

Ten Tips for Making Solid Business Agreements and Contracts

Follow these guidelines to make an enforceable, plain-English business agreement or contract.

1. Get it in writing. Although oral agreements are legal and binding in many situations, they're often difficult to enforce in court (and in some situations, they aren't enforceable at all). In the business world, most agreements should be in writing even if the law doesn't require it. A written agreement is less risky than an oral agreement, because you have a document that clearly spells out each party's rights and obligations in case of confusion or disagreement.

2. Keep it simple. Contrary to what most lawyers think, you don't need a lot of "**heretofores**¹" and "**party of the first part**²" **legalese**³ to make a contract enforceable. Instead, create short, clear sentences with simple, numbered paragraph headings that alert the reader to what's in the paragraph.

3. Deal with the right person. Don't waste time negotiating a business agreement with a junior person who has to okay everything with the boss. If you sense that this is happening, politely but firmly request to be put in touch with the person in charge. Make sure the person you negotiate with has the authority **to bind**⁴ the business and has a vested interest in making sure the business performs its obligations under the agreement. If you're not sure who that is, ask. In a smaller business, it might be one of the owners; in a larger organization it might be a chief **executive officer**⁵ or chief **operating officer**⁶.

4. Identify each party correctly. You'd be surprised how often businesspeople get this wrong and how important it is. You need to include the correct legal names of the parties to the contract so it's clear who is responsible for performing the obligations under the agreement (and who you have legal rights against if things go wrong). For instance, if a business is organized as an **LLC**⁷ or a corporation, identify it by its correct legal name -- including the Inc. or LLC suffix -- not by the names of the people who are signing the agreement for the business.

5. Spell out all of the details. The body of the agreement should spell out the rights and obligations of each party in detail. Don't leave anything out; if you discuss something verbally and shake on it but it's not in the contract, it will be next to impossible to enforce. In the world of contract law, judges (with a few exceptions) may only interpret a contract from its "**four corners**⁸," not from what the parties said to each other. If you forget to include something, you can always create a short written amendment. Or, if you haven't signed the agreement, you can handwrite the change into the contract. If parties **initial**⁹ the change, it becomes part of the contract.

6. Specify payment obligations. Specify who pays whom, when the payments must be made, and the conditions for making payments. As you might guess, money is often a **contentious**¹⁰ issue, so this part should be very detailed. If you're going **to pay in installments**¹¹ or only when work is completed to your satisfaction, say so and list dates, times, and requirements. Consider including the method of payment as well. While some people might be okay with a business check or business **charge card**¹², others might want a **cashier's check**¹³ or even cash.

¹ **heretofore** - ранее, до сего времени

² **party of the first part** - с одной стороны

³ **legalese** [li:ɡə'li:z] - юридический жаргон

⁴ **bind** 1) обязывать (законом и т. п.); связывать (договором и т. п.) 2) подтверждать (сделку) [He does not consider himself bound by agreement which was signed by his predecessor. — Он не считал себя связанным договором, который был подписан его предшественником.]

⁵ **executive officer** - руководитель, управляющий (делами) (главное лицо в организации)

⁶ **operating officer** 1) чиновник при исполнении своих служебных обязанностей

⁷ **LLC** от **limited liability company** - компания с ограниченной ответственностью

⁸ **four corners** - рамки, границы

⁹ **initial** [ɪ'nɪʃəl] - парафировать (подписывать международный договор инициалами лиц, участвовавших в его выработке, в подтверждение предварительной договорённости, до официального подписания)

¹⁰ **contentious** [kən'ten(t)ʃəs] - дискуссионный, спорный

¹¹ **pay in installments** - платить в рассрочку

¹² **charge card** - платёжная карта (владельцу которой периодически представляется счёт для оплаты в полной сумме за совершенные им расходы)

¹³ **cashier's check** - чек, выписанный банком на себя; чек кассира, кассирский чек

7. Agree on circumstances that terminate the contract. It makes sense to set out the circumstances under which the parties can terminate the contract. For instance, if one party misses too many important deadlines, the other party should have the right to terminate the contract without being on the hook legally for breaching (violating) the agreement.

8. Agree on a way to resolve disputes. Write into your agreement what you and the other party will do if something goes wrong. You can decide that you will handle your dispute through arbitration or mediation instead of going to court, which takes up a lot of time and money.

9. Pick a state law to govern the contract. If you and the other party are located in different states, you should choose only one of your state's laws to apply to the contract to avoid sticky legal **wrangling**¹⁴ later. In addition, you may want to specify where you will mediate, arbitrate, or bring legal actions under the contract. This will simplify your life if a dispute does **crop up**¹⁵.

10. Keep it confidential. Often, when one business hires another to perform a service, the other business will become **privy**¹⁶ to sensitive business information. Your agreement should contain mutual promises that each party will keep strictly confidential any business information it learns of while performing the contract.

<http://www.nolo.com/legal-encyclopedia/make-business-contract-agreement-30313.html>

How to Write a Business Contract

Every business contract should include a few important elements to protect your interests.

Entering into a business relationship with another party (whether it's a person or a company) is a serious task with important **ramifications**¹⁷ and should only be entered into after giving real thought about the relationship you want. Don't fall into the trap of entering into agreements **haphazardly**¹⁸ or with complete trust of the other party. Even if it's a family member (some would argue especially if it's a family member), the business contract should protect your own business interests first and to do so you'll need to familiarize yourself with some guidelines on how to write a business contract.

Generally speaking, you will want to keep two things in mind when **entering**¹⁹ or writing a business contract. First, does the agreement address all of the possible situations which may arise (or at the very least, the most probable ones). And second, do the provisions leave too much room for ambiguity. You want the contract to cover the important points and do so in a way that is clear and doesn't leave too much room for interpretation.

Read below for tips on writing business contracts for your small business.

How to Write a Business Contract: The Basics

- **Get it in writing.** Anytime you enter into a business contract, you want written proof of the agreement as well as specific terms by which each party is bound. Oral agreements do occur in the small business context, but they are not advisable because such agreements can lead to enormous problems. Oral agreements are difficult to enforce and people's memories can be **faulty**²⁰ and terms easily misremembered or misinterpreted. The first lesson is to always get it in writing.

- **Use language you can understand.** When writing a business contract, there's no need to be **intimidated**²¹ by a false sense that the document has to be written in "legalese". The best contracts, particularly in the small business context, are written in plain English where both parties know exactly what they're signing and what the provisions mean. Just be sure that the terms you write are specific as to each party's obligations and the specific **remedies**²² that you have in the event that the other party violates the agreement.

¹⁴ **wrangle** ['ræŋɡl] - прения, пререкания, спор, ссора

¹⁵ **crop up** - неожиданно обнаруживаться; возникать

¹⁶ **privy** ['prɪvɪ] - тайный, сокровенный; скрытый, частный, личный

¹⁷ **ramifications** - сложные последствия (какой-л. проблемы и т.п.)

¹⁸ **haphazardly** [hæp'hæzədli] - бессистемно; бесцельно; случайно

¹⁹ **to enter into an agreement / a contract** — заключать договор / контракт

²⁰ **faulty** ['fɔ:ltɪ] 1) неисправный, повреждённый, с изъяном (о предметах) 2) ложный, неправильный, ошибочный 3) несовершенный, наделённый недостатками (о человеке)

²¹ **intimidate** [ɪn'tɪmɪdeɪt] - пугать; запугивать, устрашать

²² **remedy** ['remədi] - средство судебной защиты, средство защиты права

The easiest way to write a contract is to number and label each paragraph and only include that topic in the paragraph. By segmenting the contract into individual units, it will be more easily understood by the parties (and by a court should it come to that). For example, after a brief introduction of the parties with their names and intentions for the contract, you would write, "1. Terms" and in that paragraph describe the obligations of the parties. The second paragraph could read, "2. Valid Dates," and so on.

- **Be detailed.** The rights and obligations of each party should be laid out in specific language that leaves little room for interpretation. If you want delivery on the 15th of each month, use the specific number instead of writing, "mid-month". If you and the other party agree to a new term or decide to change an existing term in the agreement, be sure to add a written amendment to the contract rather than relying on an oral agreement. A court may or may not accept the oral agreement as part of the contract.

- **Include payment details.** Directly related to the above is to specify how payments are to be made. If you want to pay half up front and the other half in equal installments during the life of the contract, state that, as well as the terms under which you will release payment. For example if you contract with someone to paint your business offices, you might want a provision stating that your regular payments are **contingent**ⁱ upon a certain number of rooms being painted to your satisfaction. Whenever possible, list dates, requirements and methods of payment (cash, check, credit). Perhaps you'll want to include a provision that states you will only perform work after the checks **clear**ⁱⁱ the bank. Contract disputes often center on money, so you'll want to be as specific as possible regarding this term.

- **Consider confidentiality.** Often when entering a business contract, the other party will gain access and insight into your business practices and possible trade secrets. If you do not want the other party sharing this information, you should include a clause that binds the other party from disclosing your business information or information included in the contract to other parties.

- **Include language on how to terminate the contract.** Contracts aren't meant to last forever, and if one party continually misses payments or fails to perform their duties, you want to have a mechanism in place so that you can (relatively) easily terminate the contract under these circumstances. It could be a mutual termination agreement (when the objectives of each side have been met through the contract) or more likely an agreement that either side can terminate if the other side violates a major term of the contract, after giving proper notice of its intent to terminate (e.g., 60 days).

- **Consider state laws governing the contract.** Contracts can stipulate which state's laws will govern in the event there's a dispute. If the other party is located in another state, you should include a clause that states which state laws will govern. If you don't, and there's a dispute, there may be a whole other legal argument (which costs more money) about which state's laws should be applied to the contract. Avoid this headache and agree to it at the inception of the contract, when both parties are agreeable.

- **Include remedies and attorneys'**ⁱⁱⁱ **fees.** Especially if you believe that it's more likely that you'll sue over the contract (as opposed to the other party suing you), you might want to include a clause that awards attorneys' fees to the winning party. Without this clause, each party will have to pay for their own attorneys.

- **Consider a mediation and arbitration clause.** In the event of a dispute, it may be advantageous to include a provision that requires the parties enter either mediation or arbitration, or both. Mediation is a voluntary process where both parties try to work out their issues directly, with the help of a neutral third party mediator. Any settlement must be approved by both parties. The advantage with mediation is that often times a compromise is found and the parties can continue doing business with a minimal amount of **acrimony**^{iv}. Arbitration is a more **adversarial**^v process where the arbitrator (sometimes a panel of arbitrators) hears both sides' arguments and makes a decision that both parties must abide by. It's akin to a trial setting, but the arbitration process is much quicker and cheaper than litigating in court, which allows the parties to continue their business operations with a minimal effect on their wallet. On the other hand, if there's a dispute, you will not get your day in court.

Writing a business contract that protects your interests while balancing your business objectives is critical to your business' success. Learning how to write a business contract is the first step on the road to success.

ⁱ **contingent** [kən'tɪndʒənt] - 1) доля, пропорциональное количество 2) квота 3) зависящий от обстоятельств 4) условный

ⁱⁱ **clear** - заплатить долг, произвести расчет; оплатить (расходы и т. п.)

ⁱⁱⁱ **attorney** [ə'tə:nɪ] - 1) поверенный; доверенное лицо - by attorney 2) адвокат

^{iv} **acrimony** ['ækɹɪməni] 1) желчность, язвительность, злость Syn: bitterness 2) повышенная раздражительность

^v **adversarial** [ˌædvə'seəriəl] 1) соперничающий; противостоящий (друг другу) 2) состязательный