

## A Guide to Laundry Contracts

*The following is an excerpt from the ALM Publication "A Resource Guide to Laundry Contracts". It is intended as a guide or checklist only. All contracts should be reviewed by your facility's legal counsel. This article only represents a small portion of the information listed in the Guide. The entire guide may be purchased by contacting the ALM National Office.*

### **Definition of a Contract:**

In simplest terms a contract is a binding agreement. Contracts arise out of agreements; hence a contract is often defined as "an agreement creating an obligation."<sup>1</sup>

The substance of the definition of a contract is that by mutual agreement or assent the parties create a legally enforceable duties or obligations that did not exist before.<sup>2</sup>

In order to be an enforceable contract, there must be (1) an agreement, (2) between competent parties, (3) based upon genuine assent of the parties, (4) supported by consideration, (5) made for a lawful object, and (6) in the form required by law, if any.<sup>3</sup>

### **Typical Contract Clauses**

#### **1. Identify Parties**

*Contracts are normally between two parties or organizations. It is extremely important that the parties be correctly identified. The following are some typical clauses used in laundry contracts.*

- THIS AGREEMENT made this February 1 day of 1981 between Mickey Mouse Commercial Laundry (hereinafter called "Provider") and the undersigned (hereinafter called "Customer").
- THIS AGREEMENT entered into this 25<sup>th</sup> day of August, 1995, by and between Quality Health Care Central Laundry, 105 Thoroughbred Trail, Madison, AR 72205 (hereafter referred as "Provider") And Oxford Memorial Hospital, 5900 S. Lake Drive, Little Rock, AR 72205 (hereafter referred to as "Customer").
- THIS AGREEMENT made and entered into between the Cambridge Memorial Hospital Hereinafter referred to as "CUSTOMER" whose business address is 540 Hughes Road, Madison, WI 53150 and Watgate Cleaners hereinafter referred to as "PROVIDER", whose business address is, 1973 Federal Drive, Oconomowoc, WI 53178. This 14th day of June 1999.
- AGREEMENT effective this 1<sup>st</sup> day of October, 1996 by and between CUTTER TEXTILE SERVICES, INC, having its principle place of business at 7200 Pope Dr. Chicago, IL, 60601, hereinafter referred to as "PROVIDER" and Uncle Scrooge Memorial Hospital, 1900 Greenbay Ave, Lake Forest, IL 60045 hereinafter referred to as "CUSTOMER".

#### **2. Services To be Supplied**

This is the section of the contract that spells out what services are included in the contract. It is important that this section adequately reflects the services needed and discussed in verbal conversations with the supplier. A careful review here can avoid problems down the road.

- The Provider agrees to furnish on a rental basis and the Customer agrees to use in all of its locations and departments the items authorized in the attached Linen List which is attached hereto as Schedule "A". Said schedule may be amended in writing from time to time by the mutual approval.

Only those items that appear on the list will be supplied as part of the contract. Make sure the list includes all the linen items that you need and that the list includes specifications for each item. A list that simply says bath towel will allow the provider to change weight and size of the towel anytime they deem necessary.

- Provider agrees to supply and provide rental laundry service for the items listed in Exhibit A and others, which may be added later. Provider will pick up soiled items and return them clean and fresh on a regular schedule, and will maintain the circulating inventory in good condition.

This clause also contains information regarding the delivery of linen "regular schedule" and that the provider will "maintain the circulating linen inventory in good condition." The problem with both these clauses is that it lacks substance. What is a regular delivery schedule? Hopefully it is defined else where in the contract. What is regular to the customer might not be what is regular to the provider.

What does it mean to maintain the circulating linen inventory in good condition? Does this mean free from holes, tears and stains? Does it mean maintaining the proper amount of linen in the inventory so shortages will be avoided?

- PROVIDER agrees to furnish the textile products for CUSTOMER on a linen supply basis providing that CUSTOMER agrees to standardize to the same linens as used by PROVIDER whenever possible. Linen items to be provided user of this linen rental agreement are detailed out in Schedule A. PROVIDER will furnish non-standard linen items to CUSTOMER as detailed out in Schedule B. Any non-standard linen items purchased by PROVIDER for the sole use by CUSTOMER will be purchased from PROVIDER by CUSTOMER at the end of the agreement based on schedule of 50% of invoice price for all linen items in circulation and 100% of invoice cost for all items in back up inventory. Some linen items – sheets, pillowcases, towels and washcloths may be marked so as to identify ownership by PROVIDER.

This clause addresses the topic of specialty linen. Hospitals are famous for having special linen items designed to meet the needs of one or two Doctors that have a lot of influence with administration. Such items can become a deal breaker when looking at a linen rental contract. This clause shows an industry acceptable way to handle this problem.

- The PROVIDER agrees to provide laundry services customary to the trade, subject to strike, lock out, acts of God or any other disruption of production beyond the control of the PROVIDER.

A very general statement about providing "laundry services customary to the trade". This statement puts the provider behind the wheel in all discussions concerning service or quality. After all who is more knowledgeable about industry practices than the laundry manager? This clause is good for the provider but bad for the customer.

The second part of this clause basically says that if we cannot deliver linen to you because it snowed, there was an employee strike or any other factor not under the direct control of management the customer will not get a linen delivery. The customer also has no recourse against the provider. The provider is not obligated to provide service through an alternate vendor or facility.

- CUSTOMER shall rent from PROVIDER all the linen supplies used in CUSTOMER'S business at the Hospital and PROVIDER shall use diligence to provide an uninterrupted supply of linen sufficient to meet CUSTOMER'S requirement. PROVIDER to deliver all linens in sanitary plastic packaging. Sheets are all bundled in individual packages of ten (10) to a bundle; most other items are bundled ten (10) to a package. This system assures excellent sanitary conditions and easy inventory control.

This clause includes words that require the customer to use the providers for all their linen needs. Such an exclusive arrangement is normal in the industry.

The contract clause also includes how the linen should be bundled and packaged. Standardized packaging and bundling is a good item to have defined in the contract.

- St. Nick's will provide laundry and linen service, including pick up and delivery, to Hoffa Memorial consistent with the terms and conditions set forth herein. St. Nick's will deliver such items of laundered linen selected from those set forth on Exhibit A attached hereto in quantities required by Hoffa Memorial and meeting the standards of Hoffa Memorial with respect to cleanliness and absence of tears and unacceptable stains although such linens need not be new. Hoffa Memorial acknowledges that the linen provided by St. Nick's will be owned by St. Nick's and may be marked to so indicate.

This clause shows wording putting the customer in charge of defining what is acceptable with regards to cleanliness, tears and stains.

- Cutter Commercial Laundry will provide linens used at Madison Hospital including all items set forth in Addendum A. Madison Hospital will purchase all other items from such vendors, as it deems appropriate. The items purchased by Madison Hospital will be purchased in sufficient quantity to enable the laundry to operate on a five-day-a-week basis. The parties shall consult from time to time regarding the quantity of items necessary.

This clause shows another method of dealing with specialty linen items. The customer in this case is responsible for purchasing and maintaining the needed inventory of any linen item they wish to use which is not normally provided by the vendor.

### 3. Exclusivity Clause

An exclusivity clause requires the purchaser to only use the provider for all items covered under the contract. This is an extremely important clause and should routinely be found in all laundry rental or processing contracts. I did find one hospital during my career whose linen-processing contract did not have this clause in it. They were able to move 95% of their business to a different supplier without violating their contract because this clause was missing!

- Customer will only allow Provider to service these items.

Exclusivity defined by item. This would be common on a walk off mat contract or a uniform rental contract, where the supplier cannot service all the linen needs of the facility.

- CUSTOMER grants PROVIDER the exclusive right and privilege to provide laundry and linen services to CUSTOMER under the following operating conditions:

This clause will define under what conditions and service parameters the vendor can have exclusive right to provide service. The definitions can make this a vendor friendly or a customer friendly clause.

- CUSTOMER, its successors or assignees agrees to purchase exclusively from PROVIDER

This clause includes language about successors or assignees that will be discussed in a later section of this booklet. Such a clause cannot bind an unsigned third party to the terms of a contract.

- CUSTOMER shall rent from PROVIDER all the linen supplies used in CUSTOMER'S business at the Richard Nixon Memorial Hospital.
- During the term of this Agreement or any renewal or extension thereof, Cut Rate Commercial Laundry shall provide all laundry services as described subsequently in this Agreement to Madison Hospital.

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#### 4. Pricing

A key element of any contract is the sections that deal with pricing. It is very important that the price be clearly stated on a per piece, per clean pound or per soiled pound basis.

- For all services performed by the Provider hereunder, the Company shall pay to the Provider a rental fee for each item furnished at the rate specified for such item in the Price List dated January 1980, a copy of which is attached as Schedule "C".

This clause simply states that the way the linen will be charged for is detailed out in Schedule C. It allows for any of the popular pricing schemes to be detailed out on that schedule.

- CUSTOMER agrees to pay the unit price per piece or pound as detailed out in the attached 1995 Pricing Schedule.

This clause has the same effect as the one above.

- The prices from January 15, 1999 through and including January 14, 2002 will be as follows:

This clause shows that the prices are fixed for one year.

- The attached Schedule "A" is a listing of cost items that PROVIDER will supply to CUSTOMER. The quoted prices as listed in Schedule "A" are subject to upward or downward adjustments during the term of this contract.

Schedule A list both items and price per piece information. Prices maybe changed during the life of the contract. No restrictions as to when or how many times they can be changed.

- Hoffa Memorial shall pay to St. Nick's \$.368 per pound of clean weight for all linen cleaned and delivered under paragraph 1 of this agreement and \$.0295 per pound clean weight for all linen cleaned and delivered under Paragraph 7 of this Agreement. Payments shall be delivered to St. Nick's no later than thirty (30) days after the receipt of the statement for services. Any sums not paid in a timely manner shall bear interest form the date such payment is due until it is received at the rate of Twelve percent (12%) per annum. The foregoing prices shall not change before July 1, 1994.

This clause defines the main processing charge as \$.368 per pound of clean weight and then a secondary charge for an add on service of \$.0295 per pound clean weight. This clause also indicates an interest charge for late payments.

- The inclusive cost for all services provided by Cut Rate Commercial Laundry under this Agreement, including without limitation provision of linen items identified in Addendum, unless otherwise noted in this section, and laundry services for items plus such other linen items as Madison Hospital submits for laundering shall be determined on a per pound basis. The cost for all services during the initial year shall be \$.389 per pound.

Please note that the language used does not clearly define whether the weight used to determine the charge is clean or soiled. In this case the hospital was thinking clean when it signed the contract but was billed correctly by the supplier on a soiled weight basis.

The cost of personalized lab coats, laundered, pressed and returned on hangers shall be \$2.50 per coat. Replacement of lab coats will be billed at \$32.00 each.

The cost of personalized scrubs, laundered and returned on hangers or folded shall be \$.20 per piece. Replacement of lost scrubs will be billed at \$8.00 per piece.

The cost for OR packs will be as follows:

Single Gore Tex gown pack w/towel	\$2.80
Two Gore Tex gowns w/towel	\$4.60
XL Resistant gown pack w/towel	\$2.02
L Resistant gown pack w/towel	\$1.61

Towel packs:	Four pack	\$1.30
	Two pack	\$0.75

The cost of plastic soiled linen bags to collect and transport soiled laundry will be .16 per bag for the first year of the Agreement. Soiled linen hampers will be provided at no additional cost to Madison Hospital.

## 5. Terms of Payment

Many of us have learned to read credit card offers very carefully to see what their billing cycle is and how long you have to pay after receipt of the bill before interest applies. The "Terms of Payment" section of the contract defines the frequency of billing, how long the customer has to pay, whether interest will be charged and how much if it is not paid on time. In an effort to improve cash flow many commercial laundries have gone to weekly billings. This is likely to increase the cost associated with the handling of the contract by the customer. Most contracts specify the uncontested bill must be paid in 30 days. If your facility routinely averages more than 30 days then change this section to reflect your normal bill payment time. (Many hospitals routinely age bills and do not pay them until they are almost 60 days old.)

- Except as provided in Paragraph B below, all fees payable by the Customer under this Agreement will be paid as follows:

The Provider will submit to the Customer, monthly a statement of all fees due for service by the Provider during the period following the last statement submitted.

The Customer will pay the Provider all sums due on each statement on or before the 30<sup>th</sup> day following the date of said statement;

All such sums remaining unpaid after said thirty (30) day period will be subject to a service charge at the rate of one and one half (1 1/2 %) percent per month or the maximum allowed by law, whichever is less, until paid in full.

*Billing done on a monthly basis with a 30-day grace period.*

- Customer is obligated for charges upon delivery, and payment is due immediately unless Provider has accepted Customer's Credit Application and Agreement (Exhibit B). Customer will pay and interest charge of 1.5% per month (or legal maximum, whichever is less), on any past due balance, and any legal expenses Provider may incur to collect from customer.

Billing done on a daily basis and no grace period is defined.

- Billing shall be made on a monthly basis. Each billing shall indicate either the total pieces or pounds delivered by item or group, the charge per item or pound and the total cost. The bill shall be paid within thirty (30) days from the billing date.

Any uncontested billing which is not paid when due shall bear interest at the rate of 1-1/2% per month, or the maximum legal rate, whichever is less, from the date the payment was due. PROVIDER reserves the right to

forthwith terminate its performance hereunder for non payment or delayed payment by CUSTOMER, without prejudice to any other rights at law or equity.

Billing on a monthly basis with a 30-day grace period.

- PROVIDER shall bill CUSTOMER on a weekly basis. Invoices, which are complete, correct and undisputed by CUSTOMER, shall be paid within 30 days of receipt. CUSTOMER shall notify PROVIDER within five (5) business days of any dispute as to an invoice and pay the undisputed portion within 30 days. A one- percent (1-%) per month carrying charge will be added to all balances past due not to exceed the maximum permissible under applicable law.

Billing done on a weekly basis, 30-day grace period on undisputed bills.

- No later than the tenth day of the month following that during which services are rendered. St. Nick's shall render to Jimmy Hoffa Memorial a statement for services reflecting the pounds of laundry processed and any credits for unsatisfactory linens, all calculated on a clean weight basis.

Monthly billing cycle.

- Cut Rate Commercial Laundry shall provide Madison Hospital a monthly invoice for services during the proceeding month. Madison Hospital shall make payment for such invoice within twenty (20) days after receipt of the invoice. Failure to make payment within 30 days of receipt will result in a 1.5-% monthly late fee.

Monthly billing cycle, 30-day grace period.

## 6. Price Adjustments

It is common practice for contracts to have a clause that allows the price to be adjusted during the life of the contract. Some clauses are very specific as to the amount allowed while others are vague and subject to much interpretation.

- The parties agree that in event the Provider's costs for rendering the services to be provided by it hereunder increases during the term of this agreement, or any extensions thereof, due to increased costs of labor, energy, or textiles, the prices then being charged hereunder may at the option of the Provider be revised at any time following the first year of the original term hereof. However, in no event will prices be increased under this Paragraph more than once during any year of this Agreement. The Customer shall be notified of any such increase in writing at least sixty (60) days prior to the effective date of said increase and shall have the right to terminate this Agreement by giving written notice of termination to the Provider not less than thirty (30) days prior to the effective date of said increase.

This clause says that prices maybe increased after the first year to reflect increases in the cost of production. Prices maybe changed once a year. The provider will give a 60-day notice of the price increase. The customer has 30 days to cancel the contract or agree to pay the increased price.

- Prices may be adjusted annually, but the total effective adjustment percentage may not exceed the percentage change in the Consumer Price Index since date below.

Most of us do not know that there are many different CPI indexes. Since the contract does not specify which one is to be used the provider can choose to use anyone they desire.

- Prices will be increased on an annual basis each year by 5% or the CPI which ever is less.

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This is similar to the above clause only this one does include a price increase cap.

- The CUSTOMER agrees that the listed prices may be changed to reflect an increase of the minimum wage legislation and cost of living index or the prices may be changed upon mutual agreement of the parties.

Prices maybe increased to reflect the CPI or new minimum wage legislation without customer approval. They can also be changed for any other reason with customer approval.

- This price adjustment shall adhere to the current Consumer Price Index (CPI) of that period. No adjustment shall occur until the first Monday following October 1, 1999. Unusual increases in cost beyond the control of the PROVIDER shall be negotiated as necessary.
- The foregoing prices shall not change before July 1, 1994. However, Hoffa Memorial shall, if requested by St. Nick's pay an increase in price per pound of up to one and a half percent (1.5%) per year beginning July 1, 1994 and for the year beginning July 1, 1995. St. Nicks shall be entitled to receive the requested increase only if the increase is substantiated by evidence of comparable cost increases to St. Nicks in performing hereunder. Such evidence shall demonstrate cost increases for labor, linen or other supplies, or due to a major capitalization for the laundry service. Written request for price increases must be delivered to Hoffa Memorial no later then March 31, 1994 concerning any price increase to take effect on July 1, 1994 and no later then March 31, 1995 concerning any price increase to take effect on July 1, 1995.

This is an unusual clause in that it is very specific as to the amount per year that the prices maybe increased along with the required justification for the price increases that must be submitted. The clause also includes specific notification requirements.

- The cost for services may be altered as follows during the initial term of the Agreement. See Section 9 C. During any extension or renewal of this Agreement the cost for services may be altered as follows: No later than sixty (60) days prior to the end of each year of the Agreement, Cut Rate Commercial Laundry may request a change for the following year, which shall be based upon changes in the cost of labor and supplies for providing linen services to Madison Hospital. Any price increases shall be subject to a maximum not to exceed the Consumer Price Index change for the previous twelve-month period in southwest Wisconsin.

Clause is a good example of the use of a more specific CPI index. In this case it is the CPI index for southwest Wisconsin.

## **7. Term of Agreement**

This is the clause that specifies how long a period of time the initial term of the contract covers. I do not recommend that the contract be longer than three (3) years. Most laundry contracts are for a period of three (3) to five (5) years. I feel the shorter three (3) year contract provides more incentive for the supplier to maintain proper levels of service and quality.

- This agreement shall commence on the date first above written and shall continue for three years from the date on which the items to be furnished hereunder are first installed at the Customer's location(s).

Three-year contract dated from the date service begins.

- The initial term is 36 month's from the date below.

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Three-year contract from signature date.

- This agreement shall become effective August 29, 1995 and remain in force for a period of three (3) years from the effective date.
- For a period of five (5) years from the date hereof
- This Agreement shall be effective until June 30, 1996 subject to the provisions of Paragraph 10 herein.

<sup>1</sup> H. Liebes & Co. v. Klengenber, [C.A. 9<sup>th</sup>] 23f.2d 611.

<sup>2</sup> Business Law, Uniform Commercial Code, Ronald A. Anderson, Eighth Addition, page 65

<sup>3</sup>Business Law, Uniform Commercial Code, Ronald A. Anderson, Eighth Addition, page 66