

Title:

Getting Started on Commercial Contracts

Word Count:

795

Summary:

Basic tips on entering into contracts in business

Keywords:

contracts, contract law, binding contract, legal agreements, legally binding agreements contracts, contract law, binding contract, legal agreements, legally binding agreements

Article Body:

A legally binding contract will exist between two people or companies where one agrees to do or sell something in exchange for something else (usually money). With very few exceptions, it does not have to be in writing but the reason why they should put in writing is that otherwise it may be one person's word against another either as to whether the contract exists or as to its exact terms. Even if it is in writing, the meaning must be clear and not capable of misinterpretation - therefore, you need to make sure it is as simple and "to-the-point" as possible.

Obviously, you are in effect entering into contracts all the time (e.g. buying a newspaper, going into a car park, buying a drink) and you cannot put everything in writing. You will therefore have to exercise some degree of discretion as to when to put something in writing - if in doubt, ask your solicitor. Some contracts have to be in writing (e.g. for interests in land or for finance) - soon electronic contracts will be sufficient for these purposes.

You may need general "terms & conditions" depending on your business needs and you should discuss whether or not you do in fact need them with your solicitor. If you already have standard terms & conditions, you need to make sure that:

they are not just copied from someone else - the terms may be inappropriate if they were copied from someone operating slightly differently from you and they may be out of date and/or defective (plus it is a technical breach of copyright too).

they are drawn to the other person's/company's attention before the contract is entered into as otherwise they will not usually be binding on them.

A good practice is to get a copy of your contract letter or standard terms & conditions signed by them - do not rely on the terms being printed on the back of invoices. Try and avoid conflict between your terms and those of your supplier or customer by agreeing whose terms are to apply. Also make sure that agreed terms between your and a supplier are not at odds with your own terms with your customers (e.g. so that your supplier will not accept faulty goods after one week from delivery whereas yours specify two weeks).

Some common clauses include:

Price, date payment is due and method of payment  
Delivery details and non-liability of seller for delay beyond its control  
Seller retaining ownership till goods are paid for but requiring buyer to carry risk for them and to insure them  
Limitation on seller's liability  
Some important points relating to terms & conditions

no matter what a contract says, certain rights are implied by law or by statute (always seek proper legal advice on such matters) e.g. the goods must be "fit for the purpose" for which they are sold and be of "suitable quality". Goods must match samples (unless "tolerances" are specified) or descriptions in promotional literature, so it is important samples are truly representative and brochure claims are realistic. If the goods are not suitable for the intended use but the buyer insists on buying them despite that, confirm your warning in writing immediately. The same broadly applies to on-line selling.

if you deal with private consumers as your customers or clients (including as a landlord) any standard terms (whether in a letter or in a printed contract) are subject to the European Directive on Unfair Contract Terms and as such they must be "fair", otherwise they will be of no legal effect whatsoever. Bear in mind that with consumer sales in the EU, no matter what your terms say, local consumer laws will override any contrary terms in your contracts. See our article on the new jurisdiction rules for electronic consumer contracts.  
if you print terms on the back of something, make sure that on the front you refer to their presence on the back (e.g. "See over for our standard terms of trading").

trading on the Internet brings special considerations - terms need to be sufficiently prominent and well-placed to be effective. Effectiveness will depend upon individual circumstances - in some cases it will be necessary to make the terms appear in a "pop-up" window then force customers to scroll down before having to expressly click an acceptance button.

if you sell goods or services on the Internet or by telephone or mail order, the Consumer Protection (Distance Selling) Regulations 2000 will apply. See our lay

overview of the Regulations or our detailed technical briefing.  
from January 16th the EU Ecommerce Directive is supposed to be effective and  
contracts and web sites must be constructed with this in mind as its  
requirements are strict: see our article on the Directive

<http://www.kaltons.co.uk>