



GPS

LEGAL

CLEAR DIRECTION IN A COMPLEX WORLD

# WRITING A BETTER BUSINESS CONTRACT



The Seven Essential Elements

# WHY CONTRACTS? ...THE BASICS

- Legal agreement between two or more parties
- An obligation “To do” or “Not to do”, that is the question
- Clearly establish the parties’ terms, rights, and obligations
- Avoid
  - Ambiguity
  - Disputes (“He said – She Said”)
- **ENFORCEABILITY**



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# ESSENTIAL ELEMENTS



# 1. OFFER



- A promise to act or refrain from acting
- Made in exchange for a promise to do the same or performance (or not) of an act
- Offeror must exhibit a present intent
  - distinguished from preliminary negotiations (ads, catalogues, letters of intent)
  - Caution: Preliminary negotiation can become binding contracts!
- Offers terminate when
  - Rejected (Express / Implied / Withdrawn)
  - Expire or Lapse
  - Death or Insanity or Destruction
- Options (to keep open / extend)

## 2. ACCEPTANCE

- Offeree must know of the offer
- Offeree must manifest a present intention to accept
- Unequivocal
- Unconditional
- In the manner specified by the offer
  - Oral or written
  - Online or in person
  - Handshake or ceremony
- “Mailbox Rule”
- Be careful of implied acceptance



### 3. CONSIDERATION

- Exchange of value between the parties
- Need not be currency
- Can be a promise to
  - Perform - not legally required
  - Refrain - legally entitled
- Offeree must suffer a “legal detriment” (relinquishing a legal right)



Promising “love and affection” a gift or donation, or to complete an act that is already completed is not enough consideration to support a contract.

## 4. MUTUALITY OF OBLIGATION

Also known as a “meeting of the minds”, the moment when both parties have recognized the contract and agreed to enter into its obligations.

- Both parties must be bound, or no parties will be bound
- One party may not be given the absolute and unlimited right to cancel





# 5. COMPETENCE & CAPACITY

Each party must be fully able or have the legal capacity to enter into the contract in order for it to be considered valid.

- Legal Age
- Of Sound Mind
- Intoxicated (maybe)
- Under no duress or coercion



# 6. WRITING REQUIREMENT



Thailand allows verbal contracts; however, certain types of contracts must be in writing to be enforceable:

- Debts greater than THB 2,000
- Last Will and Testament
- Marriage (and Divorce)
- Title in Property
- Long term leases (greater than 3 years)
- Insurance Contracts
- Sale & Purchase of Securities (including transfer of shares)
- Performance extending beyond 1 year

## 7. LEGAL

Contracts cannot be created to govern the trade of illegal products or services.



# IN CONCLUSION (DO'S AND DON'TS...)



- **DO** your due diligence...Know who you are dealing with. Contracts are only as good as the people behind them
- **DO** be careful of “self-help websites...” There is a lot of misinformation and missing information on the internet
- **DO** use the “KISS” principle
- **DON'T** inadvertently turn a non-binding MOU into a binding agreement
- **DON'T** be penny-wise and pound foolish – ask an attorney to review your work.



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