

## GETTING YOUR CONTRACT RIGHT IN THE BEGINNING

Many people enter into contracts without fully understanding all the terms and conditions, their rights and obligations or the legal consequences. Investing in legal advice from a lawyer is strongly recommended before signing on the dotted line. This can save a lot of emotional and financial hardship in the future – especially if you are running a business.

### Contract Basics

Contracts can take on various forms, and can either be in writing, oral, partly written or partly oral. There are some important elements that must be present:

1. the contract parties must intend to be legally bound, which can usually be determined by looking at their conduct and all the surrounding circumstances;
2. there must be agreement on all the essential terms; and
3. there must be consideration, which is the exchange of something of value.



### The Importance of a Written Agreement

Oral agreements are legally enforceable, however a written agreement will always be advantageous. The exception is agreements for the sale of land which must be written and signed by both parties. If a dispute arises, then proving the terms of a written agreement is usually much simpler than compared to an oral agreement. This also assists to prevent a party changing the terms later on without the other party's consent. Some of the terms or an entire oral agreement may be held by a Court as unenforceable if there is no evidence or certainty of what was agreed on.

If circumstances and the obligations under a contract change, then a contract should also be updated to reflect these changes. As changes in the law occur, clauses in contracts can become outdated. A lawyer who keeps up to date with developments in the legal system will be an important business asset.

### Special Conditions

Many people presented with a contract assume that it is non-negotiable, often because it is a standard form contract such as the REIQ contract for the purchase/sale of land. Contracts are always negotiable. A skilled lawyer can help identify clauses which are unfavourable and negotiate changes with the other party. Amending special conditions in contracts for the purchase/sale of land can cover the inclusion of a dishwasher to the purchase being conditional upon the sale of another property to fund the purchase.

What may appear to be a simple business transaction can involve considerations which have not been contemplated by the parties, such as:



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**Warning**—this article is only meant to give you general information and should not be relied on as legal advice. If you want more information then talk to one of our lawyers.

- If the contract is ongoing, such as a supply agreement, when and under what circumstances will the agreement end?
- If the contract provides a licence to do something, such as a franchise agreement for operating a store, does it cover a specific territory or location?
- What happens when the agreement ends, will one of the parties be restrained from carrying on business in a certain location over a specific time period?

## Franchising

Before entering into a franchise agreement, a franchisor must allow the franchisee the opportunity to obtain independent legal advice. The Franchising Code of Conduct requires the franchisor to collect from the franchisee a signed statement:

1. that the franchisee has received independent legal advice; or
2. that the franchisee has been told that legal advice should be sought but has decided not to seek it.

Entering into a business agreement such as a franchise is a big step, and the legislation attempts to guide people to assess their legal rights before they commit to entering into business.

For more information on franchising, read some of our [franchising papers](#) such as [Steps Involved in the Purchase of a Franchise Business](#).

## Online Contracts

In the online world, people enter into contracts every day. Whether it is signing up for an email account, logging onto Facebook or purchasing music from iTunes, clicking 'I Accept' on the terms and conditions box binds you into a contract. A contract will be valid even if you do not read the terms and conditions. Simply scrolling through the terms and conditions to the 'I Accept' box or the website offering a link to them is enough to form a contract.



## How can legal advice help?

If the other person entering into a contract is using a lawyer, then you should too, if not always. Lawyers have to put their own client's best interests first, and these best interests may not always be the same as yours.

Despite the wealth of knowledge available on the internet, a lawyer trained to understand the framework of contract law will provide the accuracy and benefits that a search engine cannot. A hastily drafted contract could expose you to risks, and deny you the full advantage of the benefits to an agreement. Just because a term of a contract seems reasonable does not mean that a Court will take that same view.

At Bywaters Timms we can help by:

1. advising on the terms of a contract;
2. drafting a contract tailored to your business needs;
3. identifying the weak points and amending the terms of a contract.

It is always recommended to hope for the best but to plan for the worst. One of our lawyers can help by identifying any potential pitfalls, and ensure that you have certainty of understanding your rights and obligations.

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