

# TRANSCRIPT

## On Your Terms



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Do Free Contracts Protect You At All? My honest take

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Sam Vander Wielen:

You have to have that legal language in your terms. It's built into my terms of use templates, built into all my contract templates that require it. But that is not something I tend to see in these freebie contracts.

Hey there, and welcome back to On Your Terms. Or if you're new here, welcome, welcome. I'm so glad to have you. Today, we're talking about something I get a question about a lot on social media, in my emails, even by my own customers in the Ultimate Bundle, asking if you're allowed to use the free included terms of use or terms and conditions when you sign up for some sort of tool or software like Thinkific or Kajabi or any of the other platforms, it doesn't really matter, insert platform here. People always ask me if you can use the free terms of use or the - I don't know - default terms of use, I guess, that are included on those platforms, and whether that's good enough or whether you have to get your own thing, whether you should customize it, is there something that's missing from there.

And I think that these are all really, really good questions because it's pretty confusing. It's like, well, if they've provided it to you, surely it should be pretty good, right? But here's the thing, you still need your own terms of use. So, if you're selling, for example, an online course, a membership, or a digital product, you still want to get your own terms of use, which is a contract. It's like a type of contract that you include at checkout so that people have to click on something when they purchase from you and they have to agree to that at checkout. So, they're checking off a box that says I have read and agreed to these terms of use, and then they purchase and they buy and they go on their merry way.

So, yes, you still want your own. You do not want to use the free ones that come from really any platform.

And by the way, this is no diss about any of these platforms. I think they're trying to be nice and I think they're just trying to provide you with something. But also in my experience, I tend to notice two things. One is that the free terms that are often provided are just woefully inadequate. So, they're just not containing a lot of the information - which I will go over in a second - but they're not containing a lot of the information that you need, and they're not at all customized to you or what you do.

And if you've listened to my show before or anything that I've really done, you know that one of the things I talk about is that you have the opportunity to set your own business practices. You don't have to have the same refund policy that I have. You don't have to have the same rescheduling policy as your friend. You get to do whatever you want to do. This is your business. You set the rules. You set the terms literally and figuratively.

So, for one, I don't really love you taking somebody else's and just dealing with it. Because as a business, you have to set the terms and you have to set the rules because then you know what they are so you know if people are actually following them or breaking them or what to do if they do break them. But if you've just accepted default rules, you're like I'm not really sure what it says or I'm not really sure what I can do about it.

So, I really want you to own this. So, like I said, first things first, I would just say they're willfully inadequate, but also that they are not at all tailored to you, and you kind of, I think, should take advantage of that opportunity.

The second thing is that I do tend to notice that the terms of use that are provided by these companies are a little bit more geared towards protecting them as well. Which, again, is like their prerogative, they're a company and they're providing these for free and they don't have any obligation to do so, but that is something that I notice when I've read them before. A good giveaway, for example, is if it includes any indemnification language, because indemnification is essentially a fancy legal term where we pass on the legal responsibility to somebody else if something happens. And so,

sometimes what I see in these freebie clauses that are provided by companies is that they're actually putting all the liability on you in case something happens in your customer's use of their own platform.

So, for example, just to make this real life. If you sold courses on Kajabi, for example, and let's say Kajabi had that kind of indemnification clause - I don't know offhand if they do, but if they had that - and then you just use their default policy as your own, you'd actually be letting your customers agree to indemnify Kajabi. Meaning that they could not go after Kajabi if something happened, they would only be able to go after you. So, like it's actually shooting yourself in the foot.

So, remember earlier I said that they are woefully inadequate. Why? What are some of the things that are missing, typically speaking, from these kinds of freebie documents? Well, for one, I would say the financial and the payment terms provisions are some of the worst. I would say that's both because it's missing a lot of the language that you need legally, but also that is the place where it's going to need the most customization and input from you because everybody's payment structure and refund policy, or chargeback policy, or whatever your policy is about kicking somebody out after a certain number of attempts, whether they get access to the course again, whether they do or don't, all that kind of stuff, whether they get a refund, that is all so highly individual.

Like on a surface level, it's individual on your part. You can do whatever you want. There's no right or wrong. But, also, it's super individual because all of our programs are run so differently. They're all different periods of time. They're all served and delivered differently. We all take payment plans differently. Some people have a set price and then a couple of months of a payment plan, then it's optional. There's just nine million ways to Sunday to cut up payment plans in the way that people get charged. So, we're typically missing the opportunity and the prompt.

I think this is what a lot of people like about my legal templates is that you wouldn't know - which I don't blame you, I wouldn't have known either - you wouldn't know what you don't know. So, you don't know what parts of a payment plan policy am I supposed to write out here. And those are always

so vanilla, so plain, so it's missing all of that language. It's also, though, they also are typically missing the legal language that you need that's actually legally required to continuously charge somebody's credit card without going back to them for express permission every single time.

So, for example, if someone buys your course and they choose a six month payment plan, and so you just use some software that's going to automatically charge their card every month for six months, totally normal. You can do that. That's fine. But the law does require that you have some sort of language in your term saying we are going to automatically charge your card 30 days space apart for six months, again, very tailored to you and your policy. You have to let the person know that you're not going to be contacting them to ask them for their permission every month. They've agreed to a six month payment plan, therefore you are just going to automatically charge. But every single month, you're not going to reach out to them and be like, "Is it okay if I charge you for this month's payment?" They've already agreed to that.

So, you have to have that legal language in your terms. It's built into my terms of use templates, built into all my contract templates that require it. But that is not something I tend to see in these freebie contracts.

I also don't ever see any chargeback threat protection. I mean, this is pretty, pretty common in our industry, but it's not something I see mentioned. So, chargeback threat is when a person goes to their credit card company and says I didn't like this and I want my money back. Instead of going to you, or maybe they do this to their credit card company after they've tried speaking to you and you've enforced your refund policy. Sometimes people do this in a kind of fraudulent way where they'll say I never got the product, even though they did.

Again, this is one of those things where you can really successfully defend yourself against these chargeback threats if you have the proper legal language in your terms and you presented the terms properly. So, I don't tend to see that language in the freebie contracts, but they are in my templates.

I also don't see a whole lot about intellectual property protection. If I see anything, it might be like a general IP statement. But it is important for people to know that this stuff is your intellectual property. I also think it's important to have more specific language in that section or somewhere in your terms of use that talks about the fact, let's say you're selling an online course, this course is not meant for people who want to be inspired by something and to go out and create their own. So, they can use the content and the substance of what's in your course for their own personal use, but it's not meant to be something that is replicated elsewhere. It's not licensed. You're not offering them any sort of license. That's a very complicated legal topic, and so that's not something I see typically addressed in these freebie contracts.

Now, one of the other ways that I see this being - I don't know - one of those issues that comes up a lot in day-to-day life, as I always say, people aren't typically getting sued left and right, but we have a lot of day-to-day legal issues. So, one of the legal issues that comes up often is that people will have somebody kind of unruly in their course or in their community, for example, and they want to know if they can remove that person.

Like, let's say somebody is being bad in your Facebook Group or in your circle membership or something like this, and you might want to still give them access to the content or the resources, but not allow them to comment or participate in the community or something like that. That's the kind of thing that you want to address in a terms of use at checkout because it would give you the legal right to say you don't automatically or without any qualms about it have access to this community indefinitely forever no matter what you do. We want to be able to limit that only obviously for the bad cases, but you still want to be able to limit that. And I have seen that actually come up quite a bit, so that's something I don't see in there either.

Now, I could sit here all day and probably read more and more things for you that I don't see typically in these terms of use or, really, in any contracts that I see you get online for free, even stuff that you get online from a friend or somebody you met in a group or community because we

don't know where they got it from and we don't know if it was drafted by a lawyer, we don't know how many changes they made to it.

And really at the end of the day, what I see make the most difference is when people feel confident about the contracts and policies that they use in their business, because that's what's going to get you to confidently enforce it and confidently put yourself out there more often. I'm more concerned about you not worrying about promoting your online course or selling more of your digital product because you know you've got yourself covered on the legal side.

So, with that being said, if you have considered joining my signature program, the Ultimate Bundle, you want to keep your eyes and ears peeled because two weeks from today, on June 24th, I've got something very special dropping for you. So, you're going to want to keep your eyes open, ears open, keep your eyes on my email list if you receive my emails, I think you're going to be really excited about what I've got going on.

All right. With that, I'm about to hop off. I'm going to go film. I'm going to batch record a whole bunch of social media videos for the month of June. Our marketing assistant, Michelle, is coming over to help me get it done. She's the enforcer. So, I'm going to get all these videos done, reels done. I got to do voiceovers, all kinds of fun stuff. So, with that, I'll see you on the podcast next week.

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