

Summary

Contracts

A contract is a binding agreement between 2 or more parties. Preferably, it should be in a written format, so that there is no room left for misinterpretation by any party. Contracts help mitigate disputes between parties and enforce rights in case a party does not live up to its commitments.

Key Aspects of Contracts

Any type of contract contains certain set of covenants, rights and considerations. For any party, various aspects demand a closer observation before signing the contract. A few of them are listed below:

1. **Term of Contract** – It could either be long term/short term. For judging the period of contract, you need to consider factors like level of dependency on the product, getting a price bargain, etc.
2. **Termination** – This aspect helps you understand the various circumstances under which you may end the contract before the term ends. For example – breach of terms and conditions/mutual consent etc.
3. **Exclusivity** – An inclusion of exclusivity clause would bind you to service only that party, barring you to transact with rest of the world for similar services.
4. **Payment** – Under this, you decide on the timing of payment; is it in advance or after services are rendered, are there any credit periods involved or is payment to be made in tranches, etc.
5. **Service Levels** – It is important to elaborate the nature of services and the expected standards they are to conform to so that there is no ambiguity on deliverables.
6. **Indemnity** – Under this clause, you have the right to claim money for the losses suffered due to a breach by the other party of its commitments.

Founder & Employee Agreements

Now, you need to understand the different types of contracts.

A founder's agreement is essential to documenting the understanding of the co-founders. It helps prevent and/or resolve any form of dispute arising among the founders of the company. There are various aspects which one needs to think through before making an agreement amongst the co-founders. For example, there could be a difference of opinion on things like the need of funding. While preparing the agreement, please consider whether any founder should have a casting vote, i.e., whether one founder can overrule

Vendor & Customer Contracts

Anyone on fundamental decisions depending on what he is bringing to the table so that there is no deadlock among founders. The other things which you need to put are IP rights and ownership of IP (which should solely vest in the name of the company); remuneration structure for the co-founders.

The next contract is the employee agreement, where you try to create a win-win situation for both the employer and the employee.

- ❑ **1) Exclusivity** - By making the employee agree on exclusivity clause, you ensure that his or her service and time is not being shared by any other employer simultaneously.
- ❑ **2) Non-Compete** - This is to make sure your employee does not join a competitor and divulge critical information regarding your business. However, there are legal issues on the validity of non- compete obligations post the termination of employment.
- ❑ **3) IP Ownership** - You need to protect and ensure that all the intellectual property rights of the work created by any employee is owned by the company.
- ❑ **4) Confidentiality** - Finally, you need to have confidentiality clauses in place, to prevent employees from sharing sensitive data with the any third party.

Vendor & Customer Contracts

These are contracts which are made with third-parties, which are **external** to the organisation. As an entrepreneur, you need to look carefully at the **terms and conditions** which you include at the time of signing a contract with them. Do read between the lines.

First, let's look at **vendor contracts**. There are specific reasons for you to check here:

- ❑ **1) Refund Policy** – You need to establish the grounds for a refund in case there is any defect in the goods/service supplied to you.
- ❑ **2) Tax Clause** – Have a clear cut understanding as to who bears taxes – especially service tax and whether such taxes have been factored when agreeing to the quantum of fees.
- ❑ **3) Exclusivity** – This is to ensure that the vendor supplies/manufactures goods only to you.
- ❑ **4) Termination** – On what conditions can you exit the contract. You can add clauses like representation and warranties etc.

Service contracts are essentially made whenever you outsource your work. There are a few aspects which you need to protect. For example, if you engage someone to design your website:

- ❑ 1) Avoid any third-party IP Infringement and that the work created for you is original.
- ❑ 2) Ensure that the work created belongs to the company.
- ❑ 3) Set the timelines for payment, such as on the basis of percentage of work completion.

Customer contracts would depend on the types of services you are rendering and what's your business model. If you are an intermediary, ensure that you have a liability clause in place declaring that you are not responsible for paying up if the supplier denies the refund on any ground. Make the terms and conditions very clear on all the communication mediums with the customer. When we talk about the complexity of contracts, in the case of a B2B business model, you may have a full-length contract, however, for a B2C model, the terms and conditions are relatively simple.

You should be able to:

- Ponder on the key aspects of contracts before signing or preparing one
- Assess the key clauses that go into making the founder and employee agreements
- Understand what goes into the making of third party contacts with vendors and customers