



Ten Minute Primer to Common Terms in Commercial Contracts

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Commercial contracts form the backbone of many commercial transactions from vendor agreements to client engagement agreements. While no two businesses or industries are the same, all commercial contracts share certain fundamental structures and clauses that have become part of the body of “best practices”. There is both an art and science to drafting them and the following provisions are some of the most critical in forming a complete commercial contract.

- Parties Block
- Recitals
- Consideration
- Definitions
- Services
- Payment
- Term & Termination
- Ownership & Rights
- Account Information and Data
- Representation & Warranties
- Disclaimer of Warranties
- Confidentiality
- Forum Selection and Choice of Law
- Force Majeure
- Liquidated Damages
- Integration

Parties Block. The first paragraph lists who the parties are, where they are located or incorporated, and the date the contract will commence. Hereinafter clauses for party names are introduced here, which are just short-forms, since repetition of a party name may unnecessarily lengthen the contract. (e.g., Gotham Industries may be shortened to “Gotham”)

Recitals. This section often sets out a few plain English clauses that describe the background of the transaction. In other words, this section provides the context for the agreement. Often such clause will begin with “Whereas” and then continue with a basic statement such as “Client wishes to engage Contractor and Contractor wishes to be engaged on the terms herein.”

Consideration. Consideration is a concept used to distinguish promises that don’t give rise to legal obligations from ones that do. If an agreement lacks consideration, no legal remedy will be provided. Thus, it makes good sense to have a provision stating what is the consideration, e.g., mutual promises. Both parties must agree to do something in exchange; one party’s promise to give away a product without some exchange is generally unenforceable.



Definitions. Further short-forms may be necessary, given the extensive meanings of terms needed within the commercial contract. If the agreement is about intellectual property and licensing, the parties may want to define who owns what property involved in the agreement. For example, a definition entitled “Gotham’s Property” might list all intangibles that Gotham is bringing to the table. Then, in a later provision describing what rights the other party has to Gotham’s property, there’s no ambiguity.

Services. This section details what the parties agree to do under the contract. It’s important that each party know what is required of them to satisfy their contractual obligations.

Payment. In rendering services, a party will obviously seek payment. A provision with the terms of the payment, such as when and how, is needed to avoid any disputes over payment later.

Term & Termination. This clause can be vital in protecting interests of the parties by providing a mechanism to opt out of the contract. The provision may contain a “For cause” and “Without cause” mechanism for such termination. The former involves a scenario where one party fails to fulfill their obligations, or in other words breaches the contract, so the other party opts out. The latter is when a party simply doesn’t want to continue with the contract. Both clauses may provide terms for what the other party must do in the event of either scenario.

Ownership & Rights. Parties need to come to terms on how the property is to be used by the other, who owns new property produced pursuant to the contract, or what other requirements need to be met in using a party’s property.

Account Information and Data. If part of the agreement involves working with a party’s customer list or the like, a party may want to define the rights to the account information, or provide terms in the event of a breach or potential liability for wrongdoing.

Third-Party Interactions. In the interest of limiting its liability, a party may choose to disclaim any liability for the other party’s agreements, etc., with any third party that relates to the contract between it and the other party.

Representation & Warranties. This section contains disclaimers of warranties, express or implied, and lays out what a party is expected to give and what the other is expected to receive. A party will want to assure that the product it is purchasing is not defective or of low-quality, and, thus, may try to include a clause about what standard(s) the product must meet. Alternatively, the other party may want to provide for deviation from strict measures to protect itself.

Disclaimer of Warranties. Along with warranties, the contract can also limit and disclaim warranties. For example, the contract can provide that the goods and services are provided on an “as is” basis. Further, the contract can limit damages for any breach to some figure (e.g., the price actually paid for the goods/services).

Confidentiality. Confidential information may be exchanged during the course of the contract, so it’s important that both parties are bound to withhold disclosing such information for any purpose other than performing its duties under the contract.



Forum Selection and Choice of Law. All good Commercial contracts should specify the state law that will be used to govern any dispute (e.g., New York Law), especially where one or more of the parties reside out of that state. Secondly, the contract should also specify where such dispute or proceeding will take place (again e.g., New York Courts federal or state). In addition, the contract can specify the particular dispute forum, for example court, arbitration, and/or mediation.

Force Majeure. This clause attempts to absolve liability for breach by party for so called “acts of god” (e.g., floods, riots, earthquakes, etc.)

Liquidated Damages. The contract may also provide a specified amount of monetary damages should the contract be breached. This can allow the parties to shape and agree on what would be a fair amount of damages and possibly dispense for the additional time consuming step of proving the scope of such damages through a law suit. [You can read more about liquidated damages provisions here.](#)

Integration. This clause sets forth that the entire scope of the contract is within the pages of the contract, and no other agreements, verbal or otherwise, are to be considered as part of the contract. This is important because any other discussion of terms, etc. are to be discarded if there’s an integration clause, and the terms supplied by the contract will control.

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