

QUESTION:

WHAT IS THE PURPOSE OF A CONTRACT?

ANSWER:

THE PURPOSE IS RISK ALLOCATION.

9 (+ Bonus) Critical Elements
Every Commercial Contract
Needs

BY: Alexander Chizhik, Esq.

The True Value of Legal Counsel

Attorneys navigate complex challenges to make agreements happen while properly allocating risk between parties.



Finding Solutions

Sales, technical, finance, operations - they all have their drivers. Attorneys balance the (at times) competing interests to make a deal happen while managing risk.



Managing Risk

All contracts come with inherent risks. Managing that risk while moving the business forward takes understanding of the business needs, business operations of both sides, meticulous attention to detail, and understanding of the law. And you thought, lawyers were obstacles. We just have more hills to climb!

Party Identification & Deal Clarity

1 Relationship Between Parties

Understanding the business relationship means understanding the business fundamentals of both sides. Parties to a contract gain something from the relationship. Knowing what's important beyond the simple transaction is the key.

Using the correct legal names is crucial for contract enforcement. Consider whether affiliates and subsidiaries should be included in the agreement.

2 "The Deal" Fundamentals

Clearly articulate who's doing or getting what. Use clean, simple language. Examples are underrated and underused... use them so third parties can understand the terms if disputes arise.

I suggest that this is the most important section. Accurately describing responsibilities and sequences of events will significantly reduce future disputes.



Financial Terms & Duration

3 Price and Payment

Specify payment amounts, terms, and consequences for late or missed payments. Assess buyer creditworthiness before the contract is signed.

4 Term and Termination

Define contract duration, renewal conditions, termination rights, and post-termination obligations for all parties.



Risk Allocation & Adaptability

5

Allocation of Risk

Address indemnities, warranties, service levels, liability limitations, and excluded damages. Consider whether representations or joint and several liability provisions are necessary.

6

Change Management

Establish how the agreement can be amended and whether a formal change management process is required.



Confidentiality & Intellectual Property

7 Confidentiality Provisions

Determine if the agreement itself is confidential and how exchanged confidential information will be protected. Specify remedies for breaches of confidentiality.

8 Intellectual Property Rights

Clarify IP licensing terms, ownership of created IP, usage rights, and protection mechanisms (including escrow arrangements if applicable).

LEGAL LITIGATION

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Indemnification & Notice Requirements



Indemnification Clauses

These critical provisions protect one or both parties against financial risk from specifically identified events or actions.

BONUS:

Dispute Resolution: The Final Safeguard

Every solid contract needs clear mechanisms for resolving disagreements. Will disputes be handled through court proceedings, arbitration, or mediation? Remember that nearly 97% of court cases settle before trial. Set up appropriate mechanism to drive resolutions if disputes arise.

Escalation procedures for dispute notices, cure periods, approvals, acceptances and reworks are an excellent way to slow the "I'll see you in court" situations and force the parties to work together to save their relationship.

Specify the venue for litigation, applicable law, whether attorneys' fees will be awarded, and any special remedies required.

- HOW TO CONTACT ME

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