



1/31/24 Service Contracts Training

Questions & Answers

I. GENERAL QUESTIONS

- **QUESTION: Which part of the contract can land you in the most trouble, meaning which one is the most critical to negotiate with your client? Clearly all of it should be, but where do most of the issues come up?**
 - **ANSWER:** There are many clauses that can create issues later on. The first one is Scope of Services. When you don't clearly define what type of services you will be providing, listing all the tasks; this clause may cause a conflict between the parties. We gave the example of a cleaning business in the presentation. If for example you only write, "I will clean your house" in the scope of services, and then if you don't clean the outside of the windows, you may get into trouble because you were not specific and did not say "windows are excluded."
 - Another critical clause is limitation of liability. The clause tends to have very heavy legal language that you may find confusing. In this section, if you don't limit your liability and then something goes wrong, you may end up owing a lot more money to the other party than you would expect.
 - Another clause to mind is Warranties. Check whether your industry has customary warranty obligations, because sometimes warranties can be in the form of "implied warranties." Either way, it is always good practice to incorporate in the "disclaimer of warranties" clause in the contract.
 - As you negotiate contracts, make sure *all* the details of the negotiated deal appear accurately in the contract language. It can be tempting to capture negotiated terms in another document, such as email, without editing the contract, but it can be *very difficult* to defend your legal rights if the true terms of the deal are not in the contract itself, or if the language of the contract contradicts what you negotiated.

- **QUESTION: Can you explain a bit why some of the information in this presentation might not apply to independent contractors and maybe define what an independent contractor is?**



- **ANSWER:** We see independent contractors usually in Construction businesses; where a contractor hires other contractors to complete a project or when a customer hires a Contractor to provide services; such as remodeling, handyman, small construction tasks.
- In those types of contracts, the scope of services is a bit complex; liability clauses can definitely sometimes be opposite of what we provided in our contract template. Also the owner of Intellectual Property or what we call “Work Product” is different from our template. In independent contractors, the work product obviously should belong to the customer, however in our template we kept the ownership rights with the service provider businesses.

II. QUESTIONS RELATED TO SPECIFIC CLAUSES

- Warranty
 - **QUESTION: We are all used to warranties in contracts for products that we purchase—everything from computers to home appliances and more. What is the difference between a warranty in a services contract and a warranty in a contract for sale of goods?**

- **ANSWER:** A warranty clause in a services contract is similar in concept to warranties most of us are familiar with from daily life. If something major is wrong with the product, a warranty can provide you with getting your money back or at least getting the item repaired without charge.

In a services contract, a warranty clause refers to promises made by your businesses about your services. If the customer has a negative experience with the services, the customer can potentially use such promises to make a claim against your business that the contract was not lived up to and seek financial recovery.

In general, best practice with service contracts is to not make any warranties. Mistakes can happen when providing services—and even when you have provided services perfectly there is still the possibility a customer could be dissatisfied.

The best practice is to make clear in the contract that you have not made



any warranties. And this is using what is called an “As Is” or “Disclaimer of Warranties” clause. This is what we have in the template.

- Intellectual Property (IP)
 - **QUESTION: Would you ever share the IP with the client?**
 - **ANSWER:** Yes, a common IP clause in a service contract involves the small business—which created the IP during the course of the contract—granting a license to the other party to use the IP. Under the clause we have drafted in our template, the customer is given a license to use the IP for a specific purpose that we leave open for your drafting. This purpose limitation allows a business owner to limit the scope of the customer's license to use the IP. You may wish to add other limitations, such limiting how long the customer’s license rights last.

Communities Rise Contact Information

Questions? Feel free to send us an email at smallbiz@communities-rise.org or reach us via our [contact form](#). Feel free to leave a voicemail at 206-324-5850 or see our [business resources](#) on our website.