

Before You Sign: 10 Contract Clauses to Check



Most contract problems trace back to a clause nobody read closely. Before you sign, find each of these ten and answer the question next to it. If a clause is hard to explain in one sentence, ask what it does in the worst case. That is the case it was written for.

THE TEN CLAUSES

- 1 Parties and signatures.** Are the exact legal entity names and types used, and does the person signing have authority? A contract with the wrong entity may bind you personally or bind no one.
- 2 Scope and deliverables.** What exactly is being delivered, by when, and who decides whether it is acceptable? Vague scope is where most disputes start.
- 3 Payment terms.** How much, when, with what late fees or interest, and who pays taxes and expenses? Confirm what happens if the other side disputes an invoice.
- 4 Term and termination.** How long does it run, can either side end it early, how much notice is required, and which clauses survive after it ends?
- 5 Indemnification.** Who covers whose losses and legal fees, and for what? Is it mutual? In Texas, a clause that makes you pay for the other side's own negligence must be conspicuous and say so expressly.
- 6 Limitation of liability.** Is there a cap on damages, and does it exclude lost profits or consequential damages? Check whether the cap protects both sides or only one.
- 7 Warranties and disclaimers.** What is promised about quality, performance or title, and what is disclaimed in capital letters?
- 8 Confidentiality and ownership.** Who owns the work product, data and improvements? How long does confidentiality last, and what can each side keep after the deal ends?
- 9 Dispute resolution.** Which county is venue, which state's law governs, is it arbitration or court, and who pays attorney's fees? These decide whether a dispute is affordable to bring.
- 10 Restrictive covenants.** Does the contract include a non-compete or non-solicitation? In Texas these must be reasonable in time, area and scope and supported by consideration, or they will not hold.

FOUR MORE TO FIND

- ☐ Force majeure: which events excuse performance, and does the list include the events that could actually affect this deal
- ☐ Assignment: can the other side hand the contract to a buyer or successor without your consent
- ☐ Amendments and notices: must changes be in writing, and where must notices be sent

- ☐ Entire agreement: does the contract wipe out the promises made in proposals and emails before it was signed

Mark up the draft, ask for the changes in writing, and keep the final signed version in your legal file. A contract review before signing costs a fraction of a contract dispute after.

General information about Texas law from Hanshaw Kennedy Hafen, LLP, not legal advice for your situation. Reading it does not create an attorney-client relationship. More resources: hanshawkennedy.com/resources/

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