

# LEGAL GUIDE

## The 10 Most Important Contract Clauses to Know

If you are a small business owner, you are in the business of agreements and you may not know the different areas where a contract might be leaving you vulnerable. Here's a quick guide to some of the most important contract clauses to look out for.

BY: TEMI SIYANBADE

### 1. *Introduction/Background*

This section of your contract often outlines the parties involved, the purpose of the contract and the date the contract goes into effect. It may also include relevant background facts about the agreement to put the contract in the proper context.

### 2. *Payment Schedule & Billing*

Your contract should include detailed information about the payment expected, its form, and when it is to be paid. Be as specific as possible to reduce the risk of payment disputes and increase the chances of getting paid.

### 3. *Assignment Clauses*

An assignment clause explains whether a contract can be transferred to another party and how that transfer would occur. Be sure to pay attention to any assignment clauses you have in your contracts and decide whether they actually benefit you. This is especially true when you are hiring someone to do creative work. You may want to place some restrictions on a vendor's ability to pass your work on to someone else because a transfer like that could have an effect on the quality of the work you receive.

### 4. *Scope of Services*

This clause is extremely important to clearly describing exactly what work is to be completed. It is not uncommon for parties in an agreement to have different understandings about what work in different fields look like. For example, an event planner may have different packages for pre-event planning and day of services, but a potential bride may not know that there could be such a division. It is important to explain these variations to your clients and vendors.

### 5. *Termination Clauses*

Including a termination clause will increase the level of clarity in your contracts. This clause outlines the specific circumstances that cause an agreement to end. Be sure to identify what events (like nonpayment, or substantial changes in



circumstances) that allow for a party to terminate the contract. Also, be sure to pay attention to which parties have the power to terminate during the circumstances or events outlined.

## 6. *Limitation of Liability Clauses*

This is a clause that a party includes to clearly state their limitations on what they will be liable for if a claim does arise. Some common limitation of liability clauses say that a party will not be responsible for consequential damages which are the more indirect consequences that someone might encounter like loss of profits. Be on the look out for areas where someone limits their liability to you and try to ensure that you consistently limit your liability to others.

## 7. *Attorney Fees Clauses*

The attorney fees clause is another provision that comes up when disputes occur. It usually outlines who will be responsible for paying the attorneys if a legal dispute ensues. A very common and useful way people use this clause is to say that the losing party will be responsible for the attorney fees for the prevailing party. A clause like this may increase the likelihood of you finding an attorney willing to represent you on your claim.

## 8. *Waiver Clauses*

Waiver clauses are sections in a contract where someone freely and voluntarily gives up one of their rights. In most cases, one should pay very close attention to waivers of any kind. This is especially true for business people because states like Texas expect business owners to be knowledgeable and exercise the right amount of diligence required to know one's rights and protect them through contracting. Be especially wary of waivers of warranties and "AS IS" clauses in written contracts. These provisions usually say that despite any promises made in the past, the contract overrides them and the signing party waives all rights to enforce those agreed to promises. Be very careful when dealing with these provisions because you can really find yourself in a bind if you don't ensure that

the contracts mean what you think they do and promise what you hope they promise.

## 9. *Modification of Agreement*

The modification of agreement clause simply outlines what it takes to make changes to what the document says. There are so many disputes that arise from conversations and new arrangements after the contract is signed. Unfortunately many of those claims fail because the individual does not have the changes documented or does not follow the procedure outlined in the contractual agreement. When using this clause, it is usually wise to say that any changes or additions made to this agreement must be in writing and signed by both parties.

## 10. *Dispute Resolution Clauses*

These are clauses that explain what happens when stuff goes wrong. It's extremely wise to use these clauses to describe the state law that should control legal claims, and whether arbitration or mediation will be mandatory. These clauses are especially useful for individuals involved in interstate commerce or e-commerce sales.

### **FIND OUT MORE.**

For more information about contracts, other areas where businesses are often vulnerable to legal attack, and ways to minimize risks and protect profits, visit [www.toslegal.com](http://www.toslegal.com).

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**TEMI SIYANBADE** is a practicing attorney in Houston, Texas. She is passionate about helping the little guy win big. Her firm, the Law Office of Temi Siyanbade is built on the philosophy that everyone has the capacity to be great. To learn more about Temi and her firm, visit [www.toslegal.com](http://www.toslegal.com) and sign-up for her monthly newsletter.

