

# Essential Elements of Strong B2B Contracts

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**TAKE AWAY #1:  
IF YOU TAKE ONE  
THING FROM THIS  
PRESENTATION, LET IT  
BE THIS:**

**CONTRACTS ALLOCATE  
BUSINESS RISK!**



FOUNDATION

# Why Strong Contracts Matter

## Your Business Risk is reflected in your Pricing

Your prices reflect the investment, cost, and risk of producing your services or products. While most companies already calculated the investment and cost, a strong contract allocates risk appropriately so you don't take on more than you bargained for.

## Risk Mitigation

Well-drafted contracts serve as primary mechanisms for avoiding costly disputes and litigation.

## Clear Guidance

Provides unambiguous direction for resolution when disputes arise between parties.

## Business Protection

Establishes foundational architecture for commercial relationships, defining rights and obligations.

# Party Identification & Scope

## Precise Party Details

Include full legal entity names, jurisdiction of formation, and principal place of business. Explicitly delineate obligations for subsidiaries and affiliates.

## Clear Scope of Work

Articulate with specificity what goods or services will be delivered. Include detailed specifications, performance standards, quality metrics, and acceptance criteria.

# Clear and Unambiguous Payment Provisions

## Base Compensation

Specify exact amounts, calculation methods, and any variable or performance-based components.

## Payment Procedures

Define milestone payments, invoicing procedures, payment due dates, and acceptable payment methods.

## Late Payment Terms

State consequences of overdue payments and interest rates that comply with applicable usury laws.

# Representations & Warranties



## Authority & Ownership

Each party represents their authority to enter contracts, intellectual property ownership, and compliance with laws.



## Product Warranties

Explicitly state express warranties provided and clearly disclaim any implied warranties with defined survival periods.



## Absence of Conflicts

Confirm no existing agreements or obligations conflict with the proposed contractual relationship.

# Indemnification & Liability Limits



## Indemnification Scope

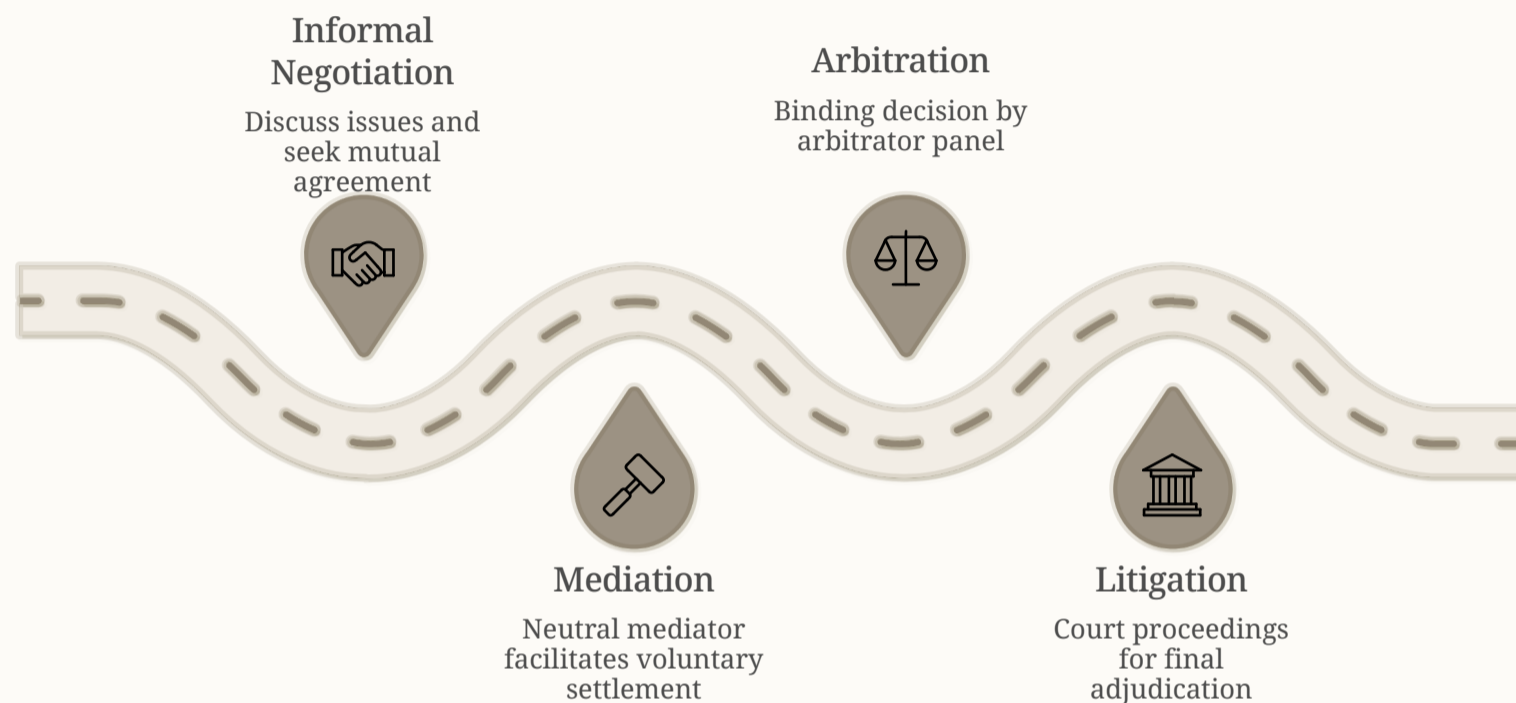
Allocate risk of third-party claims. Specify who indemnifies whom, for what claims, notice requirements, and defense control rights.



## Liability Limitations

Include caps on total liability and exclude consequential damages. Carve out indemnification, confidentiality breaches, and IP violations.

# Termination & Resolution Framework



Establish clear pathways from negotiation to binding resolution. Include detailed termination provisions for both cause and convenience, specifying grounds, notice periods, and post-termination obligations.



## Forum Selection

Eliminate uncertainty about where disputes will be resolved.



## Choice of Law

Specify which jurisdiction's laws govern the agreement.

# TAKE AWAY #2:

Appropriate dispute resolution is a reflection of your business risk:

- Disputes are inevitable, avoiding costly ones can be done by:
  - requiring notices before termination,
  - opportunity to fix/cure the problem,
  - mandatory mediation,
  - mandatory arbitration, or
  - liquidated damages.
- Are you primarily concerned with collections?
  - Consider avoiding mandatory mediation and requiring arbitration.
- Including Liquidated Damages
  - Estimated damages in event of a breach, if actual damages are hard to predict
  - Very useful if your company invests a lot of time or money at the start of a relationship
  - Very useful to establish predictable damages in event of termination so everyone knows their exposure

**Bottom Line: it depends on  
the risk to your business.**

# IP Rights & Confidentiality

## Intellectual Property

Clearly allocate ownership of pre-existing IP, IP developed during performance, and derivative works. Specify license scope, duration, exclusivity, and sublicensing rights. Consider IP transfer until payments are made.



## Data Protection

Define confidential information, use obligations, and disclosure restrictions. Address federal and state privacy laws, GDPR, CCPA compliance, breach notification, and liability for regulatory violations.



# Force Majeure & Contract Integrity

**1**

## Force Majeure

Define qualifying extraordinary events, notice requirements, mitigation obligations, and effects on contract performance.

**2**

## Integration Clause

Establish written contract as entire agreement, superseding all prior negotiations and preventing outside evidence from amending contract terms.

**3**

## Amendment Process

Require written modifications signed by authorized representatives to prevent informal changes creating uncertainty.

# Invest in Strong Contracts

Comprehensive contract drafting yields substantial returns through reduced litigation costs, faster dispute resolution, and preserved business relationships.

**3x**

## Cost Savings

Strong contracts reduce litigation expenses significantly

**60%**

## Faster Resolution

Clear terms accelerate dispute settlement

**Engage legal counsel early** to ensure critical elements are properly addressed and tailored to your specific transaction.

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