



12 practical reasons for using written contracts with suppliers and service providers

It may seem hard to believe, but many companies still enter into verbal agreements with suppliers and service providers. While trust may be a virtue, **protecting yourself** with a written agreement is common sense!

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As Benjamin Franklin once said, “An ounce of prevention is worth a pound of cure,”¹ and when dealing with suppliers and service providers, this rings true. Just one dispute with a supplier or service provider can create huge problems. In this area in particular, written contracts are the “ounce of prevention” that can practically erase the possibility of future problems.

In my 30-year contracts career, I have discovered the amazing fact that many large and small companies still routinely enter into verbal agreements with some of their suppliers and service providers. While it may seem convenient and fast, this practice can result in serious problems down the road. As a result, I have developed the following simple list of 12 practical reasons why such a practice is unwise. By providing this list to those individuals who continue to enter into such verbal agreements, it will help them to better understand why it is wise to “get it in writing.”

- 1** It may sound like a fairytale that some folks grew up in homes without locked doors, settled their deals with a simple handshake, and always received what was originally promised. Unfortunately, while these practices were commonplace in the past, the world has changed and this is just not the case anymore.
- 2** You can try to convince a judge or jury that your version of the verbal contract is correct all you want, but without written, documented proof, it's your word against the supplier's, and there's no telling who a judge or jury will believe.
- 3** A written contract has the beneficial effect of forcing both the buyer and the supplier to think through the deal somewhat longer than it takes to simply say “It's a deal.” A well thought-through written contract drives the completion of a much better understanding between the buyer and seller. Individually, the buyer and seller may interpret the deal quite differently if it is just a verbal agreement.
- 4** A carefully drafted written contract definitizes the entire deal with your suppliers. This helps to prevent suppliers from unilaterally changing the arrangement at a later date (and at your expense).
- 5** A written contract serves several practical purposes; some obvious and others not so much. A written contract impresses upon the parties the importance of the event and requires the parties to seriously consider the effects of performance and nonperformance. Signing the written contract convinces the parties of the importance of their commitments.
- 6** Nowadays, savvy buyers desire explicitly-stated guarantees (express warranties) and service level agreements (SLAs) for the products and services being acquired so that these products and services meet certain desired requirements. If express warranties and SLAs are what you want, your written contract can clearly describe these requirements.
- 7** If your supplier is breaching the arrangement, the process of proving whether or not and how much the supplier should pay can be quite expensive and time-consuming, but not if you include an applicable clause in your written contract. Therefore, not only should you have a written contract with your supplier, but you should also state your desired remedies in the event of a supplier's breach.
- 8** If you want to charge a supplier for your attorneys' fees and court costs incurred to resolve a supplier's deficient performance, it must be stated in your contract. Otherwise, you probably won't be able to recover applicable attorneys' fees and court costs. Often, the inclusion of such an attorneys' fees/court costs clause in a written agreement may be the only economically feasible way for you to litigate in the event of a supplier's deficient performance.
- 9** The laws governing business dealings can differ greatly from jurisdiction to jurisdiction. If your supplier is located in a jurisdiction outside of your own, the question of which jurisdiction's laws will apply will invariably arise in a business dispute, as well as the question of where the lawsuit should take place. A written agreement can settle these issues upfront.
- 10** There's more to a written contract than the simple boilerplate *legalese*; a written contract is also a fixed reference point. During the ongoing course of a business relationship, should there be a misunderstanding concerning results, period of performance, or other issues, you can easily refer back to the written document and quickly resolve these issues.

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A written agreement can be an important method for establishing that your supplier is operating as an independent contractor. This is extremely useful in the event that you need to prove to others (including the Internal Revenue Service and other governmental authorities) that the supplier is an independent contractor and not an employee.

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In most states, a signed written contract is an absolute legal necessity for some specific types of deals. Also, the requirement of a written agreement is defined in the applicable Statute of Frauds and Uniform Commercial Code provisions of most states. Other countries have requirements for certain specific types of contracts to be in writing as well. Typically, in the United States, contracts for the sale of goods over \$500, agreements transferring real estate, contracts (by their terms) that cannot be completed in one year, and some other specific types of contracts are required to be in writing.



Samuel Goldwyn perhaps said it best when he stated, "A verbal contract isn't worth the paper it's written on."² Use this list as one of your resources the next time you need to convince someone to use a written agreement. You will find that it will cause

many issues to be surfaced and identified for consideration regarding the merits of written agreements. Simply put, play it safe and put it in writing! **CM**

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ENDNOTES

1. The Electric Ben Franklin, "The Quotable Franklin," USHistory.org. Accessed July 11, 2008, at http://findarticles.com/p/articles/mi_g1epc/is_bio/ai_2419200466.
2. Samuel Goldwyn quote taken from *St. James Encyclopedia of Pop Culture*, by Jill A. Gregg, "Samuel Goldwyn," BNET. Accessed July 11, 2008 at www.ushistory.org/franklin/quotable/quote67.htm.

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