

Minimize Your Contract Risk

Companies must do two things:
draft good contracts and use them consistently.

Successful companies have one thing in common – they engage in best practices that enable them to draft successful contracts with their customers. Companies that employ best practices are less likely to have claims. By having well-written contracts and a solid insurance program, companies can greatly reduce the problems that could escalate beyond the negotiation stage.

Best Practices of Information Technology Companies Include:

- Engaging in quality business practices during product development, the sales process, integration and installation and post-sale (see best practices checklist on reverse)
- Writing good customer contracts
- Maintaining good customer relationships
- Negotiating rather than litigating
- Communicating and cooperating with Travelers Canada throughout the management of a claim

Well-written contracts can help to minimize both the insured's and the carrier's exposure.

Here Are Three Things to Keep in Mind:

- **UCC:** The Uniform Commercial Code (UCC) allows a vendor to exclude implied warranties, limit potential remedies, limit potential damages and limit the time to sue the vendor.
- **Courts:** While recovery for tortious misrepresentation is possible, courts have displayed reluctance to permit disappointed users to avoid the bargained-for terms of their contracts by resorting to misrepresentation theories.
- **Defence:** To the extent that allegations of misrepresentations are merely disguised breach-of-contract claims intended to circumvent contractual disclaimers of warranty, the results seem appropriate. Contracts do hold up when defending claims.

If you have any questions about CyberTech+ from Travelers Canada, contact your local broker or visit travelerscanada.ca

Three Key Provisions of Well-Written Contracts

While many provisions are important to well-written contracts, the following three provisions are key to reducing your liability risk:

- **Limitation of liability:** This provision disclaims liability for certain types of damages – usually incidental, consequential or special damages. This is very useful in the event of threatened litigation.
- **Disclaimer limitation of warranties:** This provision identifies the warranties provided, disclaims or limits those warranties not provided and identifies the remedies available in the event the product or work does not comply with the warranties provided.
- **Integration:** This provision identifies the documents that comprise the parties' contract and will also limit the parties' reliance on documents and information outside of the contract.

Contract Risk Management Best Practices: A Life-Cycle Checklist

Product Development

- Verify purpose of product or work
- Review design with customer
- Determine compatibility with other platforms
- Clarify all communications and instructions with the customer
- Complete thorough system testing

Sales Process

- Perform a thorough evaluation of customer needs
- Research customer expertise and attitudes before taking on the job
- Check for mutual understanding of goals and work
- Set out formal expectations
- Use standard contracts

During the Work, Integration or Installation

- Continuously manage customer expectations
- Watch for changes by the customer that could affect project goals

- Evaluate competency of customer's staff
- Communicate and get sign-offs for all modifications and alterations
- Maintain staff consistency and expertise

Service, Support and Maintenance

- Manage customer support expectations
- Conduct periodic surveys or evaluations
- Resolve problems quickly
- Determine whether product or work is meeting expectations, promises, goals, scalability, etc.
- Monitor escalation of problems
- Maintain relationships and negotiate mutually beneficial solutions (possible return of funds)

Overall Management

- Exhibit a true customer service attitude
- Practice excellent people management
- Provide outstanding communications
- Deliver consistently high levels of service

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