

Commercial contracts

Checklist

Sharp
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LAWYERS

It is always tempting to start performing services or providing goods before a formal written contract is in place. However, if there is no written contract then it will be difficult to prove the terms on which you were supplying or buying the relevant services or goods. To avoid any uncertainty, we recommend getting a written contract in place as soon as possible.

While each commercial contract is unique to the particular facts, this checklist sets out the key issues that are helpful to consider when preparing a commercial contract:

1. Who are the parties to the contract?

- The relevant parties should all be clearly identified. If they are not a party to the contract, then it is unlikely that the contract will give them any rights or obligations.

2. What does each party have to do (or not do)?

- Set out who will do what, how they will do it and when they will do it.
- If the particular requirements might change later on down the line, consider including rights to vary those requirements.

3. Who pays what?

- Specify who will pay for what, and the timing for payment.
- Consider whether there should be any right to change the pricing, for example to reflect any change in underlying costs or inflation.
- Be clear about who is responsible for paying taxes like GST

4. How long will the contract continue for?

- State when the contract starts and when it expires (or whether it continues indefinitely).
- If there are rights to terminate the agreement early, then these should be specified.
- Think about what happens after termination
- should the other party have to return any information or equipment relating to the agreement? Should they have to complete any work that is in progress?

5. What happens if the parties don't perform?

Be clear about what happens if the parties don't do what they have said they will do or if they are late in fulfilling their obligations. For example:

- If goods aren't delivered by a certain date, should the agreement be terminated?
- If there is a breach of the agreement, should the breaching party be given time to remedy the breach?
- Should there be a specified dispute resolution process (e.g. mediation)?

6. Have the parties executed the contract?

- Make sure that the signing parties have authority to enter into the contract and that they sign it.