



BUSINESS-TO-BUSINESS CONTRACTS – HOW CAN YOU END THEM?

Running your own business means you will be entering into contracts on a regular basis. Sometimes, for many different reasons, you may want to bring them to an end.

Do not assume that there will always be a way of getting out of a contract early. As a general rule, you are bound by what you have agreed to. Trying to terminate a contract, when the other side objects, is often fraught with difficulty. Using any of the methods below carries a risk that if you get it wrong, the other side may try and hold you to the contract, and sue you for damages.

An overview of contract law

- Contracts do not have to be signed to be legally binding. Whilst some contracts are entered into by signing a piece of paper, they can also be made verbally (either face to face or over the telephone), by the exchange of emails or letters, by clicking a button on a website or by a combination of the above.
- Following an offer and an acceptance, a contract between two businesses is binding there and then. You do not have a automatic “cooling off period” to change your mind unless the contract says so (which it rarely will).

How can you end a contract?

1. Giving notice

- Most contracts will allow you to end them by giving the other side notice to terminate. Read the contract carefully to see if you can do this, how, and when.
- Whatever the contract says about how to give notice must be followed, otherwise there is a risk that your notice will be invalid, and the contract will continue.
- If, however, the contract is for a fixed-term (e.g. 5 years), then, generally, you will not be able to terminate it until the fixed term has expired, and even then it may contain a “roll-over clause” which will often have the effect of extending it for a further period if you do not serve the correct notice to end it at the right time.
- If a contract has no fixed term, and says nothing regarding what notice needs to be given, then the law will imply that “reasonable” notice can be given at any time by either party. What is reasonable is open to interpretation and depends on the circumstances of the arrangement (for example how long has the contract been running, how regular are the payments etc?)

2. Serious breach(s)

- There are often differing levels of breaches of contract – some may be minor, and some may be serious.
- The difference is very important because if it is a minor breach, you cannot end the contract, whereas if it is a serious breach, then you can potentially terminate the agreement.

- Some pieces of legislation, e.g. the Sale of Goods Act 1979, actually specify what is or is not a serious breach by referring to "conditions" (serious breaches) and "warranties" (minor breaches).
- The contract may say whether a particular breach is serious or not, and what you need to do e.g. flag this up within a certain period of time.
- If neither the contract nor the legislation is explicit, then deciding whether a breach is serious is both difficult and risky.
- A serious breach must be of major significance and "go to the heart" of the contract.
- Once you become aware of a serious breach, you must quickly make up your mind what you wish to do (e.g. continue or terminate). If you delay, you can lose the opportunity to bring the contract to an end.
- Be aware, once you have decided to terminate the contract, there is no going back, and you cannot later change your mind.
- Before taking any decision to terminate the contract, always check to see if there is an exclusion/limitation clause, as this may limit or substantially reduce your remedies.
- If you decide not to terminate and/or the breach is not sufficiently serious for you to do so, you may still be entitled to claim compensation (damages).

3. Misrepresentation

- Sometimes, you may believe that the goods or service have been mis-sold, i.e. what you have been told does not reflect what you are now receiving (called a "misrepresentation").
- You must show that the misrepresentation(s) persuaded you to enter into the contract.
- If you can prove this, you may be able to escape from the contract.
- Misrepresentations are often very difficult to prove, because they are usually made verbally. The other party can, and often will, deny what they have told you, and the onus will be on you to prove this. This can end up being your word against theirs, and this may not be enough to convince the court to find in your favour.
- Misrepresentations need to be acted upon quickly or the opportunity may be lost.
- Written contracts often contain an "entire agreement" clause and a "non-reliance" clause – the effect of these is that they say you cannot rely on anything you have been told verbally and/or in writing. These types of clauses can sometimes be challenged, but this is not easy.
- Generally, a misrepresentation needs to be a misleading statement, rather than an incorrect assumption on your part.
- Even if you can show misrepresentation, there are different types, and they do not all allow you to end the contract – instead, you may only be entitled to damages.

4. Mistake and/or lack of formalities

- For a contract to be valid there must be (a) a specific and unambiguous offer (b) acceptance of the offer (c) consideration (for example, payment of the price in return for goods/services) and (d) an intention to create legal relations.
- On rare occasions, if the discussions/negotiations are, for example, too vague, or it is not clear whether the parties had intended to reach a binding agreement, there may, in fact, be no contract at all.
- Sometimes, the parties can be at cross-purposes, where one or both are mistaken over what has been agreed. Where this happens, in certain circumstances, the contract can be challenged on the grounds of "mistake".

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