

A Somewhat-Barebones Contract Example

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INITIAL NOTES:

This hypothetical agreement introduces some important contract-drafting concepts. For pedagogical purposes, this agreement is overly-simplified in some respects and overly-detailed in others.

The contract provisions are shaded in gray. Some text is presented in a different color to signal that the text is discussed in the commentary following the provision.

Some provisions are written in very-short form (“See Spot. See Spot run”) for easier annotation and study. In a real agreement, some such provisions likely would be combined. ¶ I’m starting to think, though, that the See-Spot-See-Spot-run approach might well speed up The Other Side’s legal review — and that’s a key consideration in drafting.

The paragraph numbering and formatting of this Agreement are not necessarily the way you’d draft a contract; I’ve done them this way for simplicity.

Purchase and Sale Agreement – 2012 MacBook Air Computer

[A] The title of this agreement is worded to make the title easier to spot in a list of documents (e.g., an index of files) and to make the title more descriptive when referred to in other documents (e.g., another agreement, or a pleading, brief, or court opinion).

[B] For some agreements, it might make sense to list the parties’ names in the title as well. See, for example, the [merger agreement](#) between United Airlines and Continental Airlines (which we’ll be studying), whose title is:

23 AGREEMENT AND PLAN OF MERGER Among UAL Corporation ¶
24 Continental Airlines, Inc. ¶ and JT Merger Sub Inc. ¶ Dated as of
25 May 2, 2010 [we'll talk about the "Dated as of" part later].

26 [C] Another title style is that seen in a [real-estate purchase agreement](#) involving Rick's Cab-
27 aret (which we'll also be studying):

28 REAL ESTATE PURCHASE AND SALE AGREEMENT BY AND
29 BETWEEN WIRE WAY, LLC, a Texas limited liability company
30 ("Seller") and RCI HOLDINGS, INC., a Texas corporation
31 ("Purchaser").

32 [D] By putting the abbreviations "Seller" and "Buyer" in the title itself, the drafter usefully
33 eliminated the need to define those terms later in the contract, thus following the D.R.Y. princi-
34 ple ("Don't Repeat Yourself").

35 THIS AGREEMENT [A] [B] ("**Agreement**") [C] is between [D] **Betty's Used Computers, LLC**, a lim-
36 ited liability company [E] organized under [F] the laws of the State of Texas ("**Buyer**") [G], with its
37 principal place of business [H] and its initial address for notice [I] at 1234 Main Street, Houston,
38 Texas 77002; and **Sam Smith**, a resident [J] of Houston, Harris County, Texas, whose initial ad-
39 dress for notice is 2450 River Oaks Boulevard, Texas 77019 ("**Seller**"). This Agreement is effec-
40 tive [K] the last date written on the signature page

41 [A] Unlike the provisions below, this opening paragraph doesn't have a section number.
42 That's merely a convention (as is true for many contract-drafting practices) and not a require-
43 ment; sometimes I do number the opening paragraph.

44 [B] Many drafters would start this paragraph by repeating the title of the agreement in all-
45 caps: "THIS PURCHASE AND SALE AGREEMENT ..." I prefer the shorter approach shown here,
46 because (1) it should be obvious what agreement is referred to in this opening paragraph; and
47 (2) the shorter version reduces the risk that a future editor might (i) revise the large-type title at
48 the very top of the document but (ii) forget to change the all-caps title in the preamble. ¶ Note

49 how I broke up the previous sentence with parenthetical "[romanettes](#)," that is, lower-case Ro-
50 man numerals, to make the sentence easier for a contract reviewer to skim.

51 [C] The words "Agreement," "Buyer," and "Seller" are in bold-faced type and surrounded by
52 quotation marks and parentheses. When "defined terms" such as these have their definitions
53 stated "in-line" in this fashion, it's a good idea to billboard them in this way. That makes it eas-
54 ier for a reader to spot a desired definition quickly when scanning the document to find it. (*Im-*
55 *agine the reader running across a reference to some other defined term and starting to flip*
56 *through the document, wondering to herself, "OK, what does 'Affiliate' mean again?") ¶ If you*
57 have a separate definitions section, it's a good idea to include cross-references to the in-line
58 definitions as well.

59 [D] Many drafters say "by and between" instead of just "between." I prefer the latter, which
60 sounds less legalese-y.

61 [E] This sample agreement is set up to be between an individual and an LLC so that the sig-
62 nature blocks will illustrate how organizational signature blocks should be done.

63 [F] Stating the type of organization and, importantly, its state of organization, has two ben-
64 efits: (i) It reduces the chance of confusion in case there are (let's say) an "Acme Supplies, Inc."
65 in different states; and (ii) it helps to nail down at least one jurisdiction where the named party
66 is subject to personal jurisdiction. ¶ Note how at the beginning of item (i) in this paragraph,
67 I capitalized the first letter of the word "It" – that's the conventional usage when you use a
68 number before the colon, which in this case is in the introductory phrase, "has two benefits:".

69 [G] The terms "Buyer" and "Seller" are used, and presented the way they are, because it's
70 very often a good idea to use **functional** short-form names for the parties, e.g., Buyer and Seller
71 instead of Betty and Sam. That can make it easier on future readers (e.g., a judge) to keep track
72 of who's who. It also makes it easier to re-use the document for another deal by just changing
73 the names at the front, instead of having to change each occurrence within the document.
74 (Global search-and-replace is convenient but often over-inclusive.)

75 [H] Stating the principal place of business of an organization is another aid to help trial
 76 counsel nail down personal jurisdiction – for example, a Delaware corporation whose principal
 77 place of business was in Houston would almost certainly be subject to suit in Houston.

78 [I] I like to put the initial address for notice in the preamble – that way, a later reader won't
 79 need to go paging through the agreement looking for it, and it makes it easy for reviewer(s) to
 80 verify that the information is correct.

81 [J] Stating Sam's residence helps establish personal jurisdiction *and the proper venue* for
 82 a lawsuit. ¶ Just saying that Sam lives in "Houston" won't be enough to establish venue, be-
 83 cause the city of Houston per se extends into multiple counties, and Texas's venue statutes typ-
 84 ically require that a lawsuit against an individual be brought in the *county* in which the individ-
 85 ual resides.

86 [K] The "effective date" sentence is usually unnecessary, but many drafters like to include
 87 it. I prefer the "last date signed" approach that's shown here; we'll discuss that in more detail
 88 later.

89 **1. The transaction:** [A] [B] [C] [D] At the Closing, as defined below, **Seller will sell** [E] [F] to Buyer,
 90 and **Buyer will buy** [F], Seller's 2012 MacBook Air computer, **serial number** [G] 123456789, and
 91 its factory-supplied power supply (collectively, the "**Computer**"), for **USD** [H] \$800 (the "**Pur-**
 92 **chase Price**").

93 [A] Putting the basic terms of the contract "up front" in this manner helps the reviewer(s)
 94 to see at a glance what the deal is all about; it also provides a convenient place to make
 95 changes to the basic terms without having to hunt through the document. ¶ This section could
 96 be a one-sentence contract all by itself if the phrase "At the Closing" were replaced by a specific
 97 time and place. See my essay about short contracts, at [http://www.oncontracts.com/a-con-](http://www.oncontracts.com/a-contract-can-often-be-short-and-simple/)
 98 [tract-can-often-be-short-and-simple/](http://www.oncontracts.com/a-contract-can-often-be-short-and-simple/).

99 [B] For relatively-short contracts like this, I like to use bold-faced descriptive headings, not
 100 capitalized (except for the first letter), and ending with a colon. That saves a line or two.

101 [C] I've skipped the "recitals" here (sometimes worded archaically as "Whereas" clauses)
102 because the body of the agreement is pretty much self-explanatory.

103 [D] For the same reason, I've also skipped what Stark calls the "words of agreement,"
104 namely, "The parties agree as follows."

105 [E] "Seller will sell" and "Buyer will buy": These phrases obligate each party; otherwise, the
106 agreement might be an option contract—a "call" option if Seller must sell to Buyer but only if
107 she chooses to buy, or a "put" option if it's the other way around.

108 [F] Some drafters would prefer "shall sell"; I like "will sell" because it's a tad less harsh,
109 which I think can be a nice touch in a supplier-customer relationship, where the sales people
110 would like for the seller corporation to be just a bit deferential to the customer. ¶ Also, I've
111 read that in some other countries the term "shall" refers to something that's optional, not man-
112 datory. ¶ I might well use, e.g., "Seller is to sell" instead of "Seller will sell."

113 [G] Serial number: It's often a good idea to be very specific in identifying the exact goods to
114 be sold (or whatever); that wouldn't be the case if the goods were fungible.

115 [H] USD is the conventional abbreviation for U.S. dollars – see [Wikipedia](#) for a list of other
116 currency abbreviations.

117 **1.1 Closing Time:** 10:00 a.m. on May 10, 20XX.

118 Some drafters might end this sentence with "subject to possible change as provided below" as
119 a "comfort clause." For a short agreement with this, I probably wouldn't bother. ¶ Notice how
120 this is not a complete sentence, but it's perfectly understandable.

121 **1.2 Closing Location:** The parking lot of the Wal-Mart store at 9555 South Post Oak Road in
122 Houston, Texas.

123 This is a separate paragraph in the "See Spot run" vein described above. In many contracts this
124 information would normally be folded into the provision stating the Closing Time.

125 1.3 The parties may agree in writing to change one or more of the Closing Time and the Closing
126 Location.

127 This is a “comfort” clause; technically, it isn’t necessary, at least in the U.S. – because even
128 without this clause, the parties would of course be free to agree in writing as stated here — but
129 the cause can reassure an individual participant (e.g., a business person or an unsophisticated
130 reviewer) who doesn’t know this.

131 1.4 [A] For the avoidance of doubt [B], an agreement under section 1.3 may take the form of, for
132 example [C], an exchange of emails.

133 [A] This provision is an example of a “**safe harbor**” clause that should preclude any attempt
134 to assert that email was *not* sufficient to form an agreement under section 1.3. (See generally
135 [Wikipedia](#) for a discussion of what the term “safe harbor” means in the context of a statute or
136 regulation.)

137 [B] The term “for the avoidance of doubt” seems to be something British lawyers use. Some
138 U.S. drafters loathe it. I find it useful, as long as it’s not overdone, because it can provide trial
139 counsel with a “sound bite” to use in a lawsuit or arbitration, e.g., by quoting it in a brief or
140 showing it on a PowerPoint slide or poster board. See generally the Common Draft definition.

141 [C] Some drafters insist on writing “including without limitation,” every time. That can be a
142 pain — and what if you forgot to do it in a particular instance: would the term then mean “in-
143 cluding only”? Of course, in a longer contract, it might be a good idea to specify that the term
144 “for example” is not intended to be limiting (see the [Common Draft definition](#) for sample lan-
145 guage). Absent such a definition, a “creative” lawyer might try to argue that, under the doctrine
146 of [ejusdem generis](#), this language means that **only** emails and similar communications, e.g., text
147 messages and Internet chat messages, could be used to reschedule the Closing – this is a silly
148 example but it gets the point across.

149 **2. Restrictions on Seller’s subsequent use:** Between now and the Closing, Seller will not use
150 the Computer [A] [B] without using up-to-date anti-malware software.

151 [A] This is an example of what could be called a “lockdown” clause or “keep everything the
152 way it is until we can get this deal closed” clause. (It could be referred to as a “standstill” clause,
153 but that term is normally used for a different purpose; you can see the Wikipedia [Standstill](#)
154 [agreements](#) page if you’re interested.) Such provisions are often seen in purchase-and-sale
155 agreements of all kinds, e.g., real estate deals and M&A deals. (Such “thou shalt not” obliga-
156 tions are sometimes referred to as “**negative covenants.**”)

157 [B] Another way to phrase this obligation would be to say that “Seller may not use the Com-
158 puter” or “Seller must not use the Computer”; that’s a stylistic choice.

159 **2.1 EXCEPTION:** Seller need not run anti-virus software on the Computer when the computer is
160 not connected to the Internet.

161 Re “EXCEPTION:” I like to use all-caps (sparingly) to flag things that I want to catch the eye of
162 a reader, e.g., as a guide through the text. I’ll also do that sometimes with “IF: ...; THEN:”

163 **3. Required upgrades:** Seller will cause [A] [B] the Computer, as delivered to Buyer, to have a
164 clean install of the latest release of the Mac OS X operating system.

165 [A] “Seller will cause ...”: Seller might not be the one actually to do the clean install. (In this
166 case it almost certainly doesn’t matter who does it, but in other situations it might well matter.)

167 [B] This an example of an “**affirmative covenant,**” i.e., one that requires Seller to take some
168 specific action.

169 **4. Upgrade as prerequisite** [A] [B]: Seller’s performance of the obligation stated in section 3 [C] is
 170 a prerequisite to Buyer’s obligation to buy [A] the Computer.

171 [A] Most drafters would phrase this prerequisite as, e.g., “a **condition** of Buyer’s obligation
 172 **to close.**” In this context, I prefer the former term because it’s plainer. ¶ See section 5 for
 173 a still-plainer “need not” phrasing.

174 [B] Because of this “prerequisite” provision, Seller’s obligation in section 3 is not merely
 175 a promise, i.e., a covenant, but also a condition. ¶ If Seller’s obligation in section 3 were *only* a
 176 covenant, then Buyer’s remedy for a breach of that section by Buyer might be only a suit for
 177 damages (unless the breach were found to be “material,” in which case Buyer likely would have
 178 the right, by law, to terminate the Agreement). ¶ But this “prerequisite/condition” provision is
 179 included; consequently, if Seller were to fail to provide a clean install as required by section 3,
 180 then Buyer would have the right to choose between: (i) buying the Computer anyway — i.e.,
 181 waiving the prerequisite/condition and going forward with the deal — then suing Seller for
 182 damages for breach of section 3; or (ii) invoking this section 4 and walking away from the
 183 deal. ¶ These are tricky concepts; we will return to them in the semester.

184 [C] This phrasing, i.e., “obligation stated,” is another example of the D.R.Y. principle: In-
 185 stead of repeating the text of section 3, I’ve drafted a cross-reference to that section. That way,
 186 if the parties were to change the substance of the obligation stated in section 3, there’d be little
 187 or no danger of an inconsistency — which is good, because inconsistencies can cause real prob-
 188 lems in litigation.

189 **5. Decal clean-up as prerequisite:** Buyer **need not buy** [A] the Computer if, at the Closing Time,
 190 the Grateful Dead decals that are currently affixed to the Computer have not been removed,
 191 along with all glue residue. [B]

192 [A] This “need not buy” phrasing is a plainer way of stating a condition to closing.

193 [B] Unlike section 3, this provision is a prerequisite but not a promise; in legalese terms, this
 194 provision is a condition but not a covenant. As a result:

- 195 ○ if Seller were to fail to get the Grateful Dead decals off the Computer, then Buyer
196 could refuse to buy the Computer (because that prerequisite wasn't satisfied);
- 197 ○ but Buyer wouldn't have the option of buying the Computer anyway and forcing
198 Seller to pay damages for his failure, as she would under section 4.

199 **6. Seller's representations:** [A] Seller represents that, *so far as he knows, without having made*
200 *any particular investigation* [B]:

- 201 (a) the Computer is in good working order; [C] and
202 (b) the Computer is [D] free from malware.

203 [A] These are **representations**, not **warranties**. We'll spend some time studying the differ-
204 ences, which can be significant, as explained in [this essay](#) (of mine). ¶ See also the Common
205 Draft definitions of [misrepresentation](#) and [warranty](#). ¶ Representations and warranties — and,
206 importantly, the negotiated exceptions to them — are often the subject of intense discussion in
207 deal-making.

208 [B] The phrase, "so far as he knows, without any particular investigation," is a hedge by
209 Seller against Buyer's later claiming that Seller had implicitly represented that Seller had used
210 due care in making the representation. ¶ When representing someone like Seller, I strongly pre-
211 fer "so far as he knows" to the ambiguous phrase, "to Seller's knowledge," which *arguably*
212 means "Seller knows what he's talking about" — and under the principle of **contra**
213 **proferentem**, if Seller (or his attorney) drafted the contract, then such an ambiguity might very
214 well be resolved against him and in favor of Buyer.

215 [C] Note that the two items in this list of representations are set forth as separate subdivi-
216 sions, each starting on a new line. That makes it quicker and easier for others — such as the
217 drafter's supervisor, the drafter's client, and the other side's contract reviewer — to scan down
218 the list of items to be sure that all (and only) desired items are listed.

219 [D] Note that the term "the Computer is" is repeated. Some purists might insist on rear-
220 ranging the wording so that the provision would read as follows: "Seller represents that, so far

221 as he knows, the Computer is: (a) in good working order; and (b) free from malware.” This
222 would slavishly follow the D.R.Y. (Don’t Repeat Yourself) principle to an extreme. In contrast,
223 I’ve drafted this provision in the way shown above. Other things things being equal, I like to
224 have “sayable” phrases, and it’s not as though there’s a lot of repetition here in any case.

225 **7. Buyer’s right to inspect:** [A] Buyer **need not buy the Computer** [B] if Seller does not allow
226 Buyer to perform **commercially-reasonable** [C] testing for malware on the Computer before the
227 Closing.

228 [A] This is a “due diligence” clause allowing Buyer to get at least some assurance that the
229 Computer is as Seller says it is. ¶ In this course you will hear me use a saying from the U.S.
230 Navy’s nuclear-propulsion program, in which I served: “You get what you inspect, not what you
231 expect.”

232 [B] As with section 5, this is a **condition, not a covenant** (that is, it’s a prerequisite,
233 not a promise). Thus, if Seller were to fail to allow Buyer to perform malware testing, then
234 Buyer’s only remedy would be to walk away, because Seller does not commit here to allow
235 Buyer to do such testing.

236 [C] The term “commercially reasonable” is often used as an alternative to defining specific
237 standards. Some purists might say it’s a cop-out, because it’s vague and thus likely would re-
238 quire a trial to determine the facts. In proper circumstances, though, the **business risk** of using
239 the term might well be worth taking — and ultimately a contract is not about doctrinal purity,
240 but about getting business done in a manner that the client judges to involve acceptable risk.

241 **8. Buyer’s obligation to close:** [A] At the **Closing**, [B] **IF:** [C] All prerequisites to Buyer’s obligation
242 to buy the Computer have been either (i) [D] satisfied, or (ii) waived by Buyer; THEN: Buyer will
243 deliver the Purchase Price to Seller.

244 [A] This provision affirmatively obligates Buyer to go through with the deal in the stated cir-
245 cumstances. That distinguishes this agreement from a “call” option.

246 [B] Note how “At the Closing” leads off this section so that it forms part of both the “IF:”
247 clause and the “THEN:” clause.

248 [C] IF: and THEN: This is an example of using judicious capitalization to make it easier for
249 contract reviewers and other readers to spot the key pieces of the sentence.

250 [D] (i) and (ii): When doing a list of things “in-line,” as opposed to in separate paragraphs,
251 it’s often helpful to delimit the list items using romanettes.

252 8.1 [A] The Purchase Price **must be paid** [B] [C] by **cashier’s check** [D].

253 [A] Many drafters won’t assign a subdivision number (which in this case is 8.1) if there’s
254 only a single subdivision, but I don’t see a problem with doing so — the goal is clarity, not slav-
255 ish conformity to an arbitrary convention.

256 [B] Normally, active voice is preferred (yes, this sentence itself “violates” that guideline).
257 This provision, though, is one of those instances in which we care more about the action (pay-
258 ment) than about who performs the action (in this case, Buyer).

259 [C] Even a cashier’s check might carry nonpayment risk, because the check might be coun-
260 terfeit – see [Wikipedia](#). Alternative forms of payment might include ACH, which stands for Au-
261 tomated Clearing House; wire transfer; personal checks; currency; credit cards; or even Bitcoin.
262 The parties will generally opt for the one that strikes a balance between convenience, cost, and
263 safety.

264 **9. Seller’s obligation to close** [A]: At the Closing: IF: All prerequisites to Seller’s obligation to sell
265 the Computer to Buyer have been either (i) satisfied, or (ii) waived by Seller; THEN: Seller will
266 **deliver the following** [B] to Buyer:

267 (a) the Computer; and

268 (b) a signed and **notarized** [C] bill of sale for the Computer in substantially the form of **Ex-**
269 **hibit 9(b)** [D].

270 [A] This is the counterpart to Buyer’s delivery obligation under section 8.

271 [B] In a more-complex deal, Seller might be required to deliver other things, e.g., (i) a signed
272 certificate that the Computer has been used only in compliance with the requirements of the
273 agreement, or perhaps (ii) a certificate, signed by a reputable computer consultant, that the
274 computer consultant had checked the Computer for malware. (Opinions of counsel are often
275 delivered in, e.g., M&A deals.)

276 [C] The requirement for notarization doesn't specify what kind of notary certificate is to be
277 used. It's important to remember the distinction between:

278 ○ an "**acknowledgement**," which is a certificate that the signer personally ap-
279 peared before the notary public (or other authorized official) and acknowledged
280 that he or she indeed signed the document — this makes the original, notarized
281 document self-authenticating in litigation (which can be an important considera-
282 tion), and would be the kind of notary certificate to use for the bill of sale here;
283 versus:

284 ○ a "**jurat**," which is a certificate that the signer personally appeared before the
285 notary public (or other authorized official) and stated, under oath or penalty of
286 perjury, that the document's contents were true — that wouldn't be useful here.

287 [D] In subdivision (b)* of this provision, the exhibit number matches the section number in
288 the body of the agreement. That way, a reader who looks at the exhibit will immediately know
289 where to find the agreement's primary reference to the exhibit. * *I use the term "subdivision"*
290 *instead of "subparagraph" or "subclause"; that's also what the Uniform Commercial Code does.*

291 **10. DISCLAIMER OF OTHER WARRANTIES, ETC.:** [Omitted]

292 See, e.g., the Common Draft disclaimer of implied warranties, representations, terms of quality,
293 etc., at <http://www.commondraft.org/#ImpliedWarrantyDisclaimer>.

294 **11. Termination for material breach:** [Omitted]

295 See the Common Draft provision at <http://www.commondraft.org/#Termination> and its anno-
296 tations. (I'm in the process of re-revising this Common Draft provision; I previously rewrote it as
297 an experiment but really don't like how it turned out.)

298 Also possible: A provision allowing one or both parties to terminate **without cause** (“**at will**”).
299 That would allow the specified party or parties to walk away from the transaction. There might
300 be prerequisites for doing so, e.g., paying a breakup fee.

301 **12. General provisions:** [Omitted]

302 [A] See the various Common Draft “general” provisions, e.g., at [http://www.com-](http://www.com-
303 mondraft.org/#GenProvBasic)

304 [B] A “**redlining representation**” provision can be very useful – see [http://www.com-](http://www.com-
305 mondraft.org/#RedliningRep)

306 [C] For contracts where one party might later make a claim of misrepresentation, consider
307 including a “**no-reliance**” provision; see, e.g., the Common Draft provision at [http://www.com-](http://www.com-
308 mondraft.org/#EntireAgrmtRelianceDiscl)

309 *[IF APPLICABLE:] (Signature page follows)*

310 [A] I like to keep all of the text of a signature block together on the same page (which might
311 or might have other text on it). That looks more professional, in my view, than having a signa-
312 ture block spill over from one page onto the next. This can be done using Microsoft Word's
313 paragraph formatting option, “Keep with Next.”

314 [B] Sometimes drafters put the signatures on a separate page to make it easier to FAX just
315 the signed signature pages back and forth. If that's to be done, I don't like leaving significant
316 blank space on the last page before the signature page, because it might tempt a fraudster to

317 add provisions in the blank space and claim they were part of the signed contract. Hence, the
318 “Signature page follows” parenthetical on the last line.

319 [C] If signatures are on a separate page, then someday The Other Side might claim that it
320 signed a different version of the contract than the one you claim it signed. One way to try to
321 forestall such a claim would be to include, at the top of every page of every draft, a running
322 header with a version date and time, such as that shown at the top right of this page. (Don’t use
323 Microsoft Word’s automatic date fields – you don’t want the date field automatically updating
324 itself every time the document is printed.) ¶ See also the “PAGE X of Y” running footer below,
325 which can be done by inserting Microsoft Word’s PAGE and NUMPAGES fields.

AGREED: [A]	AGREED:
BUYER: [B] Betty’s Used Computers, LLC, by: [C]	SELLER:
_____ Betty Boop, Manager [C]	_____ Sam Smith
_____ Date signed [D]	_____ Date signed [D]

326 [A] Concerning “AGREED:” Stark says to use a concluding paragraph such as “To evidence
327 the parties’ agreement to this Agreement, each party has executed and delivered it on the date
328 indicated under that party’s signature.” See Stark § 17.3. I don’t like that approach, for two
329 reasons: (i) First, it’s overkill; there are other ways of proving up that The Other Side in fact de-
330 livered a signed contract to you — for starters, the copy in your possession that bears The
331 Other Side’s signature. (ii) Second, *at the instant of signature*, a past-tense statement that each
332 party “has delivered” the signed contract is technically inaccurate — even more so at the mo-
333 ment when the first party to sign the document affixes (his / her / its) signature.

334 [B] Including the parties’ shorthand names in their respective signature blocks is a conven-
335 ience for the reader.

336 [C] The word “by:” and the title of an organizational signer are included for two reasons:
337 First, they give the other side at least some assurance that the signer has at least “apparent au-
338 thority” to commit the organization. (An individual representation of signing authority can also
339 be used for that purpose; see the [Common Draft signature-authority provision](#). ¶ Second, in-
340 cluding the signer’s title protects the individual signer from being held *personally* liable.

341 [D] Note that I left a blank “Date **signed:**” line for each signer to fill in. I don’t like the way
342 Stark does it, namely saying just “Date” (see the second shaded example on page 242). In some
343 circumstances, that could contribute to landing the client in prison, for reasons we’ll discuss
344 later. (*Preview*: The CEO, general counsel, and other officials of a giant software company, Com-
345 puter Associates [now known as CA] were sent to prison, and the general counsel was dis-
346 barred, in large part for backdating software-license agreements as part of a scheme to falsify
347 the company’s quarterly earnings reports filed with the SEC.)

348 — END OF DOCUMENT —