

Form:

Sample Limitations of Liability

Description:

Sample language for limiting one party's liability under a contract

The following are examples of limitations of liability in the context of a consulting or services agreement:

4. STANDARD OF CARE.

The Company warrants that its services shall be performed by personnel possessing competency consistent with applicable industry standards. No other representation, express or implied, and no warranty or guarantee are included or intended in this Agreement, or in any report, opinion, deliverable, work product, document or otherwise. Furthermore, no guarantee is made as to the efficacy or value of any services performed or software developed. THIS SECTION SETS FORTH THE ONLY WARRANTIES PROVIDED BY THE COMPANY CONCERNING THE SERVICES AND RELATED WORK PRODUCT. THIS WARRANTY IS MADE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, NON-INFRINGEMENT, TITLE OR OTHERWISE.

5. LIABILITY.

5.1 Limitation. The Company's liability, including but not limited to Client's claims of contributions and indemnification related to third party claims arising out of services rendered by the Company, and for any losses, injury or damages to persons or properties or work performed arising out of or in connection with this Agreement and for any other claim, shall be limited to the lesser of (i) _____ dollars (\$_____) or (ii) payment received by the Company from Client for the particular service provided giving rise to the claim. Notwithstanding anything to the contrary in this Agreement, the Company shall not be liable for any special, indirect, consequential, lost profits, or punitive damages. Client agrees to limit the Company's liability to Client and any other third party for any damage on account of any error, omission or negligence to a sum not to exceed the lesser of (i) _____ dollars (\$_____) or (ii) the payment received by the Company for the particular service provided giving rise to the claim. The limitation of liability set forth herein is for any and all matters for which the Company may otherwise have liability arising out of or in connection with this Agreement, whether the claim arises in contract, tort, statute, or otherwise.

5.2 Remedy. Client's exclusive remedy for any claim arising out of or relating to this Agreement will be for the Company, upon receipt of written notice, either (i) to use commercially reasonable efforts to cure, at its expense, the matter that gave rise to the claim for which the Company is at fault, or (ii) return to Client the fees paid by Client to the Company for the particular service provided that gives rise to the claim, subject to the limitation contained in Section 5.1. Client agrees that it will not allege that this remedy fails its essential purpose.

5.3 Survival. Articles 2, 4, 5, and 6 survive the expiration or termination of this Agreement for any reason.

6.5 Notices. Client shall give the Company written notice within one hundred eighty (180) days of obtaining knowledge of the occurrence of any claim or cause of action which

Client believes that it has, or may seek to assert or allege, against the Company, whether such claim is based in law or equity, arising under or related to this Agreement or to the transactions contemplated hereby, or any act or omission to act by the Company with respect hereto. If Client fails to give such notice to the Company with regard to any such claim or cause of action and shall not have brought legal action for such claim or cause of action within said time period, Client shall be deemed to have waived, and shall be forever barred from bringing or asserting such claim or cause of action in any suit, action or proceeding in any court or before any governmental agency or authority or any arbitrator. All notices or other communications hereunder shall be in writing, sent by courier or the fastest possible means, provided that recipient receives a manually signed copy and the transmission method is scheduled to deliver within 48 hours, and shall be deemed given when delivered to the address specified below or such other address as may be specified in a written notice in accordance with this Section.

If to the Company:

If to Client:

Any party may, by notice given in accordance with this Section to the other parties, designate another address or person or entity for receipt of notices hereunder.

The following clauses attempt to limit the liability of a licensor under a shrink wrap license agreement:

Disk Warranty

The sole warranty regarding the Software and related materials is that the original disk is free from physical defects in material and workmanship, assuming proper use, for a period of ninety (90) days from date of purchase. If such defect occurs during this period, you may return your faulty disk to Licensor, along with a dated proof of purchase; Licensor will replace it free of charge. After 90 days, you may obtain a replacement by sending your defective disk and a check for \$_____ (add sales tax of residents of AR, AZ, CA, CT, FL, IL, MA, MI, MN, NJ, NM, NV, PA, TX, UT, VA WA) to Licensor.

Your sole and exclusive remedy for any breach of representation or warranty is that Licensor, at its option, either (a) will refund your payment for the Software upon your return of the Software and related materials, with a copy of your receipt, or (b) will replace it on an exchange basis without charge (except as provided above).

EXCEPT FOR THE EXPRESS WARRANTY OF THE ORIGINAL DISKS SET FORTH ABOVE, THIS SOFTWARE IS PROVIDED "AS-IS," AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, LICENSOR DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, BY STATUTE OR OTHERWISE, REGARDING THE SOFTWARE, DISK, AND RELATED MATERIALS, INCLUDING THEIR FITNESS FOR A PARTICULAR PURPOSE, THEIR QUALITY, THEIR MERCHANTABILITY, OR THEIR NONINFRINGEMENT. THE LIABILITY OF LICENSOR UNDER THE WARRANTY SET FORTH ABOVE SHALL BE LIMITED TO THE AMOUNT PAID BY THE CUSTOMER FOR THE PRODUCT. SOME STATES DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSIONS MAY NOT APPLY TO YOU. IN THAT EVENT, ANY IMPLIED WARRANTIES ARE LIMITED IN DURATION TO 90 DAYS FROM THE DATE OF PURCHASE OF THE SOFTWARE. THIS WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS. YOU MAY HAVE OTHER RIGHTS, WHICH VARY FROM STATE TO STATE.

Certain Limitations

Licensor has no control over your use of the Software. Licensor does not and cannot warrant the performance or results that may be obtained by its use. Licensor does not represent, warrant, or guarantee the accuracy and timeliness of the data contained in the Software and Licensor shall have no liability of any kind whatsoever to you, or to any other party, on account of any inaccuracies in or untimeliness of the data, or for any delay in reporting such data contained in the Software. Various information in the Software constantly changes, and the information in the Software is only as of a particular date. Licensor does not warrant that the operation of the Software will be uninterrupted or error free. Licensor is not responsible for problems caused by accident, abuse, mishandling, alteration, or improper use. Licensor does not warrant or guarantee the suitability of the Software or that it will meet your requirements.

Limitation of Damages

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, LICENSOR AND ITS SUPPLIERS WILL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES (INCLUDING DAMAGES FOR LOSS OF BUSINESS, LOSS OF PROFITS, OR THE LIKE), WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE, EVEN IF LICENSOR OR ITS REPRESENTATIVES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF A REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. LICENSOR'S TOTAL LIABILITY TO YOU FOR ACTUAL DAMAGES FOR ANY CAUSE WHATSOEVER WILL BE LIMITED TO THE AMOUNT PAID BY YOU FOR THIS PRODUCT. SOME STATES DO NOT ALLOW THE LIMITATION OF EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU.

The limitations of damages set forth above fundamental elements of the bases of the bargain between Licensor and you. Licensor would not be able to provide this product on an economic basis without such limitations.