



A GOOD CONTRACT IS GOOD INSURANCE

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Winning significant new work invariably means that a new contract must be signed.

However, once the commercial deal has been done and you've agreed on the price and sorted out the nuts and bolts of the work to be done or the goods to be supplied, both you and your client are usually very keen to get started. This can mean that the written contract is not given the attention it requires or deserves

Unless you have someone in your organisation with the skills to properly vet a contract before it is signed, or you have good standard form contracts that you can use over and over again with confidence, signing any new contract represents both a blessing and a key risk to your business. In the event that something goes wrong, the contract will become very important.

A contract doesn't always mean what it says

It is vital that you make sure a contract is right. What you spend on paying a lawyer to check a contract could well be a tiny fraction of the cost of the disaster you avert by doing this.

A quick read-over won't do. Although these days most good contract drafters try to write in plain English, contracts don't always mean what they appear to say. Often they can have implications and complexities far beyond the simple written words. This can have a significant bearing on your risk. Also, just because a contract is an industry standard form doesn't mean that it's safe. All the standard forms have their own idiosyncrasies and tend to favour one party over the other.

The crux of all this is that your best bet is to have a lawyer with the relevant experience review your contract before you sign it. Doing this is really just another form of insurance and it doesn't have to take a lot of time or cost a lot of money. A good lawyer should be able to give you an analysis of the key risks fairly quickly and relatively inexpensively.

All of this might seem blindingly obvious, especially to experienced commercial managers in larger organisations. However, in smaller organisations (and even in some larger ones), good contracting basics are often overlooked. Lawyers have no shortage of horror stories to tell of

situations where a job goes wrong and the contract wasn't properly checked or thought through at the outset because the organisation did not have the resources or expertise to do so.

Four basic steps to minimise risk

If you don't want to have a lawyer review each contract before you sign it, there are some other basic steps you can take to reduce your risk:

1. At the very least, have your insurance broker review the insurance provisions and indemnities in the contract and consider whether your coverage is adequate. Insurance is your greatest protection, but insurance arrangements can be very complex, particularly in industries such as building and construction, for example.
2. Prepare (or have prepared for you) a contracting checklist which clearly sets out the key matters to be checked in each new contract and what level of risk is acceptable in each case. Most of the larger organisations routinely use these checklists to assess and mitigate their risk.
3. Incur the one-off expense of having a suite of contracts prepared for your organisation to use over and over again. Clients will often accept, as a starting point at least, a supplier's or contractor's standard contracting terms. Using your contract as opposed to the client's goes a very long way to ensuring that you are aware of your risks and have them adequately covered.
4. If you don't have in-house legal expertise in your organisation, appoint someone to undertake at least basic training on contracting principles. For example, many law firms offer training seminars on topics of use to their clients.

Whatever you choose to do to minimise your contracting risk, you should not ignore it. Even where a contract is for a relatively low value or for a relatively small, discrete project, the risks that can arise can be substantial.

Just as you use insurance to protect your business, you should make sure to carefully check the contracts you enter to ensure that they do not contain anything that could damage your business. You can then proceed with the job, safe in the knowledge that the contract is fair and reasonable and does not contain any hidden terrors. ■■