



TERMINATION AND RELEASE AGREEMENT & GUIDE

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1. Overview

The end of an agreement is as important as its beginning. A change in the business climate or in the parties' goals may signal that it's time to terminate the contract and release the parties from their duties. A clean break will give both parties peace of mind, discharging their obligations and leading to an amicable conclusion of the arrangement.

A well-drafted termination and release agreement is the definitive end of the parties' commitments, and can help prevent future misunderstandings and disputes. While no document can insulate you from later lawsuits or claims, a clear termination form can strengthen your defense if such claims arise.

Note that a termination is not an end in itself: it may open avenues of discussion with the other party that might otherwise have been closed. You can review your mutual expectations and concerns, perhaps even laying the groundwork for future agreements and interactions. An assessment of the parties' performance under the contract will afford you both a better understanding of what should be required on termination.

2. Dos & Don'ts Checklist

- Make sure you have performed all of your duties under the contract before signing a termination: once the termination has been signed, the original agreement is void. Review the original agreement and draft a list of all of your obligations and rights. Take a moment to ensure that your interests have been satisfied.
- Allow each party to spend some time reviewing both the original agreement and the termination. This will reduce the likelihood, or at least the efficacy, of a claim that a party did not understand any terms or how those might affect their rights or obligations.
- Both parties should review the termination carefully to ensure that **all relevant deal points** have been included. It is better to be over-inclusive than under-inclusive. Do not assume that certain expectations or terms are agreed to if they are not stated expressly on the document.
- The terms of your original agreement are still in effect, so make sure both parties continue to perform their obligations under that agreement until the termination is completed and signed.
- Sign two copies of the termination, one for you and one for the other party.
- Keep your copy of the signed termination with the original agreement. Once the termination has been drafted and signed, it is the concluding part of the original agreement and should be treated accordingly.
- Depending on the nature of its terms, you may decide to have your termination witnessed or notarized. This will limit later challenges to the validity of a party's signature.
- If the original agreement or the conditions of your termination are complicated, do not use the enclosed form. Contact an attorney to help you draft a document that will meet your specific needs.

3. Termination and Release Agreement Instructions

The following provision-by-provision instructions will help you understand the terms of your termination and release agreement.

The numbers below (e.g., Section 1, Section 2, etc.) correspond to the provisions in the termination. Please review the document in its entirety before starting the step-by-step process.

- **Introduction.** Identifies the document as the termination of an existing agreement. Write in the parties and the date on which you want the termination to be effective. The parties must be the same as those who signed the original agreement (unless one of the new signers is an agent of the same company that originally signed) and should have the same designations as well (i.e., Party One is still Party One, Party Two is still Party Two).
- **Recitals.** Identifies the existing agreement that's being modified and explains where your right to terminate the document comes from. Put in the effective date of the original agreement and the section number of the original agreement that allows you to terminate it. Note that the paragraph requires you to attach a signed copy of the original agreement as an exhibit to this document.
- **Section 1: Termination.** Explains that both parties want to terminate the agreement, but acknowledges that if there are any ongoing obligations in the agreement (for example, an obligation to make sure confidential information of the other party stays confidential), those will survive the termination.
- **Section 2: Mutual Release of Liability.** Discharges both parties of any liabilities that could arise from the original agreement. In other words, you both agree that you will not sue the other party for some unfinished obligation or fees. This section has the biggest impact: you are eliminating your ability to claim that you are still owed something under the original agreement (and the same is true of the other party with respect to your obligations). Unfortunately, the inclusion of this provision will not prevent a party from arguing that enforceable promises still exist, but it will provide you some protection from these claims.
- **Section 3: Return of Goods (Optional).** Although it may seem obvious to you that any of your goods that are in the other party's possession should be returned after the agreement is terminated, it may not be as obvious to the other party. This section indicates that each party must return the other's merchandise, and that they are responsible for the condition the goods are in when they are returned. It also allows the parties to determine a time frame within which the property must be sent back. If you remove this section, correct the section numbers and references in the agreement.
- **Section 4: Confidential Information (Optional).** This serves largely as a reminder to the parties that confidential information must remain confidential, even after the termination is effective. Review this section closely to make sure it provides sufficient security for your company and its proprietary information. If you remove this section, correct the section numbers and references in the agreement.
- **Section 5: Non-Disparagement (Optional).** This reflects the parties' agreement that neither will say or do anything to damage the other's commercial reputation. If you remove this section, correct the section numbers and references in the agreement.

- **Section 6: Covenant Not To Sue.** Promises that neither party will initiate or help others to initiate a lawsuit against the other based on claims specifically released by the termination agreement. Again, the inclusion of this provision will not prevent all such lawsuits, but it will provide you some protection from those filings.
- **Section 7: Governing Law.** Your original agreement probably includes a choice-of-law provision that governs what laws will be used to interpret it. If it does not, this section allows the parties to choose those laws. Note that this is not a venue provision: the included language will not impact where a potential claim can be brought.
- **Section 8: Counterparts/Electronic Signatures.** The title of this provision sounds complicated, but it is simple to explain: it says that even if the parties sign the termination in different locations, or use electronic devices to transmit signatures (e.g., fax machines or computers), all of the separate pieces will be considered part of the same document. In a modern world where signing parties are often not in the same city - much less the same room - this provision ensures that business can be transacted efficiently, without sacrificing the validity of the termination.
- **Section 9: Severability.** Protects the terms of the termination as a whole, even if one part is later invalidated.
- **Section 10: Entire Agreement.** The parties' agreement that the termination they're signing (when taken together with the original agreement) is "the agreement" about the issues involved. Unfortunately, the inclusion of this provision will not prevent a party from arguing that other enforceable promises exist, but it will provide you some protection from these claims.
- **Section 11: Authority.** A promise that the parties signing the termination have the right and power to do so.
- **Section 12: Headings.** Notes that the headings at the beginning of each section are meant to organize the document, and should not be considered operational parts of the agreement.

As you tailor these documents to your specific needs, keep in mind what you are trying to achieve: a profitable partnership, a relationship free of disputes, etc. A well-written document should enhance the parties understanding of their deal rather than obscure it. If any provision within your agreement is confusing, spend time trying to clarify its meaning. A few hours spent improving your agreement, could save you weeks of problems in the future.

This document can provide a clear and mutual understanding of the terms of the agreement, as well as helping to set realistic expectations by both parties, and answering questions at the outset of the contract. All of this, as well as implementing the tips provided, can help to minimize potential conflicts. But most importantly, if and when conflict or dispute does arise, you have taken a large step towards protecting your business.

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TERMINATION AND RELEASE AGREEMENT

This termination and release agreement (the "Termination") is entered into as of _____, 200_, (the "Termination Date") by and between _____ ("Party One") and _____ ("Party Two") (collectively the "Parties").

RECITALS

WHEREAS, Party One and Party Two are parties to that certain agreement dated as of _____, 20__ (the "Agreement"), a copy of which is attached as Exhibit A hereto and made a part hereof by reference; and

WHEREAS, pursuant to Section _____ of the Agreement relating to terminations thereof, the Parties hereby desire to terminate the Agreement with effect and as of the Termination Date.

NOW THEREFORE, in consideration of the above recitals and the mutual benefits contained herein, the Parties hereby agree as follows:

1. TERMINATION.

Subject to the terms and conditions hereof, the Parties hereby terminate the Agreement effective as of the Termination Date, and the Agreement shall be null and void and have no further binding effect; provided, however, that with respect to _____ of the Agreement that would otherwise survive in _____ of the Agreement, each Party hereby releases and agrees to release _____ of the Agreement.