

10 Common Boilerplate Provisions That Should Be Considered in Every Agreement

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Presented by:
D. Jonathan Coombs
Witten LLP
Edmonton, Alberta

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TERMINOLOGY

The term "boilerplate" refers to standardized language in contracts and to provisions that are often grouped together most often at the end of the agreement under a title such as "Miscellaneous," or "General," or "Standard." These provisions do not have much in common with one another except that they do not fit more appropriately anywhere else in the agreement and are thus miscellaneous terms grouped together for convenience.

Even though boilerplate is buried in the back of the agreement, these provisions are important and ignoring them may be to the detriment of the party doing so. Referring to these provisions as "general" or "standard" sometimes diminishes the how vital some of these provisions are. The term "Boiler plate" is a most unfortunate term that itself leads to the connotation that these terms are "standard", and do not need to be reviewed, negotiated or modified, and therefore likely of limited importance.

Since boilerplate provisions tend to be more general in nature than other clauses in an agreement, there is a tendency only to give a quick glance before moving on. The significance of boilerplate language is therefore often overlooked or simply taken for granted. Lawyers preoccupied with the substantive, deal specific provisions of an agreement sometimes treat the boilerplate provisions like formulaic afterthoughts. This may lead to boilerplate provisions being included in an agreement without any forethought leading to unintended consequences for the client.

BOILERPLATE LANGUAGE IS OFTEN USED BUT SELDOM CAREFULLY REVIEWED

So-called "boilerplate" has much more substance than the name indicates and although including provisions without thought may lead to unintended consequences, the effect of boilerplate is sometimes most noticed when so called "standard terms" are omitted from a contract. Each boilerplate clause should be included in a particular agreement for a specific purpose and should not be blindly inserted simply because that clause was included in the last agreement the lawyer drafted. It is important that these clauses are reviewed by lawyers in conjunction with the operative terms of the contract to ensure that they reflect the agreement between the parties and that the meaning and purpose of each included provision is fully understood in order to verify that the rights and obligations of the parties are protected and that inclusion of a particular provision is appropriate under the circumstances.