

DON'T SIGN THAT CONTRACT!

1. AS LITIGATORS, we are generally called in after the fact when a deal has gone bad. In many cases, we encounter clients who are saddled with a vendor contract drafted entirely by their vendor and which they signed without objection.

2. IT SHOULD COME AS NO SURPRISE that if you sign the other side's contract, odds are the terms will favor the party who drafted it. Lawyers are funny that way—they draft contracts to favor the party who hired them. Frequently, we find that critical terms including late fees, limitation of remedies, termination fees, attorneys fees provisions, forum selection or venue clauses, and even arbitration clauses, are not helpful to the client in the ensuing dispute and provide unfair settlement leverage to the drafting party ("fine, come sue us in New York if that's how you really feel").

3. IN CONTRACTS for the sale of goods, we also frequently see dueling contract terms where the buyer's offer includes statements such as "this purchase order expressly limits acceptance to the terms of this offer and buyer hereby objects to any different or additional terms contained in any response to this purchase order." The seller's fine print will frequently seek to trump this language by stating "this acceptance is expressly conditioned upon buyer's assent to all of the terms in this acceptance." The so-called "battle of the forms" has winners and losers, depending on which rules the court applies, which may vary by state.

4. ALL THIS COUNSELS THAT CLIENTS SHOULD NEVER BLINDLY SIGN form agreements drafted by the other side. In this current economic environment, clients should not hesitate to push back against proposed one-sided contracts. If pushed, vendors will oftentimes blink and agree to changes in their preferred form of contract because they believe they need to do so as a condition of getting the business. But unless you try, you will never know. We think it makes sense for many of our clients to implement a uniform contract standard. For example, have a uniform standard that selects Minnesota as the forum for any disputes. When negotiating, it is far easier to secure a Minnesota forum for any dispute if you can tell the vendor it is your policy not to enter into vendor contracts that designate any forum for dispute other than Minnesota. There is no question that a careful review of contracts before they are signed—and objection to overreaching terms—can save a lot of headaches and heartache later.

Sign _____
Date _____



By Alain Baudry |

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