

COMMERCIAL AGREEMENT (CA) SCRIPT

January 5, 2021 Update

(dialogue in *italics*) DO NOT GIVE THIS FORM TO CUSTOMERS

Introduction: Executing legal documents need not be an uncomfortable experience. The purpose of our scripts is to facilitate a smooth presentation of the forms, and to ensure uniformity in the way various employees explain the principal terms of the contracts. It is good business practice to orally explain all principal terms of contracts to customers before the agreement is signed. Always suggest that the person signing actually *reads* the document and asks questions before signing. The oral presentation introduces the concepts and makes the reading easier, but the script is not a substitute for the customer's review of the documents. (Note: The scripts are for general information purposes and are not intended to be legal advice. Each case is different, so legal questions should be posed to qualified California lawyer.)

How To Use This Script: First, carefully read the special set of Instructions that accompany the form you are using. The instructions explain the function of the form and how to fill it out. Then read the form before reading this script. Once the form is *completely* filled out, and the "customer" or "agent" box checked, it is ready to be presented to the customer. The script will help you guide the customer through the form. The paragraph headings from the form are shown here for reference. The dialogue follows the heading and is in italics. Memorize (as closely as possible) the explanation that goes with each paragraph and present it the same way to every customer.

[IMPORTANT: Before executing the form, determine who will be responsible for paying any amount not covered by insurance. Fill in that name(s) as "CUSTOMER" in the top box--even if that person is not signing the Agreement. If that person is not available to sign, make sure the person signing is authorized to sign by the person responsible for making payment; that person signing is an "agent."]

Customer(s): _____	Contract Date: _____
Property Address: _____	Date of Damage: _____
	City/State/Zip: _____

[If the job will be billed on a rate and materials basis, give the customer the Rate and Materials Schedule before giving this form. "This is our Rate and Materials Schedule. It includes the prices for labor, equipment and materials we will use for this job. Right now, we know we will be using {indicate labor and equipment you anticipate using}. There may be others as circumstances require. We'll know more once we get into the job a little bit. *Please initial the bottom of each page of the Schedule* and I will give you a copy for your records."]

"This is our Service Agreement. It explains what you can expect of us and what we will expect of you."

1. Contract Documents: *"This paragraph explains what documents make up our contract and what notices we have provided you."*

2. Scope of Work: *"This explains our scope of work, and includes our commitment to complete the job in a workmanlike manner. This contract {does/does not} include reconstruction services, or the removal of coronavirus. This says we are not responsible for minor incidental damage, such as damage to baseboards that occurs as a result of the work."*

[Optional for wary customers: *"It will be your decision to approve or disapprove any change order."]*

[For projects involving containment: *"We will build containment in these areas ___, ___, ___. Our responsibility is limited to work in those areas and we are not responsible for damage or contamination in other areas."]*

[For mold jobs: *"Mold is everywhere in the environment, and is airborne even in extremely clean buildings. The goal of mold remediation is not to remove every spore but to bring the concentrations down to normal levels."]* If there are medical questions, defer to the customer's physician and do not render anything that could be construed as medical advice.

[Optional for wary mold customers where post-remediation testing will be performed: “When you receive the report, you will see there is mold; that’s normal. If it shows excessive levels, then we will address it; just don’t expect a report showing zero mold; that’s not our goal.”]

3. **Contract Price:** “Based on what we know now, the price for the work will be (\$_____) {OR} will be based on our Rate and Materials Schedule.”

[For emergency service jobs where an estimate is given: “The price is an estimate based on the damage we are aware of at this time. If further damage is discovered, we will let you know the price to address it and offer a change order for your approval.”]

[Note: Clarity about the price is crucial to success!]

4. **Approximate Start Date:** ____/____/202__ ; **Approximate Completion Date:** ____/____/202__. “We will start on (date). Based on what I know at this moment, I have estimated that the job will be substantially complete on approximately (date). There are a variety of situations that could cause delays beyond our control {give examples if it seems necessary}.”

5. **Right to Cure:** Contractors do not have an automatic right to return to fix defective work. But that right can be secured by contract, which is the goal of this provision.

“Please sign here to confirm your agreement.” Then stop talking.

“Customer(s)” (I have read this contract and understand it)

CONTRACTOR

Check the “Customer” or “Agent” box *before giving it to them to sign*

Signature. Check one: ☐ Customer; ☐ Customer’s Agent

Signature

Print Name and Title

Print Name

TERMS AND CONDITIONS SCRIPT (dialogue in *italics*)

1. **Release for Third Party Professionals; Indemnity:** “This paragraph explains that we are contractors and not environmental consultants and won’t be doing any testing. If you environmental questions, call an environmental consultant. If you have medical questions, call your doctor.”

[If the job involves long-term water damage or mold or other potential environmental issues: “We advise you to hire an independent environmental consultant to inspect and prepare a protocol if contamination is found. If you do, we are not responsible for any mistakes by the consultant. If don’t choose to hire a consultant, we are not responsible for environmental conditions a consultant could have discovered.”] **Note: the suggestion to hire a consultant can be mere advice; it need not be a deal-breaker.**

2. **Personal Liability:** “As I explained before, we are working for you and not your insurance company. We will send a copy of your invoice to the insurance company as a courtesy to you, but you are responsible for any amounts not paid by insurance. Payment is due in 15 days.”

3. **Down Payment and Schedule of Progress Payments:**

[If requesting progress payments: “This explains our payment schedule.”]

Description of Phase	Amount Payable (in Dollars)

4. **Payment:** “If we are not paid on time, we may stop work, and you will be responsible for administration charges, interest and collection costs.”

5. **Partial Lien Releases:** “When we are paid, we will give you an unconditional release for the portion of work that was paid.”

6. **Extra Work and Change Orders:** *“Any changes in the work or price will be in a signed change order. If you ask us to proceed with change order work and we do the work but you don’t sign the change order, we are entitled to the reasonable value of the change order work. You agree to sign Change Orders to increase the price to address unexpected conditions.”*

7. **Limit of Liability and Indemnity:** *“We are not liable for damage or injury caused by you or your agents. Our liability is limited to two times the amount of the Contract Price. You will hold us harmless and indemnify us for third party claims that don’t result from our sole negligence.”*

8. **Workers Compensation Insurance:** *“We carry workers’ compensation insurance for all employees.”*

“Please initial the bottom to approve the terms.” **Then stop talking. If concerns arise, pinpoint the exact nature of the concern and attempt to resolve it. See the Instructions that accompany this form for more information.**