

Contracts

Bought something from the dairy lately? Hired a plumber? Booked a motel? If you did, you entered a contract. You, and the person you dealt with, have legal rights and obligations. And the agreement you made can be legally enforced. There's no backing out now.

What is a contract?

Contracts come in all shapes and sizes. Some are verbal, some written. Some are formal, some informal. They all have 3 features in common:

- you make someone an offer
- they accept it
- and you promise to give something - usually money - in return for what you're getting. The legal term for this promise is "consideration".





Written or Verbal?

Contracts are both written and verbal.

Verbal and written contracts

Generally, contracts don't have to be in writing. A verbal agreement is binding, but you can save yourself a lot of hassle by writing it down: if things go wrong, how do you prove the terms of a verbal contract?

Putting the contract in writing also makes sure you both understand exactly what's being promised before you agree.

What do we need?

When drafting an agreement/contract it is ideal to include:

- A date
- Name of the 2 parties/companies
- Agreed work
- Deadlines (For Work & Payment)
- Signatures





General Terms

- What you're expected to do — tasks you'll perform, what you'll deliver. You may see the word "services" used to describe this section, eg "Services to be provided".
- How much you'll be paid, eg an hourly or daily rate, and when you need to invoice for your fees. This might be weekly, monthly or after you've completed certain projects or tasks.
- How long the contract will last — also called its term— and whether it can be renewed.
- Who your client contact person will be.
- Whether either party has the right to terminate the contract.
- Who will own any intellectual property that you may have developed as part of the contract.



Legal Requirements

FUNDAMENTAL PRINCIPLES

50 To prove that a binding contract has been formed under New Zealand law, the parties must establish the following elements:

- the parties *intended to create legal relations* when they entered into the agreement;
- one party to the contract made an *offer*;
- the other party or parties *accepted* that offer;
- the promises contained in the contract were made for **valuable** *consideration*; and
- the terms of the contract must be *certain*.



Other Legal Terms

Breach

When someone doesn't fulfil their part of the contract.

Damages

Money paid over to compensate for a breach of contract. For "special" damages, you have to prove the exact amount the breach cost you.

"General" damages cover things that can't be measured, such as distress, humiliation and inconvenience.

Frustration

This is when the contract can't be carried out because of circumstances beyond everyone's control. Say, for example, you hire the local church hall for your wedding but it's struck by lightning and burns down. If that happens, you don't have to pay but you can't sue the church for damages.

Postal acceptance rule

If you write a letter accepting an offer, the contract applies as soon as you put the letter in the post. The only exceptions are if you were specifically asked to accept in some other way, or if posting a letter is unreasonable in the circumstances. If you accept by fax, there's no contract until the fax reaches its intended destination. The legal situation with e-mail is still unclear.

Specific performance

This is the term for a court order telling you to follow the terms of the contract.



Remember

- Get something in writing
- Specify work required
- Specify deadlines
- Specify price
- Get signatures of both parties
- Date the agreement