



# TOP LEGAL TIPS ON BUSINESS CONTRACTS

Running a business can be an exciting yet challenging experience. One of the core challenges every business faces is ensuring it has good quality contracts in place to govern its relationships with its suppliers and customers.

The importance of such contractual relationships cannot be understated. They help businesses to secure their revenue, protect their assets and mitigate their liability and risks if things go wrong. Furthermore, if you wish to sell your business the quality of your contracts will be an important consideration for any buyer, and might increase the amount they are prepared to pay.

Here, we share some key considerations:

## 1. CUSTOMER CONTRACTS i.e. when you are selling your goods or services



### DESCRIPTION OF GOODS OR SERVICES

It sounds obvious but it is very important to spend time ensuring that each contract contains a clear and accurate description of the goods or services you are delivering to the customer.



### TIMING OF DELIVERY

Set out clearly when the goods or services are due to be delivered.

### INTELLECTUAL PROPERTY

If you are using your IP (in particular any technology or software) make sure you state clearly that ownership of this (and any changes to this) will remain with you and that it is only to be licensed to the customer for the duration of your agreement.

If you are creating new materials in the course of the contract, consider carefully who should own them. It does not always follow that ownership should pass to the customer just because they have paid a fee. If you retain ownership then you may be able to re-use those materials.



## PRICE



It is of course crucial to clearly set out the price for the goods and services being supplied and the payment terms. Avoid situations where all fees are paid after delivery and, where possible, insist on some form of payment upfront or by instalments.

We always advise having the right to suspend delivery/services if payments are not made.

## DURATION



If you are providing services, negotiate as long a minimum term of the agreement (before the customer can terminate) as possible. Committed contract revenue increases certainty for your business and can help increase the value of your business.

## LIABILITY - DON'T "BET THE FARM"



Check you have appropriate insurance (typically professional indemnity and product liability) to cover your business if you make errors in delivering services or goods.

Ensure that you insert a cap on your liability under the contract, ideally not more than the fees paid in the last 12 months. This is standard practice and will protect you from the risk in the event of a business-ending liability claim.

## FORMATION – WIN THE "BATTLE OF THE FORMS"



Make sure it is very clear that your terms apply to every delivery. Be vigilant about customers sneaking their terms in, particularly when they are providing purchase orders or even accepting delivery. You need to win the "battle of the forms" by ensuring that you are clear your terms apply at every stage up to and including delivery.

Remember that putting T&Cs on invoices is too late as the goods/services have already been delivered (and the contract commenced) by then.

## 2. SUPPLIER CONTRACTS i.e. when you are purchasing goods or services

Similar considerations apply to supplier contracts but reversed:

### PRICE

Don't pay too much upfront. Hold some money back until delivery.

### INTELLECTUAL PROPERTY

Make sure that any IP created is transferred to you – the default position is that any Intellectual Property Rights created by any independent contractor (even if you pay them) remains with them. It is therefore essential that your contracts with contractors expressly transfer any Intellectual Property Rights to you.

### REMEDIES

Make sure the contract provides clear remedies if the supplier delivers late or the goods/services delivered are defective.

### DURATION

Keep the committed term as short as possible and make sure you have clear "no fault" termination rights.

### BEWARE OF PERSONAL GUARANTEES

Suppliers do try to sneak these in. Avoid them unless the supply is essential and you absolutely have no choice. Even then, think very carefully.

**For many businesses, contracts cover complex arrangements, so we recommend you always take legal advice. Our team of expert business contracts lawyers are here to help. Please contact Steve Thomas on 01242 246489 or at [sjthomas@hcrlaw.com](mailto:sjthomas@hcrlaw.com), or Kevin Mahoney on 01242 246426 or at [kmahoney@hcrlaw.com](mailto:kmahoney@hcrlaw.com).**