

DGM 3110 – Corporate Issues – Terms and Definitions 3 – Contracts

Contract	A legal agreement between two or more persons. Mutual exchange of value is a must – called “consideration.”
Person	Can be a natural, living individual, or a legal construct, such as an LLC or a Corporation.
Party	1) The opposite of what class feels like; or 2) A Person engaged in a Contract or other legal act or proceeding.
Parts of a Contract	Recitals; Definitions; Body; General Provisions; Signature/Notary block.
Types of Contracts	Written; Oral; De Facto; Of Adhesion; many more
Bargaining Power	The power one Party has relative to another to dictate the terms of a contract without fear of material loss.
Recitals	Opening section of a written contract, naming and clearly identifying the Parties, the nature of the agreement, and often the purpose for the contract and an overview of any subject property.
Definitions	Clear descriptions of the full meaning of all operative terms of a contract that might otherwise be open to varied interpretations. Avoids “genuine issues as to material facts.”
Body	The bulk of the operative language of a contract: includes Duties, Benefits, Terms of the Parties’ interactions, Succession Planning, Ouster Planning, Dissolution Planning, Governance, Dispute Resolution, and any other matter that might arise to any Party’s detriment.
General Provisions	Just like the Body of the contract, with terms and parameters, but this section is where you will find provisions common to many different kinds of contracts, e.g. Merger, No Waiver, Venue, Choice of Law, Severability, Successors & Assigns, etc.
Signature Block	The field where the Parties will sign to certify their agreement. Must include printed as well signed name, role or title, company or entity being bound, if any, and often a date for each signature. Can include witnesses (usually two or three, with clear identifiers).
Notary Block	A Notary is a professional, disinterested, certifying witness. The Notary Block “solemnifies” the document and, depending on its wording, can have the effect of making a Party’s statement/signature either an “acknowledgement,” or an “oath,” which is a sworn affidavit, as if testimony in court.
Merger Clause	Eliminates all previous written and oral agreements by “merging them into the current contract. Also called a “Whole Agreement” clause.
No Waiver Clause	Certifies that even if a Party doesn’t choose to enforce a provision of the contract at any time and for any reason, he or she has not waived that provision for the future.
Severability Clause	States that even if a provision of the contract is held unenforceable by a court, the remaining provisions shall remain of full force and effect. (E.g.: the offending provision is “severed” rather than the whole contract being nullified.)
Choice of Law	Designates the body of law which is to apply (i.e. the State) and the

Clause	agreed venue for court action.
No Assignment Clause	The Parties may not assign their duties under the contract to anyone else. Sometimes limits assignment of benefits, as well.
Binding Nature Clause	The contract binds the Parties, their successors, heirs, and assigns.
Survival of Terms Clause	The terms or provisions listed shall survive the termination of the contract, either forever, or for a term of years.
Force Majeure Clause	One or more Parties shall not be held to certain duties and/or deadlines if unforeseeable outside forces intervene to make compliance impossible.
Purpose Clause	States that the even if part or all of the contract is judged to be unenforceable, the contract shall be amended or reformed to carry out the purposes of the Parties, which can be enumerated in this provision or elsewhere in the contract.
Dispute Resolution Clause	Specifies the procedure for resolving disputes. Can include any combination of Mediation, Arbitration, or Litigation. This provision will USUALLY allocate dispute costs to the loser to prevent spurious lawsuits.
Authority Clause	The Parties certify their authority to enter into the contract and bind themselves or their companies.
Independent Judgment Clause	The Parties certify that they are entering into the contract fully informed, and with full opportunity to counsel with their own attorney.
Injunctive Relief Clause	Specifies the manner in which a Party contractually agrees to be subject to restraining order or injunction, including the reasons why.
Language Clause	All about masculine versus feminine, etc.
Headings Clause	Specifies that the headings are for organization only, and not substantive in their own right.
Counterparts Clause	States that the contract may or will be executed in multiple counterparts. Can state that all together form one whole agreement, or that each one is a self-contained agreement.
Succession Planning	What happens if a Party dies, is incapacitated, quits, is convicted of a crime, or is ousted.
Exit Strategies	A contract should contemplate all the ways in which the relationship might fall apart, and specify the path for the Parties to take to minimize harm and preclude litigation, if possible.
"Stoopid"	How you describe someone who enters into a business relationship without a really good contract.