

REL MARK GROUP

Risk Management Advocates for Fire Sprinkler Contractors

Business Contracts: Language to Avoid

YOU have the right and power to negotiate and modify your contracts!

STOP! Don't sign contracts with clients, manufacturers, or other business parties before you read the "fine print" of the contract. You may unknowingly be waiving your rights and taking on responsibility for the negligence of others! Make smart business decisions and where appropriate, negotiate terms of the contract before doing business with the other party.

RED FLAGS: There are some phrases in contracts that you should identify and make reasonable attempts to AVOID or NEGOTIATE when they are attached to your obligations. These include phrases such as:

- ♦ "ANY"
- ♦ "ALL"
- ♦ "HOLD HARMLESS"
- ♦ "INDEMNIFY"
- ♦ "WAIVE RIGHTS"

WHAT CAN YOU DO?

- **READ CONTRACTS** provided to you, as a subcontractor, by general contractors, building owners, construction managers or others. Each contract should be read thoroughly and reviewed by in-house personnel knowledgeable in contract language. If irregularities or new provisions are discovered, the contract should be reviewed by your legal council.
- **STRIKE CERTAIN PHRASES** and clauses in the contract where contract language appears to broaden your potential for assuming the liability of others. ***Initial where you have made such changes. To be binding, the other contract party must also initial any contract changes.***

For Example

F.P.C.
g.c.

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- **PUT IT IN WRITING.** One of the best ways to reduce the potential for liability is to ensure that all agreements and changes are in writing. Since liability laws and standards change over time, a lawyer should review standard contracts you develop and use with your subcontractors.
- **CONSULT YOUR ATTORNEY** and have him/her review the contract in detail, and advise you on the provisions, including indemnification and hold harmless clauses. Some of these clauses may not be legal in all states, which is one reason why it is important for you to discuss these contracts with your attorney before signing!
- **ADD WORDING** such as *'to the extent of insurance coverage'* to contracts to protect your company assets from claims that may exceed your insurance limits or grant coverage that you do not have. Remember to initial the added wording and to get the other contract party to initial the change.
- **KNOW LOCAL AND STATE LAWS.** With anti-indemnity statutes, individual states have laws that do not permit entities to shift their sole negligence to others. However, not all states have laws that protect against sole negligence indemnification. If you are not careful, you can acquire other parties' sole negligence by the wording in your contract.

The American Subcontractor's Association maintains a chart of indemnity statutes by state at www.asaonline.com. Another avenue is a general internet search using your state name and key words such as anti-indemnity, indemnity, prompt pay, retention and construction contracts.

- **KEEP RELATIONSHIPS IN PROSPECTIVE.** Insurance policies have provisions to seek reimbursement, from other parties, for loss dollars paid out on claims. A great relationship with a general contractor does not mean that in the event of a loss, that their insurance company will not pursue you through subrogation. Make it a practice not to start a job without a signed final contract in place.
- **CONSULT WITH YOUR INSURANCE AGENT OR ATTORNEY** to address any implications and the advisability of the insurance provisions of a contract.

Conclusion

Great care and attention should be paid to details before entering into all contractual agreements. Make sure you are not signing your rights away or agreeing to compensate others for something you have no control over.

Remember,

YOU have the right and power to negotiate and modify your contracts!

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