

BEFORE ENTERING INTO A CONTRACT – THINGS YOU NEED TO BE AWARE OF

When you run your own business you will be entering into contracts on a regular basis.

Before committing yourself to any contract, beware of the following issues:

- Contracts do not have to be signed to be legally binding. Whilst some contracts are entered into by you signing a piece of paper, they can be made verbally (either face to face or over the telephone), by the exchange of emails or letters, by clicking a button on a website or by a combination of the above.
- Generally a contract between two businesses is binding there and then. You do not have an automatic “cooling off period” within which to change your mind and cancel.
- Don't allow yourself to be pressurised into signing anything, or agreeing to anything verbally, without having given yourself time to consider the matter fully.
- Remember, you are not obliged to agree, nor should you agree to anything you are not 100% happy with and understand fully. If in doubt, do not agree.
- Read any terms and conditions fully before signing them. If you cannot read the small text, ask for the conditions in a format you can read. It will generally be no defence to argue that you didn't have time or were pressurised afterwards.
- A reputable firm will normally be happy to allow you the time you need to consider the matter, even if that may take a few days.
- You are fully within your rights to ask that clauses be altered, removed or added, and to refuse to agree unless you are happy.
- Beware of businesses putting you under time pressure to agree. This is often because they want you to agree before you have had time to think it through properly or do your research.
- Research the business you are thinking of contracting with, before you do so. The internet is a useful tool for finding out about a business's reputation.
- Beware - there are bogus people operating scams at all times. You should be more guarded with businesses that have approached you than those you have chosen to approach. Please ensure staff do not act for you, whilst you are out of the business.
- Ask if you can have references or speak to other customers of theirs, should you have any doubts.
- Do not simply trust what “salespeople” say. Contracts sometimes negate the communications you had with the sales people, which helped you agree to the contract.
- If this is not reflected in the contract you agree, you will often be left trying to prove you were lied to with little or no evidence apart from your recollection of what the person told you. Unfortunately they may often deny this, or have a different recollection. Make sure anything that is important to you, is recorded in writing on any contract.
- There may or may not be a voice recording of the conversation, or the other party may deny its existence.
- Terms and Conditions often contain an entire agreement clause – which states that you cannot rely on anything you have been told verbally – i.e. if it's not writing – it's not official.
- Always check any terms and conditions you receive in a hard-copy format following on from a verbal agreement. Do these correspond with what you thought you agreed to? If not, raise this immediately.
- If you are a Limited Company, avoid giving a personal guarantee as a Director.

- A consumer can, under the Consumer Credit Act (as amended), withdraw from most regulated finance agreements within 14 days. Here a consumer is more widely defined, and can potentially include very small businesses (sole traders and partnerships with up to 3 partners), provided they are not Limited Companies. You should still be careful before signing something rather than relying upon this because:
 - (a) It is much simpler not to sign, than to sign and then try to cancel.
 - (b) You may be mistaken as to whether the Consumer Credit Act applies. This is a complex area of the law and there are numerous exemptions and complexities.
 - (c) Whilst you may be able to cancel the finance, you may not be able to cancel any other related contract. For example, if buying a car, you may be able to cancel the credit agreement, but you will still be committed to buy the car (and will therefore need to seek alternate finance).

Typical clauses to look out for

- » **Price.** Are there any hidden charges, or unspecified amounts? Be careful that there is not a “headline” price, but clauses that then allow for certain unspecified charges/expenses to be added.
- » **Where there is an element of finance,** work out what you will be paying overall and consider whether this is the best way to acquire the goods/service.
- » **Duration.** How long is the contract to last for? Be very careful to check whether the contract has clauses that mean that it renews itself, for example if you do not terminate it, in writing, before a certain deadline. These are often called auto-renewing contracts (ARCs) and are very common. If you haven’t spotted these, or forget them, then you can find yourself stuck in a much longer contract than you wanted.
- » **Termination.** In what circumstances can either party terminate the arrangement, if at all, and what charges, if any, are there for termination?
- » **Obligations.** Is the other party obliged to do all of the things you want them to do? If they have said something verbally that is not in the contract, it needs to be added. Do this immediately before the contract is signed.
- » **Variations.** Look out for clauses that may allow the other party to vary the contract so that they can do something slightly different instead eg price, product types, etc.
- » **Timing.** Does the contract oblige the other party to do certain things within a certain period of time? If you want certain deadlines to be fixed, then you need to get this set out clearly in the contract, before committing your signature.
- » **With any finance agreement,** you need to check the nature of the arrangement. Will you ultimately own any goods, for example, at the end of the contract, or will you have to make a large final payment to acquire the goods. Alternatively, are you just hiring the goods, and they will not become yours at all.
- » **Contractual parties.** This may seem obvious, but check who you are contracting with.
- » **Sometimes you can end up entering into more than one contract** – for example you may be being asked to enter into a finance agreement with a bank and a supply agreement with the party providing the product/service.
- » **Verbal representations.** Make sure that anything you have been told that you wish the other party to be legally obliged to do should be recorded in writing in the contract.