

The Devil is in the **Details**

Part 2: Avoiding Contract Pitfalls

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In its most basic form, a contract is merely an agreement between two or more people to do or not do a particular thing. That sounds simple enough, but when those obligations are buried in the fine print in the middle of a lengthy document it may not be so easy to understand exactly what the parties are agreeing to do or not do.

Risk Allocation, Hold Harmless and other Contracting Pitfalls

1. Determine how risk is to be allocated. Risk is typically borne by the party in the best position to prevent loss; however, there may be reasons for a different allocation. Check insurance requirements. Will you be able to obtain the required insurance within your budget?
2. Check hold harmless and indemnification provisions. When you agree to hold someone harmless you are agreeing to not hold them responsible for liability that may arise out of the transaction. When you indemnify someone, you are agreeing to protect them from liability or loss that may arise out of the transaction. If you must indemnify the other party, limit the indemnification as much as possible and negotiate the same indemnification for yourself.
3. When another document is incorporated by reference always read the incorporated document. Don't assume you know what it contains.
4. Determine what acts constitute default and whether you are able to enter into and perform under the contract without causing a default under another agreement. Also consider what should be included as events of default by the other party.
5. Review remedies provisions. Determine the worst that can happen to you if you default. Explore ways to limit your liability. Also determine what types of remedies you need in the event of default by the other party.

It is my hope that this three-part series on avoiding contract pitfalls is useful for you and your business. I've found that it is not uncommon for otherwise very careful people to glance over a contract and just sign it without really knowing what it obligates them or the other party to do. Let me know if this post has been helpful by commenting on the Facebook page (Hampton Roads General Counsel, PLLC), or by leaving a comment on the website (www.hrgclaw.com).