

Entering into contracts may be one of the scarier parts of doing business, but knowledge about a few common terms can help make sure you do not get tricked into an agreement that will not treat you right.

Termination. Pay attention to the language specifying the length of the contract term and how and when the contract will terminate. Terminating for convenience means just that – a party can terminate whenever it wants to, with whatever consequences the contract lists. Other contracts may require “cause” to terminate, so note what constitutes cause to terminate. Consider whether you want a contract to renew automatically at the end of a term. Such clauses frequently require notice by a certain time (commonly one month before the end of the term, but this varies) if a party wants to terminate the auto-renewing contract. In those cases, you may be forced into a contract for an additional term if you do not submit notice at the required time.

Indemnification. An indemnification clause requires the indemnifying party to cover the losses or damages of the indemnified party if the indemnifying party does something that causes harm or causes a third party to sue the indemnified party. Consider the types of damages covered by the indemnification provision, and whether the indemnification should be mutual, one-sided or specific to the needs of each party. Negligence or willful misconduct and breach of contract will frequently be included, but you may want to include some additional types of damages depending on the nature of the contract. In agreements involving intellectual property, infringement of intellectual property rights may be included in the indemnification section.

Confidentiality. A confidentiality clause binds the parties (or party in a one-sided clause) to keep the listed information confidential except in certain conditions. If you have not executed a non-disclosure agreement prior to beginning negotiations with another party, you will likely want to make sure your contract includes strong language protecting any information you want to remain confidential. Make sure any list of information deemed confidential includes all the relevant information specific to your situation. Confidentiality clauses typically have exceptions for when the information is already known to the other

party, is disclosed by another party not under obligation of confidentiality, is required by a court order, or is independently developed. Some clauses may require confidential information to be marked "confidential" to receive the protection, so consider whether this requirement will be practical in your circumstances. Other clauses limit the ability of a party to use the name of the other party publicly or in advertising (such as representing that the party is a client or customer). Consider whether such a clause would be appropriate for your business.

Force Majeure. "Force majeure" is French for "superior force." In contracts, a "force majeure" provision frees parties from liability for delay or failure to perform caused by circumstances beyond their control, such as war, terrorism, strike or other labor disputes, and natural events like earthquakes, hurricanes, floods and fires (sometimes termed "acts of God"). Consider whether you want obligations of payment to be excluded from a force majeure clause. Typically, obligations of confidentiality should be excluded from a force majeure clause.

Insurance. Some contracts require one or both parties to maintain certain types of insurance. This may include worker's compensation insurance, commercial general liability insurance (sometimes specifying a required coverage amount), automobile liability insurance, professional liability insurance or cargo insurance. Consider whether you want to require the other party to maintain any particular types of insurance and whether any listed types of insurance make sense for the contract.

Miscellaneous. Most contracts list standard "boilerplate" or miscellaneous terms at the end of the contract. Do not assume these terms have no meaning or importance! Some of the most important terms of a contract may be included here, such as governing law and jurisdiction, choice of state law that will apply to interpret the contract, the location where a lawsuit regarding the contract must be brought, other general terms stating how to amend the contract, where to send notices (always in writing), what terms will survive even when the contract has terminated or expired, and whether the contract can be assigned to another party.

Contract "Trick or Treat"
by Callie Rogers

An attorney should review most business and intellectual property agreements, but some familiarity with these contract terms will help you as you discuss the contract with your attorney and with the other party.