

RAINEY COLLINS LAWYERS



Top 10 Tips for Contracting

People enter into contracts for a variety of different reasons. Whether the contract in question is for membership at a video store or a contract for services valuing thousands of dollars there are standard questions that parties should ask themselves each time they enter into contractual arrangements. These are my top ten:

1. **Who are you contracting with?** The parties must be legal entities for the contract to be legally enforceable. For example, if you are contracting with a company is the company registered or has it been struck off? If you are contracting with a Trust, make sure all the Trustees are named, on behalf of the Trust, rather than the Trust itself.
2. **What are you expecting to receive from the other party?** Or, what is expected of you? Take time to clearly describe the nature of the goods or services being supplied.
3. **How important is supplying the goods or services on time?** If it is vital then include a clear timeframe and, if the project is lengthy, milestones. Also, include a clause that "time is of the essence."
4. **Do you want to keep an eye on the progress of the other party?** What type of monitoring will you be undertaking, and how often? You may want to keep an eye on progress to ensure that work is of an acceptable standard.
5. **What happens if something goes wrong?** It is sensible to discuss and determine the remedies for each party in the event of an accident or breach. An indemnity provision outlining who is responsible for what type of event is crucial and should expressly include specifically foreseeable events. These will depend on the nature of the contract.
6. **How will you pay the other party?** Or, how do you want to be paid? Put clear parameters around method and basis for payment. For example, provide that payment is expected 20 working days following the date of a GST invoice and invoices will be issued at intervals reflecting key milestones in the project (if applicable).
7. **Do you want to own the intellectual property arising from the contract?** When you pay for something to be created the law is on your side and generally you will own the intellectual property in the product or outcome you commissioned. However, the creator should consider retaining some rights over the intellectual property. Given the legal position this needs to be negotiated and included in the contract. It pays to have a clear understanding regarding ultimate ownership of intellectual property at the outset.

8. **Will confidential information be exchanged in the course of performing under the contract?** If so, it pays to outline restrictions regarding disclosure, use and storage or destruction of any such information obtained. It is also sensible to expressly state that these restrictions live on beyond the expiration of the contractual arrangement.
9. **How will you deal with a dispute between the parties if one arises?** Thinking about and including a step-by-step process for resolving disputes before things get heated ensures that the process itself won't be something else to argue about when a dispute occurs.
10. **Who is going to sign the contract?** Make sure execution is undertaken correctly or the contract could be voidable. For example, because most commercial arrangements can be entered into on behalf of a company by someone other than the Directors themselves, it can pay to ensure that you are dealing with an authorised representative of the company. Also, some agreements are required by law to be in writing and these types of agreements must be signed by two Directors (if there are two or more) unless the Company Constitution allows otherwise, and if a company has only a single Director their signature must be witnessed. Perhaps you are contracting with a Trust? Then all, not some, Trustees of that Trust must sign the contract for it to be valid.

Thinking about these common issues when contracting will make entering into a contract less daunting for you, but like anything, if you are at all unsure what you are about to sign you should seek professional legal advice.

If you need help please contact us on 04 473 6850

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