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Contracts and Customer Relations

Contracts formalize the terms of your relationship with your customer. In today's litigious society they are a necessary part of doing business.
They give you ground rules for potential conflicts. You can't always control their content - it's always to your advantage to try. Note that I am *not* a lawyer - this is based on my experience doing business and working with lawyers - check with your own lawyer before signing any contract!

Arroyo's basic contract covers most of the standard stuff you'll see in any contract. Here's a a brief overview of what's in a contract and why

1. Parties; Effective Date - or who, where (offices) and when - pretty obvious really

2. Nature of Agreement: generally speaking what are you agreeing to do or provide.

3. Client Obligations: very important stuff! Your client should formally agree that what you are proposing to do will meet their needs. Equally important, they should state that they are responsible for providing you with accurate, appropriate, reliable and timely material to enable you to do the job. Without this, you may find yourself in the difficult position of having agreed to do a job without having the information you need to do it. Of course discussing this with your client is crucial - the contract formalizes the need for the discussion.

4. Payment of Fees and Expenses. nitty gritty stuff - how much - usually tied to a contract exhibit detailing a schedule of deliverables and payables.

5. Change Orders. The key here is to include a method for incorporating changes with the client having acknowledged that change orders can lead to changes in cost and schedule - for obvious reasons. You still have to negotiate these if they come up but you've laid they groundwork.

6. Best Efforts. Both sides agree to be good doobies and do their best while realizing that things don't always work out as planned. You're agreeing that everyone has the best of intentions here - assuming good will as a basic starting point.

7. Delivery and Acceptance of Deliverables. We agree to deliver deliverables in the agreed upon timeframe and client agrees that they are automatically accepted 35 days after receipt unless they give written notice of a problem. If your client isn't happy the parties should negotiate a timeframe to cure the defect.

8. Non- solicitation - six months is fairly standard. People sometimes get overly greedy or paranoid here - we've dealt with one person who thought 3 years was reasonable but he came from a mainframe background.

9. Limited Warranty. IMPORTANT - we only warrant deliverables for 90 days. You can support a product (and generally should) for considerably longer but the word "warranty" has very specific legal meaning and our lawyer advises strongly against making a longer warranty - it can be very costly.
A warranty should also point out exceptions which will void it - like modification by your customer.

Your warranty should also strongly point out that you do not warrant anything else like 3rd party goods or services and that a warranty does not mean bug free. Ours also points out that we do not warrant against viruses or hackers :-)

10. Best Efforts to Prevent Computer Software Viruses. Something about using standard industry practices to protect against viruses will go a long way toward making a customer more comfortable and you less at risk if they do

get infected is a real good idea.

11. Limitation of Liability for Damages. IMPORTANT Limit your liability to no more than the amount you get paid, and to your own work. If things you badly and you end up in a fight this can make a huge difference to how much trouble you're in. (and it might help sidestep the whole issue)

12. Confidentiality - we include a non-disclosure in most contracts with the standard terms of not including stuff already in the public domain, already known to us or created independently by us. Its term will extend beyond the contract and is sometimes specified in the agreement.

13. Ownership of Deliverables. This is where you cover the all important issue of who owns the source and if you (or your customer) have the right to reuse code. Some clients will insist on owning source, some won't care about reusing code fragments. It's always wise to specify.

14. Indemnification of client. indemnification is a legal term meaning "to protect against or keep free from loss, damage, etc" (New World Dictionary). Practically speaking, what it means is that you'll help your client defend themselves against claims that your stuff infringes on any third party's patent, copyright or trade secret rights. Your should specify that you have sole control over your own defense and settlement and get prompt notification of any claim. Also you should specify that stuff your client did on their own doesn't affect you. This should be stated as the limitation of your obligation.

This sounds like you're giving something for nothing but generally speaking people will insist on it - and it protects you as much or more as your customer.

15. Indemnification of Arroyo. Your client should agree to indemnify you against liability to property, business interruption, loss, lost profits or personal injury or death as the result of using your product. More cheerful stuff.

16. Term and Termination. When are you done - and under what terms can either side stop early. We include a few outs - mutual written consent; failure to agree on change orders; the client can choose to pay for the current portion of work completed and stop there, and either party can cancel if there is a material breach after written notice and failure to "cure the default" within 30 days. This last is a way out if for example the customer isn't paying or providing you with the key information you need to produce.

17. General Provisions. Routine stuff - what state's laws control the contract (ideally the state where you and your lawyer are), a clause saying nobody's liable for acts of god, strikes, wars, etc. You should agree that your contract is the only agreement between you and your client and can only be changed by amending it.

Limitation of timeframe to cause of actions to one year after cause of actions has accrued - they can't sue you way down the line.
It's also important to state that you are an independent contractor NOT an employee, agent or subcontractor of client. The IRS has been known to decide that contractors are employees - with highly undesirable tax consequences - so don't make it easy for them to do so.

We include a clause calling for arbitration rather than a suit in case of conflict that gets to that point - it's much less costly in time or $$.

both you and your client should sign and date the opus.

It's usual to include two exhibits - A - specification and B - deliverables and payables. There are other ways to handle these items but it is important to spell them out.