



Small Business
Commissioner

A Guide to Creating a Contract

And the role of contracts in avoiding overdue payments and unfair payment terms.



The Office of the Small Business Commissioner
In collaboration with World Commerce & Contracting



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This document has been prepared to provide general guidance only. Users of this guidance should seek their own legal advice where appropriate.

The Office of the Small Business Commissioner (OSBC) is an independent public body established by Government under the Enterprise Act 2016 to tackle late payments and unfair payment practices. It supports small businesses to get paid quickly and on time, influences large businesses to improve payment times to suppliers and works with all business to improve the culture of payment practices.



<https://www.smallbusinesscommissioner.gov.uk/>

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FOREWORD

How can a contract help your business?

Does your business sell goods to other businesses? Do you provide services to business customers? If so, having a written contract is one of the most important tools you can use to protect yourself.

Before we get into the detail, think about the real risks you face.

What if:

- you have to wait 90 days for an important payment?
- your biggest customer goes under before paying you?
- there's a dispute and nothing was written down? Who knows what was agreed?

These are exactly the situations where a contract matters. It won't prevent every problem, but it will give you a clear position, help build trust and make disputes much easier to resolve.

Even if written contracts aren't standard in your industry, taking the time to set out how everyone intends to work together and how and when they'll pay, is one of the best ways to avoid problems.

Write down what's been agreed, in a simple, clear way that everyone understands.

This guide aims to help you do that. If there are complicated issues to work through, or the contract involves significant risks or costs, legal advice is a good idea.

But even simple contracts make a difference. Whatever your size, you're an equal partner. A good contract makes that clear.

A phrase I've heard often is worth remembering: contract for the marriage, not the divorce.

A handwritten signature in black ink, appearing to read 'Liz Barclay', with a stylized, cursive script.

Liz Barclay
Small Business Commissioner

What is a business contract and why do I need one?

A business contract is simply a clear agreement between two or more businesses. It sets out what each party has agreed to do, supply, or pay. But unlike a handshake or a casual conversation, a written contract is legally enforceable.

What if:

- *you end up waiting months to get paid?*
- *you deliver on time, but the customer disagrees?*
- *there's nothing in writing you can use as proof?*

These are the kinds of problems that a written contract helps prevent. It's a practical tool that makes expectations clear and keeps working relationships on track.

When is a contract legally binding?

A business contract becomes legally binding when it includes these five key elements:

1. **Offer:** One business offers to do something (for example, supply widgets)
2. **Acceptance:** The other business accepts the offer (accepts the widgets)
3. **Consideration:** Each person in a contract must give or promise something of value (sometimes called 'consideration') in return for what they're getting.
4. **Intention:** Both sides intend the agreement to be legally binding
5. **Contractual capacity:** Each party must be legally allowed to enter into a contract (for example, they are a registered company, limited liability partnership or at least 18 years old)

Even a verbal agreement can be binding; but without a written record, it's much harder to resolve disputes.

Note: A contract that breaks the law will not be enforceable and some contracts (for example, contracts involving property) might need to take a specified form.

What if:

- *the other party remembers things differently?*
- *you need to prove what was said?*

Put it in writing. Keep it simple.

What needs to be in the contract?

At the very least your contract should include:

- **What's being provided:** The specific goods or services
- **How much:** Quantity or volume
- **Details that matter:** Quality, known limitations, or conditions
- **How long it lasts:** For example, 12 months or until a project is completed
- **Who's involved:** The correct names of all parties
- **How the contract ends** and what happens if it ends early

Use clear, straightforward language. Ambiguous or vague terms can cause confusion and lead to disputes.

What if:

- *the goods aren't what you expected?*
- *there's no mention of how to end the contract?*

The clearer the contract, the fewer surprises later.

Things to think about:

- What exactly am I promising to deliver or receive?
- What are the deadlines or time limits?
- What happens if something goes wrong or isn't delivered?
- What proof do I have of what's been agreed?

Tips

- Use **contract templates** which you can find online for free and tailor them to your needs.
- **Keep it simple.** Your contract doesn't need to be long. It might just be a clear list or a few bullet points.
- **Ask around.** Talk to others in your industry about what they include in their contracts.

Write it down. Keep it simple. Make sure everyone understands it before any work begins.



How do I negotiate a fair contract?

The key word is **agreement**. A contract should work for everyone involved. It's about making sure the working relationship is realistic, clear, and last the full length of the contract and everyone is in agreement.

What if:

- *you feel under pressure to agree to terms you don't fully understand?*
- *you think you can't push back against a bigger business?*

Should I negotiate?

Yes. If you're a smaller supplier dealing with a much larger business, it can be tempting to think you have no say, but that's rarely true. Bigger businesses may use standard contracts, but that doesn't mean the terms are set in stone.

You have every right to ask for changes. If something doesn't work for you, say so. Contracts need to work in practice, not just on paper. If the terms are one-sided or unrealistic, there's a risk someone won't be able to deliver.

Negotiation is normal. No one expects their first draft to be accepted. A fair deal involves give and take, and the clearer things are at the start, the more likely the relationship will last.

Things to think about:

- There's no one-size-fits-all way to negotiate
- Every contract has different risks and sticking points
- Your financial position matters and so does theirs
- Strong business relationships start with honest negotiation

If something does go wrong, a contract built on mutual understanding will help get things back on track.

What if:

- *you agree to terms you find you can't deliver on?*

The contract has to work for everyone. If it doesn't, someone's likely to fail to keep their side of the deal.

How can I plan for a negotiation?

Prepare:

- Research the other business, their goals, and any potential concerns
- Define your own goals, know what's essential and where you can be flexible
- Create a structure for discussing key terms and compromises
- Know when to walk away from a deal that doesn't work

Tips for researching

When researching potential contractors you can review their payment practices by searching for them on the [Payment Practices Reporting portal](#) and seeing if they are a [Fair Payment Code Awardee](#).

Choose your tactics:

- Draft your version of the contract to set the tone
- Break things down and negotiate clauses one at a time
- Ask questions to understand their concerns and priorities fully
- Be respectful, professional, and calm
- Use facts or data to back up your position
- Know your red lines, and be ready to walk away

Get it in writing:

- Record what's agreed, including any changes or compromises
- Make sure terms are clear and obligations are well defined
- Review the contract fully before signing

Tips

- **Go in with the aim of reaching a good outcome for both sides.** It's not a battle.
- **The sooner you identify risks; the sooner you can plan for them.** That's the art of negotiation.
- **Always go back to the written draft.** That's what matters if memories fade or things go wrong.

Why should I get a contract in writing?

If the contract runs for any length of time, you'll probably need to refer back to what was agreed. If there's nothing written down, people can remember things differently and that's when disputes start.

A written contract is there to protect both parties. It's not just for when things go wrong. It also helps prevent problems in the first place. It doesn't have to be long or complicated, but it should be clear, specific, and reflect how you intend to work together.

What does a written contract do?

It helps:

1. Formalise the relationship

Before negotiations begin, both sides have usually agreed in principle to work together. The contract sets that out formally: who's doing what, how often, for how long, how you'll stay in touch (e.g. weekly calls), and what's being paid.

2. Record rights and responsibilities

The contract explains what each party has agreed to do, how it should be done, how it'll be measured, and when. Everyone can refer back to it to stay on track.

3. Make promises legally enforceable

If one party breaches the agreement and the other suffers a loss, a written contract gives you something to rely on in seeking damages.

4. Confirm how and when payments will be made

This is particularly important for small businesses. It should clearly state how much is being paid, when, how, and what happens if payment is late (see below).



How can a business contract protect me?

A well-drafted contract does more than set out what's been agreed. It gives you tools to handle problems, meet legal obligations, and manage risk.

1. It can help you meet your legal obligations

A clear contract reduces the chances of a disagreement in the first place by making things clear. But if something does go wrong, it can also set out a fair way to put it right. For example:

- Include a **grace period** so you can fix an issue, such as rearranging a delayed delivery, before penalties apply
- Add a simple step-by-step **complaints process**, before either side turns to legal action
- Use **liability clauses** to protect yourself. For example, you might agree that you're not responsible for lost profits if there's a delay

These kinds of clauses don't just protect your position, they help avoid conflict and keep working relationships intact.

2. It can help you meet your legal obligations

In some cases, legal advice may be needed because the contract must include mandatory terms. For example:

- Consumer and e-commerce laws may require that you give customers certain information in writing before the contract begins
- If you handle personal data for a customer, your contract will probably need to include specific UK data protection clauses
- A written contract helps show that you've taken steps to meet your legal responsibilities

Tip: You can also use AI tools to review a draft contract you've been given, to check what's being asked of you. It won't replace legal advice, but it can help you spot gaps or red flags.

3. It can protect your business from risk

Even the best working relationship won't prevent every problem. A good contract lets you prepare for issues you can't control and gives you something solid to fall back on.

- It can help you **enforce your rights**. For example, to charge interest or claim compensation if a customer pays late.
- It can **limit your liability**. You could include a clause saying you're not responsible for delays caused by strikes, extreme weather, or other events outside your control.
- It lets you **plan for risks** you know might arise like a client missing deadlines or changing the scope of work. You can include fair clauses to deal with that.

What should a contract include?

When creating your contract, there are three golden rules:

- **Always** get it in writing.
- Be clear about **payment** amounts, dates, and methods.
- Use **plain English** so everyone understands the terms.

Here's a checklist of what to include:

- Title and date
- Legal names, addresses, and company numbers of all parties
- What's being delivered: goods or services, with quality, quantity, and specs
- Payment terms: amounts, dates, methods, and late payment penalties
- Contract length: start and end dates, renewal or termination options
- Confidentiality clauses to protect sensitive information
- Dispute resolution steps: negotiation, mediation, arbitration
- (*Tip: consider a conflict avoidance clause as well*)
- The law that governs the contract (jurisdiction)
- Signatures
- Any platforms or apps to be used for payments, e-invoicing, or updates

How can I avoid pitfalls?

Understanding the basics of contract law helps you avoid common mistakes and protect your business in the long run.

- Insist on a written contract so there's a clear record.
- Review and update contracts regularly. What worked when you started may not suit a growing business.
- Make sure all key elements are covered: deliverables, deadlines, payments, and contingencies.
- Set out a clear roadmap for how the working relationship will operate.
- Don't sign anything that's overly one-sided. Be flexible but protect your position.
- If you're unsure, get legal advice before signing.

Specifics to consider:

- **Intellectual property (IP):** Where your contract relates to the creation of documents, designs, inventions, art, images and even names the contract should be clear about who owns what: before during and after.
- **Confidentiality clauses** (or NDAs) can protect trade secrets like client lists or pricing structures.
- **Futureproofing:** Include review points to adapt the contract if circumstances change.



Risk management clauses to know about:

- **Confidentiality clauses:** Stop sensitive info being disclosed
- **Indemnity clauses:** Set out who is responsible for covering loss or damage
- **Limitation of liability clauses:** Cap the amount one side might have to pay, but make sure they're not unfair under the Unfair Contract Terms Act 1977
- **Dispute resolution clauses:** Explain how issues will be resolved, ideally without court action.

What if you're dealing with a large firm?

Big firms often use standard contracts they don't want to change. These will usually define the work, the duration, and the payment terms.

That doesn't mean you can't question what's in there. **Read everything carefully.** Ask for clarification. Highlight anything that doesn't work for you. And if you still can't agree? You may have to walk away.

Top tip:

Just because it's "standard" doesn't mean it's fair

What happens if something goes wrong?

Even with a well-written contract, disagreements can still happen. That's why it's important to have a clear written record from the start. A contract supports the relationship, and if it breaks down, it gives you something to rely on.

What counts as a breach of contract?

A breach happens when one party doesn't do what they promised. This might include:

- Missing a payment deadline, or not paying at all
- Refusing to carry out duties listed in the contract
- Stating in advance that they won't meet their obligations

Some breaches are minor and may be resolved quickly. Others are more serious and could allow the other business (party) to end the contract or claim compensation.

Examples:

- A company fails to complete a project by the agreed deadline
- A supplier delivers products that don't meet the agreed quality standards

What are the consequences of a breach?

- The non-breaching party may be able to claim compensation for their losses
- The contract might be ended, depending on how serious the breach is
- The breaching party may be legally responsible for the damage caused

What should you do if a breach happens?

- Identify the breach early and act quickly
- Keep records of any emails, calls, or written communication
- Get legal advice before deciding what to do next, especially if you're considering ending the contract or taking legal action
- Consider mediation or arbitration as a quicker, less costly alternatives to going to court
- **Minimise the damage:** both parties must take reasonable steps to reduce any losses caused by the breach. This means:
 - Don't let problems build up if there's a way to address them
 - Check if the contract allows for a fix or workaround before escalating
 - Courts may reduce compensation if the injured party didn't do enough to limit the damage

Tip: Dealing with a breach doesn't always mean going to court. A good contract can offer simpler ways to resolve issues before they escalate. How you handle the early signs of a problem often makes all the difference.

How can I protect myself when it comes to payments?

Payment terms are one of the most important parts of any contract, especially for micro and small businesses. Getting them right helps protect your cashflow and avoid long waits or overdue payments.

A good contract should cover:

- The total amount to be paid
- Who pays whom
- When payments will be made
- How often (if paying in instalments)
- How the payment will be made (e.g. bank transfer, payment platform, letter of credit)
- What happens if a payment is overdue, including interest and compensation

Payment terms are sometimes referred to as "consideration" in a contract. Make sure it's clearly described in plain language, so you know what to expect.

What does the law say?

If there's no written agreement, the law says the default payment time is 30 days from when the invoice is received. But if that hasn't been agreed in writing, it can lead to confusion.

- You can agree to longer terms: up to 60 days is typical.
- You can agree to even longer (e.g. 90 or 120 days): but only if those terms aren't grossly unfair to any of the businesses involved.

Some small businesses feel pressured into accepting long payment terms to win the work. But if it leaves you struggling to manage your cashflow, think carefully. You don't have to accept terms that don't work for you.

Tip: The time to agree payment terms is during negotiation. Don't be afraid to say 'no'.

What if payment is overdue?

Once the agreed payment date has passed and the invoice hasn't been paid, it's overdue. You can:

- Send reminders (start gently)
- Call the customer to ask when payment will be made
- Charge interest and compensation under the Late Payment of Commercial Debts (Interest) Act 1998. You can use our Interest Calculator to help you calculate the interest due.

You might hesitate to chase late payments, especially if you want more work from that customer. But ask yourself: can I afford to keep working with someone who doesn't pay on time?

You can get help from the Office of the Small Business Commissioner (OSBC)

If you're a small business (fewer than 50 staff) and your customer is a larger business, the OSBC can help for free.

They can:

- Advise you on your rights
- Contact your customer on your behalf if that's what you want
- Help resolve disputes without court action



More information about our support is on our website.

(Note: The OSBC can't help if both businesses are small or if you're in the construction sector but they can recommend appropriate support or dispute resolution services that might be available.)



Things to think about

- Check your invoice is payable before submitting it: errors like incorrect PO (Purchase Order) numbers or dates can delay payment.
- Ask for PO numbers early. Don't let delays issuing them hold up your payment.
- Consider part-payments or staged invoicing for longer jobs.
- Use digital tools like e-invoicing platforms. These can:
 - Reduce errors
 - Prevent lost or disputed invoices
 - Speed up approval times
 - Lower the risk of fraud
 - Save time and money
 - Help you track when payments are due
 - Strengthen relationships with your customers



But remember: e-invoicing can't change the culture of a business that's determined to delay payments.

Before you take on a new customer:

- Check their payment records ([Large UK companies must report twice a year](#))
- Look up [Fair Payment Code Awardees](#)
- Use credit reference agencies to see how well they pay

One final thought on late payments

- Once you've signed a contract agreeing to long payment terms (e.g. 90+ days), you can't challenge them later, even if they're tough. But if the payment is late after that period ends, you can take action.
- Don't let fear of losing work stop you from chasing what you're owed. Late payments can put your whole business at risk.
- [The Office of the Small Business Commissioner \(OSBC\)](#) can help for free. Legal action is the last resort.

Case studies: lessons from real contracts

Can I ask for better payment terms?

Yes! Many businesses do. One small supplier told us how they explained to a large customer why 90-day terms wouldn't work for them. It was a risk. They worried the client might go elsewhere, but it paid off. The customer agreed to 45 days. Sometimes you just need to ask.

Be careful what you sign.

A small business owner once showed us a contract from a major UK firm. It allowed interest on late payments but capped it at just 2% above the base rate. That meant the supplier gave up the right to the full 8% + base rate allowed under the [Late Payment of Commercial Debts \(Interest\) Act 1998](#). Once signed, your legal rights may be limited. Always read the small print.

Make sure you know who you've actually contracted with.

We helped one supplier who was chasing Firm A for payment, but the contract was with Firm B. Once that was clear, we got it resolved quickly. But it's a good reminder to double check names, addresses, and registration details.

Don't assume "standard terms" are in your favour.

Another supplier told us they expected to be paid within 30 days. The contract said, "standard terms apply", and they assumed that meant 30 days. But the customer's standard terms were 90 days. It caused real cashflow issues and made it harder to pay their own suppliers. Always ask what "standard" really means.

Where can I find simple contract templates?

Templates can be a great starting point. You'll find some useful ideas at the [World Commerce and Contracting Foundation](#) – or ask a trusted legal professional to help you draft or review something tailored to your business. You can also search for UK contract templates. There are many organisations offering 'off-the-shelf' basic documents and policies for a small fee but we can't recommend one over another.

Who can help?

These resources can support you at different stages of the contract process.

- **Lawyers:** Especially helpful when contracts are high-value, complex, or long-term.
- **[Law Society](#):** Helps you find regulated legal professionals in your area.
- **Trade bodies and [Lawbite](#):** Offer free or low-cost templates, guides, and training.
- **Mediators and arbitrators:** Can help resolve disputes without going to court.

Final Top Tips:

- Keep contracts as simple and clear as possible with no surprises.
- Put the contract in writing, even if it's just a few bullet points.
- Negotiate with a view to reaching a fair agreement that works for both sides.
- Compromise where you can and stay open and respectful.
- Always remember contract for the marriage, not the divorce.

This document has been prepared to provide general guidance only. Users of this guidance should seek their own legal advice where appropriate.

Thank you to Elspeth for her support and knowledge when writing this guide.



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