



While the Sun is  
Shining  
*(and Contract  
Negotiations Are Afoot)*





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## **While the Sun is Shining (and Contract Negotiations Are Afoot)**

### **Tip No. 1 – Prepare to Be Prepared**

Contracts are not merely a superficial necessity. They are an investment that proves the value of a business and its operations to investors and potential buyers.

Contracts are also where a business accomplishes what it does, including with vendors, contractors, employees, and others upon whom the business depends to perform. Having tailored policies and procedures that direct and coordinate internal resources ensures that what the business executes is effective, not just in terms of immediate objectives but also in planning for and controlling litigation, regulatory compliance, and other categories of legal risk.

### **Tip No. 2 – Contracts Are a Team Sport**

While a business will typically designate its leads to serve on the frontlines of deal formation, it is important at the beginning and throughout negotiations that other

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employees and stakeholders in a given project be brought into the fold. Ensuring a business can consistently perform a contract can only be done with confidence when the right departments and people are looped into discussions as a deal takes shape.

Businesses often silo contract formation, leaving it to a director or manager of business development to coordinate with one or two people in a given department to work through deal points before shipping the end product to outside counsel “to document.” But this approach often leaves critical information—which ought to have been considered from the outset—on the cutting room floor. When this happens, the risk of failure in subsequent contract performance and of things “unanticipated” increases significantly, as does overall legal and transactional risk. But with a bit of planning and a more holistic approach to contracts and their formation, a deal’s value and profit can be advanced, maximized, and preserved.

### **Tip No. 3 – Involve Your Lawyer Early On**

You have agreed upon the price, quantity, and timeline. So the contract is done, right? Wrong. What about the

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800 other things you have not considered?

A good lawyer with expertise in your industry and contract-type will bring a critical resource to the table: experience. Rarely—if ever—will a transaction be the only one of its type. With all of its twists and turns, it is highly likely that a transaction will embody varying combinations of other deals that an experienced lawyer has addressed over the course of a career. A lawyer may charge for a few hours of his or her time, but for each hour a good lawyer can offer years of experience to help guide negotiations, simplify complexities, avoid legal pitfalls, and enhance strategic value.

#### **Tip No. 4 – Keeping the Confidential Stuff Confidential**

Depending on the scope of a transaction, a business may have to disclose sensitive information about its intellectual property, business operations, finances, partnerships, employees, and more. Before the business sits down at the negotiating table—regardless of what is being negotiated—consider a robust non-disclosure agreement that is tailored to needs and objectives of the business, the deal, and the larger industry. While any number of “off the shelf” options are available online

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and elsewhere, they can have disastrous results. Consideration must be given to whether the form actually fits the subject matter, the parties to it, and its industry and environment. Also, who gets to keep what, for how long, and under what circumstances is critical, since destruction of all confidential information at the end of the deal may well not be feasible (like confidential information lurking in email, for example) – or even required in higher risk situations where a party may need to preserve copies of confidential information for legal purposes.

The business also needs to ensure that it is protecting the information of others. Use of encryption software, tiered and password-protected database access, and other tools can be essential to that end.

### **Tip No. 5 – Negotiate What Happens After a Dispute**

A contract should always incorporate a roadmap on how to resolve a dispute if a party breaches. Requiring alternative dispute resolutions, such as informal negotiation or mediation and perhaps even confidential arbitration when and if appropriate, may be good ways to avoid the courtroom and the public spotlight. As part

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of the contract, the business should also consider negotiating thresholds, exclusions, or caps for certain classes of loss, or shifting burdens for various categories of risk.

### **Tip No. 6 – Ensure You Understand What’s Written**

After all the effort and time that has gone into an agreement, one essential factor remains: can you read and understand it? Sometimes legal terms are essential, and your lawyer should be prepared to discuss them. But if the document is rife with lawyerjargon or lacks clarity on essential deal terms, who is supposed to do what and when, and defies easy comprehension, the document is more likely to cause problems instead of preventing them. In short: be prepared to say, “I don’t understand.”

### **Tip No. 7 – Employ Electronic Signatures**

Executing business contracts electronically has been used securely for nearly two decades. But electronic signatures may not always be enforceable. Adding language confirming that electronically signed documents are effective may be required for enforcement.

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## **Put Your Business in a Position to Succeed**

Whether you're just starting negotiations in a high-stakes business deal or wondering how to move forward after the commencement of legal action, having the right legal team on your side is critical.

At Baker Jenner, we are both attorneys and counselors. We are experts in deal formation and disputes. We sit on a mountain of value. We simplify the complications and help you protect your assets. Our goal is to keep you out of litigation. And if you end up in litigation, you will be prepared to win, and we will fight for your success.

Baker Jenner believes that we earn your trust by crafting practical and efficient solutions that respect your bottom line. We know that value is more than just completing the assignment. Value is knowing how we fit within the context of your business, your organization, and your marketplace. From guarding against the unexpected to anticipating zones for success, you can depend on us as your strategic partner. Please contact us today to see how we can provide value for your business.

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## Contact Info

210 Interstate North Parkway SE,  
Suite 100, Atlanta, Georgia 30339

(404) 400-5955

[rick.baker@bakerjenner.com](mailto:rick.baker@bakerjenner.com)

[simon.jenner@bakerjenner.com](mailto:simon.jenner@bakerjenner.com)

[adam.ford@bakerjenner.com](mailto:adam.ford@bakerjenner.com)



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