

# Guide to Boilerplate Contract Terms

## CONTRACT

follows:

Agreement shall be effective and shall remain in effect until the Agreement has been satisfactorily fulfilled, or the Agreement shall have been terminated or terminated by the Company's termination or termination of the Agreement. The Agreement shall be a continuing obligation of the Company and shall be a continuing obligation of the Company.

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## **Guide to Boilerplate Contract Terms**

Most written contracts contain sections with language that is commonly used for all contracts of that type. This standardized wording has come to be known as "boilerplate." The terms in this part of the contract often are not discussed. All who sign the contract indicate by their signatures that they have read the entire contract and understand every term. As a written, signed contract is legally binding, it is vitally important to understand boilerplate terms.

Many purchase agreements include promissory notes and security agreements. In such a purchase agreement, the buyer becomes the borrower. The buyer also may become the grantor, and the seller is the lender. The buyer signs a contract in order to receive the products he orders, paying for them over a period of time. The seller agrees to provide the products according to specified terms. To ensure payment, the seller retains an interest in the products he sells until the bill is paid in full. He also may obtain a security interest in other collateral, attaching a lien to the titles. The grantor is the owner of the collateral and agrees to allow a lien to be placed on the property. Often the grantor and the buyer are the same person or entity, but not always.

Boilerplate contract terms likely to be found in this type of purchase agreement are:

### *Waivers*

Contract terms listed under waivers are those in which a person or entity relinquishes legal rights. For example, the grantor might agree that the seller does not have to notify him that the buyer is behind on payments. The buyer might waive the right to be informed by the seller whenever the seller decides to act or not to act with regard to allowed actions under the contract.

### *Right of Setoff*

Lenders often include under this boilerplate contract term their right and the grantor's and borrower's authorizations to offset any indebtedness resulting from the loan by taking money from any accounts the borrower and the grantor might have with them, other than from IRA or Keogh accounts and any other accounts for which laws prevent setoff. Setoff rights may include joint accounts as well as accounts that have not yet been opened.

### *Representations and Promises with Respect to the Property*

Terms under this section bind the owner of the property, who also is the grantor of the security interest or lien, to take good care of the property, defend the seller's rights in the property, keep the property free of other liens, not lease, sell or transfer the property without the seller's consent, and keep the property insured. If the property is such that it requires licensing, the owner usually agrees to keep the license current. There may be clauses regarding where the property can be kept and what must be done if the owner moves. Who pays filing fees may be included under this section.

### *Seller's Expenditures*

This section lays out how the seller will handle costs of protecting his interests in the property in which he retains a security interest or that is to be encumbered by a lien. The granting of power of attorney to the seller may be included here or elsewhere.

### *Default, Seller's Rights*

Information headed by these boilerplate terms usually defines what constitutes default and specifies what could happen should either the grantor or the buyer fail to adhere to all terms of the contract.

Besides missing making a payment on time, a few situations that may cause the purchase agreement to come under the terms of default include:

- making misleading or false statements
- death, incompetency or becoming financially insolvent
- severe damage, loss or theft of the secured property

Often, seller's rights include the right to declare the full amount of the unpaid debt due immediately without notice. They may also state that the seller can immediately take action to enter the buyer's or grantor's premises to possess the secured property. The seller then may have the right to sell all property and apply the proceeds to the seller's costs and the buyer's indebtedness. Once that has been done, the buyer still is liable for the rest of the debt.





## **MORE BOILERPLATE TERMS**

Several other contract terms commonly are found under "Miscellaneous Provisions." Although these provisions contain standardized wording, it is dangerous to assume that the wording is identical between contracts, even contracts wholly within one state.

### *Amendments and Interpretation*

The information under these terms defines if and how changes to the agreement can be made and explains the meaning of certain words. This section also may include a statement that the contract itself overrides other agreements.

### *Arbitration*

This clause often prevents contract disputes from becoming lawsuits. It may require that the parties resolve their differences through meeting with an arbitrator, a neutral third party who listens to both sides and has the power and authority to determine the dispute's resolution.

### *Attorney Fees; Expenses*

This clause usually binds the grantor and the buyer to pay the costs of legal fees and court costs the seller might incur should the seller need to enforce terms of

the contract. Other expenses may include expenses incurred by the seller if the buyer or grantor become involved in bankruptcy proceedings or the seller uses post-judgment collection services.

### *Caption Headings*

This section points out that captions in the printed contract are there only to help the reader locate parts of the contract and cannot be used to define or interpret what the contract says.

### *Confidentiality*

Referring to the non-disclosure of information, this section works to guarantee that the parties will not reveal certain or all information related to parties, the contract itself and any related documents.

### *Counterparts*

This section contains wording to give individual parties to a contract the right to legally sign or execute copies of the original contract without all parties having to be present. The signed copies then become part of the contract.

### *Force Majeure*

This term refers to powers beyond human control. The section defines how contract terms are affected by unexpected disasters such as tsunamis, hurricanes or wildfires.

### *Governing Law*

Governing law is which state's legal rules apply should a lawsuit be brought. This section sometimes is captioned "Choice of Law." Usually there will be a reference to the laws of a particular state or to the federal government. In international and interstate commerce, what country or state provides the governing law is critical.

### *Jurisdiction*

Closely related to the section above, this clause determines where a lawsuit must be filed.

### *Limitations on Damages*

This part spells out the upper limit on what types and amounts of damage awards are possible should there be contract violations or disputes.

### *Notices*

The requirements each party must follow in making the other parties aware of

important information may be found under this boilerplate contract term.

### *No Waiver by Seller*

This part lets the other parties know that certain actions by the seller do not mean that the seller has given up rights.

### *Severability*

This term means the ability to separate one part from another. Information here may state that even though a court determines one part or provision of the contract to be invalid or unenforceable, all other provisions remain intact.

### *Integration*

In contracts, integration means that any prior discussions and verbal agreements are now blended into the written contract or replaced by it. This clause usually includes a statement that any further contract modifications must be in writing.

### *Assignment*

This section defines what can and cannot be done by each party regarding the transfer or sale to another party of that party's agreement rights and obligations.

## *Successors and Assigns*

A successor is a person or entity who becomes a party to the contract after it has been signed, taking the place of the original party. An assign is a person or entity to whom one party's contract rights or property is legally transferred, or a person or entity who is appointed to act for one of the parties. This section usually states that the contract agreement is binding upon all parties, their successors and assigns. It often provides detail as to what rights and obligations the parties have in such circumstances.

Courts have ruled that including a "Successors and Assigns" section in a contract gives consent in advance to the parties to assign or delegate the agreement unless specific wording prohibiting assignment or requiring consent of the other parties is included. If nothing in the contract addresses the issue of assignment, it is presumed that parties can freely assign their contract rights to others.

## **TIPS**

Whether boilerplate terms are negotiable depends on the viewpoint of the party that drew up the terms. Nonnegotiable terms sometimes cause the loss of core rights upon which each party could rely had there not been such terms in the contract.

Such loss may include the right to jury trial in case of a dispute or the right to hold sellers responsible for any harm resulting from their products.

If a contract does not include information as to which state or country has jurisdiction or contain clauses prohibiting lawsuits, any party can file a lawsuit in his home state or country should a dispute arise. This can be very costly to those being sued.

Contracts should state a specific length of time or a particular date when performance must be completed. They also need to include a clause stating that time is of the essence. If the contract does not state that time is of the essence, many courts presume that time is not of the essence. *Performance completion and time is of the essence* clauses could be extremely important to purchasers, especially with regard to shipment delays.

Careful reading of every section in a proposed contract can prevent unwelcome surprises. If some parts are hard to understand, the wise purchaser obtains legal advice and ensures that needed changes or clarifications are written into the contract before he signs the agreement.

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