



FROM THE IUSTORIA BLOG

Five Contract Clauses That Can Save You Millions (and That Nobody Reads)

Five clauses that decide every dispute — and that most people skip as boilerplate.

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Most people read the subject matter, the price, and the deadline in a contract. They skip the rest as "legal boilerplate." The trouble is that those skipped passages determine what your dispute will look like when things go wrong.

In our practice, we have identified five clauses that carry decisive weight when a conflict arises — and that most contracting parties never properly read.

1. Arbitration clause versus jurisdiction clause

Before anyone begins to consider who is right, there is a preliminary question: where will the matter be decided? That is precisely what an arbitration or jurisdiction clause determines.

An arbitration clause refers the dispute to an arbitral tribunal. Advantages: speed (months rather than years), confidentiality, the ability to select arbitrators with expertise in the relevant field. Disadvantages: higher initiation costs, limited grounds for appeal.

A jurisdiction clause designates which state court will have competence. This can be critical in cross-border contracts — without one, jurisdiction is determined by EU rules that may not favour your position.

What happens when it is missing: the dispute is heard by the court with jurisdiction under general rules — typically the court at the defendant's registered seat. If your business partner is in Ireland, you litigate in Ireland. If they are in China, the situation is more complicated still.

A practical example: a Czech supplier entered into a contract with a German buyer. The contract contained neither an arbitration nor a jurisdiction clause. When the buyer stopped paying, the supplier had to file a claim in Germany — in German, with a German lawyer, under German procedural law. The cost of pursuing the claim exceeded the amount owed.

2. Limitation of liability

The limitation of liability clause is probably the most important provision that nobody reads. It sets the maximum amount one party can claim from the other as compensation for damages.

Without a limitation of liability, you are responsible for all damage you cause — including lost profits, consequential losses, and damages you could not reasonably have foreseen.

A standard formulation such as "liability is limited to the amount of fees for services provided in the preceding 12 months" can mean that your maximum exposure is CZK 500,000 — instead of CZK 50 million.

What happens when it is missing: you are liable in full. In one case from our practice, an IT system supplier caused a three-day outage for a client. The direct repair cost was CZK 200,000. The client's lost revenue over those three days was CZK 8 million. Without a limitation of liability, the supplier paid the full CZK 8 million.

3. Change of control clause

A change of control occurs when the ownership structure of one of the contracting parties changes — typically through an acquisition, merger, or the entry of a new investor.

A change-of-control clause gives the other party the right to respond — usually by terminating the contract, renegotiating terms, or requiring consent to the change.

What happens when it is missing: your contract continues unchanged even if your contractual partner is acquired by your direct competitor. You are providing services to a company now owned by someone you would never have contracted with voluntarily — and you have no legal mechanism to exit.

A practical example: a distributor had an exclusive agreement with a manufacturer. The manufacturer was acquired by a competing distributor. Without a change-of-control clause, the exclusive agreement remained in force — but now benefited the competitor, who gained access to the distributor's pricing, terms, and customer base.

4. Force majeure

Before 2020, the force majeure clause was widely regarded as an academic exercise. The pandemic demonstrated otherwise.

A force majeure clause defines what happens when performance of the contract is prevented by circumstances beyond the parties' control — natural disasters, war, epidemics, government orders.

The key questions: what precisely constitutes force majeure? Must performance be entirely impossible, or is it sufficient that it is substantially impeded? What notification obligations does the affected party have? How long can force majeure persist before a right of termination arises?

What happens when it is missing: Czech law contains a general provision in the Civil Code (Section 2913(2)), but it is default and broadly worded. Without a contractual arrangement, you will be arguing over whether a specific circumstance falls within the statutory definition — at precisely the moment when you need a swift resolution.

A practical example: in 2020, we dealt with a contract for the supply of components from Asia. The supplier could not perform because factories had closed. The contract did contain a force majeure clause, but defined it so narrowly that it covered only "natural disasters and armed conflicts." The pandemic was not included. The result was a year-long dispute over whether a pandemic qualifies as a natural disaster.

5. Severability clause

The shortest and seemingly least significant clause. It says essentially this: if any provision of the contract is found to be invalid, the remaining provisions continue in force.

Without a severability clause, the invalidity of one provision — say, a disproportionately high contractual penalty — can open the door to arguments that the entire contract is void because the parties would not have entered into it without that provision.

A well-drafted severability clause goes further: it stipulates that the invalid provision shall be replaced by a provision that most closely approximates the purpose and economic effect intended by the parties.

What happens when it is missing: the counterparty gains argumentative space to challenge the entire contract. In practice, this occurs rarely, but when it does, the consequences are substantial — instead of a dispute over one clause, you are fighting over the validity of the whole agreement.

Practical recommendations

When reviewing any commercial contract, I recommend starting from the end — from the clauses that address what happens when things go wrong. The subject matter and the price matter when the contract is working. But these clauses matter when it is not.

Check five things: where you will litigate, what your maximum payout is, what happens when the ownership changes, how you handle unforeseeable events, and whether one defective link can bring down the entire chain.

It takes an hour. It can save millions. For more typical contract mistakes, see [Contract mistakes — five errors we see most often](#), and for the economics of prevention vs. dispute, see [A twenty-thousand contract or a two-hundred-thousand dispute](#). If you are setting up or restructuring a company, [Articles of association are not a formality](#) is the relevant read.

Drafting or revising a commercial contract that won't come back to bite you in court? In our [risk prevention practice](#) we set these clauses up to work for you — not against you. [Get in touch](#).

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