

CONTRACTS

The entrepreneur, in starting a new venture, will be involved in a number of negotiations and contracts with vendors, landlords, and clients. A contract is a legally enforceable agreement between two or more parties as long as certain conditions are met. It is very important for the entrepreneur to understand the fundamental issues related to contracts while also recognizing the need for a lawyer in many of these negotiations.

Often business deals are concluded with a handshake. Ordering supplies, lining up financing, reaching an agreement with a partner, and so on, are common situations in which a handshake consummates the deal. Usually, when things are operating smoothly, this procedure is sufficient. However, if there are disagreements, the entrepreneur may find that there is no deal and that he or she may be liable for something never intended. The courts generally provide some guidelines based on precedence of cases. One rule is to never rely on a handshake if the deal cannot be completed within one year. For example, a company that trains salespeople asked another firm to produce videotapes used in the training. The training firm was asked to promise to use the tapes only for its own sales force and not to sell the tapes to others. Some time after the tapes were produced, this firm began to produce and sell the tapes under a newly formed company. The original developer of the tapes brought suit, and the courts ruled that an oral agreement for more than one year is not enforceable. The only way that this could have been prevented was if the copying firm had signed a contract.

In addition to the one-year rule of thumb, the courts insist that a written contract exist for all transactions over \$500. Even a quote on a specified number of parts from a manufacturer may not be considered a legal contract. For example, if an entrepreneur asked for and received a quote for 10 items and then ordered only 1 item, the seller would not have to sell that item at the original quoted price unless a written contract existed. If the items totaled over \$500, even the quoted price could be changed without a written contract. Most sellers would not want to try to avoid their obligations in the above example. However, unusual circumstances may arise that force the seller to change his or her mind. Thus, the safest way to conduct business deals is with a written contract, especially if the amount of the deal is over \$500 and is likely to extend beyond one year.

Any deal involving real estate must be in writing to be valid. Leases, rentals, and purchases all necessitate some type of written agreement.

Although a lawyer might be necessary in very complicated or large transactions, the entrepreneur cannot always afford one. Therefore, it is helpful for the entrepreneur to understand the four essential items in an agreement to provide the best legal protection.

1. All the parties involved should be named and their specific roles in the transaction specified (e.g., buyer, seller, consultant, client).
2. The transaction should be described in detail (e.g., exact location of land, dates, units, place of delivery, payer for transportation).
3. The exact value of the transaction should be specified (e.g., installment payment with finance charges).

4. Obtain signature(s) of the person(s) involved in the deal.

Hisrich, PhD, Robert D., Michael P. Peters, PhD and Dean A. Shepherd, PhD.
Entrepreneurship. 6 ed. New York: McGraw-Hill Irwin, 2005.