

FIRST EDITION

CONTRACTS:

Cannot Live Without Them

AN OVERVIEW OF CONTRACTS
FOR THE FLOORING DEALER

WITH SAMPLE FORMS

Jeffrey King, J.D.

For Members of the
World Floor Covering
Association



Signed this _____





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WORLD FLOOR COVERING ASSOCIATION

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AN OVERVIEW OF CONTRACTS FOR THE FLOORING DEALER WITH SAMPLE FORMS



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INTRODUCTION

For better or for worse, contracts are needed in today's society for even the most routine transactions. This is especially true for flooring dealers, who enter into any number of contracts each week, from purchasing products from manufacturers and distributors, to selling products to customers, to purchasing advertising, to subcontracting with general contractors and installers, to leasing equipment and property. A contract can be as simple as an order form, an acceptance letter or e-mail, or it may be a detailed multi-page agreement. Regardless of the format, contracts define the rights and obligations of the parties, and control what products or services must be provided, the time and type of performance expected, the terms of payment, and the liabilities and responsibilities of each party. Failure to understand the consequences of these agreements and forms can subject the flooring dealer to unnecessary disputes and liability.

As a result, every flooring dealer should be familiar with the basic legal concepts regarding contract law. It is important to know how easy it is to form a contract; when that contract must be written and not oral; when a simple proposal can become a contract; and what happens to assurances and promises that were not specified in the agreement. Understanding the legal issues and contract terminology will enable the flooring dealer to exercise sound judgment before signing a legally binding document. Once signed, it may be too late to make corrections or ensure the dealer's rights are protected.

This book presents general guidelines for handling the various types of contracts flooring dealers regularly encounter. Chapter 1 provides a basic overview of contracts and the need for written agreements. Chapter 2 explains how a contract is formed and the precautions to take to prevent unintended contractual obligations. Chapter 3 describes key clauses needed in a typical floor dealer's contracts with suggested language. Chapter 4 reviews the various types of contracts flooring dealers regularly encounter with suggestions for and explanations of language that should be included in each type of contract. Chapter 5 provides sample contracts and order forms. These contracts and forms are available in electronic form so they can be downloaded, modified as necessary and used by the flooring dealer.

It is key to note, however, that many states and local governments have unique statutes and regulations regarding contracts, especially sales and construction contracts. For example, California law limits deposits for home improvements to 10% or \$1,000 whichever is lower. In the District of Columbia, a contractor may not "require or accept payments for home improvement contracts in advance of full completion of all work required" unless that person is licensed as a home improvement contractor. Massachusetts, on the other hand, exempts contractors or subcontractors from registering as a home improvement contractor if they work exclusively on "finished floor covering, including, but not limited to, carpeting, vinyl, tile, non-structural hardwood."

A number of states, including Alabama, Arizona, Florida, Hawaii, Maryland, Nevada North Carolina, Utah and Virginia, have Contractor Recovery Funds that were created to reimburse homeowners for losses caused by a licensed contractor who either abandons or fails to perform correctly a home improvement job. While the statutes vary from state-to-state, these state laws often require the contractor to include in their contracts a notice to the homeowner of the existence of the recovery fund.

In addition, some state and local governments require all home improvement contracts to include a “cooling off” period during which a consumer can cancel the contract without liability. For example, California, New Jersey and Virginia allow the customer to cancel a home improvement contract without penalty or obligation within three business days after the consumer signs the contract. These state laws require all home improvement contracts to include an explanation of the consumers’ right of cancellation. Many other states and the Federal Trade Commission also require a cooling off period for contracts signed in a customer’s home. The contracts must include an explanation of this right to cancel.

As a result, it is impossible to create standard contracts that will satisfy every state and local requirement. It is possible, however, to include suggested contract language that will provide substantial protection to the flooring dealer. For example, Chapter 3 includes language to add to all purchase orders to protect the dealer from Lacey Act liability, which mandates that any wood product be certified as not having been illegally harvested. Similarly, suggested clauses on warranties and limitation of liability are included in the section dealing with consumer contracts.

Accordingly, the explanation and forms included are designed to provide basic contract language that most dealers can use. Nevertheless, every flooring dealer should seek legal advice from an attorney familiar with its state and local requirements before signing any agreement.

CHAPTER 1--Contracts — Overview

In this Chapter, the need for contracts to be written is explained. Not only are there risks of misunderstandings with oral agreements, but they also are likely not to include any of the protections for the dealer found in well-written contracts and may even be unenforceable.

1.1 Oral Contracts and the Statue of Frauds

A contract does not always have to be a formal written document. In some circumstances, an oral agreement can bind the parties equally as does a written contract. However, oral agreements create major issues and potential problems. First, an oral agreement may be binding in some circumstances, but enforcement depends on the parties' recollection of what was included. Absent both parties agreeing on what is covered, what is included in an oral agreement will depend on which party is believed.

Second, an oral agreement with a consumer exposes the dealer to significant risks. For example, most states have enacted consumer protection laws that mandate the dealer explain these rights to the consumer in writing. Failure to do so, which is likely with an oral agreement, may render the contract unenforceable.¹ Similarly, every state has adopted the Uniform Commercial Code, which creates implied warranties of merchantability and fitness for a particular purpose for most products sold to consumers. In addition, many states have a warranty of habitability.² These warranties can only be waived in writing. Absent a written document, the dealer will be required to honor these warranties.

Third, an oral agreement may not be enforceable under a state's "Statue of Fraud." Every state has some type of statute of fraud. These laws require that certain kinds of contracts must be in writing or they are invalid. As applicable to the flooring dealer, a statute of fraud usually requires a written document for contracts where the sale of goods totals \$500 or more. Few, if any, flooring sales or purchases are for less than \$500 and therefore almost every flooring contract needs to be written.³

Under the statute of fraud, a written document does not need to be a formal agreement. It can be a note, an e-mail, a letter, facsimile or memorandum. It must be signed at least by the party against whom it is to be enforced. It must also include the essential terms and conditions of the parties' agreement. For the flooring dealer, this generally means it must include the products or services to be provided and the prices.

A strict application of the statute of fraud can produce an unjust result. A party, who spends time and money to perform the contract in the good faith belief that a contract exists, would be unable to enforce the agreement because it was not in writing. To avoid such injustice, the courts often consider whether partial performance justifies enforcement of the contract. To have partial performance, it is usually not enough that one party partially preformed. Rather, the other party

¹ An explanation of these types of consumer protection laws is provided in Chapter 2.

² An explanation of these warranties is provided in Chapter 4.

³ The statute of fraud also applies to any contract that cannot be completed within one year. Any flooring contract that is for less than \$500 can be completed within one year, even if the contract in fact take over a year to complete. The issue is not how long it takes, but whether is feasible to complete the contract within a year.

must have accepted the partial performance. It needs to include, for example, the delivery of the flooring to the customer and the customer's acceptance of the delivery. That does not mean a dealer can never recover its preparation costs or the cost of goods ordered that the customer refused to accept. Even if the contract itself cannot be enforced, a party may at least be able to recover expenses incurred and the value of services provided even though they were incurred pursuant to the unenforceable contract.

1.2 Written Contracts

All flooring dealers' contracts, therefore, should be written and signed by the parties. The issue is what is sufficient to create a written contract. A binding contract can be created, in certain circumstances, by merely signing a proposal, submitting an order form or an exchange of e-mails. Such agreements, however, often do not articulate all the terms agreed to by the parties, which can result in future problems.

Due to the potential problems oral agreements raise, it is recommended that all contracts be in writing. A written contract enables the parties to confirm the numerous details of the relationship. Well-drafted and complete contracts avoid later uncertainty and acrimony. Careful attention to hammering out specific details in a written agreement will protect the interests of the flooring dealer. As a result, there are three important questions to ask before signing a contract: (1) Are all the terms of the contract set out with specificity (*e.g.*, prices, products and services to be provided, deposits, time of delivery/installation, payment terms, warranties, etc.)? (2) Does the contract encompass all the items agreed upon by the parties (*e.g.*, arbitration clause, what state law applies, indemnification, etc.)? and (3) Does the contract include the provision required by local law (*e.g.*, licensing and permit information, consumer rights, warranties, etc.)?

All information and correspondence relating to contract negotiations, execution and subsequent communications should be retained at least until the satisfactory conclusion of the contract. Upon completion of the contract, the information should be discarded only in accordance with the parties' document-retention policies.⁴ It is recommended that all the documents be retained until the statute of limitations expires. A statute of limitations is a basic provision in the law that requires a claim be brought within a period of time. For example, in many states, a lawsuit for a breach of contract will have to be brought within six years of the breach. Each state has its own statute of limitations, and the dealer will need to determine the applicable limitation period. Dealers should consult with their legal counsel if they have any questions on retaining or discarding documents.

CHAPTER 2: Creating A Contract.

In this Chapter, the general requirements of contracts are explained. Potential pitfalls are identified and suggestions to avoid these problems are provided. With a basic understanding of contracts and how they are formed, the dealer will be able to negotiate with its customers and vendors without risking prematurely creating a contract or failing to include needed contract provisions.

⁴ If the contract is with a federal or state agency, then the documents need to be retained according to the applicable government requirement or mandate.

A contract is an agreement between two or more parties that creates legal obligations for the parties. For example, a sales contract obligates both the retailer and the consumer; the retailer is obligated to provide certain goods and the consumer must pay for those goods. The basic requirement to create a contract is an agreement on the basic terms by an individual of legal age who is the actual party to the contract or who has authority (actual or apparent) to bind the party for whom he has signed the agreement.

It is easy to create a contract, even when a dealer does not intend to. To create a valid contract, there must be three basic elements:

1. **An offer** — An offer must contain the basic terms of the agreement, such as price and the products and services to be provided.
2. **An acceptance** — The offer must be accepted without change, or it becomes a counteroffer, which in turn must be accepted as submitted to create a valid contract.
3. **Consideration** — The agreement must provide benefits to each party (e.g., manufacturer is paid for products and the retailer receives the goods).

As explained more fully below, each of these elements can create problems if not fully understood.

2.1. The Offer

An offer must contain the basic terms of the agreement, but the offer does not have to contain all of the details. For a floor covering dealer, agreement on the items being sold and the price may be sufficient. Most courts will often fill in the missing terms. The problem is it is easy to create a binding offer that can be accepted and enforced by a customer or a vendor, but does not contain the provisions needed to protect the flooring dealer. As a result, it is key that the proposal includes all the details regarding each party's obligations. To avoid incomplete offers it is also essential that a dealer's proposal, which is not likely to include all the terms, not be interpreted to be an offer. Finally, all offers should include a time limit so that a vendor or customer cannot accept it months later.

2.1.1. Complete Terms

The courts often have found that an oral proposal, a purchase order or an e-mail can be an offer that, if accepted, is just as binding as a formal and signed written contract. An e-mail to a manufacturer which identifies the product and price may be a valid offer, but it may not include a time for delivery, include any warranties, require lot and dye numbers, or set the freight charges. Most courts will fill in the delivery time as any reasonable period and set the freight at the prevailing rates. The flooring dealer may not have any warranty protection with a simple e-mail exchange and may lose the right to demand the product come from a single dye lot.

The risks are even greater with consumers. Many states mandate that any contract for home improvement or construction must include certain terms that explain the homeowners' rights. In these states, if a contract is created that does not include the mandatory consumer protection language, the flooring dealer will be obligated to provide the flooring at the proposed price, but may not limit any warranties, may not be able file mechanic liens, or may be prohibited from insisting on a deposit.

For example, a number of states require that contracts include language explaining the rights of a customer to cancel the contract. These state laws generally apply to home improvement contracts, especially if the contracts were negotiated at the customer's home. As explained above, these laws give the customer a "cooling off" period in which to reconsider the contract. Many states allow the customer to enforce a contract that fails to include the explanation of the right to cancel against the dealer, even as they grant him or her the option of voiding the contract because the mandated consumer protection language is not included.

Additionally, if a customer does not receive this notice of right to cancel at the time the contract was signed, state laws may allow the customer to cancel the contract at any time up to three days after he or she received the proper notice, even if this is after the work has been completed. The contractor may be required to immediately return all money, property and other consideration given by the consumer. As such, the consumer may have the right to keep any services or property provided under the unenforceable contract. The flooring dealer faces the worst of both worlds — a contract the customer can enforce, but one the dealer cannot — simply because offer did not include the required consumer protection language.

Even if your state does not have a cooling off statute, the Federal Trade Commission has issued a home solicitation ruling that allows a consumer to cancel a contract for any reason if it is signed in a consumer's home. The consumer has three business days after they sign the contract to cancel if the contract is for more than \$25. Moreover, the seller must explain this right of cancellation to the consumer and provide two copies of a cancellation notice. If the customer verifies his or her agreement by e-mail, especially if the customer never visited the dealer's store, the contract was arguably "signed" in the customer's home because that is where the e-mail was sent from.⁵

Accordingly, it is always advisable to include in offers all of the terms and all the formal language that is required. The simplest way of accomplishing this is to include the formal contract with any offer and make the offer contingent upon both parties signing of the contract.

2.1.2. Offers Verses Proposals

A problem can arise when a proposal that the dealer presents to a customer or a manufacturer is interpreted as an offer. The potential for a proposal being considered an offer is compounded by the use of e-mail. Simply sending an e-mail to a customer or vendor that includes the flooring details and the price may create a contract if the customer or vendor responds that he or she "accepts" the offer.

Recent statutes and court decisions have increasingly recognized the use of email as a primary means of communications today. The majority of states have adopted the Uniform Electronic Transactions Act (UETA), which provides that a "contract may not be denied legal effect or enforceability solely because an electronic record, an electronic record satisfies the law." Based on the UETA, courts are increasingly ruling that emails may create enforceable contracts under state law if the email has a signature block, the sender typed his or her name at the end, or even if the name appears only in the sender's "from" line.

⁵ If the consumer visited the store, but signed the contract in their home when the measurements were taken or by an subsequent e-mail, a strong argument can be made that the contract is not covered by these home solicitation laws and requirements.

However, such an offer rarely would include provisions that protect the dealer or that are required by law, such as the home solicitation or contractor recovery fund notice. If such a proposal is interpreted as an offer, it can create a contract that the customer has the option of enforcing against the dealer or cancelling.

To avoid these problems, the flooring dealer needs to take certain precautions. The flooring dealer should put in all correspondence, including e-mails, that it is not making a formal offer. Each correspondence should state that:

THIS IS NOT AN OFFER: This proposal is only a summary of the products and cost estimates, and is based on the information provided. This proposal does not constitute a final offer or agreement.

There is no binding obligation on [NAME OF DEALER] until a written contract has been signed by [NAME OF DEALER].

The inclusion of this language will avoid a proposal being misinterpreted as a formal offer.

2.1.3. Timing

Failure to limit the duration of an offer can cause significant problems for the flooring dealer. An offer is open for a reasonable time unless the offer includes a specific time limit. Prices can change, styles can be discontinued, available stock can become back ordered and similar issues. Accordingly, it is key to that the flooring dealer not leave an offer open indefinitely.

To avoid problems with a party accepting an offer after a lapse of time, the offer should contain a date by which to accept the offer. A date set forth to accept the offer simply means that the offer is automatically terminated if other party has not accepted the offer by that date. It is therefore recommended that all offers include the following language:

This offer expires at 5:00 PM Eastern Standard Timer on [DATE] unless a signed contract accepting the offer is **received** by [DEALER NAME] prior to that date and time, or [DEALER NAME] previously terminated the offer.

Unless one party has paid the other party to have an offer left open for a set period of time, an offer can be withdrawn at any time, even if it has a set time period for acceptance. Accordingly, it is important that the dealer keep informed of anything that will impact the order and immediately withdraw and/or modify it to reflect such changes.

2.2 The Acceptance

The other party can accept an offer at any time until it is terminated, withdrawn or an unreasonably long delay has occurred. The offer must be accepted without change. An acceptance that adds conditions is not valid. Rather, it becomes a counteroffer, which in turn must be accepted as submitted to create a valid contract. Thus, accepting an offer “subject to the approval” of the offeree’s owner, officer of board, with an addendum added, or that is otherwise modified is not a valid acceptance, and no contract is created unless the original party accepts the changes.

To create a valid contract, a person who has the authority or apparent authority to bind the party must accept the offer. To avoid this issue, the offer can mandate that a certain person accept the offer or include a requirement that a person with the authority to bind the seller or buyer accept the offer. The offer can also require that acceptance be in writing, such as sending a signed contract.

Unless written acceptance is required, acceptance can often simply be performing a party's obligations. For example, a vendor shipping goods pursuant to an order likely constitutes acceptance of the offer and a contract is formed.

2.3 Consideration

Mutuality of consideration is the cornerstone of contract law; it is the bargain to which the parties have agreed. To have a valid contract, something of value must be given by both parties. It can take the form of money, physical objects, services, promised actions, abstinence from a future action, and other potential obligations. It may consist of a promise to perform a desired act such as delivering carpet or promising to pay for the carpet. It can also be a promise to refrain from doing an act that one is legally entitled to do. For example, in an agreement to settle a dispute one of the parties will agree not to sue the other. Consideration must be of value and is exchanged for the performance or promise of performance by the other party. Contracts may become unenforceable or rescindable for "failure of consideration" when the intended consideration is damaged or destroyed, or performance is not made properly, such as delivering the wrong flooring, improper installation or unreasonable delay.

Generally, consideration is clearly set forth in most agreements. For example, the flooring dealer agrees to sell flooring and the customer agrees to pay a set price, or the dealer agrees to pay a set price to purchase flooring from a manufacturer or distributor. Similarly, the dealer agrees to pay rent and the landlord agrees to lease specific space. To ensure that the consideration is recognized, contracts may include an acknowledgement that the parties consider the obligations to be of value:

In consideration of \$1 and other good and valuable considerations paid, receipt of which is hereby acknowledged, including the mutual promises of the parties, the parties hereby agree as follows:

Such clauses are not necessary, especially if the obligations of the parties are clearly set out, but they can help in circumstances where one party is challenging the value of the bargain.

CHAPTER 3: Contract Terms and Conditions

Contracts contain terms and conditions that are intended to protect the interests of both parties. You should be familiar with the various types of terms that are often included to ensure that the contract covers all the bases. Not all of the provisions discussed below are needed or even appropriate for every contract. Some will be identified by other headings and some may be consolidated. For example, clauses on jurisdiction, dispute resolution and liability may all be included under a Liability and Resolution heading. Regardless of the headings or organization, the flooring dealer should read the contract and understand each provision.

This Chapter sets forth the types of clauses and terms that are commonly included in contracts. An explanation of these clauses is provided so the dealer understands what they mean, whether they are needed in its contracts and what clauses to avoid. This information will assist the dealer in negotiating, reviewing and preparing the contracts needed for its business.

3.1 Preamble/Whereas Clauses

A preamble is an introductory statement at the beginning of the document that identifies the parties by names and addresses. The preamble often affirmatively states the intent of the parties to enter into a contract. This section often includes basic background or recital information such as the “Whereas” clauses.

A contract does not have to include whereas clauses to be valid. Many perfectly legally binding contracts do not include these clauses. If they are included, however, they will be used to interpret the contract. For example, if a whereas clause indicates that one party is being hired because of its experience or expertise, the party will be held to that standard. Similarly, a whereas clause that states a party will “use its best effort” will only require the party to make that effort and not guarantee performance, such as delivery times. It is, therefore, important to review these clauses and not simply brush over them.

3.2 Parties

The agreement should clearly identify the parties. The parties’ identities should be detailed enough to distinguish them from other individuals or companies with similar names. The address, state of incorporation and similar information should be included. In addition, this is the appropriate place to include any license numbers for the dealer or contractor.

3.3 Legal Authority

A basic requirement to create a contract is that it be entered into by an individual of legal age who has the authority to bind the party for whom he or she has signed the agreement. In a consumer agreement with a married couple, for example, is the signatory signing on behalf of him or herself, or also for his or her spouse? In these types of agreements, it is best to have both spousal owners sign the agreement.

In contracts with corporations or other businesses, it is best to include a statement that the signatory is legally authorized to sign the contract on behalf of the corporation or business. The contract should specifically state that:

Each party represents and warrants to the other that it has the authority and power to enter into this Agreement and perform its obligations under this Agreement, and that each person signing this Agreement represents and warrants that he has the authority to and is duly authorized to execute this Agreement on behalf of such party.

For shorter agreements, it may be sufficient to include in the signature block that the party is signing “on behalf of and as agent for” the party.

3.4 Products and Services

This clause needs to clearly identify the products and services to be provided. If the contract states that a certain product “or its equivalent” will be supplied, the vendor can substitute other products provided they are “equivalent.” Such provisions often lead to disputes. Accordingly, the contract should identify any product by the manufacturer, style number or information, etc.

3.5 Price, Payment and Terms

This provision should clearly state the price, any deposit required and when payments are due. As noted above, some states restrict the amount of deposits that may be obtained from consumers. It is important to maximize deposits and progress payments to the extent permissible under state law.

Supply contracts often have clauses in them that allow for increasing the prices of the material as a result of increasing costs of raw materials or transportation costs. It is important that your other contracts reflect these same changes and allow you to pass these costs on to the customer or general contractor where possible.

3.6 Other Obligations

If either the seller or buyer has any additional obligations, these should be included here. For example, if the customer is obligated to remove furniture and breakable items, the contract should specify that obligation. Similarly, if products are to be delivered to a job site, that obligation needs to be clearly spelled out in the contract.

3.7 Term of Agreement and Renewal

The term of a contract is its length — when it starts and when it ends. Most contracts are effective immediately or within a few days of signing. Some contracts specify a termination date, such as a lease or an agreement for advertising. Others are ended when the job is completed. The key is to clearly state when the contract ends. To illustrate, the contract can state that it ends when flooring is installed and full payment is paid.

Some contracts, such as leases and advertising agreements may allow for renewal. It is important to understand these renewal provisions so as not to miss an opportunity to renew a favorable agreement or to ensure the dealer is not caught with an automatic renewal of an unfavorable agreement. Agreements may have an “evergreen” provision by which the agreement is automatically renewed unless one of the parties affirmatively terminates the agreement. A

common evergreen clause renews the contract for the same length of time as the original agreement. If the original agreement was for a year, the renewal will usually be for a year.

To avoid the automatic renewal, most evergreen provisions require the party to send a written notice to the other party affirmatively terminating the agreement a set number of days before the end of each term of the agreement. Consider, for example, a dealer contracting to run advertisements six times a month on the local radio for six months, and the agreement is “automatically renewed” unless the dealer sends written notice to the radio station 30 days before the end of contract. If the dealer fails to send the written notice at least 30 days before the end of the six months, the dealer will be obligated to run and pay for six more months of advertising.

As a general rule, evergreen agreements should be carefully considered and entered into only where the dealer knows he is going to have a long term and ongoing relationship. If there is an evergreen provision or a provision that allows the parties to renew the agreement, the dealer should calendar the renewal dates in order to avoid inadvertently renewing a contract or missing an opportunity to renew.

3.8 Termination

A contract can specify the circumstance when a party can cancel a contract without incurring liability for a break of the agreement.

3.8.1 Without Cause

An agreement may allow the parties to terminate the agreement by giving notice. These are usually included in contracts that have distinct segments and there is no special lead-in or preparation involved. For example, an ongoing advertising agreement may allow termination by simple notice since there is no long term preparation to printing and running the advertisement. On the other hand, a construction contract often does involve preparation that makes it less advisable to include such a cancellation clause.

Typically, such a clause would state that:

Either party may terminate this Contract without cause prior to the end of the term with ___ days’ notice in writing to the other party, provided that the party terminating the agreement fulfills all its obligations under the contract that are due as of the effective date of the termination.

Termination without cause should to be included lightly. If a contract requires preparation or purchase of materials, allowing cancellation could leave the dealer with unwanted expenses. If a termination without cause is included, it is important to ensure that the terminating party remains obligated to fulfill all obligations that are due.

3.8.2 Force Majeure

Termination clauses are provisions that excuse non-performance of the contract without liability. For example, force majeure or Acts of God clauses protect the parties in the event that a contract cannot be performed due to causes that are outside the control of the parties and cannot

be avoided. Obvious catastrophes, such as hurricanes and snow storms, provide valid reasons for delaying performance. Other outside forces, such as strike at a manufacturing facility, may make it impossible to obtain the products needed for the job. However, these issues do not always excuse a termination of the contract. In some circumstances, these problems may only allow for a delay in performance, such as disruption of transportation. In other cases, such disruptions may justify termination, such as a fire that destroyed the building where the flooring was to be installed or a dealer was unable to accept delivery because of damage to its facilities.

The contract should specify under what circumstances the contract can be terminated or performance delayed without liability. A typical force majeure clause provides:

Force Majeure. A party shall not be liable for any failure of or delay in the performance of this Agreement for the period that such failure or delay is due to causes beyond its reasonable control, including but not limited to Acts of God, war, strikes or labor disputes, embargoes, government orders or any other force majeure event.

If such an event occurs, it is recommended that the dealer immediately inform its vendor or customer and assert its rights to terminate or delay based on the force majeure clause.

3.8.3 For Cause

It is generally advisable to allow a party to terminate the agreement if it becomes apparent that the other party cannot fulfill its obligations. A dealer, for example, would not want to prepay for products if the supplier goes bankrupt nor should the dealer install flooring in a house that went into foreclosure. Similarly, it is important for a dealer to stop work on a contracted project if the other party fails to pay the amounts that are due.

To avoid these problems, the dealer should consider including a termination for cause provision that sets forth the reasons for allowing one party to terminate the contract, such as:

Either party at any time may without any liability terminate the Agreement immediately and without prior written notice upon:

1. The institution by or against the other Party of insolvency, foreclosure, receivership or bankruptcy proceedings or any other proceedings for the settlement of either party's debts;
2. The other Party's dissolution or ceasing to do business;
3. The other Party's conviction of any crime or offense, or serious misconduct in connection with performance hereunder; or
4. A material breach by the other Party of this Agreement.

This provision allows the dealer to avoid a claim that it breached a contract when it stopped work on a bankrupt or defaulting project, or cancelled an order from a failing distributor.

3.9 Governing Law and Venue

Many contracts are local — installation of flooring at a local home or building. Any dispute would be brought in the local courts. Some agreements, however, involve parties that are not all local, such as a purchase order from a manufacturer or selling flooring for a commercial building owned by an out-of-state corporation. In these contracts, it is important to specify what law controls in interpreting the contract and where any dispute can be filed. As a general rule, the dealer should always try to have the laws of its state apply and all disputes filed in its local courts.

3.9.1 Applicable Laws

If the parties fail to identify the applicable state law and the location for resolving disputes, then the courts will determine these issues through a complex set of rules. Therefore, it is generally in the best interest of both parties to negotiate an agreement that includes such a provision.

This Contract shall be governed by and construed in accordance with the laws of the State of _____.

3.9.2 Venue

Venue is where a party is permitted to file any claim. Sometimes the location for the dispute can render it impractical for the flooring dealer to realistically enforce its rights. For example, if a flooring contractor in California is undertaking work for a Texas company, a venue provision that mandates the flooring contractor go to Texas for any dispute could well render the dealer without any realistic remedy. If possible, a dealer should always have venue in its backyard, not the other parties.

It is important to note, that courts will often consider whether the choice of venue is fair and valid. Picking a state in which neither party is located, or picking a state that is very distant from a consumer may not be enforceable. Accordingly, the venue chosen should be related to at least one of the parties. Once agreed upon, the venue for resolving disputes should be clearly set out in the contract.

Any claims, legal proceeding or litigation arising in connection with the Service will be brought solely in the Federal or state courts located in _____ County, in the State of _____, and venue shall lie exclusively in the courts located in such location. The parties hereto also consent to the service of process by any means authorized by federal law or the laws of the State of _____.

3.10 Breach

Providing both parties reasonable time to resolve defaults can prevent contract breaches and litigation. If a dispute arises, the contract should provide a mechanism to resolve the dispute. The parties can mutually agree to provide reasonable notice of contract defaults and reasonable time to cure or remedy the defaults. A typical clause may provide:

Either party shall have thirty (30) days to remedy any material breach to the terms of this agreement after receiving written notice of the same.

3.11 Entire Agreement

Contracts commonly include statements that the written contract is the whole agreement. Essentially, these clauses mean only those items discussed in negotiations that were included in the agreement are binding. Other documents or discussions cannot be used to interpret the contract. If a dealer, for instance, agrees in an e-mail to its customer that it will deliver the flooring by a specific date, but does not include the date in the contract, an “Entire Agreement” clause means that date is not binding and generally will not be considered in any dispute.

Inclusion of an ‘Entire Agreement’ clause is recommended. This ensures that all the terms can be identified in a single document and avoids dispute about what was said during negotiations. Such a clause should provide:

This Agreement, and any documents expressly referenced herein, contains the entire agreement between the parties hereto with respect to the transactions contemplated hereby and supersedes all prior oral and written agreements, memoranda, understandings, and undertaking between the parties hereto relating to the subject matter hereof.

3.12 Related Documents

Contracts often include attachments such as blueprints, layouts, schedules and other related documents. The contract may contain the phrase “per plans and specifications.” Similarly, contracts commonly refer to codes or standards and obligate the party to perform in accordance with these standards. These attachments and references are often key to understanding the work to be done.

It is common in construction contracts to include a “flow-down” or “pass-through” clause. Flow-down provisions help to ensure that the subcontractor's obligations to the general contractor mirror the general contractor's obligations to the owner. Essentially, the general contractor's agreement is incorporated into the flooring dealer's subcontract.

It is important that any attachments be identified as incorporated into and made part of the contract. If they are not incorporated, the attachments can be excluded under the Entire Agreement clause. There is no specific language necessary to incorporate other documents into a contract, but mere reference to other documents is not sufficient. Rather, the language must clearly demonstrate an intent to incorporate the other documents. Problems arise when vague references are incorporated such as “as per our meetings” or “as previously agreed.” It is recommended, therefore, that referenced documents be clearly identified and attached to the contract and each initialed by the parties if at all possible. A typical clause provides:

The parties intend to be bound by the terms and conditions in the documents attached as Addendums __ to __ and that these documents have been incorporated by reference into and made a part of this Agreement.

3.13 Modifications

To avoid future disputes, it is generally recommend that the contract specify that any changes, amendments or modifications must be in writing.

Any changes, modifications or amendments to this Agreement must be in writing and signed by both parties.

3.14 Severability

A severability clause is included to ensure that the entire contract is not rendered void if one of the provisions is found to be invalid. For example, if a court were to find the venue clause to be unenforceable because it makes a consumer file a suit in a distant court, that would not render the entire agreement invalid.

If any clause or provision of this Agreement is found to be contrary to law, then that clause or provision shall be eliminated and the remainder of the Agreement shall remain fully in effect.

3.15 Dispute Resolution

When disputes arise regarding a contract, the first step is to look at the contract language itself. Not only will the contract terms determine the rights and remedies of the parties, the contract also may provide where and how the dispute is to be resolved. Generally, if parties cannot resolve a dispute, a party must file a claim in a state or federal court to enforce its rights.

A contract can specify that the parties will use an alternative dispute resolution (ADR) procedure instead of going through the process of filing a complaint and pursuing the claim in court. It is essential that the contract clearly states how and where disputes are to be resolved. There are several types of ADR procedures available, including arbitration, mediation and private use of retired judges. These methods provide both binding and non-binding resolutions of issues. The American Bar Association's Alternative Dispute Resolution Section maintains a listing of available programs on its website. The ADR Section also publishes titles such as "Resolving Disputes in the Global Marketplace," "State and Local Bar ADR Survey," "ADR Primer," "Arbitration Seminar," "Mediation Seminar," "Making Mediation Work for You," and "Mediation: Practical and Ethical Challenges." These publications are available from the American Bar Association for a nominal fee.

A typical ADR clause would provide:

Claims or controversy of any nature, including, but not limited to, the issue of arbitrability, arising out of or relating to the Agreement, or the breach thereof, shall be settled by final and binding arbitration through the [Location] office of the American Arbitration Association ("AAA") in the unlikely event the parties cannot resolve the dispute informally and promptly through good faith negotiation within thirty (30) days (or in any time frame as mutually agreed upon by the parties) following written notification. All cost and expenses of arbitration shall be borne equally by the parties except as otherwise determined by AAA. Each party shall pay its own legal fees. That notwithstanding, the parties recognize that an arbitrator is unable to provide injunctive relief, and thus this arbitration clause, in no way precludes, the parties from seeking and obtaining injunctive relief in an appropriate court of law.

Unless specified in the contract, the prevailing party will not be able to recover attorney fees incurred to enforce its rights under the contract. As a result, if a dealer wants to shift the cost of attorney fees to the losing party, it needs to specify so in the contract by including a provision that states:

The prevailing party in any proceedings under this Agreement shall be entitled to recover all reasonable attorneys' fees and other costs it has incurred.

3.16 Indemnification

It is common for the contracts to provide that one party will "indemnify" the other party for their misconduct or negligence. If the flooring dealer is signing the other party's contract, it is key to ensure that these agreements are mutual, that is, that "for any claim arising from its misconduct or negligence, that party will indemnify, hold harmless and defend the other party to this contract." The two indemnification clauses should be essentially identical to ensure that each is getting the same protection.

It is also important to understand that "indemnifying" means only that the one party will pay all third-party damages that arise from its misconduct or negligence. To provide additional protection, the contract may need to provide that the other party will "indemnify, hold harmless and defend" the other party thereby ensuring that legal fees and defense costs are also covered. Such a clause should provide:

Each party agrees to indemnify, defend and hold harmless the other party, its affiliates, and its respective officers, directors, agents and employees from any and all claims, demands, losses, causes of action, damage, lawsuits, judgments, including attorneys' fees and

costs, arising out of, or relating to, the indemnifying party's services under this Agreement. The provisions and obligations contained in this Section shall survive expiration or other termination of this Agreement.

3.17 Limitation on Liability

Contracts often include clauses that limit the liability. Although restricted in many states, when allowed, a contract should limit a floor covering dealer's liability "not to exceed the price of the contract." It is one thing to lose the value of the contract as a result of a problem or a dispute. It is another thing to lose more money than the dealer could have possibly been paid for that contract.

In addition, a contract can also set out the time within which a claim must be filed. For example, a flooring dealer could provide that any claim for defective product or installation must be brought within one year of the installation. This limit may not work against hidden defects or installation problems that a consumer was unaware of, but it may shorten the time to file a claim for known or obvious defects.

Any claim arising out of or in connection with this Agreement shall be asserted in written notice to the other party within twelve months after the claim arose, and, if not, shall thereafter be barred.

3.18 Insurance

The contract should address any appropriate insurance requirements. These may include, but are not limited to, commercial general liability (CGL), worker's compensation, and business interpretation. The contract should specify the minimum amount of insurance the other party must obtain. In addition, the parties may request that each party will name the other party as an additional insured on existing policies. The contract should also determine whether certificates of insurance should be exchanged to verify that the party has in fact obtained the required insurance to protect the other party. Given the complexities of insurance, the party should consult with their legal counsel.

3.19 Confidential Information

Layouts, plans, diagrams, blueprints and similar documents are often prepared for flooring projects. These documents frequently are the intellectual property of the party that prepared them. Moreover, a flooring dealer does not want to prepare detailed plans only to have the customer take them to the local big box store to purchase the flooring products. To avoid disputes over the ownership and use of such plans the contract can provide:

Plans, diagrams, blueprints, sketches, samples, artwork and swatches made for this order will remain the property of Dealer and may not be used by Customer for any purpose without the written permission of Dealer.

3.20 Notice

It is good practice to specifically state how notice is to be delivered and to whom notice is to be delivered. Commonly, a notice clause will provide:

Any notice required or permitted under this agreement shall be deemed sufficiently given or served if sent by United States certified or overnight mail, return receipt requested, addressed as follows:

If to Dealer:

[NAME]

[ADDRESS]

If to Customer:

[NAME]

[ADDRESS]

3.21 Acknowledgment

The courts will often consider who drafted the contract and whether the parties have had a fair opportunity to review and negotiate the terms. To minimize a claim that the contract is unfair or unconscionable, a clause stating the parties each had a fair chance to review the terms is helpful.

Each party acknowledges that it has had the opportunity to review this Agreement with a lawyer of its own choosing, and that it enters into this Agreement fully understanding the obligations detailed in this Agreement.

3.22 Non-Waiver Clause

It is not uncommon for a party not to insist on strict compliance. A dealer may, for example, accept a late payment. It is important that allowing these breaches is not construed to be either a modification of the contract or waiver of the dealer's right to insist on strict compliance in the future. The following provision provides protection against such an interpretation.

The waiver by either party of any term or condition of this Agreement or of any breach shall not constitute a waiver of any other term or condition of this Agreement.

3.23 Successors and Assigns

A contract should address whether someone other than the parties to the contract can assume the responsibilities under the contract. This can take the form of a clause that stipulates whether a party may or may not assign its rights and responsibilities to a third party and whether consent must be required.

Some contracts hire an individual or a company because they have special skills, such as an installer, an architect, advertising copywriter or web designer. When a particular individual or company is needed, a clause prohibiting assigning the contract should be included. If an assignment is not allowed, then the contract should specifically state:

The parties may not assign this agreement or any right or obligation of this agreement without the written consent of the other party.

In most flooring contracts, the products and payments are the key provisions. There is not the need to insist that a particular individual or company perform the contractual services. Rather, delivery and payment are paramount and it does not matter whether the original parties or their assigns provide the products or make payments. Moreover, for a consumer contract, it is often preferable to require his or her heirs to assume responsibility for a contract. This obligates the consumer's heirs to pay if the consumer passes away. If the contract can be assigned to a third party and the obligations pass on to a party's heirs, it should provide:

This Agreement shall be binding on the parties hereto, their heirs, administrators, executors, successors, and assigns.

3.24 Signatures

There should be a signature block that sets forth the date the contract was signed and the authority of the signatory to bind the contracting party. For example, the signature block can read, "by James Smith, Chief Operating Officer, authorized and on behalf of ABC Corporation." For lengthy contracts, it is also advisable that each party initials each page of a contract. Should there be any changes made to the contract, such as handwritten inserts or modifications, both parties should place their initials beside the changes.

A contract also can be "signed by a counterpart." This means that all parties to the contract sign their own separate signature pages, which are then sent to and assembled by one of the parties. This avoids having to send a contract around to each party, especially when there are more than two parties to the contract. If signing in counterpart is acceptable, the contract should specifically authorize it.

This Contract may be executed in one or more counterparts, all of which shall be considered one and the same Contract, binding on all parties hereto, notwithstanding that all parties are not signatories to the same counterpart.

CHAPTER 4: SPECIFIC CONTRACTS

As explained earlier, there are no standard contracts for every type of agreement that a flooring dealer will encounter in its business. The suggestions provided in this section are designed to create the best case possible. A flooring dealer, however, may not be able to negotiate all of the suggested provisions in its contracts or may find some inapplicable. The contract terms depend on the type of contract, the dealer's bargaining position, state and local legal requirements and the economy. A dealer that purchases significant products from a manufacturer or distributor will likely be able to bargain for better terms, as will the dealer negotiating a lease for multiple locations.

In this Chapter, specific issues for typical contracts are discussed. Suggested contract language is provided and explained. Armed with an understanding of the issues and needs, the dealer will be able to intelligently determine whether a particular provision is necessary.

4.1 Purchase Orders/Agreements — Manufacturers and Distributors

Most — if not all — contracts with manufacturers and distributors are standard form agreements prepared by the manufacturer. Few dealers are able to write their own contract with manufacturers or distributors. Instead, the dealer enters into a master contract with the manufacturer and distributor when it initially sets up its account. The dealer then places individual orders by sending either an e-mail, a facsimile or order form. Dealers may even orally place an order.

There are important provisions to the contract that should be included to protect the flooring dealer. As explained below, these can include warranties, product information and Lacey Act certification. Since the dealer is unlikely to be able to revise or amend the master contract these additional terms can be included with each order. All orders should be in writing, whether on a formal form or by e-mail. A written order documents the transaction and allows the dealer to include needed provisions to protect itself.

4.1.1 Product Information

Although manufacturers and distributors generally already tagged or labeled their products, it is advisable to require that the products be properly identified on tags and on box labels. This will protect the dealer in case the products are mislabeled and it is not discovered until the dealer sells the flooring. To minimize this risk, the order form should include a provision that provides:

Prior to shipping, the Vendor shall:

1. Inspect the product for visible defects;
2. Ensure the product is properly labeled or tagged, which shall include where applicable:
 - a. Product name or number;
 - b. Style number;
 - c. Color number or name;

- d. Size;
- e. Quantity;
- e. Dye lot number; and
- f. Roll number.

4.1.2 Warranties

It is essential that the manufacturers and distributors provide the dealer with all the information on warranties, including any limitations or actions that will void the warranties. In addition, the dealer should ask for a copy of all warranties that can be shared with the dealer's customers. The order form, therefore should include:

Warranties: Vendor shall provide a copy of any warranties and shall identify all limitations and reasons that would invalidate any warranty.

4.1.3 Sundry Items and Unique Information

Products can often be impacted by a variety of factors, such as the type of adhesives that can be used, transitions to other surfaces, subflooring requirements and the impact of moisture. Failure to take these factors into account could cause serious problems and void any vendor warranties. It is therefore important that the dealer obtain all information from the vendor on any special needs.

Vendor shall provide:

1. Installation instructions, including any product-specific installation requirements;
2. Information on substrate and site conditions that might affect product, including substrate-testing requirements;
3. Specific information relating to material and sundries for specialized installations;
4. Cushion recommendations (if applicable);
5. Pattern information and applicable tolerances (if applicable);
6. Backing material composition information (if applicable);
7. Limitations on use and intended application; and
8. Maintenance information.

If a patterned carpet is ordered, it is important to know the bow and skew tolerances. The order form can request this information (as included in the language above) or can set out a level

of tolerance. If feasible, the order form should state the amount of bow and skew that is acceptable. For example, the order form can provide that:

The amount of bow should be no more than one and one-half inch (1½” or 3.8 cm) in a 12-foot (3.7 m) width.

At a minimum, the dealer should ask for the manufacturer’s tolerances.

4.1.4 Lacey Act

Retailers may have obligations under recent legislation amending the Lacey Act to prohibit the importation of illegally harvested plant products. The provisions in the new Act are very broad and would include lumber, wood pulp, paper, gums, resins, saps, cork and most other conceivable materials that can be made from trees and plants. As a result, not only hardwood floors, but also laminates, particleboards, glues and other flooring products would be covered by the Act if they include illegally harvested wood or other plant products

A flooring dealer cannot simply avoid its responsibilities under the Lacey Act by passing them on to its supplier. The law makes everyone from the importer through to the end consumer responsible for compliance. The dealer can minimize the risks and protect itself from the potential liability under the Lacey Act by including the following provision in its contracts, addendums to the contract or order forms.

Lacey Act Compliance: The manufacturer is responsible for obtaining all materials under the Lacey Act and will:

1. Provide the Dealer with a copy of the Lacey Act filings, including the Lacey Act declaration;
2. Certify that the products do not contain any material from illegally harvested plants or trees or any endangered plant or tree; and
3. Hold harmless, indemnify and defend [Name of flooring dealer] for any claim that the Lacey Act is violated or for any inaccurate information provided by the supplier.

4.2 Construction Contracts

Common practice in commercial jobs is to use the American Institute of Architects (AIA) contract forms. The flooring dealer is generally a subcontractor and the general contractor usually prepares the contracts. While it is beyond the scope of this book to rewrite an alternative to the standard AIA contract, it is important for the flooring dealer to read the contract and make appropriate changes and request pertinent information. Some of the primary issues are identified below.

4.2.1 Drawings, Specifications and Referenced Documents

The dealer needs to verify that it has received pertinent drawings, material specifications and other documents and information. It is recommended that the dealer include a cover e-mail or letter with any signed contract and state that:

The contract was signed with the understanding that all drawings, specifications, information and documents relating to the work have been provided.

4.2.2 Warranties

The standard AIA contract provides that the “Contractor” warrants the material and workmanship. This warranty applies to the flooring dealer. To the extent the dealer is simply passing through the manufacturer’s warranties and not separately warranting the materials, it needs to so advise the general contractor. This can be done with a simple cover letter or e-mail that states:

The agreement is signed with the understanding that the Dealer is passing through the manufacturer’s warranties and is not separately warranting the materials. If this is not acceptable, please contact us immediately.

4.2.3 Indemnification

The standard AIA contract provides only that the contractor and subcontractors indemnify the architect and the homeowner. The contractor and subs are not protected against the mistakes and acts of the architect or homeowner. If at all possible, the dealer should request that the indemnification be fair and protect the dealer from any claims arising from performance of the architect. A cover letter or e-mail should state:

The agreement is signed with the understanding that the [DEALER NAME] will be indemnified under section 3.8 for any claims arising from the performance of the architect and general contractor.

4.2.4 Moisture Testing

It is common for the architect to impose moisture testing of floors on flooring dealers and not the concrete subcontractor. It is suggested that the dealer only take on this responsibility if it is equipped to do the testing and has included the cost of the testing in its price.

4.2.5 Americans with Disabilities Act

The Americans with Disabilities Act (ADA) and Fair Housing Act (FHA) establish requirements to ensure buildings are accessible by the disabled. Property owners and developers often include in construction contracts a clause that delegates the responsibility to comply with these mandates to architects, consultants, contractors and subcontractors.

It is important that the flooring dealer does not assume any responsibility for ADA and FHA compliance. The architect and owner develop the building plans and they should not shift

the responsibility for complying with these requirements to the subcontractors.⁶ It is recommended that any provision shifting such responsibility to the dealer be crossed out.

4.2.6 Change Orders

The dealer does not want to be caught in the dilemma of having the general contractor insist on a change order without having the owner's approval. The dealer could run the risk of the owner rejecting the change or refusing to pay for it. Accordingly, it is best to require the owner sign all change orders.

Any change orders, alteration of or deviation from plans and specifications or the terms and provisions of this contract shall be binding only if set forth in writing and signed by the Owner.

4.4 Installation/Subcontracts

The WFCA has published a book on subcontracts, *The Independent Contractor: Understanding the Rules and A Model Contract* (2013). The book includes a model contract that can be used for independent installers, cleaners, inspectors, etc. The book is available to WFCA members. To order a copy, a member should go to wfca.memberclicks.net.

4.5 Consumer/Sales Agreement

There is not a standard consumer sales agreement for the flooring industry. Nonetheless, there are basic provisions that should be in each contract.

4.5.1 Contractor License

Most states require a license to do construction or home improvement work. If the flooring dealer includes installation with the sale of flooring, whether through its own dealers or subcontractors, it may be subject to these licensing requirements. If so, the dealer should include in its agreement its license number or the license number of its subcontractor, who will do the installation.

4.5.2 Products

Any specific limitations or issues with products should also be identified. For example, given the potential for variation in color from dye lots for carpet, it is recommended that a disclaimer be included. Similarly, since natural wood products will not necessarily have a

⁶ Recently, some courts have ruled that owners and developers cannot avoid their responsibility to comply with ADA and FHA access requirements. Consequently, these courts refused to enforce indemnification clauses that made the owners' contractors and subcontractors responsible for compliance. These decisions do not mean the flooring dealer can ignore potential ADA or FHA liability. In rejecting the property owners' claims, the courts specifically noted that the owners tried to shift all the responsibility for non-compliance to architects or consultants. The courts may allow owners to require their contractors to share in the responsibility to design and construct buildings that comply with ADA and FHA requirements so long as they do not try to absolve themselves of all responsibility. See, *Who is Responsible If a Facility Does Not Comply With the Americans with Disabilities And Fair Housing Acts?* (Posted July 31, 2013 on wfca.memberclicks.net).

consistent color or grain pattern, this variation should be disclosed. A disclaimer is recommended that states:

Color and grain patterns may vary and be different from samples due to the nature of product and dye lots, and Dealer is not responsible for these variations.

4.5.3 Access and Conditions

Consumer flooring is often installed in existing homes or offices. This presents the unique issue of moving the furniture and removing the existing floor. In addition, the condition of the subflooring may not be known until the existing floor is removed. The subflooring may need repair or there may be flooring under the existing floor, such as old vinyl or tile. To protect itself, the dealer should clarify the responsibilities in its agreement:

The Customer is responsible for removing all furniture and breakable items prior to the scheduled installation.

The Dealer is not responsible for (i) normal installation repair such as minor scratches on existing walls, doors and baseboards; (ii) touch up painting; (iii) repairs needed to subflooring; or (iv) removal of any flooring under the current visible floor covering.

4.5.4 Permits and Approvals

The contract should clearly state who is responsible for obtaining any needed building permits or association approvals.

Dealer shall be responsible for determining which permits are necessary and obtaining all necessary permits.

Customer shall be responsible for obtaining approval from the local homeowner's association, if required.

4.5.5 Warranties

The Uniform Commercial Code ("UCC"), which has been adopted in every state in some form, provides that all merchandise includes the implied warranties of merchantability (the goods must reasonably conform to an ordinary consumer's expectations) and fitness (goods to fit a specific request). While there is an issue of whether these warranties apply in construction contracts, they are likely applicable to all floor covering dealers who sell flooring and charge for it separate from the installation. These warranties can only be waived in writing. Additionally, these waivers must be conspicuous in the contract. The waiver must be in at least 10-point font and usually are in all capital lettering to make them stand out.

If you provide a written warranty to a customer, you are limited on the ability to waive the implied warranties and any liability. The Federal Magnuson-Moss Act prohibits anyone who offers a written warranty from disclaiming or modifying implied warranties. This means that no matter how broad or narrow your written warranty is you cannot waive the implied warranties.

There is one permissible modification of implied warranties. If you offer a "limited" written warranty, the law allows you to include a provision that restricts the duration of implied warranties to the duration of your limited warranty. For example, if you offer a two-year limited warranty, you can limit implied warranties to two years. A warranty is "limited" if the dealer or contractor limits the warranty's duration, covers only the first buyer, charges a service fee for warranty work, limits replacement, or requires the buyer to perform any duty as a precondition for receiving service other than notifying the dealer of a defect.

In addition, many products come with express warranties from the manufacturer and those warranties can only be waived if such disclaimers are not unreasonable and the waiver is conspicuously stated in the contract. Again, the enforcement of the waiver will depend on whether the waiver is deemed reasonable or unconscionable. At a minimum, the flooring dealer should state in writing that it is passing the manufacturer's warranty to the consumer and the dealer is not included in that warranty.

Moreover, state laws often limit the ability for a merchant or contractor to waive liability. The law varies by state. For example, the Massachusetts Consumer Protection statute prohibits the disclaimer of the implied warranty of merchantability on household goods sold to consumers. Many states have similar limits.

Many states also recognize the implied workmanlike quality for services and an implied warranty of habitability for a home. To waive these implied warranties often requires specific language be included in the contract — in conspicuous and bold lettering. Moreover, some states will consider whether the warranty waiver is unreasonable under the circumstances. The waiver is likely to be invalid if there were issues unknown by the consumer that the dealer or contractor knew of or should have known about.

Notwithstanding these limits, waivers of liability are often useful to include in a contract. At a minimum, the waivers raise issues of whether dealers, contractors or installers are liable for any failure or defects of the flooring product and installation. The waivers should conform to the state law and UCC requirements. Any waiver of warranties, whether implied or express warranties, must be clearly stated and should be conspicuous. In addition, it is recommended that any special circumstances be specified in the waiver. For example, if the issue is the installation of tile on concrete that may not have cured completely, that should be specifically explained in a written and signed document.

While there is no single answer to the issues that is applicable to all states, using clear and complete warranty waiver language will help. Many state statutes require waivers to be set out separately and in bold print or all capitals that is at least 10 point and not smaller than the other provisions in the contract. The key is to make the waiver stand out.

DISCLAIMER: CONTRACTOR DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, HABITABILITY, ANY THIRD PARTY GOODS OR SERVICES OFFERED OR SOLD BY CONTRACTOR, OR THE QUALITY, FEATURES OR CHARACTERISTICS OF SUCH GOODS AND SERVICES, THAT RESULT FROM ANY

FACTORS OUTSIDE CONTRACTOR'S REASONABLE CONTROL, INCLUDING ANY MOISTURE IN THE SUB FLOORS. THE BUYER(S) ACKNOWLEDGES THAT CONTRACTOR EXPLAINED THE ISSUES WITH REGARD TO MOISTURE PROBLEMS AND THAT THE BUYER(S) IS NOT RELYING UPON THE SELLER'S SKILL OR JUDGMENT TO SELECT OR FURNISH GOODS SUITABLE FOR ANY PARTICULAR PURPOSE AND THAT THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THE DESCRIPTION ON THE FACE HEREOF.

TO THE EXTENT THAT CONTRACTOR MAY NOT DISCLAIM ANY WARRANTY AS A MATTER OF APPLICABLE LAW, THE SCOPE AND DURATION OF SUCH WARRANTY WILL BE THE MINIMUM PERMITTED UNDER SUCH LAW. SOME STATES DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU. THIS LIMITED WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS, AND YOU MAY ALSO HAVE OTHER LEGAL RIGHTS, WHICH VARY FROM STATE TO STATE.

There is no guarantee that the waiver will ultimately be enforceable, but its inclusion can often cut off lawsuits before they are filed.

4.5.6 Limitation of Liability

Although restricted in many states, when allowed, a contract should limit a floor covering dealer's liability "not to exceed the price of the contract." It is one thing to lose the value of the contract as a result of a problem or a dispute. It is another thing to lose more money than the dealer could have possibly been paid for that contract.

LIMITATION OF LIABILITY: IN NO EVENT WILL CONTRACTOR BE LIABLE TO ANY PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES, INCLUDING ANY LOSS OF PROFIT, REVENUE, BUSINESS OPPORTUNITY, DATA OR USE, ARISING FROM OR RELATING TO THIS CONTRACT, WHETHER IN CONTRACT, IN TORT OR OTHERWISE, EVEN IF CONTRACTOR KNEW, SHOULD HAVE KNOWN OR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. CONTRACTOR'S TOTAL CUMULATIVE LIABILITY ARISING FROM OR RELATED TO THIS CONTRACT, WHETHER IN CONTRACT, IN TORT OR OTHERWISE, WILL NOT EXCEED THE FEES ACTUALLY PAID BY YOU UNDER THIS AGREEMENT. THIS SECTION WILL APPLY EVEN IF AN EXCLUSIVE REMEDY HEREUNDER HAS FAILED ITS ESSENTIAL PURPOSE.

SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU.

In addition, a contract can also set out the time within which a claim must be filed. For example, a flooring dealer could provide that any claim for defective product or installation must be brought within one year of the installation. This limit may not work against hidden defects or installation problems that a consumer was unaware of, but it may shorten the time to file a claim for known or obvious defects.

Any claim arising out of or in connection with this Agreement shall be asserted in written notice to the other party within twelve months after the claim arose, and, if not, shall thereafter be barred.

4.5.7 Consumer Protection Provisions

There are a variety of consumer protection requirements that vary from state to state and community to community. The dealer needs to include any local requirements. It is recommended that the dealer have an attorney familiar with its state and local requirements review all agreements.

Under federal regulations, and therefore applicable to all consumer sales contracts, if the contract was signed at the customer's home, then the dealer must advise the customer of his or her right to cancel the contract within three days. The dealer must give the customer two copies of a cancellation form (one to keep and one to send) and a copy of the contract or receipt. The contract or receipt should be dated, show the name and address of the seller, and explain his or her right to cancel. The contract should include a notice of the right to cancel:

Right of Cancellation: If this agreement was solicited at your residence and you do not want the goods or services, you may cancel this agreement by mailing a notice to the seller. The notice must say that you do not want the goods or services and must be mailed before midnight of [Date] when cancellation right lapses. The notice must be mailed to [INSERT NAME AND MAILING ADDRESS OF DEALER]

A cancellation form is included in Chapter 5.

4.5.8 Subcontractors

If the dealer uses a subcontractor for installation or other work, it is recommended that the Dealer inform the customer. A typical provision provides:

Customer agrees that the Dealer may hire subcontractors at its discretion, provided that Dealer agrees that the payment for said subcontractors is entirely the Dealer's responsibility.

4.5.9 Liens

A number of states require that a contractor include a detailed description of the rights and obligations regarding mechanic liens. Failure to include the required description can preclude the dealer from obtaining a lien if the customer fails to pay. The required information varies by state. At a minimum, the dealer should include in its contract its right to file a lien for overdue payments.

The Dealer may be entitled to record a mechanics' lien on your property if you fail to make the payments due under this agreement. A mechanics' lien is a claim, like a mortgage or home equity loan, made against your property and recorded with the county recorder.

4.6 Miscellaneous Contracts

The flooring dealer may enter into a variety of other contracts. These may include equipment leases, advertising agreements, website agreements and property leases. The key factors to remember when entering into these agreements are: To ensure the scope of the agreement is clear; the parties are properly identified; the term of the agreement is fair; all automatic renewals are entered properly calendared; and the dealer's rights and remedies are fully explained and included. To further assist the dealer, Chapter 5 includes a contract checklist.

CHAPTER 5: SAMPLE CONTRACTS AND FORMS

Unfortunately, there is no single contract that will insure compliance with every state and local law and the varying interpretations of these laws by the courts and the agencies that enforce them. Nonetheless, sample forms are provided to provide a basic agreement or form that can then be modified to comply with local requirements.

5.1 Product Order Form

Most products are ordered from vendor by simply placing the order pursuant to a pre-written master contract. It is important that the dealer put its orders in writing to avoid future disputes. In addition, an order form can be used to include the terms described in Chapter 4 to protect the dealer.

Sample Manufacturer or Distributor Order Form

[Dealer Name]

Account Number:	Vendor:
------------------------	----------------

Item No./Color	Description	Quantity	Price	Total
TOTAL				

This Order is pursuant to the Agreement between [Name of Vendor] (hereinafter "Vendor") and [NAME OF DEALER] (hereinafter "Dealer") dated _____. To the extent that any of the terms or conditions contained in this order may contradict or conflict with any of the terms or conditions of the Agreement, it is expressly understood and agreed that the terms of this order shall take precedence and supersede the Agreement.

1. Delivery: The products shall be delivered to the following address: _____
2. Product Information and Labels: Prior to shipping, the Vendor shall:
 - i. Inspect the product for visible defects;
 - ii. Ensure the product is properly labeled or tagged, which shall include where applicable:
 - a. Product name or number;
 - b. Style number;
 - c. Color number or name;
 - d. Size;
 - e. Quantity;
 - f. Dye lot number; and
 - g. Roll number.
3. Warranties: Vendor shall provide a copy of any warranties and shall identify all limitations and reasons that would invalidate any warranty.
(If a specific bow and skew tolerance is to be included, it can be added here)
Vendor also warrants that the amount of bow should be no more than one and one-half inch (1½" or 3.8 cm) in a 12-foot (3.7 m) width.
4. Additional Information and Instructions: Vendor shall provide:
 - i. Installation instructions, including any product-specific installation requirements;
 - ii. Information on substrate and site conditions that might affect product, including substrate testing requirements;
 - iii. Specific information relating to material and sundries for specialized installations;
 - iv. Cushion recommendations (if applicable);
 - v. Pattern information and applicable tolerances (if applicable);
 - vi. Backing material composition information (if applicable);
 - vii. Limitations on use and intended application; and
 - viii. Maintenance information.
5. Lacey Act Compliance: The manufacturer is responsible for obtaining all materials under the Lacey Act and will:
 - i. Provide the Dealer with a copy of the Lacey Act filings, including the Lacey Act declaration;
 - ii. Certify that the products do not contain any material from illegally harvested plants or trees or any endangered plant or tree; and
 - iii. Hold harmless, indemnify and defend [Name of flooring dealer] for any claim that the Lacey Act is violated or for any inaccurate information provided by the supplier.
6. Confirmation: Vendor agrees to the terms set forth above by processing the order and/or shipping the goods ordered, provided the order is accepted or shipped by 5:00 PM Eastern Standard Time on [DATE].

Dealer_____

Date_____

5.2 Consumer Contract

The consumer contract was designed as an order form with the contract printed below the basic order grid. It was designed to cover the basic provisions. The form needs to be adjusted to incorporate state and local requirements. As a result the dealer needs to seek legal advice from an attorney familiar with its state and local requirements to ensure compliance.

SAMPLE CONSUMER CONTRACT

[Dealer Name and Logo]

License No:

Permit No:

Account/Invoice Number: Date:	Customer: Address:
--	-------------------------------------

Item No./Color	Description	Quantity	Price	Total
TOTAL				

1. THIS AGREEMENT is between [DEALER NAME] ("Dealer"), a [STATE OF INCORPORATION] company located at [ADDRESS] and [NAME OF CUSTOMER] ("Customer") located at [ADDRESS] by which Dealer agrees to sell the products and services identified in the order form attached hereto and Customer agrees to purchase, accept and pay for said goods and services subject to the terms of this Agreement. This order may not be terminated, cancelled or reduced by Customer.
2. Price. Customer shall pay the price set forth in the order form plus any excise, sales, use or other tax imposed upon Dealer incident to this order.
3. Deposit and Payment. Upon execution of this agreement, customer agrees to pay a nonrefundable down payment of \$ _____. Customer shall then pay to Dealer the Contract Price in 2 installments, of 50% of the remaining amount due upon delivery of products and a final payment of the remaining amount on completion of the Work. Payment from Customer shall be due upon receipt of Dealer's invoice(s), without set off, deduction or withholding, whether based upon a claim of breach of warranty, breach of contract or otherwise. Past due accounts shall be assessed a service charge of 1 1/2 % per month, or the maximum permitted by law, whichever is less.
4. Dealer Responsibilities. Dealer shall be responsible for determining which permits are necessary and obtaining all necessary permits. The Dealer is not responsible for (i) normal installation repair such as minor scratches on existing walls, doors and baseboards; (ii) touch up painting; (iii) repairs needed to subflooring; (iv) removal of any flooring under the current visible floor covering; structural alterations, including doors and framing; or (vi) color and grain patterns that vary and/or are different from samples due to the nature of product and dye lots.
5. Customer Responsibilities. Customer is responsible for (i) removing all furniture and breakable items prior to the scheduled installation, and (ii) obtaining approval from the local homeowner's association, if required.
6. Delivery. All deliveries shall be to the Customer's address as set forth in this Agreement. All delivery dates are approximate dates based upon conditions existing at the time the estimate is made. Title to the goods and liability for loss or damage to the goods shall pass to Customer upon Dealer's or the manufacturer's tender of delivery of the goods to Customer and any loss or damage thereafter shall not relieve Customer from any obligation hereunder. Customer shall bear all transportation and insurance expenses, including without limitation responsibility for any associated taxes, duties or documentation.
7. Plans and Other Documents. All diagrams, plans, blueprints, sketches, specifications, artwork, swatches, samples and other documents and items made for this order will remain the property of Dealer and may not be used by Customer for any purpose without the written permission of Dealer.
8. Subcontractors. Customer agrees that the Dealer may hire subcontractors at its discretion, provided that Dealer agrees that the payment for said subcontractors is entirely the Dealer's responsibility.
9. Limited Warranty. To the extent permitted under arrangements with its manufacturers, Dealer will assign to Customer on a non-exclusive basis the warranties made by the end manufacturer for goods under this order (the "Manufacturer Warranties"). Customer shall be solely responsible for pursuing its claims under any Manufacturer Warranties at its own cost and expense.

DISCLAIMER: DEALER DISCLAIMS ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, HABITABILITY, AND NONINFRINGEMENT.

TO THE EXTENT THAT DEALER MAY NOT DISCLAIM ANY WARRANTY AS A MATTER OF APPLICABLE LAW, THE SCOPE AND DURATION OF SUCH WARRANTY WILL BE THE MINIMUM PERMITTED UNDER SUCH LAW. SOME STATES DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU. THIS LIMITED WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS, AND YOU MAY ALSO HAVE OTHER LEGAL RIGHTS, WHICH VARY FROM STATE TO STATE.

10. Liability limitation

LIMITATION OF LIABILITY: IN NO EVENT WILL CONTRACTOR BE LIABLE TO ANY PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES, INCLUDING ANY LOSS OF PROFIT, REVENUE, BUSINESS OPPORTUNITY, DATA OR USE, ARISING FROM OR RELATING TO THIS CONTRACT, WHETHER IN CONTRACT, IN TORT OR OTHERWISE, EVEN IF CONTRACTOR KNEW, SHOULD HAVE KNOWN OR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. CONTRACTOR'S TOTAL CUMULATIVE LIABILITY ARISING FROM OR RELATED TO THIS CONTRACT, WHETHER IN CONTRACT, IN TORT OR OTHERWISE, WILL

NOT EXCEED THE FEES ACTUALLY PAID BY YOU UNDER THIS AGREEMENT. THIS SECTION WILL APPLY EVEN IF AN EXCLUSIVE REMEDY HEREUNDER HAS FAILED ITS ESSENTIAL PURPOSE. SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU.

11. Claims. Any claim arising out of or in connection with this Agreement shall be asserted in written notice to the other party within twelve months after the claim arose, and, if not, shall thereafter be barred.

12. Default Provision. In case of a default, the non-defaulting party shall furnish the other party with notice of any default and the defaulting party shall have thirty (30) days after receipt of the notice to cure the default.

13. Customer's Right of Cancellation: If this agreement was solicited at your residence and you do not want the goods or services, you may cancel this agreement by mailing a notice to the Dealer. The notice must say that you do not want the goods or services and must be mailed before midnight of [date] when cancellation right lapses. The notice must be mailed to Dealer at the address set forth in this Agreement.

14. [INSERT ALL CONSUMER PROTECTION PROVISIONS REQUIRED BY LOCAL LAW]

15. Dealer's Right of Cancellation. If the Customer fails to pay its debts, becomes insolvent, files a petition in bankruptcy, has an involuntary bankruptcy petition filed against it, makes an assignment for the benefit of creditors, has foreclosure proceedings initiated against any of its property or becomes involved in insolvency proceedings, Dealer may cancel this order without liability. Dealer shall be excused from performance and shall not be liable for any delay in delivery or for non-delivery to the extent caused in whole or in part by any contingency or condition beyond the control of either Dealer or Dealer's suppliers.

16. Indemnity. Customer shall indemnify, defend and hold harmless Dealer, and their respective employees, officers, subcontractors and agents from and against any loss, liability, damage or cost (including reasonable attorneys fees and disbursements) incurred by them arising from (i) Customer's breach of these Terms or (ii) personal injury or property damage associated with Customer's acts or omissions.

17. Force Majeure. A party shall not be liable for any failure of or delay in the performance of this Agreement for the period that such failure or delay is due to causes beyond its reasonable control, including but not limited to acts of God, war, strikes or labor disputes, embargoes, government orders or any other force majeure event.

18. Assignment. This Agreement shall be binding on the parties hereto, their heirs, administrators, executors, successors, and assigns.

19. Non-Waiver of Default. The waiver by either party of any term or condition of this Agreement or any breach shall not constitute a waiver of any other term or condition of this Agreement

20. Severability. If any clause or provision of this Agreement is found to be contrary to law, then that clause or provision shall be eliminated and the remainder of the Agreement shall remain fully in effect.

21. Enforcement. The Dealer may be entitled to record a mechanics' lien on your property if you fail to make the payments due under this agreement. A mechanics' lien is a claim, like a mortgage or home equity loan, made against your property and recorded with the county recorder. If Dealer takes any legal or judicial action to enforce these Terms and any related order, Customer shall pay all reasonable costs and expenses incurred by Dealer (including without limitation attorneys' fees and disbursements).

22. Applicable Law and Venue. This Contract shall be governed by and construed in accordance with the laws of the State of _____. Any claims, legal proceeding or litigation arising in connection with the Service will be brought solely in the Federal or state courts located in _____ County, in the State of _____, and venue shall lie exclusively in the courts located in such location. The parties hereto also consent to the service of process by any means authorized by federal law or the law of the State of _____.

23. Arbitration. Claims or controversy of any nature, including, shall be settled by final and binding arbitration through the [Location] office of the American Arbitration Association ("AAA"). All cost and expenses of arbitration shall be borne equally by the parties except as otherwise determined by AAA. Each party shall pay its or her own legal fees. That notwithstanding, the parties recognize that an arbitrator is unable to provide injunctive relief, and thus this arbitration clause, in no way precludes, the parties from seeking and obtaining injunctive relief in an appropriate court of law.

24. Entire Agreement. This Agreement, and any documents expressly referenced herein, contains the entire agreement between the parties hereto with respect to the transactions contemplated hereby and supersedes all prior

oral and written agreements, memoranda, understandings, catalogs, specifications, drawings, notes, samples, models, photographs, information from websites or similar materials and undertaking between the parties hereto relating to the subject matter hereof.

25. Additional Documents. The documents attached to this Agreement are incorporated by reference into and made a part of this Agreement.

26. Acknowledgement. Each party acknowledges that it has had the opportunity to review this Agreement with a lawyer of its own choosing, and enters into this Agreement fully understanding the obligations detailed in this Agreement.

Customer_____Date_____

Customer_____Date_____

Dealer_____Date_____

5.3 Cancellation Form

The Federal Trade Commission (“FTC”) requires all home solicitation contracts for more than \$25.00 provide the customer with three days to cancel the agreement for any reason. The FTC rule also requires the seller explain this right to the customer this right to cancel and to provide the customer with two copies of a cancellation form. A number of state laws also provide for the right of cancellation. The notice below is based on a model that complies with the FTC requirements. Some state laws may require different notices and different cancellation periods. The dealer needs to seek legal advice from an attorney familiar with its state and local requirements to ensure compliance with all state and local requirements.

Notice of Three-Day Right to Cancel

You, the buyer, have the right to cancel this contract within three business days. You may cancel by emailing, mailing, faxing, or delivering a written notice to the contractor at the contractor's place of business by midnight of the third business day after you received a signed and dated copy of the contract that includes this notice. Include your name, your address, and the date you received the signed copy of the contract and this notice.

To cancel this transaction, mail or deliver a signed and dated copy of the Notice of Cancellation, or any other written notice to:

Dealer Name: _____

Address: _____

Customer Name: _____

Address: _____

(Date) ____/____/____

5.4 CHECKLIST: Contracts

There are numerous other contracts that the flooring dealer will enter into during the year, such as advertising agreements, equipment and property leases, website development and signage contracts. Most often the vendor or landlord prepares these contracts and presents them to the dealer. Each agreement or order form should be reviewed and compared to the checklist below to ensure the agreement covers all the needed items and is fair to the dealer.

- ___ Preamble/Whereas Clauses—Do they help define contract?
- ___ Parties—Are they clearly identified and have authority to sign?
- ___ Product/Services—Are both parties' obligations clearly stated?
- ___ Price and Payment Terms--
- ___ Contract Term and Renewal—What is the term and can the contract be renewed?
- ___ Termination—Can the parties cancel the contract with and without cause/ Force Majeure?
- ___ Breach and Liability Limits—Do you have a reasonable time to correct a breach?
- ___ Governing Law and Venue—Will they impact ability to pursue claims?
- ___ Entire Agreement—Are there any other documents or promises that need to be included?
- ___ Related and Attached Documents—Are all related documents incorporated?
- ___ Modification/Amendment—Can the agreement be modified only by written amendments?
- ___ Indemnification—Are they mutual and do they cover hold harmless and defend?
- ___ Insurance—Does the other party have adequate insurance coverage?
- ___ Warranties—Are there any warranties and have you properly waived any?
- ___ Independent Contractor—Have the parties agreed they are independent contractors that cannot bind the other?
- ___ Dispute Resolution—Is there an alternative dispute resolution method?
- ___ Severability—Does the contract provide it will not be invalidated by one of its provisions being found to be void?
- ___ Notices—Are the correct individuals identified?

- ___ Successors and Assignment—Should another party be allowed to assume the contract?
- ___ Acknowledgement—Have both parties had an adequate opportunity to review the contract?
- ___ Non-Waiver—Will a right be lost if you do not insist on strict compliance such as accepting a late payment?
- ___ Local requirements—Are there any state or local requirements that must be included?
- ___ Signatures—Have all the needed parties signed?

Always obtain legal advice before signing any agreement.

APPENDIX

WFCA Publications

The WFCA has published a number of articles on contracts and related topics. A list of some of these articles is provided below. Members of WFCA can access most of these articles at wfca.memberclicks.net.

Creating Contract: As Simple as Hitting the Send Button, Premier Flooring Retailer (Jan./Feb 2014).

The Independent Contractor: Understanding the Rules and A Model Contract (WFCA 2013).

Who is Responsible If a Facility Does Not Comply With the Americans with Disabilities And Fair Housing Acts? (Posted July 31, 2013).

Trade Secrets and Enforcement of Non-Compete Agreements, (Posted 11/29/11).

Unsigned Contracts: No Mechanic's Lien (Posted 4/5/11).

Waivers of Liability (Posted 3/22/11).

Federal Construction Contracts: You May Need a Union Contract (Posted 4/21/10).

Exclusive Locations: So Who's Your New Neighbor? (Posted 01/28/2009).

Important Contract Terms (Posted 12/02/2008).

Lacey Act (Posted 11/17/2008).

But We Agreed In Writing: Discrimination Release Forms (Posted 09/16/2008).

E-Mails Can Create Contracts (Posted 02/19/2008).

State's Consumer Protection Act Does Not Apply to Home Builder Contractors (Posted 12/17/2007).

Do You Need a Home Improvement Contractor's License? (Posted 11/27/2007).

Don't be a Victim of A General Contractor's Bankruptcy (Posted 11/27/2007).

Waiver of Liability for Gross Negligence Found Unenforceable (Posted 10/22/2007).

A Written Contract is Always Best (Posted 08/16/2007).

When is a Contract a Contract? (Posted 08/16/2007).

Contractor Responsible For Costs Due to More Stringent Requirements (Posted 08/16/2007).

Contract Language That Should Be Included When Purchasing New Technology (Posted 08/16/2007).