

### **Contract Issues for a Small Business**

The importance of a good business contract cannot be overstated, no matter what size business you operate. Many small business owners operate under the old adage that “my word is my contract.” While a person’s word is still important in all business relationships and a verbal contract may be valid and enforceable, your counterpart in a contract may remember spoken details and intent differently.

A written contract, even one sketched out in a single paragraph, can save a lot of hassles and headaches if a dispute occurs between parties. Obviously, the more detailed the contract, the better protection both parties have should a disagreement arise. Many small businesses do not like the idea of a lengthy contract between two parties, feeling it gives the parties a sense of mistrust. In reality, a good contract serves to lay the groundwork for everyone to know what is expected and what should be the end result of a business relationship.

Contracts should be considered and written for many types of business operations and transactions, both within a company and between companies. From employer/employee agreements, to partnership agreements, to vendor agreements, it’s best to have everything written in a contract. Not all contracts are perfect or will anticipate different conditions as time moves on, but a contract can provide security that all parties are protected to the greatest extent possible if something goes wrong.

What constitutes a contract? There are three basic elements: 1) an offer by one party and acceptance of that offer by another party; 2) consideration, simply defined as what each party gets for his or her promise under the contract; and 3) the legal ability to enter into that agreement, such as age, mental capacity, etc.

There are many types of contracts, including express, implied, and quasi-contracts, and depending on the terms of the contract, the contract may be valid, void, or unenforceable. Some contracts must be in written form to be valid, including nearly all contracts for the sale of land, any promise to lend money, and contracts which cannot to be performed within one year of their making.

All contracts have aspects that should be specifically established:

- ◆ Identification of the Parties – who does this particular contract cover? The contract should specifically identify the parties.
- ◆ Purpose of the Contract – is the contract for the sale of goods or property; for services; a merger of businesses; etc.
- ◆ Scope of Work – what work is covered in the contract? Be specific in this section. If you want something done as part of the contract, spell that out. If it’s not in the contract it may not get done. Who does what, sequencing of work, project completion date, deliverables, etc. In some instances (construction for example) the scope of work will be more important than in others.
- ◆ Indemnification – what if something happens to a third party such as a physical or financial injury to someone or something that is not part of the contract? How does that get handled? Who is responsible for addressing the injury or damage?
- ◆ Payment Terms – it’s always a good idea to know when you will be paid or when you will have to pay the other party. Are payments to be made monthly, quarterly, after some other milestone, or after a particular task is complete? What does a party have to provide the payer to get paid? If you are entering into a construction contract, is the payment “Pay When Paid” or “Pay if Paid” and which one is better for your situation? Who is contractually obligated to pay you?

- ◆ Length of Contract – how long is the contract in effect? Is it a contract with a definite start date and end date, or is the end date determined when a specific task is accomplished by one of the parties and accepted by the other? Will one party have to complete the task within a certain time frame, and what are the penalties if the task is not completed?
- ◆ Remedies for Breach of Contract – what happens if one of the parties abandons the job and walks away from the contract? What are your options? Will a bond be necessary like we see in construction projects that will pay for project completion? Will mediation be a remedy or can one party take the other straight to court by filing a lawsuit? What if the unexpected or unforeseen happens, as witnessed in the COVID-19 pandemic?

Having a written contract will not guarantee that disputes won't arise, but written contracts can help focus the intent of the parties should disagreements occur and legal action is taken. For assistance in writing, negotiating, and reviewing contracts contact The Law Firm of Robert D. Schmitter, LLC.