

High Tech Counsel Corner

Many business people don't fully appreciate how often they enter into contracts that are binding on their company.

At its most basic, a "contract" is any agreement enforceable by law. Contracts may take many forms – e.g., a purchase order and an invoice, or an online acceptance of a license or the terms for the purchase of a product. Once a contract is found to exist, you are bound by the terms of that contract.

The "substantive" terms (product descriptions, pricing, payment, etc.) usually get the most attention, while the so-called "boilerplate" clauses at the end are often ignored. However, the latter can be very important to your business. Here are just a few clauses you should pay attention to:

Assignment: Contracts often prohibit or require consent for assignment of the contract. If you aren't able to transfer a key contract to someone that wants to buy your business, this may be a real problem.

Governing Law: Agreeing that another State's law will govern your contract may or may not be a problem. But, agreeing that a law suit must take place in a far-away place (venue/jurisdiction) could well end up being a problem.

Entire Agreement. If the contract states that it covers all of the terms of your agreement, you need to make sure it does. For example, if you are counting on statements that have been made to you about the specifications or performance of a product, you need to make sure that they are written into the contract.

Intellectual Property Rights. The ownership of intellectual property needs to end up where it is supposed to. If you expect to own the IP resulting from a development contract, then your contract needs to say this.

Obviously, every contract you enter into will not be the product of extensive negotiations with an attorney at your side. But you should be aware of the importance and effect of the terms of the contract – even those terms which you consider "boilerplate". If you have a question about such a provision, you should consult a knowledgeable attorney about what it means and its importance to your business.



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