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1. When Are Heads Of Terms

A Heads of Terms (HOT) is also commonly known as a “Memorandum of Understanding”, or “Term Sheet” - is typically used where the parties to a commercial arrangement have reached a preliminary decision on the full legal and commercial terms and other details of the whole arrangement. In this note, we have, for convenience, grouped all such Heads of Terms, MOU, Letters of Intent and Term

There are many types of HOTs which will vary according to their subject matter, the industry, the intended to be achieved by the document, timescales, and whether or need to do pending signature of the definitive contract.

The parties to a proposal should prepare their HOT with the intention that, after they follow it up with a much more detailed document. That formal contract, once fully negotiated, drafted and signed, definitively governs the commercial arrangement in question. It supersedes the HOT.

2. The Advantage of Heads Of Terms

The advantage of using a HOT document is that it serves as a useful tool to help focus the parties to go ahead with a deal. It can identify and set out the main terms and issues, and indicate those major issues which need to be resolved in the formal contract to follow it. Once the HOT is signed, the parties go on to provide information to each other, review that information to clarify, negotiate, and resolve all matters before finally entering into a definitive, legally binding, formal contract.

3. The Disadvantage of Heads Of Terms

A disadvantage of an HOT is that it can require a disproportionate amount of time and it can be a distraction from the negotiation of a full and detailed definitive contract. This can result in the parties to proposed

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commercial arrangements
contract. They may then
may implement their deal
and non-binding agreement
inadvisable not to follow
deal. Use of an HOT also
lead to disputes and legal

4. Legal Status Of Heads

Such HOT documents
Contract”, although it is
uncertainty they create. The
Terms”, “Memorandum of
important to recognize that
the legal status or effect
instead on all of the contract

5. Non-Binding, But With

The nature of an HOT,
treated as an incomplete
that, pending signature of
by anything (whether it is
letters etc. written at any

There will often be state
approach that the HOT is
HOT which the HOT ex
definitive contract is signed
nature and are included
formal contract or failure

For example, the “boiler
protect the confidential
poaching staff from each

The “boilerplate” in the
clauses to prevent the party
party for a stated period.
such exclusivity or lockout
HOT is also used). Such
early stage, before any

to produce and sign a definitive
or sign a definitive contract, and
. An HOT is only an incomplete
be temporary, and it is extremely
contract before implementing any
certain legal position which can

Subject to Contract” and/or “Draft
headings because of the legal
use of a title such as “Heads of
of Intent”, or “Term Sheet”. It is
ing and/or title will not establish
al status and effect will depend

ns behind it is that it should be
ent whose function is to ensure
the parties are not legally bound
, say, draft documents, emails,
contract is signed).

There are exceptions to the general
points will often be set out in the
of legally binding effect until a
nts are usually of a “boilerplate”
pending either the signature of a
parties’ negotiations.

They may include binding provisions to
parties or to prohibit them from

They may include binding exclusivity or lockout
parallel negotiations with a third
one HOT might consist solely of
or not a further, more detailed
the HOT, can be used at a very
legal and commercial terms and

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other details is agreed
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Heads of Terms and Contract
emplates:

A properly drafted HOT
also clearly state that th
binding since they will
detailed negotiation and

e such binding provisions; it will
cial points detailed in it are not
subject of further subsequent

6. Heads of Terms Can In

Pre-Contract Work

Certain types of HOTs v
pending a full definitive
signed, will later then su
the HOT. For example, th
after signature of the H
types of work to be carri
into existence). The HOT
do that work it will becom
that situation, the HOT c
work, but in so far as it c
entitled to payment on t
extent that type of HOT
HOT, the HOT will state

vities will or may be carried out
n this case, that contract when
govern those activities in place of
in the HOT which establish that,
choose to request certain stated
r to a definitive contract coming
that if the other party chooses to
aid certain stated sums for it. In
obligation on that party to do that
done, that party becomes legally
ate set out in the HOT. To that
in common with other types of
e HOT are not to be binding.

7. Templates

Our Heads of Terms an
templates for use in conr

bfolder contain a range of HOT
ercial arrangements.

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