

Biz Legal Contract Term EXPLORED: Integration/Merger Clause

Intro/Definition

A merger clause (also known as “integration clause”) is a clause, usually at the end of a contract, that states that this agreement encompasses all the terms and conditions of the agreement. (i.e. no oral or outside agreements have been made that will be a part of this contract if not referenced within the 4 corners of this document.)

Points to Consider

1. If your contract has a merger clause, any side documents that don’t incorporate or override this document or any oral agreements **WILL NOT BE CONSIDERED PART OF THE CONTRACT**. That means that if the other party breaches something outside of the agreement with this clause, you have no cause of action. This final writing supersedes any previous negotiation terms so make sure you read and incorporate your negotiations into this agreement.
2. This is the rule that **PREVENTS** the outside agreements (written and verbal) from being presented as evidence for being part of a contract where the outside agreements would directly contradict the written contract with this clause; there are exceptions to the parol evidence rule but it depends on the facts; there are exceptions to this rule and you will need to consult your attorney for more information.
3. The agreement needs to state that “this agreement is the **COMPLETE** and **FINAL** agreement between the parties.” Any clause short of the words complete or entire and final agreement between the parties will give rise to an argument that there is **NOT** a merger clause

In Georgia....

Like the “time is of the essence” language we discussed in a previous post, parties can modify a written agreement even with this merger/integration clause, by their conduct. This applies **EVEN IF** the contract has a “no waiver” provision. (stating that under no circumstances can this integration/merger language be waived by conduct.)

General Advice

If you and your attorney choose to put this language into an agreement, be careful to strictly comply with the provisions in the contract and **NO MORE**. If there is a waiver of

this agreement, BOTH verbal and written side agreements can come into evidence and it quickly dilutes the original agreement and complicates any case.

DISCUSSION QUESTION: What would be some advantages of including this clause and some disadvantages?

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