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### CHECKLIST FOR CUSTOMER CONTRACTS

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A good contract is often the cornerstone of a good business relationship. Sophisticated customers generally expect a written contract when they request important services. A well-written document containing fair and balanced terms speaks volumes about the way you do business and the way you treat your customers.

When all goes well on a project, it may be unnecessary for either you or your customer to go back and consult the contract. On the other hand, if things do not go exactly as planned, the terms of the contract can suddenly become very important. For that reason, it is worth taking some time, in advance, to ensure that your contracts adequately protect you.

Our attorneys have prepared the following checklist of some *basic* items that should be addressed in your contracts with customers.

#### Description of Services

The contract should describe, in reasonable detail, the services or work product you will provide, so it is clear what you are –and are not– promising to do. Be as specific as possible. Vague or overly generalized descriptions leave the door open for misunderstandings and disagreements.

If the services are described in an addendum (such as a “Statement of Work,” as in the case of many construction contracts), the contract must specify that the addendum must be signed by *both* parties before it becomes part of the contract. If the contract refers to exhibits or addenda that are not attached, demand copies of each separate document before you sign the contract.

Depending on the nature of your business, your customer may be hoping for a specific result (for example, the removal of an inkspot on his carpet). If you cannot guarantee the results of your services, include a disclaimer to that effect.

#### Payment

Payment details often get inadequate attention. Here are a few essential payment terms that should be in your contracts:

The contract price (if a flat fee) or the method for determining the price (for example, your hourly rates).

The due date for payments (e.g. “Payment is due within 30 days of the date of the invoice.”)

A statement that the customer’s failure to pay in a timely manner constitutes a “material breach” of contract.

Your rights if the customer fails to pay on time. For example:

▪ *Interest:* You are entitled to charge interest. A statutory rate of interest (currently 8% in Colorado) applies unless your contract specifies a different rate of interest (up to the maximum permitted by law).

▪ *Late Fees:* You may also charge late fees if you specify the late fee amount (typically 5%-10% of the overdue amount).

- *Stoppage of Work:* The contract should allow you to suspend services until payment is received, or terminate the contract if you prefer.

- Don't allow customers to reject invoices for purely *subjective* reasons (e.g., "in customer's discretion," "in customer's opinion," etc.) Disputes about invoices must be based on *objective* criteria, such as failure to perform as described in the description of services.

### Warranty

- If you offer a warranty, the warranty should be the customer's *exclusive* remedy. ***Note: Warranties should be in writing. We strongly recommend that your warranty be drafted or reviewed by your attorneys.***

### Intellectual Property

- Beware of contracts requiring you to indemnify a customer for intellectual property infringement! This exposes you to potentially enormous liability that is often uninsurable. If an indemnification clause is truly unavoidable, the contract should limit your liability (as discussed further below).

- ***If you have valuable intellectual property that may be accessible to your customer during the course of a project, consult your attorneys to ensure your intellectual property is fully protected.***

### Rights of Termination

- In some situations it can be critical to have the right to terminate work early. Ensure your contract clearly states when each party may terminate and what your payment rights are upon early termination.

### Other Helpful Clauses

- *Limitations on liability:* To avoid being a virtual insurance company to your

customers, there should be reasonable limitations on your liability. Ideally, the contract should specify an overall "cap" on liability, such as the contract price or the proceeds of applicable insurance coverage. The contract should also state that you are not liable for any "consequential," "incidental," or "special" damages. These are losses or expenses a customer might incur indirectly or due to circumstances beyond your control.

- *Attorneys' Fees:* The contract should state that the prevailing party in a dispute is entitled to recover its reasonable attorneys' fees. Avoid clauses that allow only the customer to recover attorneys' fees.

- *Venue & Jurisdiction:* These terms refer to the location where a lawsuit may be filed. To avoid the expense and inconvenience of going to court in a distant location, the contract should specify venue and jurisdiction in your state and county.

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**IMPORTANT:** This checklist is NOT an exhaustive list of every legal issue or contract clause that may be important for every business. Different businesses face different legal issues.

In addition, the specific language of any contract must be carefully reviewed before the legal effect of the contract can be determined. **In some cases a clause that, at first glance, appears to be beneficial, or that addresses a concept noted in this checklist, may have adverse or unintended legal consequences depending on how the clause is written.**

To ensure that your customer contracts adequately protect your rights, they should be reviewed by an experienced attorney who is familiar with the details of your business.

As always, if you have questions or require legal assistance in any business matter, please do not hesitate to contact us.