



Contracts

Information you need to know

This fact sheet gives an overview of what constitutes a contract and the obligations arising from entering into a contract.

What is a contract?

A contract is a legally binding agreement between two or more parties. For example, if you purchase any goods, buy a house, engage a tradesperson to carry out work, borrow money, order goods or machinery from a manufacturer, or sign up for a telephone plan, these involve all types of contracts.

A contract involves:

- an agreement arising from an offer and an acceptance;
- a consideration or exchange of some benefit or something of value by the parties; and
- an intention to enter into legal relations – that is, the parties intended to enter into a legally binding agreement.

The parties must also have the legal capacity to enter into a contract.

Most contracts relate to the provision of goods and services and are in writing, but they can also be verbal or agreed to with a click of the mouse.

Who decides the terms of a contract?

Generally the terms of a contract are for the parties to decide. However, the law may 'imply' terms into the contract. One implied term is that goods sold for a particular purpose are able to be used for that purpose. For example, that a machine which is sold as a clothes dryer will dry your clothes.

Despite the wording of a contract, there are some circumstances in which a court might decide not to enforce its strict terms. For example, you may have rights under the Australian Consumer Law that cannot be waived by terms in a contract.

What if a contract seems to be unfair?

The Australian Consumer Law offers protection in circumstances where you have little or no opportunity to negotiate with a business.

This includes:

- a general ban on misleading and deceptive conduct in trade or commerce;
- a general ban on unconscionable conduct in trade or commerce and specific bans on unconscionable conduct in consumer and some business transactions; and
- a provision that makes unfair contract terms in consumer contracts void.

In considering whether conduct may have been unfair, the courts may take into account factors such as:

- Does the term cause a significant imbalance between your rights and obligations and those of the business?
- Is the term reasonably necessary to protect the legitimate interests of the business?
- Would the term cause you detriment (financial or non-financial) if the business tried to enforce it?
- How transparent is the term?

Are you bound by a clause you did not read?

If you sign a written contract then generally you are bound by all of its terms even if you did not read or understand them.

There are various types of contracts which do not require your signature. For example, a car park ticket or a dry-cleaning docket, which has clauses printed on the back.

What happens if the terms of a contract are broken?

Once you make a contract you will be committing a breach if you do not comply with its terms, or if you change your mind and decide not to perform your obligations under the contract.

The available remedies for a party who breaches a contract can be through:

- making a damages payment (a sum of money) to compensate the 'innocent' party for any loss suffered;
- a court order requiring the party who has breached the contract to carry out his/her obligations;
- a court order forbidding the party from breaching the contract; and
- a court order declaring that the contract is at an end and requiring the party who has breached the contract to put the 'innocent' party in the position he/she was in before the contract was entered into.

The type of remedy and its availability would depend very much on the type of contract and the type of breach.

Before you sign a contract

1. Read all the terms of the contract, including the fine print.
2. Understand your rights and obligations under the contract.
3. Ask questions and seek legal or independent advice if there is anything you are unsure about or do not understand.
4. If the contract does not meet your needs, negotiate or shop around for an alternative offer that does suit your needs.
5. If the supplier provides an explanation of particular terms or words in the contract, ask for the explanation to be put in writing and attached to the document.
6. Do not be harassed into signing the contract. Take it away with you if you feel pressured into signing anything on the spot.
7. Never sign a blank contract or allow details to be filled out later by a salesperson. Always put a line through blank spaces.
8. Check any figures or other information inserted into the contract is correct.
9. Check all verbal promises or claims made by the salesperson are written into the contract.
10. Ask to be given a copy of any contract you sign.

Minors (people under 18) can't be held to a contract unless it relates to the necessities of life (such as food, shelter, or other basic essentials).

Parties that breach a contract could be forced by a court to pay damages or provide other forms of redress. If you would like to learn more about unfair contract terms read A guide to unfair contract terms law, which is available from the ACCC at www.accc.gov.au

For more information:

- call Consumer Protection on 1300 304 054
- contact the Citizens Advice Bureau – check the phone book or www.cabwa.com.au for the bureau closest to you
- call The Law Society of WA on 08 9221 4002

Department of Mines, Industry Regulation and Safety

Consumer Protection:

1300 304 054

Consumer Protection
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