

Notice: This guide is for informational purposes only and does not provide legal advice or create an attorney-client relationship. You should contact an attorney to obtain advice with respect to any particular issue or problem.

UNDERSTANDING AND NEGOTIATING CONTRACT TERMS

How do I understand the parts of a contract?

A contract typically consists of several key sections and provisions, which are essential for clarity and enforceability. Contracts can vary widely in scope and length depending on their purpose. Simpler contracts may not contain every provision below, but here are the common contract sections and provisions:

1. **Scope of Agreement/Preamble:** This section provides the purpose and intent behind the contract.
2. **Parties:** Identifies the legal names and addresses of all parties involved. Make sure to use the business entity's name (and not your personal identification information) if it is a business contract.
3. **Definitions/Defined Terms:** Lists specific terms used throughout the contract. The contract may define a term differently than its common usage. Therefore, this section is very important when drafting a contract, be as clear as possible.
4. **Performance Obligations:** Details the specific duties and responsibilities each party must fulfill under the contract. This could include payment terms and liabilities.
5. **Covenants and Warranties:** Covenants are promises in a contract to do or not do something in the future. Warranties are guarantees that certain facts are true.
6. **Termination:** Outlines the conditions under which the contract can be canceled by either party, including all steps needed and consequences of termination.
7. **Breach and Remedies:** Specifies what constitutes breaking the contract and the remedies available to the other party.
8. **General Provisions:** Often called "boilerplate" clauses, these clauses usually govern the overall relationship between the parties and provide mechanisms for handling common issues that may arise. Common clauses cover:
 - **Entire Agreement Clause:** Ensures that the contract supersedes any prior discussions or agreements.
 - **Severability:** Preserves enforceability of the rest of the contract if some parts of the contract are invalid.
 - **Amendment:** Specifies how the contract can be modified.

- **Assignment:** Rules for transferring rights.
- **Force Majeure:** Addresses unforeseen event impacts.
- **Governing Law:** Determines jurisdiction and dispute resolution venue.
- **Confidentiality/IP:** Protects exchanged information and intellectual property.
- **Dispute Resolution:** Determining resolution methods like litigation or arbitration.

9. **Signatures:** Where all parties sign and date the contract, making it legally binding.

10. **Schedules/Exhibits:** Attachments provided for additional detail or documents referenced in the main contract.

If in doubt, seek legal advice to ensure you fully understand the implications of the contract before signing.

Where should I spend time drafting and negotiating a contract?

Any area of a contract can be contested by one of the parties. However, some contract issues for small businesses and local entrepreneurs are challenged more than others. These higher-contested issues require greater attention and negotiation due to their potential impact on business operations, financial stability, and legal risk. Here are the key areas that often require significant negotiation:

1. **Scope of Work or Deliverables:** Clearly defining the scope of work or deliverables helps manage each party's expectations and avoid disputes. Negotiations focus on specifying the exact tasks, milestones, deadlines, and quality standards to be completed, ensuring alignment between the parties.
2. **Payment Terms and Pricing:** This provision often requires extensive negotiation as it directly impacts cash flow and profitability. Small businesses may negotiate payment schedules, terms for early payment, discounts or late payment penalties, and mechanisms for adjusting prices in response to changing market conditions.
3. **Governing Law:** The location where and the rules that control how disputes will be resolved can impact a party's ability to have their issue heard. A party that must travel long distances to initiate or defend a lawsuit is less likely to do so due to travel costs and time away from running the business. Generally, parties choose the rules of the location where they want the issue heard. If specific state's laws are more developed on legal issues covered in the contract, parties may negotiate to use those rules.
4. **Breach and Remedies:** Negotiating this provision allows parties to clarify expectations and protect their interests in case of contract violations. Defining what causes a violation (breach), how to fix or remedy the violation, and what procedural aspects (notice and dispute resolutions) are necessary helps ensure fair and efficient resolutions.

5. **Termination and Renewal:** Negotiating termination and renewal terms helps small businesses manage risks associated with continuing the contract. This provision addresses how much notice must be given before ending or renewing the contract, the conditions that cause the contract to end or renew, and any penalties or obligations upon termination.
6. **Intellectual Property Rights:** Ownership and usage rights of intellectual property (IP) can be contentious, especially in contracts involving innovation or creative work. IP ownership determines who has the rights to use the IP and exclude others from using it now and in the future. Negotiations often involve defining ownership of newly created IP, licensing terms, exclusivity rights, and protections against infringement.

Conclusion

Contracts can be complex and contain nuance. Protect your interests by making sure that you understand your rights and responsibilities before entering into the contract. Spending time reading and discussing the terms upfront goes a long way to ensuring that you are making the deal that you want to make.

Looking for legal help? Contact the following legal organizations to see if you qualify for free legal assistance!

Legal Food Hub
legalfoodhub.org
legalfoodhub@clf.org
1-844-LAW-GROW (1-844-529-4769)

Northeastern University Community Business Clinic
<https://law.northeastern.edu/experience/clinics/community-business/>
617-373-6435

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