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# Workshop H - Buying and Selling Assets and Inventories

The Legend of the Wrings: Wringing  
Value from Your Transactions

# Disclaimer

- This presentation provides some concepts to consider when negotiating asset/inventory transactions
- It is not meant to provide a complete checklist of topics to consider
- It is not legal advice
- It does not take the place of competent legal advice about your particular transaction

# Beware of the Morphs!



# Beware of the Morphs!

*Transactions must beware the Morphs,  
Sap your contract like mining dwarfs,  
But Seven Wrings,  
Like gossamer wings,  
Fly the agreement above the Morphs*

# Seven Wrings of the Morphs

- Clarify the asset
  - For unique assets, use unique and static identifiers like serial numbers
  - For assets, consider an inventory list or manifest, where possible
  - For assets, have a procedure for reconciling the actual sale to the expectations found in the manifest

# Seven Wrings of the Morphs

- Clarify the payment
  - How much?
  - Deposit? Is deposit refundable?
  - When is payment expected to be made?
  - How is payment expected to be made?
  - To where is payment expected to be made?

# Seven Wrings of the Morphs

- Leave room for due diligence
  - Review the inventory/asset
  - Document the state of the inventory/asset
    - For assets, document major components and review documentation
    - For inventories, a complete manifest is best but otherwise try to identify the most valuable elements; review documentation
  - Perform technical acceptance and then require the inventory/asset to remain static OR have a way to adjust purchase price if it does not remain static

# Seven Wrings of the Morphs

- What needs to happen before the transaction can finish?
  - Establish conditions precedent and/or closing conditions
  - E.g.
    - Removing liens
    - Providing/obtaining documentation
    - Signing related records like a bill of sale

# Seven Wrings of the Morphs

- Warranties and Promises
  - What promises do you expect from the other side?
  - Are there things you think should be implicitly understood? Make them explicit!

*Are you ready for the feud?*

# Flying Feud:

- 100 Middle East creatures surveyed
- What topics did they say they wanted to see addressed as promises and/or warranties in their aircraft or inventory sales contracts?

# Survey Says:

Warranties and Promises	Survey said:
Documentation/traceability	38
Airworthiness state (e.g. new, overhauled, etc.)	29
Warranty of failures/non-compliances	18
Return conditions	5
Indemnities	5
Consequential/incidental damages	3
No liens/encumbrances	2

# Seven Wrings of the Morphs

- Think about transportation
  - Where will the asset or inventory go?
  - How will it get there?
  - Who is responsible for cost and liabilities associated with transportation of the asset or inventory both before the agreement closes and after?

# Seven Wrings of the Morphs

- Decide how you are going to resolve disputes among the parties
- Decide how you are going to resolve disputes with third parties
  - Decide who will defend who in the event of a third party problem/suit (indemnity)
  - This may help drive insurance requirements, etc.

*Are you ready for the feud?*

# Flying Feud:

- 100 Middle East lawyers surveyed
- What clauses did they say they wanted to see addressing dispute resolution in their aircraft or inventory sales contracts?

# Survey Says:

Dispute Resolution Clauses	Survey said:
Choice of law and venue/jurisdiction	28
Indemnification clause	25
Arbitration clause	15
Limitations on liabilities or consequential/incidental damages	14
Insurance requirements	8
Assignment of costs and attorney's fees	7
Mediation clause	3

# Seven Wrings of the Morphs

## *[Checklist]*

- Clarify the asset
- Clarify the payment
- Leave room for due diligence
- What needs to happen before the transaction can finish
- What warranties are necessary?
- Think about transportation
- Decide how you are going to resolve disputes

# Three Wrings of the Shelves

In addition to the seven  
wrings of the morphs,  
there were the three  
wrings of the shelves

# Three Wrings of the Shelves

- Put it in writing
  - Letter of Intent
    - Should address key elements of the transaction
    - A “macro” picture of the transaction
    - Be wary of legal issues like indemnity (get expert advice)
  - Agreement
    - Statute of frauds says that an agreement for sale of goods worth \$500+ must be in writing to be enforceable

# Is An Email OK?

- The Uniform Electronic Transactions Act (UETA) recognizes that electronic records are valid expressions, and enforceable
  - An email would be treated like any other 'note'
  - Parties need to agree to conduct transactions by electronic means
    - Exchange of business cards with email addresses, or past conduct of business by exchange of emails, would be evidence of intent
  - The mere inclusion of one's name as a part of an e-mail message could be a signature if the sender intended it to be a signature

# Uniform Electronic Transactions Act

- 47 states and DC and the U.S. Virgin Islands have adopted UETA
  - not adopted in IL, NY, WA

# Three Wrings of the Shelves

- Don't be in rush
- Take time to:
  - Perform adequate (“due”) diligence – know what you are getting
  - Ensure that the description of the transaction in the agreement is one that both sides can live with

# Three Wrings of the Shelves

- Use a lawyer
- There are many factual details that can vary about the transaction. It may be important to make sure
  - The special concerns of the transaction are addressed
  - The clauses that you have put together actually coordinate

# Three Wrings of the Shelves

## Summary:

- Put it in writing
- Don't be in rush
- Use a lawyer



# One Wring to Rule Them All

- Be clear

*One Wring to rule them all,  
One Wring to find them,  
One Wring to bring them all,  
And in the contract bind them*

# Clarity

- Keep sentences simple and short
- If you must include modifiers, like adjectives or adverbs, use only one per sentence
- Multiple modifiers raise the ambiguity of whether the second modifier modifies the entire sentence or just the first modifier
  - Ambiguous sentences may not be enforceable!
  - *Contra Proferentem* – the document will be interpreted against the drafter



# Thank You

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