

STANDARD AGREEMENT

Definition of an standard agreement:

A standard form contract is a contract between two parties that does not allow for negotiation, i.e. take it or leave it. Sometimes it is referred to an adhesion contract or boilerplate contract. ... Sometimes it is referred to an adhesion contract or boilerplate contract.

Examples of standard form contracts can include:

- Employment contracts
- Lease agreements
- Insurance agreements
- Financial agreements

If you intend to offer standard form contracts you must not include terms that are considered unfair. This could include terms that:

- Allow one party (but not another) to avoid or limit their obligations
- Allow one party (but not the other) to terminate the contract Penalise one party (but not another) for breaching or terminating the contract
- Allow one party (but not another) to vary the terms of the contract.

List of the main clauses to be included in a standard agreement:

BASIC CLAUSES

- **Names of the parties:** The parties are provided with a particular name that is used to refer them in the entire agreement.
- **Relationship of Parties:** An agreement shall be deemed to constitute a partnership or agency between the Parties and no Party shall have the authority to bind or shall be deemed to be the agent of the other in any manner.
- **Definitions:** There are certain terms used in the agreement which have a technical meaning. Such terms should be defined under this clause of the agreement that makes interpretation accurate.
- **Term:** The duration of the agreement should be included in the agreement (in year or months). The term of the agreement shall be in force unless contract is terminated by either parties or on mutual consent of both the parties (term clause is linked to termination clause).
- **Amendment:** If the Parties wants to make any alteration in the contract, its procedure should be specified in this clause.
- **Engagement and Scope of Work:** The Scope of Work (SOW) is the area in an agreement where the work to be performed is described. The SOW should contain any milestones, reports, deliverables, and end products that are expected to be provided by the performing party. The SOW should also contain a time line for all deliverables.

- **Assignment:** The parties shall not be entitled to assign or license any or all of his rights and/or benefits under this MOU/Agreement to any other party.
- **Waiver of Rights:** Save and except as expressly provided in an Agreement, no exercise, or failure to exercise, or delay in exercising any right, power, or remedy vested in any Party under or pursuant to an Agreement shall constitute a waiver by that Party of that or any other right, power, or remedy.
- **Counterparts:** An Agreement may be signed by both the parties in any number of counterparts, each of which is an original and all of which, taken together, constitutes one and the same instrument.

MANDATORY CLAUSES

- **Title of agreement:** It is necessary to name the agreement. The title of the agreement denotes nature or type of agreement.
- **Dispute Resolution:** How the dispute shall be resolved? There are different modes of dispute resolution such as mediation, arbitration or conciliation.
- **Jurisdiction:** In case of any dispute between the parties, which court shall have jurisdiction to handle such matters? The Parties shall use the word 'exclusive jurisdiction' to limit the location.
- **Arbitration clause:** An arbitration clause is a provision in a contract that specifies how the parties intend to resolve disputes relating to the contract. Generally, by including an arbitration clause in a contract, the parties agree to first attempt to resolve any disputes through arbitration rather than litigation.

Terms of Payment:

Duration of Payment:

- Time based payments – every 30 days, 45 days, etc.
- Progressive payments – on completion of first milestone, on receiving results,
- Full payment on the entire work done.

Method of Payment:

- Fixed Based Model – a fixed amount of payment shall be made;
- Revenue Based Model – a percentage of revenue earned shall be paid,
- Profit Based Model – a percentage of profit made shall be paid.

Mode of Payment:

- Cash,
- Cheque,
- Net Banking.

Force Majeure: In case any event is beyond the control of parties or unforeseeable, whether the agreement can be terminated due to non-performance by either parties?

Signature sections: First and last pages need to be signed by the parties along with initials on other pages. Signature is mandatory for validity of the contract. In certain contracts, attestation from witnesses shall also be required.

Duplicate Copies: It is recommended that each party should have a copy of the agreement and both the parties have understood and agreed upon terms and conditions of the agreement.

ESSENTIAL CLAUSES

- **Termination:** Circumstances when the agreement can be brought to an end by either parties shall be mentioned. Also, how many days prior written notice period is mandatory should be specified.
- **Governing Law:** The laws applicable to the contract are very important (for example, this agreement shall be governed by the laws of India).
- **Confidentiality:** Whether the confidential information exchanged between the parties can be shared with a third party. Also provide with the exceptions to it. It is recommended to define “confidential information” in the definition clause.
- **Non-Compete and Non-Solicitation:** Many agreements will call for non-competition and/or non-solicitation clauses. The non-competition clause prevents a party from competing against the other using the information from their prior relationship for some period of time. The non-solicitation clause typically prevents one party from taking the employees, customers or other commercial relationships of the other party for some period of time.
- **Recitals:** This clause gives the background of the parties and the purpose of entering into the agreement. If it is a supplementary (additional) agreement then the reference of the main agreement is provided under this clause.
- **Representation and Warranties:** This clause provides an underlying statement of fact by the parties (for example, Mr. X is sole owner of the property, the property is free from encumbrances). In future, if it is

proved that the other party has misrepresented the facts, the party has the right to seek compensation from the guilty party.

- **Consideration:** One of the essential elements for a contract to be considered valid is consideration. Consideration can be monetary or it may take the form of a promise to carry out a particular act (such as services, money, etc.).
- **Invoices (in some contracts):** What all things should be included in an invoice? Date of invoice, name of the parties, name of item/activity/service for which invoice is made, amount of invoice, percentage of taxes, etc. **Note:** If you are registered as MSME (Micro, Small or Medium Enterprise), the invoice should specify the same.
- **Notices:** The address or email-id of the parties should be provided in this clause to deliver notice to the parties.
- **Intellectual Property (in some contracts):** This clause will help to know who shall own the intellectual property (patents, copyright and trademark) that is created out of contract and whether such intellectual property can be assigned or transferred to a third party.
- **Exclusivity (in some contracts):** The parties can be restrained from providing the same kind of services or entering into the same nature of agreement with a third party during the existence of this agreement.
- **Severability:** In case, some part of contract is declared illegal then other part of contract shall be valid. Such a clause saves the contract from being entirely dysfunctional.
- **Exemption clause:** An exemption clause is a provision in a contract that limits the liability of one party. It applies in the case of breach of contract or contract default. Not all exemption clauses are the same. Three principal types exist: limitation clauses, exclusion clauses, and indemnity clauses.
- **Schedules or Annexure (in some contracts):** When the information is too lengthy to be included in the clauses section, such details can be mentioned in tabular or pointer form at the end of the agreement (for example: list of properties sold, services to be provided by event managers).
- **Entire Agreement:** This clause specifies that the agreement covers all rights and obligations of the parties and supersedes all other agreements

whether written or oral between the parties. Such a clause helps to avoid negotiations earlier made which were not finalized later.

- **Indemnity clause:** An indemnity clause is a type of exemption clause in a contract in which one party agrees to indemnify, or answer for, liability or losses incurred by another party. When two parties enter into a contract with an indemnity clause, party A agrees to be held liable for all losses party B may incur. That is, party A agrees to compensate and/or defend party B if party B is sued for a certain, specified action. Party A's liability is limited to party B's liability.
- **Sunset Clause:** A sunset clause is a provision in a contract that sets an outer time limit on the contract's viability. If the parties have not been able to consummate the contemplated transaction by the sunset date, either party has the right to walk away from the contract.
- **Non-Compete Clause:** A non-compete clause is usually found in an employment contract. It prohibits the employee from competing with the employer during a set span of time by either working for a competitor. Usually the clause also describes the region or state in which the employee may not compete as well as the relevant scope of the services and skills. For example, usually the clause also describes the region or state in which the employee may not compete as well as the relevant scope of the services and skills.

DESIRABLE CLAUSES

- **Merger (Integration):** In most contracts you'll find a merger (also referred to as an integration clause) which provides that all prior agreements among the parties are brought together in this agreement. This is usually desirable because we want a contract that is complete and is the only document governing the relationship among the parties for that particular item.
- **Indemnification:** Another provision that is common in contracts is the indemnification provision. What the indemnification does is shift risk from one party to another. It's often appropriate in commercial arrangements to understand who is taking the risk for various actions.
- **Non-Violation:** Another key clause in contracts is non-violation provisions. These provisions typically provide each of the parties will not violate agreements with other parties. If Party A and Party B are entering into a contract it is not uncommon for Party B to want to be sure that

Party A is not breaking a contract with another person by entering into the agreement.

- **Covenants:** Covenant means a promise to do certain acts in future. Unlike representations and warranties, it does not include statements of fact (for example, Mr. X shall make payments to Mr. Y before the 10th day of each month).
- **Indemnification:** It is basically about shifting the risk to another party. In case breach of any provision by one party causes loss to another party, the defaulting party has to make good the losses caused to the non-defaulting party. How indemnification will be done should also be mentioned in this clause.
- **Conclusion:** Contracts are often complex from the outside. But usually they're just a grouping of different legal arrangements all in one document and should be thought of as such.
- **Exclusion:** An exclusion clause is a type of exemption clause included in contracts to limit a party's liability. It stipulates that one of the parties will not be liable to the other in certain specified situations or circumstances. For example, an exclusion clause in a life insurance contract may state that a death by suicide is excluded.
- **Penalty Clause:** A penalty clause in a contract is a provision that requires a party that has not fulfilled its contractual obligations to pay specified compensation to the other party for the breach. Unlike a liquidated damages clause, a penalty clause is not tied to an estimate of possible actual damages. For example, a penalty clause may state that if either party breaches the contract, they must pay the other Rs. 10,000.
- **Exculpatory Clause:** An exculpatory clause limits a party's liability for damage incurred during the performance of the contract terms. For example, a dry-cleaning business may include an exculpatory clause that releases it from liability if an article of clothing is damaged during the dry-cleaning process.

Case Laws :

- In the case Standard ***Retail Private Limited v. Gs Global Corp and 3 Others, On 8th April, 2020*** Bombay High Court recently dismissed a plea invoking the Force Majeure exemption.

- In ***V. Lakshmanan v. B.R. Mangalagiri and Others, 1995 (2) SCC (Suppl.) 33***, Supreme Court held as follows: The question then is whether the respondents are entitled to forfeit the entire amount. It is seen that a specific covenant under the contract was that respondents are entitled to forfeit the money paid under the contract. So when the contract falls through by the default committed by the appellant, as part of the contract, they are entitled to forfeit the entire amount.
- In ***Mr. Diljeet Titus, Advocate vs Mr. Alfred A. Adebare And Ors. on 8 May, 2006*** the defendant was working as an advocate at the plaintiff's law firm. On termination of employment, the plaintiff contended that taking away privileged information of the law firm, the use of which other than by plaintiff, can make them liable to their clients. The defendants claim to be the owners of the copyright in what they have created and it is their contention that the creation was independent and the same was so created by advising and counselling the clients and the computer generated data was lying in the computer system of the plaintiff. The Delhi High Court rejected this contention and ruled that defendants are restrained either through themselves or their representative from utilizing the material of the plaintiff forming the subject matter of the suit and from disseminating or otherwise exploiting the same including the data for their own benefit.
- In ***ABC Laminart v A.P Agencies, 1989 SCR (2) 1*** there was a contract between the parties for the supply of 5000 bobbins of Rulon Metallic yarn. The Appellant had the jurisdiction of Kaira, Gujrat and the respondent functioned his business in Salem, Tamil Nadu. The jurisdiction clause in the contract reads as "Any dispute arising out of this sale shall be subject to Kaira jurisdiction." The respondent on the arising dispute filed a suit in the court of Salem, Tamil Nadu, the appellant on this filed a case challenging the jurisdiction of the court of Salem, and the dispute was appealed to the Supreme Court.
- It was observed by the Supreme Court that it is not explicitly mentioned in the contract clause regarding exclusive jurisdiction. It was held by the court that in the absence of words – "Only", "alone" and "exclusive", the maxim of "Expressio unius est exclusio alterius" is to be used which means the explicit mention of one is the exclusion of another. It was stated by the court that "it could not be said that jurisdiction of the Court at Salem which Court otherwise had jurisdiction under law through connecting factor of delivery of goods there at was expressly excluded hence, both the courts had jurisdiction.