

Contract Basics

Why are Contracting Policies Important:

- Contracting policies protect PSU and ensure that funds are spent wisely and for appropriate purposes.
 - Get it in writing
 - All contracts are required to be in writing and should contain certain pre-approved terms and conditions. **Use PSU forms whenever possible.**
 - Purchase orders may be used for smaller purchases of goods and services that don't entail a risk of personal or commercial injury.
 - Define who has signature authority
 - Please adhere to assigned contract signature authority
 - A signature shows the person understands & agrees to the contract terms on behalf of PSU
 - An unauthorized signer may create "apparent authority" binding PSU
 - **An unauthorized signer may be held personally liable if something goes wrong**
 - Require contract reviews
 - Submit contracts with department authorized signatures to PSU-Contracts@plymouth.edu for review
 - PSU contracts will submit for PSU Authorized signature.
 - Establish consequences for policy & ethical violations
 - Disciplinary consequences for employees who engage in wasteful spending or knowingly violate policies (including signatory authority)

What is a Binding Contract:

- Exchange of promise (offer & acceptance) for something of value (consideration)
- Consideration distinguishes a contract from a gift
- Types:
 - Written contracts - use PSU templates when possible
 - Verbal contracts – oral exchange of promises can be enforced (please don't)
 - Implied contracts – no written or verbal agreement, but assent shown by paying the company

Core Provisions in Written Contracts:

- Performance
 - Parties – identifies who is obligated and how
 - Promises, Rights & Obligations - describes how the parties will perform under the contract
 - Duration – includes start & end dates, and dates parties expected to perform, be careful about automatic renewal clauses
 - Modifications – address how/if the contract can be amended
- Remedies
 - Risk Allocation – determines who's legally responsible for injury or loss to people or property
 - Indemnification – one party promises to hold harmless, defend, or pay for an injury or loss to another
 - Assumption of risk - one party voluntarily & knowingly takes responsibility for risks inherent in a dangerous activity
 - Waiver or release – one party relinquishes the right to bring legal action for injuries or losses incurred as part of contract performance
 - Insurance – included in many contracts, particularly when risk of injury or loss to persons or property. **Require proof of liability insurance & name PSU as additional insured under the policy.**
 - Termination – what rights will you have if the other party to contract fails to comply with promises
 - Dispute Resolution – Will mediation or arbitration apply, what state laws apply, who will pay litigation expenses