



Understanding business contracts

If you're in business there is a likelihood that you'll come across business contracts of some kind or another, every day. Every time you make a sale or a purchase, you enter into a contract.

It's important that you understand how these work to avoid problems in the future.

While the full range of business law is vast, the key issues affecting most businesses are pretty straightforward. If at any point you're unsure then you should take legal advice from a qualified, expert professional.

Find out which laws affect your business

It's important that you understand your industry. You need to understand the legal issues impacting on how you trade (contracts with customers and suppliers) as well as trading regulations. Talk to your local trading association or a solicitor about the legal issues specific to your business.

Consider the other key legal issues concerning your business.

When you start a new business, you need to choose the right form for the business (eg sole trader or limited company). You can read more about this in our legal need to know guide – Starting up a new business.

Other legal issues, for consideration, include whether to rent or buy premises, whether to employ or subcontract, responsibilities concerning taxes (including National Insurance and VAT) as well as how you handle data and manage intellectual property.

How does basic contract law work?

Three requirements must be met before a contract is created.

1. Both buyer and seller intend to make a contract and are capable of doing so.
2. An offer is made and accepted. Simply displaying your goods (in a brochure, for example) is not usually an offer, but an invitation for the customer to make an offer to purchase them - which you can then accept.
3. Something of value is exchanged, for example, the seller's goods for the purchaser's money or promise to pay.

Both the buyer and the seller are bound by this contract.

It's important to remember, however, that a contract doesn't have to be in writing to be binding (although it can be hard to prove what has been agreed if it isn't).

You should note, however, that some types of contract (eg property leases over three years) must be in writing.

What are implied terms?

These are terms that may not be written down but are incorporated into your contract by law as by custom and practice. For example you must usually comply with five key terms for the supply of goods implied by sale of goods certificates:

1. The seller must be entitled to sell. If you buy something from someone who does not own it, you have the right to your money back from the seller. You will probably not be allowed to keep the goods.
2. The goods must match their description. Descriptions on labels and claims made by the seller must be accurate.
3. Goods sold in the course of business must be of satisfactory quality. This includes appearance, freedom from minor defects, durability and safety.
4. Goods must be fit for the purpose. If a customer asks for a component to use in a particular piece of equipment, your component must be suitable.
5. If a batch of goods is sold after providing a sample, the goods must match the sample.

You must also comply with a number of implied

terms if you supply services.

1. The service must be carried out with reasonable care and skill.
2. The service must be completed within a reasonable time (if a time limit has not been agreed in advance).
3. The service must be provided for a reasonable price (if a price has not been agreed in advance).

Are there any exceptions to these?

It's important to remember that there's no way of overriding the implied terms as referred to above (often called 'Statutory Rights') when dealing with a private individual (consumer). The statutory rights apply to any sale of goods, including second-hand or sale goods, including hiring, hire purchase and part-exchange. However, goods can have defects if the seller has pointed them out to the buyer or they are second-hand.

When selling to another business, you can agree to exclude certain implied terms, but not unreasonably.

Don't forget to draw up proper terms and conditions of business

It's important that you have properly drawn up terms of business. You can read more about this in our Terms of Business need to know.

Protect yourself when purchasing

Contracts don't just apply when you're selling something. It's important to protect yourself when you're purchasing too. This could include drawing up and using standard terms and conditions of purchase when purchasing goods. It could also include the use of subcontractor agreements – You

can read more about these in our legal need to know guide – Using subcontractors.

Whatever your purchasing needs, don't forget to take legal advice and remember to put in terms that are important to you, to ensure you're getting what you want and need. Some examples might include:

- If prompt delivery is important, inform the seller and confirm it in writing.
- Ask for detailed product specifications. When you place an order, insist that the product must match the specification.
- State what quality levels and standards you expect.
- Tell the seller what you will use the product for or why you require the service.
- Ask the seller to tell you about any hidden dangers, limitations or quality changes.
- Keep a record of any claims made by the seller.

Your last chance to refuse...

A word of warning... Do not sign delivery notes saying that goods are satisfactory unless you have checked. If you must sign, make a note of your reservations (eg 'goods not checked') and let the seller know.

It is important that you seek legal advice. For help with business contracts please follow the link wards.uk.com/service/commercial-services or contact Marina Maclennan or Ciaran Keane on 0117 929 2811