
THE ESSENTIAL

CONTRACT REVIEW CHECKLIST

What Every Business Owner Should Know Before Signing



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Important Notice

This guide is provided for informational purposes only and does not constitute legal advice. The information contained herein is general in nature and may not apply to your specific situation. Reading this guide does not create an attorney-client relationship between you and Burhanuddin Law LLC.

Every business situation is unique, and legal outcomes depend on the specific facts and circumstances involved. Before making any legal decisions or taking any action based on the information in this guide, you should consult with a qualified attorney who can evaluate your particular circumstances.

Illinois law governs the topics discussed in this guide. If your business operates in other states, additional or different legal requirements may apply.

For a consultation tailored to your business needs, contact us at (312) 216-5174 or visit burhanuddinlaw.com to schedule an appointment.

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1. 15 Red Flags in Commercial Contracts

Before signing any business contract, watch for these warning signs that could expose your company to significant risk:

1. Unlimited Liability

You agree to pay "all damages" without any cap. This could exceed the entire value of the contract.

2. One-Sided Indemnification

You must protect the other party from lawsuits, but they don't have to protect you.

3. Automatic Renewal Clauses

The contract automatically renews unless you give notice months in advance.

4. Broad Termination Rights (for them)

They can end the contract anytime; you're locked in for the full term.

5. Unreasonable Non-Compete Provisions

You can't work with their competitors for years after the contract ends.

6. Intellectual Property Grabs

They own everything you create, even if it's based on your pre-existing work.

7. Vague Scope of Work

The deliverables aren't clearly defined, leading to scope creep and disputes.

8. Hidden Fees

Additional charges buried in fine print or attachments.

9. Unfavorable Venue Selection

Disputes must be resolved in their home state, far from Illinois.

10. Mandatory Arbitration (one-sided)

You waive your right to court, but they keep theirs.

11. Waiver of Jury Trial

You give up the right to a jury if there's a lawsuit.

12. Unclear Payment Terms

When payment is due and what triggers it isn't spelled out.

13. Personal Guarantee Requirements

You personally guarantee the company's obligations.

14. Insurance Requirements You Can't Meet

They require coverage levels that are excessive or unavailable.

15. No Limitation on Consequential Damages

You could be liable for lost profits, lost opportunities, and other indirect damages.

2. Key Terms You Should Always Negotiate

Even "standard" contracts are negotiable. Here are the terms worth pushing back on:

Payment Terms

Net 30? Net 60? Try to get favorable payment timing, especially if you're the one paying.

Liability Cap

Limit your maximum exposure to the contract value or a specific dollar amount.

Mutual Indemnification

If they want you to indemnify them, ask for reciprocal protection.

Termination for Convenience

Add the right to exit the contract with reasonable notice.

Notice Period for Renewal

Shorten automatic renewal notice requirements or eliminate them.

Dispute Resolution

Negotiate for Illinois venue, or at least a neutral location.

Force Majeure

Ensure you're protected if unforeseeable events prevent performance.

Confidentiality (Mutual)

Both parties should protect each other's confidential information.

3. Indemnification Clauses Explained

Indemnification is one of the most important—and most misunderstood—contract provisions. Here's what you need to know:

What Indemnification Means

When you indemnify someone, you agree to protect them from losses, damages, and legal fees arising from certain situations. It's essentially a promise to pay their costs if something goes wrong.

Types of Indemnification

- **Mutual (Fair):** Both parties indemnify each other for their own negligence or misconduct.
- **One-Sided (Unfair):** Only you indemnify the other party, even if they're at fault.
- **Broad Form (Dangerous):** You indemnify for ANY claim, regardless of fault.

What to Watch For

- "Including but not limited to" language that expands scope
- Indemnification for the other party's own negligence
- No cap on indemnification obligations
- Duty to defend (paying their lawyers upfront) vs. duty to indemnify (paying after judgment)

Reasonable Indemnification

A fair indemnification clause should: (1) be mutual, (2) only cover claims arising from your own actions or negligence, (3) have a cap tied to the contract value, and (4) not require you to indemnify for the other party's fault.

4. Limitation of Liability

Limitation of liability clauses cap how much you could owe if something goes wrong. They're critical for protecting your business.

Types of Damages

- **Direct Damages:** Actual losses directly caused by the breach (generally recoverable)
- **Consequential Damages:** Indirect losses like lost profits, lost opportunities (often excluded)
- **Punitive Damages:** Punishment for egregious conduct (typically not contractual)

Standard Protections

Most commercial contracts include: (1) a mutual waiver of consequential damages, and (2) a cap on direct damages tied to the contract value (e.g., "total liability shall not exceed the fees paid under this agreement").

Carve-Outs to Watch

Some contracts limit your liability but not theirs. Watch for carve-outs that exclude: indemnification obligations, confidentiality breaches, IP infringement, or gross negligence.

5. Governing Law & Venue

These clauses determine which state's laws apply and where disputes will be resolved. They can dramatically impact your rights.

Governing Law

Different states have different rules. Illinois law may be more favorable to you than, say, Delaware or Texas law. Always try to get Illinois law to govern if you're an Illinois business.

Venue (Where You Sue)

If a dispute arises, venue determines where the lawsuit happens. Flying to California or New York for court appearances is expensive and inconvenient. Negotiate for Cook County or Northern District of Illinois venue.

Arbitration vs. Litigation

Arbitration can be faster and cheaper, but you give up the right to a jury trial and usually can't appeal. Consider whether arbitration benefits you before agreeing.

Cook County is generally favorable to business plaintiffs. If you might need to sue, Illinois venue works in your favor.

6. What To Do If You've Already Signed

If you've already signed a contract with problematic provisions, you still have options:

Review the Contract Now

Understand exactly what you agreed to. Mark concerning provisions so you're aware of the risks.

Document Everything

Keep detailed records of performance, communications, and any issues. This protects you if disputes arise.

Negotiate an Amendment

The other party may agree to modify terms, especially if you're a valued customer or partner.

Plan for Renewal

Before the next renewal period, prepare your negotiation strategy for better terms.

Exit Planning

If the contract is truly problematic, plan your exit strategy. What are the termination costs? Can you give notice and switch to a better provider?

Get Insurance

If the contract exposes you to significant liability, ensure your business insurance covers the risk.

Consult an Attorney

Before taking any action, get professional advice on your specific situation and options.

7. Contract Review Checklist

Use this checklist before signing any significant business contract:

- Have I read the ENTIRE contract, including attachments and exhibits?
- Are the parties correctly identified with accurate legal names?
- Is the scope of work clearly defined?
- Are payment terms, amounts, and due dates specified?
- Is there a liability cap? Is it reasonable?
- Is indemnification mutual and fairly scoped?
- Are consequential damages waived by both parties?
- What are the termination provisions? Can I exit if needed?
- Is automatic renewal addressed? What's the notice period?
- What state's law governs? Where are disputes resolved?
- Are non-compete/non-solicitation provisions reasonable?
- Who owns intellectual property created under the contract?
- Are insurance requirements achievable?
- Are confidentiality provisions mutual?
- Is there a force majeure clause?
- Have I compared this to similar contracts I've signed?
- Have I had an attorney review significant contracts?

8. Getting Professional Help

Not every contract needs attorney review, but significant agreements definitely do. Consider professional review for:

- Contracts over \$25,000 in value
- Long-term agreements (1+ years)
- Agreements with significant liability exposure
- Contracts from large companies with non-negotiable "standard" terms
- Partnership or joint venture agreements
- Employment contracts for key hires
- Real estate leases
- Any contract you don't fully understand

Ready for Expert Contract Review?

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Schedule your contract review consultation today.