



# Contracts 101 – Top 10 Items to Consider Before Signing on the Dotted Line

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**A** restaurant owner is potentially faced with signing many different contracts as part of their business operations. From food and beverage supply contracts, equipment leases, purchase orders, delivery receipts, franchise agreements, remodeling contracts, insurance contracts, and everything in between, it may seem like there is no end to the types of contracts with which an owner is presented and asked to sign. Faced with this, some restaurant owners might consider using a form contract or adopting a “sign without reading” approach. Indeed, the justifications for merely signing any proposed contract put in front of the owner are as numerous as they are tempting:

- Because an owner is ‘too busy’ to review the contract in detail;
- because the other party to the contract told the owner that reading it was not necessary as it was a ‘standard’ agreement and consistent with prior discussions;
- because the contract is ‘non-negotiable’ or;

- because reviewing a contract before signing it is as exciting as watching paint dry.

To be sure, it can be very tempting for an owner to pay little attention to a contract’s terms and simply sign it as submitted.

Resist that temptation.

Reading and understanding a contract may sometimes seem tedious – but a well-drafted contract can save business owner’s money and provide financial protection needed in these economic times. A good contract can protect your investment. Conversely, a poor contract can have drastic consequences – both legally and

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The 2008 Michigan Taste of Elegance winning dish, Pan Asian Trio, prepared by Jake Robinson of Pacific Rim by kana, Ann Arbor.

financially. In short, the contracts you enter into can have a direct impact on a business's bottom line.

For those reasons, and because signing a contract means making a legally binding promise, it should be done with care. Below, we have summarized 10 items that we encourage all restaurant owners to consider before signing any contract.



### 1. Read and Understand the Contract.

The first step upon receiving any contract offer – whether two pages or 22 pages – is to read it, and probably read it again. If there is any term that an owner does not fully understand, seek clarification before you sign. Better yet, add any clarification that you feel is needed to the written contract that you intend to sign. Also remember to read all of the fine print – standard forms sometimes have provisions in small print on the back of the contract form. These small print provisions are usually the most protective of the party submitting the contract, and can frequently take from the terms on the front side.

### 2. Clarify, Clarify, Clarify – And Do So In Writing.

It is highly recommended that owners memorize all agreements that form the foundation of the contract offer into their written contract. If there is a key term of the deal omitted from the written contract offer, propose adding it to the written contract. If a key term is written differently than the way you understood it, propose revising the written agreement to reflect your understanding. A clear written contract minimizes the likelihood of disputes down the road.

### 3. Beware of Red Flags During the Contract Signing Period.

Watch out for certain items that may arise in the contract signing period. For example, receiving a contract offer with a demand to sign it immediately is often a red flag. This is frequently a big problem in the restaurant industry when deliveries are made during lunch or dinner time rush hours. It is standard courtesy to allow persons a reasonable time to review any contract before asking them to sign it. If that courtesy is not afforded you, be suspicious.



signature, and are likely one-sided: they likely protect the presenting party from some potential risk.

#### **5. Do Not Rely On Oral Promises.**

Do not rely on oral promises or statements made by the other party to a written contract that are not in the written contract offer. Most contracts contain a “merger clause,” which will prohibit your later reliance on such oral promises or statements made before the contract is signed. Merger clauses essentially mean that there were no binding oral promises or statements other than those in the written contract itself.

#### **6. Identify the Contract’s Length – and Whether You May Cancel the Contract.**

A key term in any contract is its length: how long is the contract for? There are pros and cons to longer and shorter contract terms. A multi-year contract might provide security, unless of course situations change. A short term contract might provide flexibility, but not the security. It is normally a

business decision as to whether to pursue a multi-year or a shorter term contract.

Another term that you may consider including in a contract is a provision allowing the restaurant owner to “terminate without cause.” Put simply, this allows a restaurant owner to terminate the contract before its term is up – without giving a reason. Sometimes a provision allowing the owner to terminate without

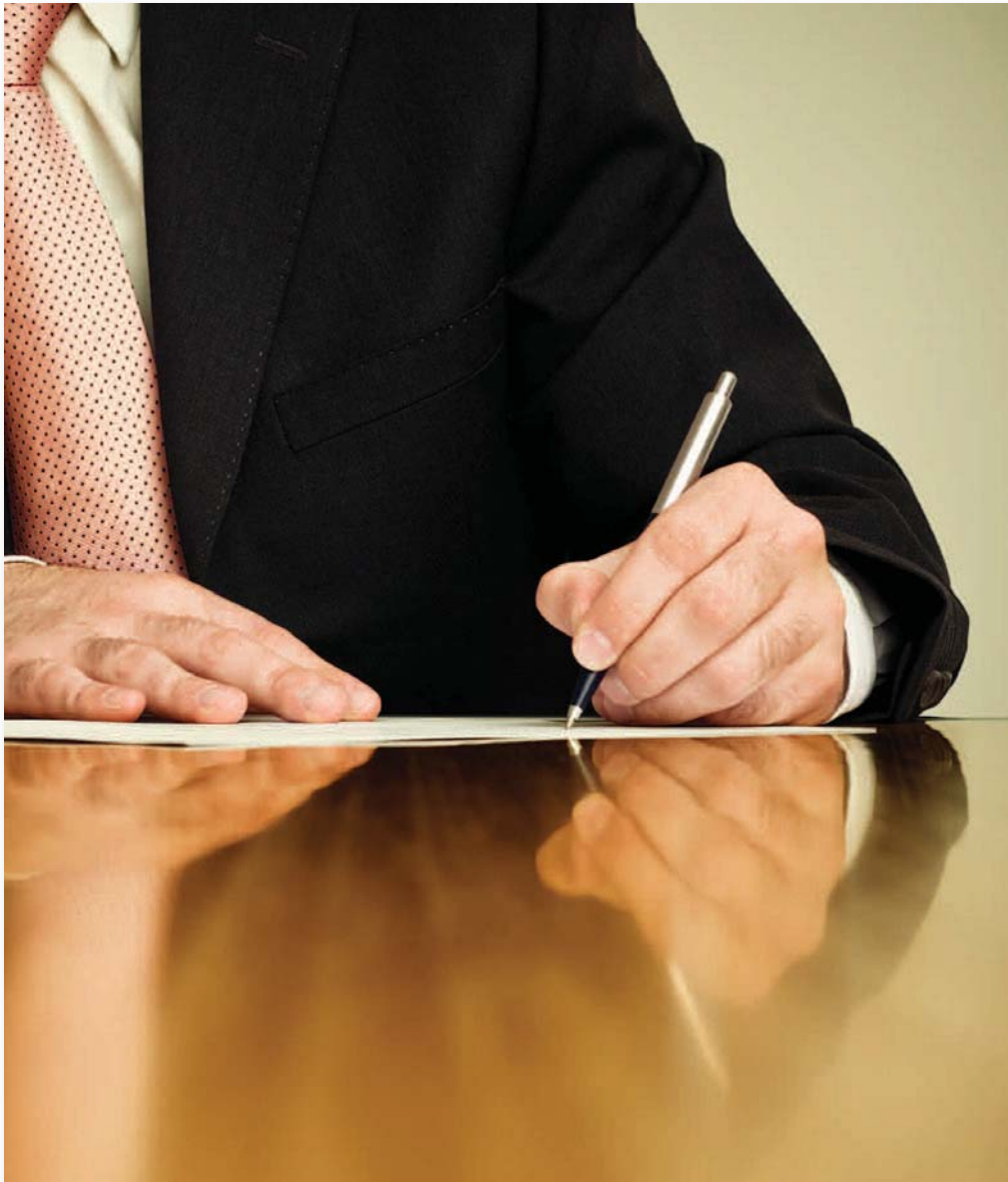
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Also, blanks in the contract offer can be troublesome. Avoid blanks in the final contract version. All blanks should be filled in before signing the contract.

Finally, keep an eye out for troublesome terms in the contract offer. For instance, watch out for a provision allowing the other party to change any contract term (such as pricing) or to make substitutions, without your consent or prior notice. These and other troublesome terms can have impacts well after the contract is signed.

#### **4. Do Not Assume Any Term is Harmless.**

It is often the case that a contract term that seems harmless when you sign the contract turns out to be the most important term later on or the subject of a dispute. Seemingly harmless terms have a way of rearing their ugly head. Do not assume that any term is harmless. These seemingly harmless terms were likely drafted by a clever lawyer on behalf of the party presenting the contract for your



contract, or does the attorney fees provision only benefit the party submitting the contract for your signature? Knowing the consequences for violations of the contract is critical to understanding the risks involved in signing the contract.

### **9. Get a Copy of All Internally-Referenced Documents Before You Sign.**

Contracts will often refer to other documents. Get a complete copy of all of the documents the contract refers to, as they may limit your rights or impose obligations on you under the contract.

### **10. Get A Copy Of All Exhibits and Attach Them to the Actual Contract.**

Contracts also often have exhibits, such as a pricing schedule or a description of the goods or property being purchased. Before agreeing to any contract, it is good practice to obtain a copy of all proposed exhibits so that you can make a fully-informed decision about signing the contract. And if you agree with the exhibits and sign

cause can be negotiated by adding a minimum advance notice provision that allows the other party to appropriately adjust its business plans accordingly. Although this term cuts both ways, a “termination without cause” provision – coupled with a multi-year contract provision – can provide great flexibility.

### **7. Include an Indemnification Clause To Protect You From Third Party Lawsuits.**

Despite its complicated title, an indemnification clause is a very simple yet important concept for contracts. It protects you if a third party (an entity not a party to the contract) sues you over actions of the other party to your contract,

by requiring the other party to the contract to defend that lawsuit and hold you harmless from any loss, cost, expense or damages arising from the other party's failure to fulfill the contract's requirements.

### **8. Note The Consequences of Violating the Contract.**

It is very important to note all of the consequences of violating the contract offer you are considering. Does it allow the non-breaching party to an automatic injunction? Does it allow an automatic, pre-set amount of damages? Does it limit the amount of money damages you can recover from the breaching party? Does the contract provide for attorney fees for the prevailing party in any lawsuit over the

the contract, make sure the exhibits are attached to the original, fully-executed contract version that you store safely.

### **A Concluding Thought**

The goals in signing any contract are at least two-fold: (1) get the best deal you can under the circumstances; and (2) understand all terms and the terms' consequences. If you do not understand the terms of the contract or need assistance in reviewing a critical contract, consider retaining an attorney or enlisting other professional help to assist you. Keeping the 10 items above in mind should help you achieve those goals, as well as help protect your bottom line. 