When reviewing a contract, certain language or clauses may seem peculiar to a layperson. The purpose of this article is to help explain the purpose and effect of certain language commonly found in contracts.

**Merger and Integration Clause**

The purpose of a merger and integration clause is to prevent the parties to a contract from later claiming that the contract does not reflect their entire understanding, was changed by a subsequent oral agreement, or is not consistent with prior agreements:

*This Agreement and the exhibits attached hereto contain the entire agreement of the parties with respect to the subject matter of this Agreement, and supersede all prior negotiations, agreements and understandings with respect thereto. This Agreement may only be amended by a written document duly executed by all parties.*

A party entering into a contract which includes this type of language should make sure that all promises and agreements are actually included in the written contract, as otherwise it may be impossible to enforce those unwritten promises.

**Choice of Law and Forum Clause**

Contracts will often contain language expressing that they are to be interpreted under the laws of a particular state or jurisdiction, and that any litigation will occur within a specified court system:

*This agreement shall be interpreted under the laws of the State of California. Any litigation under this agreement shall be resolved in the trial courts of Los Angeles County, State of California.*

Please note that this language may not always be enforceable, particularly in relation to consumer contracts.

**Statute of Limitations Clause**

A statute of limitations clause changes the statute of limitations which applies to litigation relating to the subject matter of the contract. For example, the law may provide for a six year statute of limitations for litigation, but the parties can contractually agree to shorten that period, to eliminate the "discovery rule" (which may extend the statute of limitations during the period a party is unaware of the breach), or both:

*The parties agree that any action in relation to an alleged breach of this Agreement shall be commenced within one year of the date of the breach, without regard to the date the breach is discovered. Any action not brought within that one year time period shall be barred, without regard to any other limitations period set forth by law or statute.*

Please note that, for public policy reasons, states will not always enforce a reduction in the statute of limitations, particularly in relation to consumer transactions. Before assuming that you don't have a valid cause of action on the basis of this type of contract language, consult with an attorney in your jurisdiction. However, until it is held invalid by a court, you should assume that this language is valid and whenever possible should commence any litigation within the contractual period.

**Indemnification Language**

An indemnity clause requires that one party indemnify the other, in the event that certain expenses are incurred. Example language:

*The subcontractor agrees to indemnify and hold harmless the contractor against loss or threatened loss or expense by reason of the liability or potential liability of the contractor for or arising out of any claims for damages.*

Be careful with this type of clause, as it can significantly increase your exposure in the extent of an unexpected event or breach of the contract.

**Time of Performance**

Some contracts will provide that "time is of the essence", which may support an action for breach of contract where the contract is not completed within a reasonable (or specified) time. This is often seen in construction contracts, where it is important that work be resolved such that a homeowner or business can return to normal life or operations:

*Time is of the essence for the completion of the work described in this contract. It is anticipated by the parties that all work described herein will be completed within two (2) weeks of the date of execution, and that any delay in the completion of the work described herein shall constitute a material breach of this contract.*

Others may specifically provide that time is not of the essence:

*The parties agree that time is not of the essence in the completion of the work described in this contract. All parties shall act to complete the work described within a reasonable time.*

Where a contract includes language of the latter variety, you may wish to ask yourself why the other party wants the language. That is, do they anticipate delays which will leave you dissatisfied with the timeliness of their performance?

**Arbitration Clause**

Some contracts include language specifying that all disputes under the contract will be resolved by arbitration:

*All disputes, controversies, or claims arising out of or relating to this contract shall be submitted binding arbitration in accordance with the applicable rules of the American Arbitration Association then in effect.*

Please note that a typical arbitration clause is usually considerably more detailed than this example language, and there may be statutory requirements for the content and appearance of an arbitration clause. The party which seeks to impose an arbitration clause typically anticipates a significant benefit from the inclusion of the clause - such as making any action in the event of breach unaffordable for the other party, who will typically have to pay half the cost of a private arbitration.

**Savings (Severability) Clause**

Most contracts include a savings clause, which is meant to ensure that the contract remains enforceable even if part of the contract is later held invalid:

*If any provision of this Contract is held unenforceable, then such provision will be modified to reflect the parties' intention. All remaining provisions of this Contract shall remain in full force and effect.*

In the absence of a savings clause, it is possible that if a single clause is held invalid, the entire contract will also be rendered invalid.

**Attorney Fees Clause**

An attorney fees clause requires that, in the event of litigation, the loser reimburse the prevailing party's attorney fees:

*In the event of litigation relating to the subject matter of this Agreement, the non-prevailing party shall reimburse the prevailing party for all reasonable attorney fees and costs resulting therefrom.*

**Non-Waiver**

The purpose of non-waiver language is to protect a party who excuses the other party's non-compliance with contract terms, and to prevent the parties' course of conduct under the contract from resulting in the loss of enforceability of the actual terms of the contract:

*The failure by one party to require performance of any provision shall not affect that party's right to require performance at any time thereafter, nor shall a waiver of any breach or default of this Contract constitute a waiver of any subsequent breach or default or a waiver of the provision itself.*

For example, if a contract requires monthly payments but the party owing payments only pays every other month, in the absence of a non-waiver clause, after a year of acceptance of the late payments a court would be likely to hold that the bimonthly payments do not constitute a breach of the contract. With a non-waiver clause, the party to whom the payments are due would typically be able to enforce the monthly payment provision, despite the course of conduct which was inconsistent with the contract language.

**Liquidated Damages Clause**

Where it can be difficult to calculate actual damages, it may be appropriate to include a "liquidated damages clause" in a contract. The most common form of "liquidated damages" is probably the late fee charged following the late receipt of payment on a lease or credit card. An example for the rental of a University dormitory room:

*Students canceling their housing contract after occupying their room shall pay liquidated damages in the amount of $5.00 per day for the remainder or unexpired portion of the term of the academic agreement, not to exceed $400.*

The damages are "liquidated" in the sense that the contract sets forth a specific sum that will be paid as damages, whatever the actual amount of damages may be. However, the amount of "liquidated damages" should roughly parallel what actual damages might realistically be. Courts will typically not uphold "liquidated damages" clauses if the damages are disproportionate to the injury, or if the amount of liquidated damages appears to be intended as punitive as opposed to fair compensation for the injury.