

# **BIZ Legal Contract Term EXPLORED: “Time is of the Essence” Language**

## ***Intro/Definition***

“Time is of the essence” language in a contract means that the parties to the contract MUST strictly comply with the time requirements indicated in the contract if delay would cause material harm to the other side.

## ***Points to Consider***

1. **“Reasonable time” language vs. “Time is of the Essence” Language-** “Reasonable Time” language in an agreement allows for a delay in performing on either side (for example, delay in a construction project because of bad weather) whereas “time is of the essence” language is not based on reason; all that is needed is material harm to the other party for there to be a breach.
2. **Waiver of Provision-** If you suspect that you will not be able to perform your part of the contract by the time stated, try to get a written waiver of this provision; a verbal waiver most likely won’t do”.
3. **Specificity-** “Time is of the essence” language means nothing if there are no specific times and dates to abide by. The more specific the language (such as including a specific time and time zone), the easier and more willing the Courts will be to enforce these specific provisions.

## ***In Georgia...***

Parties can WAIVE “time is of the essence” language by their conduct. For example, if Co. A and Co. Z enter into an agreement by which Co. A will provide 200 widgets to Co. Z, 100 by September 1 and 100 by December 1, if Co. A provides 100 widgets by Sept. 15<sup>th</sup> (15 days after the Sept. 1<sup>st</sup> date) and Co. Z doesn’t object in writing, it would have been deemed that the “time is of the essence” language is WAIVED in its entirety. Therefore, a Court could hold that there is no material breach of the contract by failing to provide the widgets until 15 days after the required date. Furthermore, Co. Z cannot later complain if the remaining 100 widgets are delivered on Dec. 10<sup>th</sup>, 10 days after the 2<sup>nd</sup> delivery date of December 1<sup>st</sup>.

NOTE: Waiver by conduct can be retracted with reasonable notification to the other party. In the above case, Co. Z would need to send a letter in writing that although the

"time is of the essence" language was waived as to the first 100 widgets, it would not be waived as to the last 100 widgets to be delivered on December 1<sup>st</sup>.

### ***General Advice***

This "time is of the essence" language can be a catch 22. If there is this strict language that binds one party, more than likely it will bind you as well and failure to strictly comply with the time restrictions in the least bit could leave you in breach of a contract.

Seek competent counsel to advise if placing this type of language in your specific business contract is prudent.

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