

# Commercial Contracts

**At Delaney & Delaney, we have a special interest in commercial contracts, including drafting and reviewing contracts, and giving pre-contractual advice.**

**Common scenarios where commercial contracts might be needed include:**

- ✓ The sale and purchase of commercial property;
- ✓ The sale and purchase of shares in a company;
- ✓ Employment Contracts;
- ✓ Commercial Leases;
- ✓ Shareholders' Agreements;
- ✓ Partnership Agreements;
- ✓ Confidentiality Agreements;
- ✓ Standard Terms and Conditions for Businesses;
- ✓ Licence Agreements;
- ✓ Indemnity clauses;
- ✓ Client Retainer Agreements;
- ✓ Insurance Contracts; and
- ✓ Independent Contractor Agreements.

Commercial contracts can be written or verbal. Having a written agreement in appropriate circumstances can be important for the protection of your business, and can help prevent legal problems and disputes in the future.

Some of the key functions and advantages of commercial contracts are set out below.

## **A contract can set out what each party will and won't do**

This sounds very basic, but it can be very valuable for small businesses. A contract can provide an opportunity to scope the works to be performed, and define what each party will do in performing their part of the contract. Just as importantly, it can spell out what each party will not do. This is an effective way to manage each party's expectations right from the outset. If there is any dispute in the future, a well-drafted contract can give the parties certainty of their rights and obligations.

## **A contract can help resolve disputes**

It is increasingly common for commercial contracts to have dispute resolution clauses built into them. For example, a contract might say that if there is a dispute, the parties must proactively negotiate to resolve that dispute. If those negotiations are unsuccessful, the dispute can be referred to an independent expert for determination, or to an independent mediator or conciliator. A party may only be permitted to apply to Court after these preliminary steps have been exhausted. Dispute resolution clauses like these can be very commercially beneficial, giving parties an opportunity to salvage their business relationships out of court and also avoid the expense, inconvenience and uncertainty of court proceedings. It is important that a dispute resolution clause be carefully drafted, to ensure that it will be legally binding and cannot be avoided by a disgruntled party.

## **A contract can set out intellectual property rights**

Commercial disputes often involve disputes over intellectual property rights: Who owns intellectual property created in the course of the agreement? What if that intellectual property was created by a party to the agreement, but in the course of their work outside the scope of the agreement? Who keeps the intellectual property at the end of the agreement? These are all matters that should be agreed on in advance and spelled out clearly in a written contract.

## **A contract can set out what happens at the end of the agreement**

Questions frequently arise at the end of a contractual agreement where parties have invested their funds, expertise and personal efforts into a commercial venture, regarding the rights and obligations of a party wishing to withdraw from the venture. Shareholders' Agreements and Partnership Agreements are two examples of commercial contracts which can set out a pre-agreed exit strategy. This might involve an obligation to give other parties a right of first refusal to buy a party's interest before they are able to sell their interest to third parties. It might also prescribe a method of valuing a party's interest when they wish to sell that interest. This has the benefit of giving investors certainty as to how their interest will be valued. It is also a useful part of a person's estate succession planning, to know whether they are able to leave an investment to their beneficiaries in their will, or if the investment will need to be sold and the proceeds paid to that person's estate.

**A contract can ensure confidentiality**

Quite often, parties disclose confidential information to each other in carrying out a commercial contract. It might be important to safeguard this information, particularly if it includes trade secrets or know-how, customer or client lists, or intellectual property. A well-drafted confidentiality clause can not only define what the parties' confidentiality obligations are, but it can also set out what remedies are available to an injured party in the event of the other party's breach of its confidentiality obligations. Remedies commonly include damages or injunction. Clear and concise confidentiality clauses can provide fundamental protection for a business.

**A contract can say who is at risk**

Indemnity clauses can be very a very important part of a contract. These are particularly vital if one party is in the business of performing dangerous or risky work. A contract might state that that party only agrees to perform that work on the condition that the other party will release and indemnify them from any claims that may arise from the performance of that work.

A simple example might be where contract states that a pest controller agrees to perform work on the condition that a customer who engages their services indemnifies the pest controller from any claim that any other person may bring against the pest controller. If a neighbour was to later make a claim against the pest controller for poisoning their garden and causing damage to their property, the pest controller may avoid liability because the customer has provided them with an indemnity for the claim by the neighbour. Indemnity clauses can be very effective in protecting a business, however extreme care must be taken to ensure that they are effective.

**How can we help?**

The above are just a few scenarios where having a written commercial contract can assist the parties to know what their rights and obligations are, and give them certainty and peace of mind in relation to their business. At Delaney & Delaney, we have extensive experience in drafting contracts for our clients, including both one-off contracts for particular commercial transactions, and suites of template documents which our clients can adapt for different matters as required.

**If you would like to find out more about how we can assist you with your commercial contract needs, please call one of our solicitors.**

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