

The webinar will begin in a moment.

For audio, call _____



Introduction



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We start with a common situation . . .



The “dream sale” to the mega customer has been made.

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Does the phrase “it will fill our pipeline for the foreseeable future” mean anything to you?



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The First 10 Things to Scrutinize in Every Automation Contract

Mark A. Voigtmann
Brian Clifford

*Important, Indeed
Indispensable*

A way to read these



1 •

Identify the
whole contract.

Identify the whole contract

- **The document you sign and “incorporated” docs**
- **Specifications, Exhibits, Conditions**
- **“Flow-down” provisions**
 - *“...the Subcontractor shall assume toward the Contractor all obligations and responsibilities which the Contractor...assumes toward the Owner...”*
(AIA A401-2007, Art. 2)

2.

Decide if the contract is open-ended or boxed up.

Open or boxed up

- **Look for what lawyers call an “integration clause”**
 - “This agreement takes the place of any previous understandings”
 - “There are no agreements but this one”
- **Changes not valid unless in writing**

3.

Decide if there
is a cap on
liability.

Cap on liability

- **Fixed \$ or % of Price**
- **Limited to insurance**
- **“Consequential” damages**
- **Understanding exposure
to risk is required for
proper pricing of job**

4.

Find the
deadlines.

Find the deadlines

- **Deadline or no deadline?**
- **Claims, changes and termination are the majors**
- **Cure periods are a crucial focus**

5.

Determine who
ends up owning
what.

Who owns what

- **Assignment of IP rights**
- **Non-exclusive license**
- **Distinguishing between pre-existing and new stuff**
- **Maintenance tools**

6.

Get your lawyer
paid if you're
"in the right."

Getting the lawyer paid

- It's about small claims, not huge ones
- Prevents a "win" that is a loss
- **Definitions can be key**
 - Prevailing party
 - Type of reimbursed expenses

7 •

Read and re-read
the parts about
commissioning
and testing

Commissioning and testing

- **Fixed/objective standard**
- **“Owner’s satisfaction”**
- **Scheduling of testing & coordination with others’ work**

8.

Decide if the warranties make sense for an automation firm.

Warranties must make sense

- **Best practices**
 - Limited period and remedy
 - Objective/design based
- **Problem childs**
 - "Free from defects"
 - "Fit for the purposes intended"
 - Subjective / performance-based

9 •

**Indemnification.
Be afraid. Be
very afraid.**

Indemnification

- Other incurs cost..but you pay
- Insurance coverage?
- 1% at fault can require 100% payment

10. Let the contract
gather dust.

10.

~~Let the contract
gather dust.~~

Track the
contract

Track the contract

Automation Project Tracker		Contract Section
Subject	Requirement	
Change Directives	Integrator must promptly respond to pricing in Change Directive (and architect decides disputes)	A201 Sections 7.3.5 and 7.3.7
Claims	Notice of a claim must be given to the other party within 21 days after Integrator discovers the reason for the claim. A claim requiring such notice must include any reason for which Integrator will want change in contract sum or contract time	A201 Section 15.1.2
Communication	Communications between Owner and Contractor are to be made through the Owner's Automation Consultant	A201 Section 4.2.4
Differing Site Conditions	If there are differing site conditions, Integrator must provide written notice to Owner within 21 days	A201 Section 3.7.4
Final Completion	July 22, 2011	
Injury or Property Damage	If there is injury or property damage caused by owner or someone for whom owner is responsible, must provide notice of damages within 21 days of notice of the injury, with sufficient detail for Owner to investigate.	A201 Section 10.2.8
Mechanic's	Must be recorded within 60 days of last work on the project under Virginia law	Not in Contract. Contact counsel 30 days before deadline.



Track the contract

Automation Risk Tracker

PRIVILEGED AND CONFIDENTIAL
ATTORNEY-CLIENT COMMUNICATION

TO: Tom Kyle, GAMMA INTEGRATED TECHNOLOGY
FROM: Mark Voigtman, BAKER & DANIELS
DATE: February 15, 2010
RE: Contract with General Skills Manufacturing

Risk Level

Moderate High Highest

General Thoughts

The lack of any limitation on potential liability makes this a highly risky contract. All other problems probably could be suffered if some cap on liability could be imposed.

Important Concerns

GKM's ability to withhold or reduce payment to Gamma, or reject
... unacceptable, is utterly subjective and could be

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Questions



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Thank you for listening in!



Seattle, 2010

April 29 - May 1, 2010

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