



Contracting for the climate: The Climate Contract Playbook is a trove of climate clauses

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Private enterprise is increasingly driving climate action around the world. As companies seek to mitigate their environmental risks and limit their carbon footprints, contracts have become an essential vehicle for these efforts. To help meet the demand for more climate-attuned contracts, the Chancery Lane Project – a global collaboration of lawyers developing modern contracts and laws to fight climate change – has released the third edition of its groundbreaking Climate Contract Playbook, available for free download from the Chancery Lane Project's website. The Playbook provides several dozen sample climate clauses companies can choose from as they tailor business agreements to fit into their climate-mitigation strategies. The Playbook and initiatives like it represent key tools in the private sector's emerging understanding of the need to address climate change to create and preserve long-term value for the interest of all their relevant stakeholders.

Importance of climate clauses

Growing regulatory and consumer pressure has made reducing climate impact a commercial imperative. Companies have responded by retooling their contracts to limit environmental risk. Traditional contracts, whether between business partners or with suppliers, are designed to protect the company from risk. While traditional contracts focus on a variety of commercial factors, few include clauses aimed at reducing environmental risk or emissions. Companies are thus exposed

to a host of climate related risks through traditional contracts that fail to address climate concerns explicitly.

Climate contract clauses can help companies limit environmental risk in several ways, ranging from protecting real property threatened by rising seas (see below), to ensuring suppliers efficiently transport goods. As regulators increasingly turn their authority to limiting carbon emissions, climate contract clauses help companies ensure business partners adhere to environmental regulations and emission standards. And as consumers demand climate action from the brands they buy, climate contract clauses can position a company as a leader on climate change, increasing its public profile and cultivating an image of trust and responsible stewardship. The Playbook provides a host of sample clauses enabling companies to achieve these goals.

Updates in the third edition

The latest edition of the Playbook organizes sample climate contract clauses by subject matter to help users easily identify provisions relevant to their practice area or sector. These clauses address climate related issues found in commercial supply agreements, real estate purchase agreements, mergers and acquisitions, project finance arrangements, procurements, transportation development, and many others. For each sample contract clause, the Playbook identifies the climate related issue being addressed, lists stakeholder and company benefits, and explains the consequences of implementing each clause. All sample contract clauses are based on the laws of England and Wales but may be adapted for use in other jurisdictions.

Industry overview and climate contract clauses

The Playbook is organized by industry as well as by the subject matter of the various climate contract clauses. For instance:

- **Commercial contracts: supply agreements** – Several sample clauses aim to make commercial contracts, and specifically supply agreements, more sustainable. Examples include a Termination for Green Supplier (which allows the customer to exit an agreement for a greener supplier without incurring exit-related liability), Carbon Performance Clauses (granting remedies to customers if they miss their GHG emissions targets due to a supplier breach of contract), and Sustainability Clauses in Supply Contracts (mandating that suppliers comply with strict environmental guidelines, such as mandatory carbon dioxide monitoring).
- **Corporate: investment / M&A** – The Playbook provides multiple clauses to encourage sustainable investment. Examples include mandatory climate and net-zero due diligence clauses, which encourage parties to disclose information on climate change-related issues, such as carbon emissions, when negotiating financing projects. Other examples include forms for disclosing a company's climate change plans during mergers or acquisitions.
- **Real estate** – The Playbook also provides clauses helpful for the real estate industry. Examples include property title checks that evaluate climate-change-related risks, and energy-efficiency mandates for commercial and residential real estate planning and construction.
- **Construction** – The Playbook includes climate contract clauses to be implemented in construction industry agreements. For instance, some authorize contractors to propose alterations to increase a building's energy efficiency or to require climate-resilient landscape designs.
- **Insurance** – Several sample clauses seek to encourage insurance coverage of climate risks. These clauses would, for instance, insure against business interruptions from climate-related risks and incentivize increased insurance coverage by offering discounts if companies disclose and mitigate climate-related risks.

Next steps for companies

Companies seeking to integrate climate protections into their contracts should consider the following steps:

- Identify stakeholder expectations on climate change and climate-related risks. As climate change becomes increasingly inescapable, companies should assess their customer, business partner, and shareholder expectations and take steps to meet or exceed them. Meeting stakeholder expectations on climate change can provide ample benefits to companies, ranging from positive press to unlocking capital markets.
- Identify supply chains and real estate holdings with exposure to increasing climate risks, as well as their corresponding insurance policies. As climate change and rising sea levels threaten coastal areas, companies must ensure real estate assets are protected and properly insured to limit risks from flooding or severe weather.

- Consult internal contract specialists as well as outside counsel to identify sectors and agreements where climate contract clauses could benefit the company's business. Contract specialists and counsel can pinpoint contracts that expose the company to environmental risks or negatively influence the company's carbon footprint.
- Evaluate existing commercial agreements to determine whether they align with the company's climate goals and how climate-specific clauses could better align them. Climate change clauses can be included to increase a new contract's protections or added to existing provisions, such as force majeure clauses, to help insulate the company and its business partners from climate risks.
- Assess subcontractor agreements for conformity with the company's standards regarding emissions and sustainability. This analysis can help a company identify contracts and business partners that could benefit from the implementation of climate clauses.
- Consider creating a sustainability or climate strategy committee to help implement climate contract clauses. Ideally, this committee should consist of commercial, legal, and regulatory professionals well versed in environmental risks and commercial agreements.
- Task the internal audit committee to monitor compliance with climate contract clauses. The audit committee should report its findings to the board of directors.
- Where appropriate, incorporate emissions standards and environmental impacts in company project feasibility studies. This practice ensures the company weighs emissions and environmental risks when assessing the overall economic benefits of a project.

Conclusion

Climate change has swiftly become a central issue in commercial decision making. Climate contract clauses can serve important business needs like increasing cost savings and mitigating environmental risk.

The applicability and enforceability of any sample contract clause will vary from jurisdiction to jurisdiction. If you are considering the incorporation of climate protections into your company's contracts, we recommend that you contact experienced counsel at DLA Piper for advice on how best to do so in conformity with the laws where your business operates.

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