against his interests. Don't later be caught out in left field wondering what happened when predictable events re-occur.

Contract Form

The contract should have the word "Contract" written within its title to emphasize that it is indeed a contract and not a proposal or any other kind of document. Federal judges have been known to determine that what may appear to be a contract is not a contract in certain ruling precedents. Having the word "Contract" within its title makes that declaration rather clear, especially to the judges who could later rule on it.

The beginning of the contract should be written by lawyers. Basically it states what the contract are to be, and any other pertinent information. The correct legal names of the parties to the contract, including middle initials and other identifying information in their companies or corporate name, will facilitate referring to them throughout the effectively use their entire names.

All technical concepts in the contract. Both parties to the contract will later be called upon to interpret the contract. This will remove any future doubt as to explained and defined when they first appear in the body.

Numbers should be written to minimize the likelihood of typing errors.

When words have a significant meaning and you want to emphasize that, you can use capitalization and also quotation marks in front of and behind the word as: "Delivery".

When using a word with a specific meaning, do not change to a different but similar word at other places in the contract. Use the same word throughout the contract so that ambiguity will be avoided.

Sample legal forms are available on the Internet for free download on some websites. One source for this is: www.homebusinessonline.com/resourrces/elibrary/legal/ . You may be able to obtain legal forms which resemble the contract which you wish to write. From them you may find ideas of format and organization which can assist in the creation and formulation of your own contract.