CALIFORNIA BUSINESS & CONTRACT LAW

3 Clauses that Often Create Problems in Commercial Contracts

A Plain-English Guide for Businesses

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Commercial agreements — vendor contracts, service agreements, technology licenses, and supply arrangements — are central to business operations. Many are presented as "standard," but standard terms can still create significant exposure.

Below are several provisions that frequently lead to disputes or unexpected outcomes.

> *The examples below are simplified illustrations. Actual contract language and legal outcomes can vary depending on the specific agreement and circumstances.*

1

Indemnification Obligations

The Issue

These clauses determine a party's responsibility for claims brought by third parties (i.e., parties not a part of the contract) — including legal defense costs.

Sample Language

> *"Customer shall indemnify, defend, and hold harmless Vendor from any claims arising from Customer's use of the services."*

Potential Problem

Indemnification provisions can shift significant financial responsibility to one party, even when the issue was not entirely within that party's control. In many cases, the obligation includes paying the other party's legal fees and settlement costs.

Example

A company uses a third-party platform to host marketing content on its website. One of the images uploaded by the company is later alleged to infringe a photographer's copyright. The photographer sues both the company and the platform provider. Under the indemnification clause, the company may be required to defend the platform provider and cover its legal costs — even though the provider hosted the content.

2

Limitation of Liability

The Issue

These provisions cap the amount one party can recover if something goes wrong.

Sample Language

> *"Vendor's total liability under this Agreement shall not exceed the fees paid by Customer during the twelve (12) months preceding the claim."*

Potential Problem

Even if a vendor's mistake causes significant financial harm, the contract may limit recovery to a relatively small amount.

Example

A business relies on a software vendor to manage a key operational system. A system failure causes several days of downtime and lost revenue. Even if the losses are substantial, the contract may limit recovery to the fees paid to the vendor over the past year — which may be only a small fraction of the actual damages.

3

Automatic Renewal Terms

The Issue

Many contracts automatically renew unless one party provides notice within a specified time period.

Sample Language

> *"This Agreement shall automatically renew for successive one-year terms unless either party provides written notice of non-renewal at least sixty (60) days prior to the expiration of the then-current term."*

Potential Problem

Businesses often overlook the renewal deadline and become locked into another contract term.

Example

> A company plans to switch service providers at the end of a one-year contract. However, the agreement required notice of non-renewal 60 days before expiration. Because the deadline was missed, the contract automatically renews for another full year — requiring the company to continue paying for services it intended to replace.

Final Thoughts

Contracts rarely cause problems when everything goes as planned — but they become critical when circumstances change. Understanding key provisions in advance can help businesses manage risk and enter agreements with greater confidence.

About the Author

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