



CORPORATE · GUIDE

Commercial contracts: the boilerplate that actually bites

Indemnities, limitation of liability, governing law, and termination clauses, in plain terms.

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When a business owner reviews a contract, the eye goes straight to the commercial terms: the price, the deliverables, the dates. Then there are several pages near the back full of dense language that looks like standard filler, and the temptation is to skip them. That "filler" is where a contract quietly decides who carries the risk when something goes wrong. The clauses below look boring and turn out to matter enormously. Here is what they actually do, so you know what you are agreeing to.

Indemnities

An indemnity is a promise to cover someone else's losses. If you agree to indemnify the other party, you are promising that if certain things happen, you will pay for their resulting costs, claims, and damages, sometimes including their legal fees.

Why it matters: an indemnity can expand your exposure well beyond what ordinary contract law would give the other side. It can make you responsible for losses you would not otherwise have to pay, and a broad one can reach further than you expect, covering third-party claims, certain costs, and more. The things to look at: How broad is it? What exactly are you on the hook for? Is it mutual, meaning each side indemnifies the other, or one-sided in their favour? Is it capped, or open-ended? A one-sided, uncapped indemnity is one of the most dangerous clauses you can sign without noticing.

Limitation of liability

This clause sets a ceiling on how much one or both parties can be liable for, and often excludes certain types of damages entirely, for example indirect or consequential losses like lost profits.

Why it matters: it can cut both ways and you need to know which way it cuts for you. If the other side has limited their liability to a small amount, then if they fail you badly, your recovery may be capped at that small number no matter how much their failure actually costs you. Conversely, a limitation in your favour protects you. Look at whose liability is limited, to what amount, and what is carved out. A common pattern is a supplier limiting their liability to the fees you paid them, which can leave you badly under-protected if their product or service causes real damage. Pair this clause with the indemnity, because together they tell you the real risk picture.

Governing law and jurisdiction

This clause says which jurisdiction's law applies and where disputes have to be brought. It might say Ontario, or it might say somewhere else entirely.

Why it matters: it looks like a technicality and it is not. If your contract says disputes are governed by another province's or country's law and must be litigated there, then enforcing your rights, or defending yourself, could mean hiring lawyers in that place and litigating far from home. That is expensive and inconvenient enough that it can effectively discourage you from enforcing the contract at all. For an Ontario business, having Ontario law and Ontario courts (or a sensible arbitration arrangement) is usually preferable, and this is worth negotiating rather than accepting whatever the other side's template says.

Termination

The termination clause says how and when each party can end the contract, and what happens when they do.

Why it matters: this controls whether you are trapped. Look for: Can either side terminate for convenience, meaning end it without cause on notice, or only for cause? How much notice is required? What are your obligations on termination, do you owe anything, do you have to return or transfer things? Is there an automatic renewal that locks you in unless you cancel in a specific window? Auto-renewal clauses in particular catch businesses that miss the cancellation window and find themselves bound for another full term.

A few others worth a careful read

- Assignment. Can the other party transfer the contract to someone else, maybe a company you would not have chosen to deal with, without your consent? Can you assign it if you sell your business? This matters more than people expect.
- Confidentiality and non-disclosure. What information is protected, for how long, and what are your obligations. Easy to agree to casually and binding for a long time.
- Dispute resolution. Whether disputes go to court or to arbitration or mediation first. Arbitration can be faster and private but has its own trade-offs.
- Entire agreement. This says the written contract is the whole deal and that side promises or earlier discussions do not count. So if something important was agreed verbally, get it into the contract, because this clause is designed to shut out anything that is not on the page.
- Force majeure. What happens if extraordinary events prevent performance. People stopped ignoring this clause after the disruptions of recent years.

How to approach a commercial contract

- Read the back half. The risk-allocation clauses are usually at the end, and they are the ones that bite.

- Read the indemnity and limitation of liability together. They define your worst-case exposure. If you read nothing else closely, read these.
- Check governing law, termination, and auto-renewal. These decide whether you can enforce the deal conveniently and whether you can get out.
- Get advice on anything significant or unfamiliar, especially before signing a contract that is large, long-term, or central to your business. A review before signing is far cheaper than litigating a clause you did not understand.

Bottom line

The clauses that look like standard boilerplate (indemnities, limitation of liability, governing law, termination, assignment) are exactly where a commercial contract allocates risk, and they routinely matter more than the price. They decide what you owe when things go wrong, how much you can recover, where you have to fight about it, and whether you can get out. Read them, or have them read, before you sign. Talk to us about any contract that is important enough to hurt if it goes wrong.

This is general information about commercial contracts in Ontario, not legal advice for your contract. What a clause means and whether it is enforceable depends on its exact wording and your situation. Talk to us before signing anything significant.

Questions about your own situation? Book a free consultation at lucianolegal.com/contact.html, call 647-479-4585, or email info@lucianolegal.com.

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