

West Bend Mutual Insurance Co. insures more than 700 fire protection companies in ten Midwestern states. Decades of experience working with fire protection organizations has helped us uncover several important contract provisions that have helped companies like yours limit exposure to claims.

We recommend that fire suppression and sprinkler contractors place the following language upon all invoices, inspection reports, contracts, work orders, and any other documentation provided to customers.

This free resource from West Bend includes talking points for each topic, as well as sample contract language you can copy and paste into your existing documents. The topics covered are:

- Referencing the back of documents
- Limitation of liability
- Waiver of subrogation
- Indemnification
- Warranty disclaimers
- Customer responsibilities
- Intent of inspection
- Contractual limitation periods
- Law and jurisdiction
- Severability
- Integration

The information contained in this document is intended for information purposes only and does not constitute legal advice. **We strongly recommend that you review the following provisions with a competent attorney prior to use.** West Bend makes no warranty or guarantee as to the validity or enforceability of any of the following provisions. Nothing contained herein shall amend or otherwise affect the provisions of any insurance policy issued by West Bend.

REFERENCE TO BACK OF DOCUMENT

Even when a contract includes every necessary provision, someone may claim that they weren't aware of certain terms if those terms appear on the back of a document. This is especially true if someone is asked to sign on the front of the document. Including a clear and concise notice in bold and large set type at the bottom of every double-sided document can prevent this tactic.

IMPORTANT TERMS ON REVERSE SIDE OF THIS DOCUMENT

The reverse side of this document contains important information regarding the terms and conditions of service performed by Company. This includes limitations of liability, contractual limitation in which you may bring a claim, disclaimers of warranty, and other terms that may impact Customer's rights. By signing below, Customer's authorized representative acknowledges and warrants that they have read, understood, and agreed to be bound by these conditions.

LIMITATION OF LIABILITY

The alarm installation industry, through the use of standard contract language similar to what you see below, has had great success in limiting their exposure. In essence, the Limitation of Liability language clearly points out that your customers should be insuring their own buildings. This provision is especially important for fire protection contractors that regularly perform service contract work.

The ultimate goal of this provision is to limit your liability to \$250 when property damage is sustained by one of your customer's buildings, or \$7,500 when gross negligence is a factor. Subject to the applicable deductible, West Bend would pay this total on your behalf and your customer's insurance carrier would then bear the remainder of the financial responsibility.

LIMITATION OF LIABILITY

Customer acknowledges that the Company is not an insurer of or against any potential or actual loss or damage to person or property, whether direct, incidental and/or consequential, that may occur in or at the premises.

Company's total liability to customer for damages for any claims, losses or damages arising out of or in any way related to any cause whatsoever in relation to this agreement, whether based in contract, tort (including negligence), strict liability, breach of warranty or other cause, shall not exceed \$250.00. Notwithstanding the foregoing sentence, under no circumstances shall Company be liable for any damages for loss of use, interruption of business, lost profits, revenue or opportunity, claims of third parties or for injury to persons or property or for any other special, exemplary, incidental, indirect, punitive, consequential or other damages of any kind or nature.

If the Company is found liable for any loss or damage due to its gross negligence, the Company's liability shall not exceed \$7,500.00.

WAIVER OF SUBROGATION

Including a waiver of subrogation is very important for fire protection contractors that perform work on new builds. Like the limitation of liability section, standard construction contracts have long included a waiver of subrogation with great success. The main intention of this provision is to have the property owner's insurance carrier step up to cover any claim that may occur at the building, even if the work you perform was determined to have been even partially responsible for the damage sustained.

WAIVER OF SUBROGATION

In case of any claim or loss, Customer agrees that it is responsible to maintain, and has sufficient insurance coverage to cover any potential claim or loss. Customer further agrees to look to its property and/or general liability insurance carrier for reimbursement. Customer and Company mutually agree to release one another from any and all claims with respect to any loss covered by (or which should have been covered) the insurance coverages which were required and/or recommended that may be applicable to any property where Company performs services and/or provides materials for Customer. For purposes of this Section, all deductibles shall be considered insured losses. They further mutually agreed that their respective insurance companies shall have no right of subrogation against the other on account thereof.

INDEMNIFICATION

Indemnification clauses appear in many contracts. This provision has caused significant problems for West Bend customers working with a larger national fire protection contractor. In one such instance, a West Bend customer performed basic duct cleaning work (and no inspection work) as a sub contractor for a national company, but ended up responsible for the national company's liabilities related to poorly performed inspection work.

Whenever possible, West Bend recommends crossing out the Indemnification clauses in any contract you sign with other companies.

We also recommend including the following language in all of your contracts signed by others.

INDEMNIFICATION

Customer agrees to indemnify, hold harmless, defend, and release the Company from liability and shall reimburse the Company for any liabilities, damages, losses or expenses (including but not limited to reasonable attorneys' fees, expert fees, costs and litigation costs), injuries, claims, suits, judgments, and causes of action incurred by the Company in connection with any claims, suits, judgments and causes of action which relate to the products or services the Company provides. This indemnity includes claims brought by any third party, including, without limitation, Customer's insurance company, whether the claim arises under contract, warranty, tort, or any other theory of liability.

WARRANTY DISCLAIMER

This is a standard warranty disclaimer that should appear on all legal documents.

WARRANTY DISCLAIMER

Except as provided in any specific warranty paragraphs, Company makes no warranty of any kind, express or implied, including but not limited to, any warranty of merchantability or warranty of fitness for a particular purpose.

WARRANTY DISCLAIMER FOR INSPECTIONS

The following language has been drafted specifically for use on inspection sheets.

WARRANTY DISCLAIMER

This agreement is not a guarantee or warranty that the system will in all cases provide the level of protection for which it was originally intended, is free of all defects and deficiencies, or is in compliance with all applicable codes. Customer agrees that it has not retained Company to make these assessments unless otherwise specifically indicated.

CUSTOMER RESPONSIBILITIES

“But you didn’t tell me that!” How many times have you heard that one? This clause has specifically been designed to let your customers know that they have specific responsibilities when it comes to maintaining their own fire protection systems. In this provision you will notice specific mention of maintaining adequate and ensuring proper drainage.

CUSTOMER RESPONSIBILITIES

Customer shall be responsible for maintaining adequate heat throughout the facility to prevent freezing or damage to the existing fire sprinkler system.

The customer understands and expressly acknowledges that fire protection systems are susceptible to damage by water intrusion, ice, or other conditions inside the piping that the Company cannot detect upon inspection. In the event that water, ice, or other conditions occur which render the fire protection system inoperable or damaged, Company expressly disclaims any responsibility for such conditions, and assumes no responsibility to investigate the cause, source or extent of such condition.

Customer acknowledges this warning, and acknowledges that under NFPA and other applicable codes and regulations, it is the responsibility of the customer to maintain its fire protection system, including but not limited to ensuring proper drainage. Failure to properly maintain or drain such systems may lead to breaks or other conditions that may render the fire protection system inoperable, or that damage to the system may result in injury, damage to property and loss of use.

INTENT OF INSPECTION

In many instances, courts have ruled against fire protection contractors that didn't notify their customers about code violations or system readiness, even when the contractor was not specifically being hired to provide such an inspection. In the court's view, being an expert and not raising your concerns is by default viewed as verifying the soundness of the entire system.

As an example, imagine you take your vehicle to a dealership for a simple oil change, and the next day one of your wheels falls off because it wasn't secured properly. If the dealership included this provision in their contract you wouldn't have any recourse because the mechanic, despite being an expert, wasn't required to check the safety of the entire vehicle; their only job was to change the oil.

INTENT OF INSPECTION

This inspection/testing is not intended to be a code review, complete system or code compliance evaluation.

CONTRACTUAL LIMITATION PERIOD

This provision is intended to prevent a customer from bringing suit several years after damage has occurred.

CONTRACTUAL LIMITATION PERIOD

Customer expressly agrees that any claim, lawsuit, or cause of action, whether in contract, tort or other legal theory, relating in any way and/or arising out of Company's services and/or materials provided to Customer, its subsidiaries and/or its insurers, must be filed no more than one (1) year from the date the alleged damage(s) occurs, that is the subject of the claim, lawsuit and/or cause of action. Customer expressly waives any statutory and/or common law limitation period to the contrary.

LAW AND JURISDICTION

This is a standard provision included in many contracts that outlines where a claimant can file suit. IMPORTANT: This provision does require you to fill in three blanks.

LAW AND JURISDICTION

This Agreement will be governed by, construed, and enforced in accordance with the laws of the State of _____ applicable to agreements made and to be performed entirely within such state, without regard to such state's conflict of laws rules. Company and Customer agree that any action brought by any party shall be brought and resolved exclusively by the state and federal courts located in _____ County, [State], and the courts to which an appeal therefrom may be taken, provided that any party shall have the right, to the extent permitted by applicable law, to proceed against any other party or its property in any other location to the extent necessary for the enforcing party to enforce a judgment or other court order or arbitral award. Each of the parties hereby consents to the jurisdiction of such courts and waives all questions of jurisdiction and venue. The parties agree that either or both of them may file a copy of this Section with any court as written evidence of the knowing, voluntary and bargained Agreement between the parties irrevocably to waive any objections to venue or to convenience of forum. Legal process in any proceeding may be served on any party anywhere in the world.

SEVERABILITY

This is a standard provision included in contracts that prevents the entire contract from being nullified if a single provision is determined to be unenforceable.

SEVERABILITY

If any provision of this Agreement is held illegal or unenforceable in a judicial proceeding, such provision shall be severed and shall be inoperative, and the remainder of this Agreement shall remain operative and binding on the Parties.

INTEGRATION

This is a standard provision include in contracts that indicates that the terms included in the most recent contract will override any differing terms from previous agreements.

INTEGRATION

This Agreement supersedes all prior agreements between the parties with respect to its subject matter and constitutes (along with the documents referred to in this Agreement) a complete and exclusive statement of the terms of the agreement between the parties with respect to its subject matter.