

BUSINESS CONTRACT FORMS

ROBERT J. ENGLISH

**Member of the New Jersey
and District of Columbia Bars**

Wiley Law Publications

JOHN WILEY & SONS

New York • Chichester • Brisbane • Toronto • Singapore

Copyright © 1984 by John Wiley & Sons, Inc.

All rights reserved. Published simultaneously in Canada.

Reproduction or translation of any part of this work beyond that permitted by Sections 107 or 108 of the 1976 United States Copyright Act without the permission of the copyright owner is unlawful. Requests for permission or further information should be addressed to the Permissions Department, John Wiley & Sons, Inc.

Library of Congress Cataloging in Publication Data

English, Robert J.

Business contract forms.

(Wiley law publications)

Includes bibliographic references and index.

1. Contracts—United States—Forms. I. Title.

II. Series. III. Series: Wiley law publications.

KF886.E53 1984 346.73'02'0269 83-23312

ISBN 0-471-80162-3 347.30620269

Printed in the United States of America

10 9 8 7 6 5 4 3 2 1

Dedicated to the late Walter H.E. Jaeger,
Professor Emeritus, Georgetown Law Center

PREFACE

This one-volume book of forms has been prepared to present at least ninety percent of the clauses needed in a business contract practice. The forms and clauses included herein have been successfully tested in actual practice and are equally fair to both the buyer and the seller. Those clauses included in this volume were chosen, based on the author's twenty years of experience with both large and small businesses, to reflect the main areas of business contracting. To aid in the efficient use of this book, obscure clauses and forms rarely used in the average practice have not been included.

An important part of a contract is the statement of work, which defines the business purpose and the main reason why the contract was written. Included in Chapter 2 is a guide that sets forth in a logical manner instructions for the preparation of a statement of work. Although this guide will require some modification to meet a client's individual needs, it is an invaluable tool for drafting an effective and useful statement of work.

Clauses are set forth in these forms in a logical order, unlike many contracts that are written with the clauses appearing as they were generated. These forms, therefore, can be drafted once and reproduced as needed for future use.

The forms in this book are drafted in sections. In the first section of the contract are those clauses that will change from contract to contract. Such clauses include those for scope of work, consideration and payment, delivery, and notices. Standard clauses are included in an exhibit incorporated by reference and may require modification to meet individual contract requirements, but they can be reproduced in a body to save typing time and costs.

In accordance with the purpose of this book, which is to furnish forms that are ready for immediate use, excessive annotation of forms does not occur. Citations also have been kept to a minimum, with the practices of contract drafting embodied directly in the text. Each form follows the same format—who, what, when, and general conditions. Parties (who), scope of work (what), consideration (price), and delivery (when) are included in the first articles of the contract, thereby eliminating the need to search throughout the contract for this information. Few blanks appear in the forms, which makes them easier to use and eliminates doubt and confusion about the information to be included in a blank space.

All forms are preceded by a comprehensive table of contents to ensure that the user has included all required clauses. Checklists are also included for each form to help determine which part of a form may require a change. Keyed checklists are provided to assist in proper modification of specific clauses. To further aid the user, a description of each form is included to ensure that the form implements the desired business

purpose. An index to forms and individual clauses appears in the back of the volume to further aid in selecting the most appropriate contract language.

Because two business transactions are rarely identical, and because local laws vary, some modification to these forms will undoubtedly be necessary. To reduce required modifications to a minimum, however, generic terms have been used in the forms whenever suitable to eliminate the need for retyping entire sections of a contract.

Included in this book is an export contract that covers in detail foreign business transactions. The standard software license forms that are rapidly becoming part of the daily practice of most business lawyers are also presented in the text. For the convenience of the user, the American Arbitration Association (AAA) rules for commercial and construction contracts have been included. Numbers in parentheses following Article names in Chapter 7 refer to Paragraphs of the Uniform Commercial Code (UCC).

Many contracts have been written that require a lawyer to interpret every clause. This should not be the case in a well-written contract, and is not the case with the forms in this book. The main purpose of any contract is to effectuate a business purpose, and a business person should be able to read a contract and fully understand each party's rights and obligations under the terms of the contract. The forms in this book are drafted specifically to meet that purpose.

ROBERT J. ENGLISH

*Nutley, New Jersey
October 1983*

USER GUIDE

The contracts drafted in this volume are complete with dates, contractors' names and a variety of other specific but fictional information; in this way, the reader is able to view a completed contract without questioning the absence of information in places usually marked by blanks. Instead of blanks to mark where modifications are to be incorporated, this volume utilizes different type fonts. Each chapter's introductory text appears in the same type used for this paragraph; however, the contracts themselves have been typeset in two distinct fonts:

- (1) one for basic contract text (material that requires no modification), and
- (2) one for contract text which will require modification by the reader of this book who uses these contracts in practice. Data requiring modification most often includes names of the parties to the agreement, dates, and other information related only to the specific parties to, or mentioned in, the contract.

An example is given below (excerpted from **Chapter 4, Equipment Contract**, Exhibit "B," Clause 1.):

1. ARBITRATION AND APPLICABLE LAW

Any controversy or claim arising out of or relating to the Contract or the breach thereof shall be settled by arbitration to be held in New York City, New York, in accordance with the Commercial Arbitration Rules of the American Arbitration Association, effective January 1, 19X0.

Except for the location of arbitration (New York City, New York) and the effective date (January 1, 19X0), the entire example is of a general nature, requiring only the modification of the location and date. The use of distinct fonts to separate the general contract information from the variable information specific to the contractual parties affords the reader a completed contract. At a glance the preparer of any of these forms will be immediately aware of which information will require alteration specific to the parties or terms of the contract, and which information is standard contractual text requiring no alteration.

SUMMARY CONTENTS

| | | |
|-------------------|-----------------------------------|------------|
| Chapter 1 | Drafting Guidelines | 1 |
| Chapter 2 | Statement of Work | 7 |
| Chapter 3 | Contract Checklist | 41 |
| Chapter 4 | Equipment Contract | 47 |
| Chapter 5 | Service Contracts | 79 |
| Chapter 6 | Construction Contract | 125 |
| Chapter 7 | Purchase Orders | 169 |
| Chapter 8 | Export Contract | 191 |
| Chapter 9 | Amendments | 223 |
| Chapter 10 | Consulting Contract | 237 |
| Chapter 11 | Small Value Contract | 251 |
| Chapter 12 | Software License Agreement | 263 |
| Chapter 13 | Teaming Contract | 293 |
| Chapter 14 | Escrow Agreements | 311 |
| Chapter 15 | Letters of Credit | 337 |
| Chapter 16 | Proprietary Information | 357 |
| Chapter 17 | Joint Ventures | 381 |
| Chapter 18 | Purchase of a Business | 471 |
| Chapter 19 | Partnership Contract | 533 |
| Appendixes | | 547 |
| Index | | 563 |

DETAILED CONTENTS

| | | |
|------------------|--|----------|
| Chapter 1 | Drafting Guidelines | 1 |
| §1.1 | Agrees To | 1 |
| §1.2 | By Whom | 2 |
| §1.3 | Checklists | 2 |
| §1.4 | Data and Software | 2 |
| §1.5 | Dates | 2 |
| §1.6 | Definitions | 2 |
| §1.7 | Effective Date | 2 |
| §1.8 | Format | 3 |
| §1.9 | Generic Terms | 3 |
| §1.10 | Incorporation by Reference | 3 |
| §1.11 | Negotiable Clauses | 4 |
| §1.12 | Notices | 4 |
| §1.13 | Order of Precedence | 4 |
| §1.14 | Purchase Order | 4 |
| §1.15 | Scope of Work | 4 |
| §1.16 | Signatures | 4 |
| §1.17 | Small Value Contracts | 4 |
| §1.18 | Statement of Work | 5 |
| §1.19 | Warranty | 5 |
| Chapter 2 | Statement of Work | 7 |
| | INTRODUCTION | 8 |
| §2.1 | How to Use this Chapter | 8 |
| | PROCEDURE FOR PREPARING THE STATEMENT OF WORK | 8 |
| §2.2 | Purpose of the Statement of Work | 8 |
| §2.3 | Definitions | 9 |
| §2.4 | Procedures and Responsibilities | 9 |
| §2.5 | Guidelines for Drafting the Statement of Work | 10 |
| | WORKSHEETS FOR USE IN PREPARING THE STATEMENT OF WORK | 12 |
| §2.6 | Worksheet 1—General Scope of Work | 12 |
| §2.7 | Worksheet 2—Items to Be Furnished | 13 |

| | | |
|------------------|--|------------|
| §2.8 | Worksheet 3—Services to Be Furnished | 14 |
| §2.9 | Worksheet 4—Delivery and Performance Schedule | 15 |
| §2.10 | Worksheet 5—Shipping Instructions | 17 |
| §2.11 | Worksheet 6—Packing and Marking Instructions | 18 |
| §2.12 | Worksheet 7—Inspection and Acceptance | 19 |
| §2.13 | Worksheet 8—Testing | 21 |
| §2.14 | Worksheet 9—Approvals Required | 22 |
| §2.15 | Worksheet 10—Buyer-Furnished Items | 23 |
| §2.16 | Worksheet 11—Data and Software Items | 25 |
| §2.17 | Worksheet 12—Spare Parts | 27 |
| §2.18 | Worksheet 13—Reports | 28 |
| §2.19 | Worksheet 14—Conferences | 29 |
| §2.20 | Worksheet 15—Documents to Be Incorporated by Reference | 30 |
| §2.21 | Worksheet 16—Special Requirements | 31 |
| | OUTLINE FOR DRAFTING THE STATEMENT OF WORK | 32 |
| §2.22 | Outline | 32 |
| Chapter 3 | Contract Checklist | 41 |
| §3.1 | How to Use the Contract Checklist | 41 |
| §3.2 | Contract Checklist | 41 |
| Chapter 4 | Equipment Contract | 47 |
| §4.1 | Description of Equipment Contract Form | 47 |
| §4.2 | Checklist for Changes to Equipment Contract Form | 48 |
| §4.3 | Equipment Contract | 51 |
| Chapter 5 | Service Contracts | 79 |
| | INTRODUCTION | 79 |
| §5.1 | Description of Service Contract Forms | 79 |
| | TASK | 81 |
| §5.2 | Checklist for Changes to Service Contract Form | 81 |
| §5.3 | Service Contract | 83 |
| | NON-PERSONAL SERVICES | 107 |
| §5.4 | Checklist for Changes to Non-Personal Services Contract Form | 107 |
| §5.5 | Non-Personal Services Contract | 109 |
| Chapter 6 | Construction Contract | 125 |
| §6.1 | Description of Construction Contract Form | 125 |

DETAILED CONTENTS

xv

| | |
|--|------------|
| §6.2 Checklist for Changes to Construction Contract Form | 126 |
| §6.3 Construction Contract | 129 |
| Chapter 7 Purchase Orders | 169 |
| INTRODUCTION | 169 |
| §7.1 Description of Standard and Non-Standard Items Purchase Order Forms | 169 |
| STANDARD ITEMS | 170 |
| §7.2 Checklist for Changes to Standard Items Purchase Order Form | 170 |
| §7.3 Conditions of Purchase | 171 |
| NON-STANDARD ITEMS | 177 |
| §7.4 Checklist for Changes to Non-Standard Items Purchase Order Form | 177 |
| §7.5 Conditions of Purchase | 178 |
| Chapter 8 Export Contract | 191 |
| §8.1 Description of Export Contract Form | 191 |
| §8.2 Checklist for Changes to Export Contract Form | 192 |
| §8.3 Export Contract | 195 |
| Chapter 9 Amendments | 223 |
| INTRODUCTION | 223 |
| §9.1 Description of Amendment Forms | 223 |
| EXPORT CONTRACT | 224 |
| §9.2 Checklist for Changes to Export Contract Amendment Form | 224 |
| §9.3 Export Contract Amendment | 225 |
| DOMESTIC CONTRACT | 230 |
| §9.4 Checklist for Changes to Domestic Contract Amendment Form | 230 |
| §9.5 Domestic Contract Amendment | 231 |
| Chapter 10 Consulting Contract | 237 |
| §10.1 Description of Consulting Contract Form | 237 |
| §10.2 Checklist for Changes to Consulting Contract Form | 238 |
| §10.3 Consulting Contract | 239 |
| Chapter 11 Small Value Contract | 251 |
| §11.1 Description of Small Value Contract Form | 251 |

| | |
|--|------------|
| §11.2 Checklist for Changes to Small Value Contract Form | 252 |
| §11.3 Small Value Contract | 253 |
| Chapter 12 Software License Agreement | 263 |
| INTRODUCTION | 263 |
| §12.1 Description of Software License Agreement Forms | 263 |
| LONG FORM | 265 |
| §12.2 Checklist for Changes to Software License Agreement Long Form | 265 |
| §12.3 Software License Agreement Long Form | 267 |
| SHORT FORM | 285 |
| §12.4 Checklist for Changes to Software License Agreement Short Form | 285 |
| §12.5 Software License Agreement Short Form | 286 |
| Chapter 13 Teaming Contract | 293 |
| §13.1 Description of Teaming Contract Form | 293 |
| §13.2 Checklist for Changes to Teaming Contract Form | 294 |
| §13.3 Teaming Contract | 296 |
| Chapter 14 Escrow Agreements | 311 |
| INTRODUCTION | 311 |
| §14.1 Description of Escrow Agreement Forms | 311 |
| MANUFACTURING DATA | 313 |
| §14.2 Checklist for Changes to Manufacturing Data Escrow Agreement Form | 313 |
| §14.3 Escrow Agreement for Manufacturing Data | 315 |
| SOURCE CODE | 324 |
| §14.4 Checklist for Changes to Source Code Escrow Agreement Form | 324 |
| §14.5 Escrow Agreement for Source Code | 326 |
| Chapter 15 Letters of Credit | 337 |
| INTRODUCTION | 338 |
| §15.1 Description of Letters of Credit Forms | 338 |
| IRREVOCABLE LETTER OF CREDIT | 340 |
| §15.2 Checklist for Changes to Irrevocable Letter of Credit Form | 340 |
| §15.3 Basic Form for Irrevocable Letter of Credit | 341 |
| CONFIRMED IRREVOCABLE LETTER OF CREDIT | 343 |
| §15.4 Checklist for Changes to Confirmed Irrevocable Letter of Credit Form | 343 |

DETAILED CONTENTS

xvii

| | |
|---|-----|
| §15.5 Basic Form for Confirmed Irrevocable Letter of Credit | 344 |
| CONFIRMED IRREVOCABLE STANDBY LETTER OF CREDIT—PERFORMANCE GUARANTEE | 346 |
| §15.6 Checklist for Changes to Confirmed Irrevocable Standby Letter of Credit with Performance Guarantee | 346 |
| §15.7 Basic Form for Confirmed Irrevocable Standby Letter of Credit—Performance Guarantee | 347 |
| CONFIRMED IRREVOCABLE STANDBY LETTER OF CREDIT—ADVANCE PAYMENT GUARANTEE | 349 |
| §15.8 Checklist for Changes to Confirmed Irrevocable Standby Letter of Credit Form with Advance Payment Guarantee | 349 |
| §15.9 Basic Form for Confirmed Irrevocable Standby Letter of Credit—Advance Payment Guarantee | 350 |
| AMENDMENT TO A LETTER OF CREDIT | |
| §15.10 Checklist for Changes to Letter of Credit Amendment Form | 352 |
| §15.11 Basic Form for Amendment to a Letter of Credit | 353 |
| Chapter 16 Proprietary Information | 357 |
| INTRODUCTION | 357 |
| §16.1 Description of Exchange and Disclosure of Proprietary Data Agreement Forms | 357 |
| EXCHANGE AGREEMENT | |
| §16.2 Checklist for Changes to Proprietary Information Exchange Form | 358 |
| §16.3 Exchange Agreement | 359 |
| DISCLOSURE AGREEMENT | 369 |
| §16.4 Checklist for Changes to Proprietary Information Disclosure Form | 369 |
| §16.5 Disclosure Agreement | 370 |
| Chapter 17 Joint Ventures | 381 |
| INTRODUCTION | 381 |
| §17.1 Description of Joint Venture Forms | 381 |
| JOINT AND SEVERAL LIABILITY | 383 |
| §17.2 Checklist for Changes to Form for Joint Venture with Joint and Several Liability | 383 |
| §17.3 Joint Venture Agreement with Joint and Several Liability | 386 |
| LIMITED LIABILITY | 426 |
| §17.4 Checklist for Changes to Form for Joint Venture with Limited Liability | 426 |
| §17.5 Joint Venture Agreement with Limited Liability | 428 |

| | |
|--|------------|
| Chapter 18 Purchase of a Business | 471 |
| INTRODUCTION | 471 |
| §18.1 Description of Purchase of Business Forms | 471 |
| SALE OF STOCK | 473 |
| §18.2 Checklist for Changes to Sale of Stock Form | 473 |
| §18.3 Contract for Sale of Stock | 476 |
| §18.4 Memorandum of Closing | 496 |
| SALE OF A BUSINESS | 499 |
| §18.5 Checklist for Changes to Sale of Business Form | 499 |
| §18.6 Contract for Sale of a Business | 501 |
| §18.7 Memorandum of Closing | 520 |
| BUY-SELL CONTRACT | 523 |
| §18.8 Checklist for Changes to Buy-Sell Contract Form | 523 |
| §18.9 Buy-Sell Contract | 524 |
| Chapter 19 Partnership Contract | 533 |
| §19.1 Description of Partnership Contract Form | 533 |
| §19.2 Checklist for Changes to Partnership Contract Form | 534 |
| §19.3 Partnership Contract | 536 |
| Appendixes | 547 |
| Index | 563 |

CHAPTER 1

DRAFTING GUIDELINES

- §1.1 Agrees To
- §1.2 By Whom
- §1.3 Checklists
- §1.4 Data and Software
- §1.5 Dates
- §1.6 Definitions
- §1.7 Effective Date
- §1.8 Format
- §1.9 Generic Terms
- §1.10 Incorporation by Reference
- §1.11 Negotiable Clauses
- §1.12 Notices
- §1.13 Order of Precedence
- §1.14 Purchase Order
- §1.15 Scope of Work
- §1.16 Signatures
- §1.17 Small Value Contracts
- §1.18 Statement of Work
- §1.19 Warranty

§1.1 Agrees To

Do not use this phrase in the body of the contract. By law every obligation in the contract has already been agreed to when the contract is signed. Instead, use the word *shall*.

§1.2 By Whom

Whenever an obligation is stated in the contract, the contract must also specifically state whose obligation it is. The statement, *The equipment will be installed on or before February 28, 19X1*, lacks the specificity required. Is the seller to install, is the buyer, or is a third party? The addition of the phrase *by Seller* after *installed* defines *by whom*.

§1.3 Checklists

A checklist that identifies necessary changes is included for each contract. Checklists should be reviewed and modified or revised to cover the client's requirements. A master checklist that contains all essential terms for any contract is found in Chapter 3.

§1.4 Data and Software

Data and software are of paramount concern. The contract should provide what data and software are to be delivered and when and with what rights.

§1.5 Dates

Delivery. Be specific. Instead of stating delivery as *sixteen months after award*, state it as *February 28, 19X1*.

Documents. Each document referenced in the contract should be dated. A statement of work referenced, but not dated, can cause litigation, especially if numerous revisions have been made to the statement of work.

§1.6 Definitions

A definitions clause should be included in all major contracts that are usually for complex items. A definitions clause gives the buyer and seller a common language which helps prevent misunderstandings at a later date.

§1.7 Effective Date

The effective date of the contract must be clearly stated. The effective date is not necessarily the date performance commences. However, it is the date that starts the

clock running for other obligations, e.g., filing of bonds, advance payments, and establishing letters of credit.

§1.8 Format

Alphabetical Order. Arrange the general provisions in alphabetical order. An alphabetical arrangement will help identify what must be covered and will make the clauses easier to find when reviewing a contract.

Exhibits. Put the general provisions and special provisions in exhibits and incorporate the exhibits by reference. By doing so, when changes occur, only the specific exhibit in which the change was made will need revision rather than the complete contract.

Headings. Headings on the clauses orient the reader. The heading *Applicable Law and Disputes* keys the reader to what follows.

Spacing. Double spacing or a space and a half makes the contract easier to read.

Subheadings. If a clause is long and complicated, it should be broken into subsections using subheadings. For example see the *Termination for Convenience* in Chapter 4.

§1.9 Generic Terms

Use generic terms in the body of the contract and general provisions. This eliminates retyping the entire contract when the contract is used for different clients. The generic terms *Buyer*, *Seller*, *Owner*, and *Contractor* are used in the forms.

§1.10 Incorporation by Reference

Whenever possible, incorporate documents by reference. A statement of work included in a clause makes reading the contract difficult, and if the statement of work must be revised, it usually requires retyping the whole contract. Prime candidates for incorporation by reference include: statement of work, general provisions, special provisions, detailed payment provisions, delivery schedules with multiple deliveries, milestone schedules, codes and standards.