

Clear, prominent arbitration clause can settle disputes

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Q. I sell merchandise to retail customers and would like to know if I can include an arbitration clause in my standard sales contract.

Courts generally hold a favorable view of arbitration as a dispute resolution mechanism and will enforce arbitration agreements voluntarily entered into between parties. Accordingly, whether you sell furniture, automobiles or some other product, you can usually include an enforceable arbitration clause in your retail sales contracts.

However, arbitration provisions in sales contracts involving consumers must satisfy certain requirements. A court will only enforce an arbitration provision that is clear and unambiguous. It cannot contain confusing or contradictory terms.

The arbitration provision also must appear prominently in the sales contract and explain whether it applies to all or only certain categories of disputes, and should explain the procedures that will apply if it becomes necessary to submit a dispute to arbitration.

Moreover, the provision must explicitly indicate the consumer is waiving the right to have a court consider statutory claims, such as those arising under New Jersey's Consumer Fraud Act. Without adequate notice of this waiver, the consumer will retain the right to sue in court on statutory grounds despite the arbitration agreement.

You also should know the sale of many products is regulated by various state and federal laws, and your sales contract must conform to all statutory and regulatory requirements pertaining to the product you are selling. Accordingly, you should prepare your standardized sales contract with the assistance of an attorney to ensure it complies with all legal mandates and contains appropriate terms to protect your interests.

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