

6 clauses every business contract should have

In business contracts, the clauses typically found at the end of an agreement are known as the boilerplate clauses, which set out provisions for specific aspects of the contract.

There are no hard and fast rules when it comes to drafting these clauses, as they will vary according to the nature of the business at hand and the needs of the contracting parties.

However, there are six key boilerplate clauses that usually appear in well-drafted business contracts, even though the specifics of the provisions may vary.

1. An Entire Agreement or Merger Clause

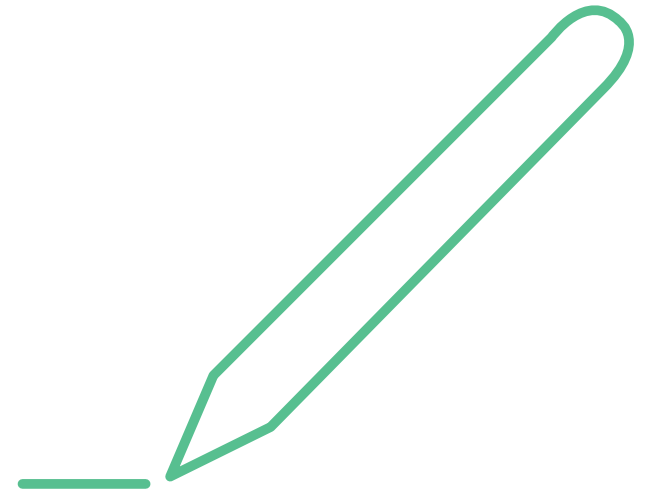
An entire agreement clause, also known as a merger clause, means that the contract constitutes the entire agreement and understanding between the two parties with respect to the contract's subject matter.

In other words, any other preceding contracts between the parties are effectively overridden by the contract at hand. This way, there is no ambiguity or confusion over the legal relations between the parties or the terms and conditions of their agreement.

2. A Counterparts Clause

When two or more parties need to sign a contract, it becomes quite common for separate hard copies of the same document to be signed and then simultaneously released to implement said contract. This is especially useful where the contracting parties are based in different countries.

However, if signing in counterparts, a counterpart clause must be included in the contract, stating that executing documents in this way is sufficient to validate the contract and legally bind both parties.



3. A No Representation Clause

Also referred to as a no reliance clause. A no representation clause provides that neither party has made any pre-contractual misrepresentations. It also states that neither party has relied on any representation made by the other party outside of what's included in the contractual agreement. Nonetheless, the parties can still face claims for misrepresentation if there are any untrue or misrepresented facts within the contract.

4. A No Waiver Clause

With a no waiver clause, the non-breaching party is still able to exercise his right to terminate the contract if the other party doesn't fulfil his obligations, even if the non-breaching party fails to exercise the right to terminate in a timely manner.

It should be noted, however, that no waiver clauses cannot apply if the contract states that specific steps must be taken within a pre-determined timeframe in order to terminate, and the non-breaching party hasn't taken those steps within the fixed period.

5. A Severance Clause

Sometimes a change in laws or regulations may void a certain clause in a contract, possibly making it illegal for a party to fulfil his obligations. In the event that a clause should become void in this way, the entire contract risks becoming void or being terminated, but with a severance clause, only the offending clauses will become void and the contract will still stand.

6. An Exclusion Clause

English law automatically implies that third parties who are not part of a contract have the right to enforce a term of a contract. By including an exclusion clause, the contract excludes this third-party right. Exclusion clauses can also be drafted to allow specific rights to be granted to a third party, while excluding all other rights.

If you would like us to check your contracts and agreements to ensure they include all the right clauses, give us a call today and let's have a chat about how we can help.

We offer a consultation and advice on all legal matters relating to your business.

For more information, or for expert advice on business or personal legal issues, call us on +44 (0)20 3475 6751 or via email at info@carterbond.co.uk

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Enis Rifat, MIYA Solicitors

HIGHLIGHTS

We were awarded the 'Commercial Lawyers - London', in the prestigious 2020 UK Enterprise Awards
