



**THE WISE COUNSEL GUIDE TO**

# **“FINE PRINT” FOR SMALL BUSINESSES**

**Ten Steps to Using “Boilerplate”  
to Avoid Unnecessary Lawsuits**

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In the late 1800s, newspapers would typeset their text using metal plates. Certain portions of the newspaper, such as advertisements and the masthead, were supplied in ready-to-use plates. Because they resembled the metal plates used for constructing boilers, these never-changing forms became known as “boilerplate.” Over time, the legal field adopted the word *boilerplate* to refer to recurring terms that appeared in every agreement, and whose language has become fairly standard.

Nowadays, the word *boilerplate* conjures up paragraph upon paragraph of sentences, defying comprehension, that only lawyers could love or decipher. Or, images of text so microscopic that your eyes glaze. Which, incidentally, is where we get the term “fine print.” This Wise Counsel Guide is designed to banish those impressions by showing you just how useful *boilerplate*, or “fine print” can be and how lawyers refer to the specific terms. We will use the words *boilerplate* and “fine print” interchangeably.

Boilerplate plays a crucial, and often misunderstood, role among your contract terms. If we liken your agreements to a meal, the substance, or “meat,” of your agreement centers on what will be done, who will be paid, how much, and when. These are your *substantive* or *material* terms, which we discuss in our Wise Counsel Guide™ on small business agreements. But to have a well-balanced meal, you also need your side dishes of “potatoes and vegetables.” These “side dishes,” or “side issues,” as we will refer to them, do not affect the basic purpose or substance of your contract. Rather, they set out the *procedures* that you will use if a dispute arises or if you want to make changes to your agreement.

While you would think you could get by on a meal of “meat” alone without the “sides,” if ignored, each boilerplate term could entangle you in a costly and time-consuming dispute. For example, as you will see in Step 9, an issue often overlooked is where to bring a lawsuit:

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**Example:**

[Based on a case litigated by author Ronald Paltrowitz]

JetPack Inc. purchased stereos in Japan, which Maru Shipbuilders agreed to deliver by ship. Their agreement was silent about where they would resolve disputes. The ship sank near Hawaii. JetPack sued Maru in its home state of Delaware to recover its money. Maru wanted the case moved to Japan, where all of Maru's employees and records were located. The Court could have chosen either place, or could have chosen Hawaii. After 2 years, and many thousands of dollars, the Court agreed with Maru. JetPack then had to start its lawsuit over again *in Japan*.

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Can you see the significance of including these kinds of terms in your agreements?

This Guide will help you learn what “fine print” terms are called and what they are meant to address. Step 1 will start with an overview of how boilerplate fits within the overall scheme of your contracts. Steps 2 through 10 will identify and introduce you to the variety of terms you will often encounter:

- Step 2 addresses ways to have others take over your contract obligations.
- Step 3 looks at situations where you may, or may not, want to take action if the other side does not perform.
- Step 4 discusses ways to limit your damages.
- Step 5 deals with obligations or promises that you may want to have continue, even after your agreement has ended.
- Step 6 alerts you to pitfalls that can change how a court may interpret your contract, and ways to keep it intact.
- Step 7 shows you how best to notify the other side in the event of a problem or lawsuit.
- Step 8 reviews your options for ways to resolve disputes in and out of court.

- Step 9 discusses where you can resolve disputes and how to choose the laws of your geographic area.
- Step 10 offers you tools to help recoup the expenses of bringing a lawsuit.

Along the way, we will provide you with signposts to alert you to certain issues, such as:



for “red flag” situations of which you should be wary,



for legal terms,



for “handy” tips,



for key summary points.

Depending on the situation, you may find yourself on different sides of a transaction. Sometimes you are the “buyer.” Sometimes you are the “seller.” Therefore, in this Guide, we will occasionally refer to the person or company with whom you are doing business as your *contract partner* or *the other side*. By using these more generic terms, we hope to help you see the possibilities and pitfalls on both sides of a deal. We will also primarily use the example of “Carole” and her New York restaurant called “Chez Moi” so that you can see how the “fine print” terms we discuss can affect a single business.

You can negotiate boilerplate terms just as you negotiate your substantive contract terms. But be smart. Put them in writing. If you do not, a court may impose different terms, which could cost you much more than you anticipated. <sup>W</sup><sub>P</sub>



### **Introduction:**

- Boilerplate provisions are crucial to your profitability.
- Spend time to understand how each kind of term can affect your business deals.