

**How to Make Contracts the
Right Tools for Your Business
Glossary**

Acknowledgement of Risk - A part of a contract that asks the person signing to acknowledge that they understand that there is a risk involved in the service, treatment, or activity they are about to engage with. Typically found in a waiver or consent form.

Ancillary - An ancillary provision of a contract is something that is not part of the core deal, but supports or supplements the core deal. For example, warranties and covenants in the sale of a piece of property are considered ancillary to the core deal, which is the sale itself.

Arbitration - A form of alternative dispute resolution that involves the use of a three-person panel of arbitrators to review the facts of a dispute and reach a legal conclusion regarding liability and damages. The end result of an arbitration is an order awarding damages that may be enforceable in court.

Assumption of Risk - A part of a contract that asks the person signing to agree that they are responsible for the risk of harm that might result from a service, treatment, or activity. The implication is that the person signing and assuming the risk will not try to recover damages for an injury from the person providing the service, treatment, or activity. Typically found in a waiver or consent form.

Bargain – Some think of a discount or a sale when they hear the word bargain, but when it comes to a contract a bargain means that both sides of an agreement have given something up or agreed to something in the exchange so the deal can move forward.

Binding – A “binding contract” is an agreement that the parties are obligated to uphold, it is an enforceable agreement. Legal consequences may follow if a binding contract is broken.

Confidentiality - A part of a contract that protects proprietary or sensitive information from disclosure.

Covenant – A covenant is a type of contractual promise or agreement that creates a binding obligation between parties, similar to a warranty.

Damages - Monetary compensation for harm caused. In a contract dispute, the person claiming they've been harmed by someone breaking a contract usually requests money damages to compensate them for the harm.

Default - Default is what happens when someone breaks a contract, misses a payment, or otherwise fails to follow through on their part of an agreement.

Electronic Assent - Signing a document electronically, for example, with one's name, an electronic signing service such as DocuSign, or with a click-through agreement (e.g., clicking I agree at the bottom of an online form).

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Entirety Clause - Disputes can arise as to whether an agreement is final and complete, or incomplete and still being negotiated. An entirety clause confirms that the agreement is final and complete, and prevents one party from trying to enforce another agreement, for example a earlier draft of the contract.

Exclusivity - A part of a contract that restricts one party from buying, selling, or partnering with others for a particular good or service.

Force Majeure – An act of god, unforeseeable catastrophe, or natural disaster. This type of clause, when included in a contract, will typically relieve one of the parties from performing their duties under the contract if “force majeure” prevents them from doing so. For example, an event host may exercise the force majeure clause in their services agreement when a global pandemic prevents them from being able to host any in person events.

Governing Law - When a dispute arises in a contract the governing law clause determines which state’s laws will apply when interpreting and enforcing the agreement.

HIPAA - This acronym stands for Health Insurance Portability and Accountability Act. HIPAA provides a national standard to protect sensitive patient information from being disclosed by a provider.

Hold in Contempt - To be “held in contempt” means that someone has violated an order or otherwise behaved inappropriately.

Indemnity - To “hold harmless.” An indemnity provision in a contract requires that one party will take responsibility for harm to the other party if someone claims that the other party harmed them. For example, if someone sues a member of a board of directors claiming that the board member made a mistake that hurt them, by law in Vermont the business must indemnify the board member against any damages from a resulting lawsuit.

Injunction - A court order that requires a party to stop doing something, to prevent harm to the other party.

Intellectual Property - A category of property that includes intangible creations such as patents, trademarks, copyrights, and trade secrets.

Licensing (for creative industries) - An agreement between someone who holds the intellectual property rights to something, such as a piece of art or literature, and someone who wants to use it. For example, an artist who owns the rights to a particular photograph may give a license to someone to use the photograph in their own production.

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Mediation - Mediation is a process that involves the use of a neutral third party, called a mediator, to help parties in a dispute reach a mutually acceptable resolution and put that resolution into a binding agreement.

Merger Clause (aka Integration Clause) - A part of a contract that makes it clear that the written agreement is the entire agreement between the parties, and that any other agreement outside of the four corners of the contract is not a part of the contract.

Mitigation – A requirement that, when a contract is broken, the person harmed by the broken contract take steps to reduce the impact. For example, in a lease agreement, if a tenant ends the lease early and moves out, the landlord has to take reasonable steps to find another tenant to rent the space before it can ask for damages. In other words, the landlord has to mitigate the impact of the broken contract by finding another tenant to reduce their damages.

NDA - Non-disclosure agreement, a common agreement requiring the signer to keep information confidential.

Non-Compete - A legal contract between employee and employer to prevent an employee from competing against the employer. The agreement can include type of employment, timing, geographical restrictions, and specified competitor(s).

Release Clause - A part of a contract that asks the person signing to release the other party from liability. Typically found in a waiver or consent form.

Remedy - A remedy in law is a legal solution or resolution to a problem or dispute. Remedies may be available to someone claiming that they have been harmed by the breaking of a contract.

Representations & Warranties - Promises about the facts.

Severability Clause - A severability clause will help ensure that if one clause of a contract is found unenforceable the remainder of the contract will remain valid and enforceable.

Venue - Venue in law refers to the geographic location or district in which a legal case is heard and decided.

Warranty – A promise made about the facts involved in a contract, often accompanied by consequences if that promise is broken. For example, a business selling a piece of property might warranty that the title for the property is clear and that no one else but the seller will be able to claim they own it. Or, a business selling a product might warranty that the product will perform well for up to a year, and explain what it will do to repair the product if it develops a problem in that year.