

How to Make Contracts that are Legally Binding

by Katherine Hawes, Digital Age Lawyers

In the building design industry, you will frequently find yourself needing to make agreements with other professionals, customers, clients and businesses. You need these agreements to be legally binding so you can enforce your rights if the other party decides to take off without properly completing their side of the bargain. This article will outline the key questions and problems that businesses face when making contracts.

Is there an Agreement – i.e. a valid Offer that has been Accepted?

For a legally binding contract, there must be an agreement. This involves an offer being made by the offeror and it then being accepted by the offeree. An offer is a promise to do something in return for the other party also promising to do something. The key things to look out for include:

- An offer is distinguished from an 'invitation to deal', which is a request for an offer. For example, a request for a tender is usually regarded as an invitation to deal, and the tender itself will be the offer.
- An offer expires if it is not accepted on time, a requirement of the offer is not met, it is rejected, or a counter-offer is made.
- A counter-offer is an offer made in response to the initial offer. It amounts to a rejection of the first offer, and creates a new offer based on different terms.
- Acceptance of an offer can occur by words or conduct, so long as it satisfies

the following requirements:

- The offeree is aware of the offer.
- It is done in response to the offer.
- It corresponds exactly with the terms of the offer.

Is there Consideration?

Consideration involves an act by the offeree in exchange for the performance or non-performance of an act by the offeror. Consideration usually involves the payment of money, but it can take many forms. Consideration does not need to be adequate, but it must be sufficient. This means there must be an actual detriment. An example of insufficient consideration is where a party is able to choose not to perform their side of the bargain without penalty, such as through an exemption clause in the contract. This would render the contract invalid. If no consideration is given for a promise, it is considered a gift and is not legally binding.

Did the Parties Intend to be Bound?

For a binding contract to be created, both parties must intend to be bound. The law presumes that parties to commercial agreements intend them to be legally binding. This is unless the contract contains an 'honour clause' which specifically states that the parties do not intend the agreement be formal or binding, or subject to any legal jurisdiction. The court will consider all of the facts and circumstances to determine intention.

Does my Contract need to be in Writing?

No, a legally binding contract can be written or verbal. There are some exceptions, however, that must be in writing, such as:

- Contracts for the sale or mortgaging of property;
- Consumer finance or credit agreements;
- Agreements for things to be done more than one year from the date of the agreement being made.

While most contracts can be made orally, it isn't always a good idea. The biggest problem with oral contracts is proof. The onus will be on the person arguing for the existence of the contract to show the verbal agreement was a legally enforceable contract. This is extremely difficult, especially where there is no written evidence of the agreement. Therefore, it is advised that you put your contracts in writing to avoid any potential problems with proof later down the line.



Katherine Hawes

Review your Contracts Today!

Contracts are central to the conduct of business so it is vital that yours are recognised by the law as binding. This will give you a course of action if the parties you do business with fail to deliver on their promises. If you need assistance with making a contract, or want to have your contracts reviewed, please don't hesitate to contact me. ■



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