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INTERNATIONAL BUSINESS ATTORNEYS

The 5 Most Important Words in a Contract

A focal point of my practice involves advising clients on the terms and conditions that absolutely **must** be included in a business agreement. Having drafted hundreds of commercial contracts over the years, I narrowed down what I perceive to be **the five most important terms to include** in a contract.

While there are a host of other critical terms to consider, the five outlined below should be at the top of any checklist:

1. Payment

Of all the contractual disputes that cross my desk, I'd say that payment terms cause the lion's share of disputes. The payment conditions must be clearly addressed.

The contract should permit the use of all payment modes, including at least payment in advance, open account, documentary collection, and documentary credit.

2. Termination

Most business contracts include a termination clause. This clause enables the parties to terminate the contract prior to the expiration of the contract's stipulated term.

While it is up to the parties to set forth the procedure for triggering a termination event, be sure to include terms that cover payment for work completed but not yet paid for.

3. Jurisdiction

When entering into an agreement, it is essential to include a jurisdiction clause within the contract. A jurisdiction clause stipulates which country's (or state's) courts will resolve any disputes that may arise under the contract.

Jurisdiction is commonly granted on an exclusive basis. This means that no other courts except those specified should be able to adjudicate disputes. An example of an exclusive jurisdiction clause is: "The courts of _____ will have exclusive jurisdiction to adjudicate any dispute arising under or in connection with this Agreement."

Practical considerations might include the cost of pursuing or defending a case in a foreign jurisdiction, and the limitation periods under each jurisdiction.

Consideration should also be given to the length of time it typically takes to resolve a dispute in the prospective jurisdiction. For example, it takes over 1,288 days to enforce a contract in Colombia.

4. Dispute (Resolution)

It is critical that your contract contains wording dealing with disputes which may arise under the contract to ensure clarity for all parties as to the precise procedure to be followed in the event of a dispute.

Towards that end, the parties should stipulate whether a dispute will be resolved by way of arbitration or litigation.

In the event the parties opt for arbitration, they should at minimum specify the place of arbitration and the language.

If the parties opt for litigation, they should designate the jurisdiction (see above) - the national or municipal courts in which the lawsuits are to be filed.

5. Force (Majeure)

A “force majeure” clause (French for “superior force”) is a contract provision that relieves the parties from performing their contractual obligations when certain circumstances beyond their control arise, making performance commercially impracticable, illegal, or impossible.

The aftermath of recent natural disasters like Hurricane Maria and Irma have reinforced the importance of carefully planning for the unexpected when negotiating meeting contracts.

If a disaster occurs, will you be able to cancel your order without liability for cancellation fees? Will you be able to go ahead with the shipment, despite risk of loss? A key tool in managing such risks is the force majeure clause.

Conclusion

Follow the points I described above and you’ll be well on your way to drafting a bullet proof business agreement. For any help with contracts or business agreements, contact Cueto Law Group today. Whether something has already gone wrong with a contract or you are trying to draft a crystal clear one, Cueto Law Group has the insight to assist you.