

November 12, 2009

OpenID Foundation CX Contract Terms

Nat Sakimura posted a Discussion Note dated July 30, 2009 concerning Contract Exchange (CX) requirements. As a lawyer familiar with contracting in both common law and civil law jurisdictions, I agreed to expand on the list of typical contract terms.

The cardinal numbers associated with each item below indicate whether the item is optional (0 or more) or mandatory (1 or more) and whether there might be multiples of each.

Note that very few items are required to establish a legally enforceable contract. In a court of law, the party seeking to enforce the contract must show that there was an **offer and acceptance** (mutual assent, or a “meeting of the minds”) between the parties to exchange something of value for **consideration** (money, other property, or a promised action). At a minimum, therefore, a court enforcing the contract must be able to identify the **parties**, the description and quantity of **goods or services** to be provided, and the **price** to be paid in exchange for those goods or services. The court will also require **evidence of assent** to this contract, typically in the form of signatures, statements, or actions taken by the parties or their representatives. All other terms are optional, even though they may be very important to the parties.

Here, then, are common terms and other items that must or may be included in a contract:

Contract ID	(0 or more)
(ex., contract or purchase order number)	
Parties	(2 or more)
(identification may include, for example, legal name, jurisdiction of establishment or registration [ex., “a business corporation organized under the laws of the State of New York” or “company registration no. xyz with the Hamburg Chamber of Commerce and Industry”], place of residence or headquarters, contracting role [“supplier,” “customer,” “consultant,” “lessor,” etc.], contact details)	
Signatories	
(individuals signing contract)	(2 or more)
Title or capacity of signatories	(0 or more)
Date of signature	(0 or more)
Digital signatures or other form of assent	(0 or more)
Description of goods, services,	

actions, or other items to be provided	(1 or more)
Quantity to be delivered (where applicable)	(0 or more)
Price	(1 or more)
(this should include denomination of currency [ex., USD\$], description of non-monetary consideration, any formula or external reference for calculation)	
Date of delivery or other performance	(0 or more)
Place of delivery or other performance	(0 or more)
Definitions	(0 or more)
Conditions	(0 or more)
(ex., performance contingent on certain events, payment contingent on standards of acceptance)	
Warranties	(0 or more)
(ex., warranty of non-infringement, warranty of conformance to stated specifications, warranty of legal authority, warranty of insurance coverage)	
Relationship to other contracts	(0 or more)
(ex., purchase order under a framework agreement)	
Term of contract	(0 or 1)
(may include renewal provisions)	
Termination	(0 or 1)
Billing and payment	(0 or 1)
(ex., net 30 days, discounts, late penalties, wire transfers)	
Damages / limitation of liability	(0 or more)
(provisions on calculation of damages, liquidated damages, limitation or exclusion of certain kinds of damages)	
Notice requirements	(0 or 1)
(form and timing of notices, electronic or postal address to which notices must be delivered)	
Governing law	(0 or more)
(ex., "English law," "Civil Code of Japan," "German Civil Code," "laws of the State of California, exclusive of its provisions on choice of law")	
Jurisdiction and venue	(0 or 1)

(ex., “the parties consent to jurisdiction in the State of New York, before a court of competent jurisdiction located in New York City”; “the parties agree to submit disputes under this agreement to the commercial tribunal of Lyons”)	
Waiver of jury trial	(0 or 1)
Arbitration / alternative dispute resolution	(0 or 1)
(ex., ICC binding arbitration clause, arbitration to be conducted in Singapore)	
Entire agreement (“merger clause”)	(0 or 1)
(provision stating that this is the entire agreement between the parties and excluding claims based on statements in advertising or negotiations)	
Amendments	(0 or 1)
(any required procedures for amending the agreement)	
Survival	(0 or 1)
(clause providing that certain terms, such as indemnification, confidentiality, or product warranties, survive expiration or termination of the contract)	
Product warranty and return	(0 or more)
Warranty disclaimers	(0 or more)
Indemnification	(0 or 1)
Third-party beneficiary rights	(0 or 1)
Relationship of parties	(0 or 1)
(ex., provisions creating or disclaiming agency or employment relationship)	
Confidentiality, nondisclosure, publicity	(0 or 1)
Proprietary rights, ownership and licensing of intellectual property	(0 or 1)
Assignment, succession, delegation	(0 or 1)
Legal and regulatory compliance	(0 or 1)
(ex., licensing obligations, export controls, data protection)	
Force majeure	(0 or 1)
(obligations excused or deferred for “Acts of God,” war or civil disorder, trade union actions, etc.)	
Counterparts and signatures	(0 or 1)
(provisions allowing signatures at different times and on multiple copies or instances)	
Other terms	(0 or more)
Attachments or documents incorporated by reference	(0 or more)

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Many other terms could be mentioned, especially in specific contexts such as loan agreements, software or content licenses, or lease contracts, but the items listed above are some of the most common in commercial contracts.