

## WHY YOU SHOULD USE WRITTEN CONTRACTS

Benjamin Franklin coined the proverb "an ounce of prevention is worth a pound of cure." This holds especially true when it comes to your business. Even a single business dispute can ruin your bottom line.

In business, written contracts are the ounce of prevention that help reduce costly disputes. Written contracts can appear in many forms, such as in formal documents, on the front or back of invoices, in letters, or in proposals.

A carefully drafted written contract spells out your entire deal with your clients. This prevents clients from unilaterally changing the arrangement at a later date and at your expense.

For convenience, many businesspeople prepare standard contracts to use with all their clients. They then tailor these standard contracts to specific jobs by filling in blank spaces or providing attachments that set out the exact services to be performed, the products to be furnished, the time for performance, the cost, and any circumstances that would excuse complete and timely performance. Discussed below are some additional issues that your contracts should address.

### WARRANTIES

These days, to successfully compete, businesspeople often explicitly guarantee that their products and services will meet certain specifications. (In legal jargon, these are called express warranties.) If you offer an express warranty, your contract should describe it and state that you offer no express warranties besides those stated. If express warranties are not part of your deal with your client, your written contract should say that. Then, your client cannot claim that you failed to honor an express warranty.

Even if you do not offer any express warranty, you may still be required to stand behind your products because the law may impose implied warranties. There are two types of implied warranties.

The first type is the implied warranty of fitness for a particular purpose. It exists when you know that your client has a particular need and is relying on your advice to select appropriate products. If this implied warranty is not part of your deal with your client, your contract should conspicuously contain these 'magic words': "there are no warranties which extend beyond the face hereof."

The second type of implied warranty is the implied warranty of merchantability. It exists in every sale of products and requires your products to be reasonably satisfactory to the typical client. If this implied warranty is not part of your deal with your client, your contract must conspicuously state that "there are no implied warranties of merchantability" or use similar words, such as "as is."

### REMEDIES FOR BREACH OF CONTRACT

If you are accused of breaching (failing to fully and timely perform) your contract, proving whether and how much you should pay can be extremely expensive and time-consuming. Therefore, your contracts should specify the maximum amount you will have to pay in case of a breach and how long your clients have to notify you of a problem. You should use caution when specifying maximum damages and notice periods. If the specifications are unreasonable, a judge may ignore them.

### INTEREST AND ATTORNEY'S FEES

Even in an era of low interest rates, most businesses cannot afford to finance their clients. However, if you want to charge interest on unpaid bills, your contract must state what the interest rate is and when interest charges begin to accrue. Also, if you want to charge your clients for attorney's fees incurred to collect unpaid bills, your contract must state that you intend to do that. Otherwise, you probably will not be able to recover interest or attorney's fees, even if your client unjustifiably withheld payment.

### DETERMINING WHICH LAW AND WHICH COURT WILL BE INVOLVED IF YOU BREACH YOUR CONTRACT

The laws governing business dealings can differ from state to state. If you have a client located in another state, the question of whether to apply the laws of Illinois or of the other state will invariably arise in a business dispute. The question of where the dispute should take place--a court in Illinois or in the other state--may also arise.

Determining which state's law to apply and which courts will hear the dispute can be time-consuming and expensive. You can reduce or eliminate these problems by inserting (1) a choice-of-law clause and (2) a jurisdiction clause in your contracts. By those clauses, you and your client agree in advance that the law and courts of Illinois (or the other state) will govern all disputes.

## ARBITRATION

Court proceedings are almost always time-consuming and expensive, whether in Illinois or elsewhere. You can reduce this time and expense with an arbitration clause. By that clause, you and your clients agree in advance to submit your disputes to binding arbitration before a designated arbitration tribunal (such as the American Association of Arbitrators). Arbitration proceedings are much more streamlined than court proceedings, and you will not necessarily need to retain an attorney.

## CONCLUSION

Anything that hinders your delivery of the best possible service or products adversely affects your bottom line. Disputes with clients are perhaps the worst hindrances. Using properly prepared written contracts can protect you from client disputes, which will make your business more enjoyable and more profitable.