

BOILERPLATE PROVISIONS IN COMMERCIAL CONTRACTS

How “Standard” Provisions Can Affect the Legal Rights
Under the Contract

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What Are Boilerplate Clauses?

- Often referred to as “Miscellaneous Provisions”
- Considered standard clauses in most contracts
- Not necessarily concerned with the subject matter of the Agreement
- Typically found at the end of the Agreement

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Common Boilerplate Provisions

- Amendments
- Costs and Expenses
- Arbitration
- Choice of Law
- Entire Agreement
- Further Assurances
- Severability
- Notices
- Assignment/Change of Control
- Force Majeure
- Confidentiality
- Waiver of Jury Trial
- Relationship of the Parties
- Damages
- Counterparts

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Boilerplate Clauses Selected For Review

- Entire Agreement
- Assignment and Change of Control
- Further Assurances
- Choice of Law
- Force Majeure

4

Entire Agreement

- Entire Agreement clauses state that the written contract represents the “entire agreement” between the parties.
- Supersedes any previous oral or written agreements on the subject.
- Enhances security around contract terms.
- The parties have to make sure that any representations, promises, binding provisions in a Letter of Intent, etc. are properly included in the written contract.

Entire Agreement

- This Agreement represents the entire agreement between the parties relating to the subject matter hereof. **This Agreement alone** fully and completely expresses the agreement of the parties relating to the subject matter hereof. There are no other courses of dealing, understanding, agreements, representations or warranties, written or oral, except as set forth herein.

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