

UCC Tip of the Month - Don't Rely on the Boilerplate

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In one popular legal cartoon, a lawyer is seen to be explaining a contract to his client with a quote reading: "Remember, it's the boilerplate that makes it ironclad."

Documenting transactions for the sale of goods is a significant step in avoiding disputes later, or in positioning yourself should litigation arise. However, in many cases buyers and sellers of goods rely upon "boilerplate" forms to document their deals with little or no thought as to what the forms actually say, or whether they are even appropriate for the transaction they are about to consummate.

One of the principle dangers in the use of boilerplate forms is that after creating a document to presumably fit all situations, the user may unwittingly omit significant terms that are both unique and critical to the deal at hand. In some cases, and despite the parties' best efforts to document their steps, the writings used may even leave open the question of whether a contract was ever formed.

Lawyers have made careers over what has been left out of contracts when deals go bad. There are books and treatises written and entire law school courses devoted to the subject of whether a contract has actually been formed.

Even when the parties agree that a contract exists, the use of boilerplate forms can sometimes result in disputes over the agreement's operative terms when the forms inevitably conflict. Other times, blind reliance on time-tested boilerplate forms can cause the omission of significant terms. When this occurs, the parties and the court are left with little guidance when disagreements inevitably arise over terms or performance.

Michigan's version of the Uniform Commercial Code contains several "gap-filler" provisions, the unique purpose of which is to fill in the contractual holes left by the parties, whether intentionally or otherwise. While UCC gap-fillers cannot complete a contract that would otherwise fail for lack of an offer, acceptance, consideration and simply a meeting of the minds, gap-fillers can guide the parties as how a court will enforce their agreement if it is for whatever reason silent on many significant terms.

UCC TIP OF THE MONTH - DON'T RELY ON THE BOILERPLATE Cont.

Failing to reach agreement over terms can result in terms being imposed or, even worse, the failure of the contract altogether. Don't live in doubt. Plunkett Cooney's attorney can help you draft your contracts to avoid ambiguity and the risk that entails. If you find yourself in a dispute over a contract already in use, the firm can help there too, so feel free to give one of our attorneys a call.