

Introduction


A contract is a voluntary agreement between two or more parties entered into with the serious intention of creating a legal obligation. In a contract, a person is bound not because he has a certain intention but because an offer which he has made to another person is accepted or because, in response to a question, he makes a promise to another.

Contracts create legal rights and duties between parties. To establish a contractual bond, the parties to the agreement must communicate their common intentions to each other. A breach of contract (which is a failure by one or more parties to carry out an obligation agreed to between the parties, in the contract) results in legal consequence. A contract is a written promise between people. It is an understanding, a deal between two or more people or an organisation to do certain things.





1. Requirements for a legally binding written contract

 Note: A contract may be enforceable even if it is concluded orally. However to prevent disputes about what was agreed to, a written contract is always first prize.

There are certain requirements that forms a basis of a contract. These are enumerated below:

1.1 Consensus

This is a meeting of minds, the contracting parties must be clear as to their obligations contained in the contract (there must be agreement on price and the method of payment, date and form of delivery and most importantly the substance of the agreement, eg a motor car if the agreement is for the purchase and sale of a motor car.).

1.2 Capacity

The parties must have the required capacity to conclude a contract. A minor may not conclude contracts. This relates to age and mental capacity as well as the legal standing to create rights and agree to obligations.

1.3 Formalities

Some contracts require additional requirements e.g., the contract must be signed in front of a notary and registered in the Deeds Office. Others require witnesses to a contract.

1.4 Legality

A contract must not be an agreement to do something that is illegal or contrary to public policy. It must not be prohibited under law.

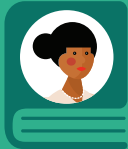
1.5 Possibility and certainty

The contractual obligations created by the parties must be possible to perform. If the contractual obligations become impossible to perform, then nobody should be able to perform them. If performs of the obligations was impossible from the beginning of the contract, the contract is not legally binding and is not enforceable. However, if one of the parties to the agreement makes performance impossible, such a party commits breach of contract.

2. Types of contracts

There are a number of different types of contracts. Examples of contracts are:

- Employment
- Cellphone
- Lease and Sale agreement e.g. buying a house or a car.
- Business contract e.g. formation of a company
- Gym contract
- Marriage contract
- Building contract (if you are building a house or making alterations)



3. Working with a contract

3.1 Why is a contract used?

A contract is used when two or more persons or any other legal entity recognized by law have agreed to do something together. Contracts are essential to regulate certain relationships. It creates certainty between parties so that each party knows what is expected of each other in terms of the written document. It also sets out the consequences for breach of the agreement.

A contract is often used to:

- Say what is expected of you
- Say what you expect of the other person or organisation
- Protect each other's rights and obligations
- Compels each party to be responsible for what that party promises to undertake
- Take legal action when one party breaches the contract

3.2 What should you do before drafting a contract?

Before concluding a contract:

- Ensure you understand what is assured to you and what you are promising.
- You have the right to ask that a contract is explained to you with simple words before signing it.
- You could also ask someone you trust to read it and explain it to you.
- Make sure that the contract really protects your rights and interests.
- Only make promises that you can keep.
- Ensure that your contract is reduced to a written document and make sure that all contracting parties have signed the document.
- Obtain legal advice, to ensure that the contract is valid and your rights are protected under law.

4. Signing a contract

The goal with any contract is to ensure that the legal consensus for all contracting parties is clearly represented on paper.

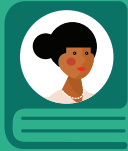
Never sign a contract if you are not sure what you are signing.

If you sign a contract that you do not understand, you are legally bound to perform the duties expected of you within the ambit of the contract in most cases, unless you sign for something that is against public policy. Keep in mind that each contract is different, and if you are in doubt, seek legal assistance.

4.1 Determine the scope of the contract

Before you proceed, consider how important this contract is to you or your business. Will it make or break your business? If so, stop here and engage the services of a lawyer who specializes in contract law. If the future of your business depends on this contract, engage the services of a lawyer. It will guarantee that your rights are protected under law.


If the scope of the contract is not going to make or break your business, then consider handling it yourself. If you attempt to handle the matter yourself, draft a simple contract and get the opinion of colleagues to peruse the document to see if it best serves your interests. One good example of this is the "Terms and Conditions" you see on almost every membership website you join, or the cell phone contract you sign when you take out a cell phone contract.



4.2 Read and understand the common terms

Common terms are included in almost every contract, so be sure to go over them before you get too far into the contract, so you have a clear understanding of what they mean and which terms represent each party. These are usually found by words such as, “shall mean,” “heretofore known as,” or otherwise wrapped in quotes. Where words such as “shall” is used note that this is an obligation that must be done. Where words such as “may” is used note that you have a discretion to do or not to do whatever it is that follows the word may.

Beware of external references which form part of the contract that you are signing. Some contracts refer to additional pages or sources. Make sure all items referenced in the contract are in the contract before you sign it, or make sure you review a copy of the referenced source before signing anything. You are within your rights to ask for the referenced documents which are referred to in the contract but are not attached to the contract that you are signing. It is always best to read all documents yourself rather than getting a mere explanation from the retailer.

 **Note:** You must look out for cancellation and termination of contract clauses including the clause that refers to the cooling off period and make sure you understand these.

Ensure that you read the clause referring to the cooling off period. This clause enables you to cancel the entire contract within a prescribed number of days without you incurring any legal obligation or liability to yourself after you have signed the contract. This clause entitles you to change your mind after you have signed a contract. The cooling off period is generally 7 days from the date that you have signed the contract. Each contract is different so the prescribed number of days as well as the requirements for the cooling off period to apply may differ from contract to contract.

 A cooling off period does not apply to every contract.

4.3 Conditions

Any amendments made must be signed/initialled by all the parties to the agreement to be valid.

4.4 Quality Control

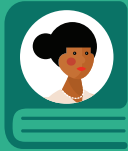
A contract is best read while you are alone and focussed. There are too many possibilities for feeling rushed and making mistakes. Look for the cancellation and cooling off clauses as these are opportunities for you to withdraw from the contract.

You should request a copy of the paperwork in advance before your signing date, or be prepared to spend several hours in the person’s office reading the contract. For other large purchases, such as a car, you might be expected to sign the paperwork on the spot.

This makes it easier for the car dealership to slide in small changes, fees, add-ons, and other expenses that you may not be aware of. Request the time to review the contract and paperwork without distractions and do not succumb to the pressure of signing the paperwork without reading it thoroughly.

You are the one spending the money – take the time to ensure you know exactly what you are purchasing and the scope of the contract.

Be sure to ask for the legalese to be explained to you if you do not understand it.



4.5 Get a draft copy of the contract, a red pen, and a quiet room

Get a pen and dedicate some alone time with the contract. Be sure to minimise distractions, turn off the music, TV, lock the door, or whatever it takes to eliminate interruptions.

Go through line by line and write down any questions, comments, or notes you need clarified.

4.6 Set up a time to go over the contract with the other party

Now that you have your highlighted sections and your notes set up a time to go over the contract with the contract partner. Again, be sure to set up a time when you will not have any distractions. Go line-by-line or section by section until you are comfortable with the agreement.

4.7 Do not accept a verbal agreement

It is very easy to make a verbal statement regarding the scope or terms of the contract, but unless it is in writing, or you have a tape recording of the conversation, that statement will be difficult to prove and even more difficult to enforce. Also, keep in mind that some contracts contain clauses stating something to the effect of the written contract overwrites all previous agreements, so a verbal contract may be superseded by the newly signed document.

4.8 Contracts can be amended

If there is something that needs addressed, then have the contract amended to encompass the new terms the parties now agree to. If there are any changes that need to be made to the contract an addendum must be drawn to reflect the amendments.



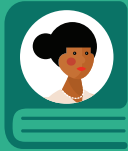
Note: Contracts are drafted for a specific time period, for example, your cell phone contract could be for a 2 year period.

4.9 Never sign anything you don't understand

Read and understand each line item on the contract before signing it.

4.10 Take a copy of the signed contract for your records

Do not leave the only copy of the contract in the hands of the other party. Make sure you receive a signed copy of the contract for your records. There is no reason why the company you are dealing with cannot give you a copy on the spot.



5. Consequence of a contract

5.1 Breach of Contract

Each party to a contract has a duty to perform. If one party performs, and the other party does not, the non-performing party could face legal consequences. Failure to perform under the contract amounts to a breach of the contract. The non-breaching party can file a lawsuit against the other party to recover damages. "Expectation damages" usually put the non-breaching party in the position they would have been in had the other party performed.

5.2 Level of Breach

If someone entered a contract with you and breached the contract, you must determine the type of breach that occurred. The person has to give notice of breach to the non-performing party and advise the non-performing party that you will not act any further unless they remedy the breach, if this is possible.

5.3 Legal tips

- Never sign anything that you do not understand.
- Never sign anything that you do not agree with.
- Do not promise something that you cannot provide.
- Reduce your contract in writing.
- Always keep a copy of all documents that you sign.