

Contracts

Information for businesses

A contract is a legally binding agreement between two or more people. It may be between you and your customer or between you and another business. Contracts can be oral. However, even for relatively straightforward arrangements, you should have a written contract as it minimises misunderstandings and leads to fewer disputes. With an oral contract, it may be difficult to prove exactly what was agreed to, or even that a contract existed.

In some industries, written contracts are compulsory. For example, in the home building industry a written contract is required between a builder and a customer for any job worth over \$1,000 in labour and material costs.

Whether the contract is oral or written, you may have certain obligations and rights under certain consumer laws. Disputes can occur over even the simplest of agreements and can drag on because nobody has anything in writing. Always, put into writing any agreement you make with another party.

Contract elements

A contract has three elements:

1. an offer - eg. this may be made when you (the buyer) decide to buy something and offer to pay a price. You may also offer to give something or do something in return.
2. an acceptance - eg. this may be done by the seller accepting the money, goods or services offered. The acceptance may be in words or an action (eg. if you signed a written agreement accepting the terms and conditions or if goods are delivered following a telephone order).
3. consideration - this is the value (usually money) that is given in return for the goods or services offered to be supplied or acquired. It may also be the promise to pay at a later date after certain events occur or procedures are followed.

Business to business contracts

Before you sign a contract you should:

- be sure you really want and know what you are signing for. If in doubt, take time to consider the contract carefully
- read every word - including the fine print
- seek legal advice if you don't understand the contract
- not be pressured into signing anything
- if necessary, take the contract home overnight and read it through
- never sign a contract that contains blank spaces
- make sure you and the seller/buyer initial any changes you may make to the contract
- always get a copy of any contract you sign.

Once you've signed a contract you really can't change your mind - you are locked in. If you still wish to pull out of the contract before it is finished, you may end up paying a penalty (sometimes the full amount of the contract) or you may be taken to court by the other party to compensate their loss.

Some contracts may allow you to 'opt out' or terminate your contract early, with or without a penalty. If you wish to have an opting-out clause in the contract, you should seek independent legal advice to make sure you are properly covered.

Unfair contract terms

Consumers and small businesses are protected by law from unfair contract terms.

Protection for consumers

Unfair contract terms provisions introduced in July 2010 became part of the Australian Consumer Law (ACL) on 1 January 2011. Consumer contracts are contracts for the supply of goods and services, or sale or grant of an interest in land for personal, domestic or household use.

For more information visit the Unfair contract terms page in the Consumers section of the NSW Fair Trading website.

Protection for small businesses

In November 2015 the ACCC introduced a new law to protect small businesses from unfair contract terms in standard form contracts. This law will apply to standard form contracts entered into or renewed on or after 12 November 2016 where:

- it is for the supply of goods or services or the sale or grant of an interest in land
- at least one of the businesses employs less than 20 people, and
- the upfront price payable under the contract is no more than \$300 000, or \$1 million if the contract is for more than 12 months.

For more information visit the Unfair contract terms page on the ACCC website.