

Plain Language

Business Agreements in Letter Form

By Louis W. Kasischke

Lawyers prepare a wide variety of business agreements. They usually prepare a formal agreement, but frequently the agreement can take another form — a personally addressed letter. Letter agreements are as valid as a formal agreement, and are often preferable.

Benefits of Letter Agreements

Certain benefits can be achieved with letter agreements. The pronouns "you" and "I" can be used in many cases. This helps to simplify the agreement, which pleases clients. Clients appreciate any effort to make a business agreement easier to read and more understandable. Some clients view the effort as efficient and economical.

Formal agreements intimidate some people. A letter agreement can add a friendly conversational tone that is lacking in a formal agreement. This will please clients who want the agreement to have a "softer" feeling. This feeling can't be achieved when lawyers use legalese found in form books, such as "Witnesseth," "Whereas," "Now therefore," etc.

When to Use

Many types of commercial agreements lend themselves to letter form. When to use it depends upon the lawyer's instinct and judgment. Common examples include an employment agreement, a consulting agreement, a noncompetition agreement, a nondisclosure agreement, a pre-incorporation agreement, an agreement to sell personal property, and even the sale of a small business.

Letter agreements are not limited to minor transactions; they are commonly used, for example, in securities underwriting agreements and sales of stock or business assets involving huge sums of money. In longer, more complicated agreements, such as an underwriting agreement, the pronouns "you" and "I" may not work effectively; defined terms such as "Corporation" and "Seller" may work better.

Format

It is common to begin the letter agreement with a statement that it constitutes or confirms the agreement reached. In closing, the letter asks the

addressee to sign a copy of the letter if he or she agrees with its terms. The word "accepted" or "agreed" should always appear at the foot of the letter above the place for the addressee's signature. In between this beginning and closing, the letter agreement can be very simple. For example:

Mr. John Jones
Detroit, MI

Dear Mr. Jones:

You and I agree to the following:

- 1.
- 2.
- 3.

Very truly yours,
Tom Smith

Agreed:

John Jones

Date: _____

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"Plain Language" is a regular feature of the *Michigan Bar Journal*, edited by George H. Hathaway, Chairperson of the State Bar Plain English Committee. Through this column the Committee hopes to promote the use of plain English in the law. Want to contribute a Plain English article? Contact Mr. Hathaway at The Detroit Edison Co., Room 688 WCB, 2000 Second Ave., Detroit, MI 48226.

Example

The following is a consulting agreement in letter form. This example shows how a letter can be used in a moderately complex situation:

Mr. John Jones
100 Main Street
Detroit, MI
Re: Consulting Agreement

Dear Mr. Jones:

This letter will confirm the terms and conditions on which you will serve as a consultant for XYZ Corporation:

1. *Services.* You will consult with XYZ and its advertising agencies on advertising matters at such reasonable times as XYZ may request. Your special knowledge and skills relate to institutional advertising, and in general you will be asked to consult in this field. You will perform the following specific services upon request: (a) meet with members of XYZ's advertising departments and with representatives of advertising firms retained by XYZ; (b) assist with advertising research projects; (c) attend meetings of national advertising organizations; and (d) perform speaking engagements.

2. *Compensation.* XYZ will pay you \$5,000 at the end of each month during the term of this agreement, regardless of the amount of services you render during the month. You will also be reimbursed for all reasonable business expenses you incur in the performance of your consulting services for XYZ. You will not participate in any employee benefit programs offered by XYZ to its employees. XYZ shall not be obligated to pay you compensation during any period in which you are unable to render the services requested because of sickness, injury, or other disability.

3. *Independent Contractor.* Your relationship to XYZ shall be that of an independent contractor and not of an officer, employee, or agent. XYZ shall have no liability to you except to pay your compensation and reimburse your expenses.

4. *Term.* The term of this agreement shall be from January 1, 1984 to December 31, 1986, unless it terminates sooner as provided in this paragraph. The agreement shall terminate upon your death. Either you or XYZ may terminate this agreement upon 30 days written notice, with or without cause, but if XYZ terminates it without cause, XYZ will pay you a severance allowance of \$25,000 in full settlement of any claims you may have against XYZ. If this agreement is terminated before the end of any month, your compensation shall be prorated on a daily basis.

5. *Noncompetition and Confidentiality.* During the term of this agreement, you shall not perform consulting or other services for any person or organization that competes with XYZ without the prior written consent of XYZ. During or after the term of this agreement, you shall not disclose to any person or organization, without prior written consent from XYZ, any trade secrets or confidential information relating to XYZ that you may acquire during the performance of your services. XYZ shall be entitled to injunctive relief if you violate this paragraph, in addition to any other remedy provided by law.

6. *Records.* Any records or other documents (including copies or summaries) prepared or acquired by you in performing services to XYZ shall belong to XYZ and shall be surrendered to it upon termination of the agreement.

7. *Other.* Except as provided in paragraph 5, any dispute or claim involving this agreement shall be settled by an arbitration in Detroit under the rules of the American Arbitration Association. Any dispute or claim shall be deemed waived unless arbitration is demanded within 90 days of the occurrence giving rise to the dispute or claim. The arbitrator shall have no authority to change any provision of this agreement; the arbitrator's sole authority shall be to interpret or apply the provisions of this agreement. The decision of the arbitrator shall be final and binding and, except as provided in paragraph 5, the exclusive remedy for any alleged breach of this agreement. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction.

This agreement contains our entire agreement and supersedes any prior oral or written understandings and agreements. We can modify this agreement only by a writing signed by both you and XYZ. This agreement is binding upon the successors and assigns of XYZ, is not assignable by you, and shall be governed by Michigan law.

If you agree with the terms of this letter, please sign the enclosed copy to make it our binding agreement.
Dated: 1 September 1984

Very truly yours,
XYZ CORPORATION
By: _____
Tom Smith, President

Agreed:

John Jones
1 September 1984