

Impermissible Clauses

- Provisions requiring the institution to pay taxes (T.C.A. §§ 67-5-203 and 67-6-322), cancellation fees, liquidated damages, incidental or consequential damages, or punitive or exemplary damages (Institution is liable for actual damages only T.C.A. § 9-8-101 et seq.).
- Provisions requiring the Institution to pay late charges, finance charges or interest in excess of that provided under the Tennessee Prompt Pay Act (T.C.A. § 12-4-701 et seq.).
- Provisions requiring the Institution to pay punitive damages or costs of litigation other than court costs (T.C.A. § 9-8-307(d)).
- Payment of travel/per diem expenses in excess of maximum limitations set forth in APSU Policy 4:015.
- Provisions designating the governing law of a state other than Tennessee. As an instrumentality of the State of Tennessee, Austin Peay State University has sovereign immunity under Article I, Section 17 of the Tennessee Constitution and the Eleventh Amendment to the Constitution of the United States.
- Provisions requiring the institution to make deposits or payments before goods are received or services are performed (T.C.A. § 12-4-703), except that the institution may pay for licensing, preventive maintenance/service, subscriptions, memberships, and in other instances only if approved in accordance with APSU Policy 4:013 Contracts, upon the signing of an agreement.
- Provisions requiring the institution to purchase or obtain liability, property or other insurance or a performance bond. The State of Tennessee self-insures its exposures in general liability, automobile liability, professional malpractice and workers' compensation. The State's self-insurance program insures all liability created under Title 9, Chapter 8 of the Tennessee Code Annotated, for all State departments, agencies and institutions, including State institutions of higher education.
- Provisions requiring the Institution to insure, guarantee, or indemnify or hold harmless any party from claims which may arise out of the agreement or be brought by third parties. Institutions are subject to the direction of the Tennessee Attorney General pursuant to Article VI, Section 5 of the Tenn. Constitution and T.C.A. §8-6-301. The Attorney General, in Tenn. Op. Atty. Gen. No. 78-71, 1978 WL 27014 (Tenn. A.G.).
- Provisions requiring the institution to obtain or pay for outside labor of persons not employed by the institution (for example, union stage-hands, teamsters, etc.) are prohibited unless such cost is included as part of the total contract price.
- Provisions requiring the institution to consent to binding arbitration by a third party of claims arising out of or relating to the agreement. (T.C.A. §§ 86-301 and 20-13-103.)

- Provisions passing risk of loss or title to the Institution before delivery and/or installation of products unless vendor provides shipment protection in the Institution's interest.
- Right of vendor to enter institution's premises without notice to remove equipment or product upon alleged default by institution.
- Provisions permitting the vendor to take a secured interest in personal property under the agreement.
- Provisions providing for a limitation of time in which the Institution may bring suit. (T.C.A. § 28-1-113).
- Provisions requiring confidentiality and nondisclosure that potentially violate the Tennessee law regarding public records. (T.C.A. Title 10, Chapter 7).
- Limitation of Liability. Pursuant to T. C. A. §§ 12-3-701 and 12-3-1210 an Institution shall not agree to limitation the liability of a contractor for less than two (2) times the maximum liability, estimated liability or maximum revenue of the contract.