

Top 10 Tips – (For avoiding litigation)

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Top 10 Tips for avoiding litigation – how to risk assess your contracts

Parties often enter into contracts without knowing the full extent of the terms they are agreeing to. This can lead to a breach by one or both parties and can increase the cost of resolving the dispute as the parties argue about what was actually agreed.

When a contract is entered into, both parties have obligations which they have to perform. Agreements reached verbally can be equally as binding as written contracts although the written wording is often the evidence of what the parties have agreed.

In order to avoid breaching a contract, you need to know what you are required to do to perform your obligations. Parties' expectations may vary and it is important to establish these at the outset. Below are some tips for parties to consider whilst carrying out a risk assessment before entering into an agreement:

- 1. Know Your Obligations** – Whilst it makes common sense to know what you have to do to perform a contract, it is amazing how many contracts are breached through ignorance of the terms.
- 2. Manage Expectations** - Identify what is required in order to meet the expectations of the other party. Manage unrealistic expectations before entering the contract.
- 3. Reduce The Risk of Reliance On Others** - Is your performance of the contract dependent on suppliers or subcontractors? Have you got adequate protection if they do not perform?
- 4. Know Your Legal Obligations** - Are you aware of the law relating to compliance with regulations and any implied terms which impact on the contract? Lack of knowledge of these is not a defence to a breach.
- 5. Limit Risk Factors Outside Your Control** - Your ability to perform a contract may depend on factors such as the weather. If so, include terms in the contract to reflect this.
- 6. Anticipate What Could Go Wrong** - Try to anticipate what could go wrong and your potential liability if it does.
- 7. Consider Insurance Cover** - Do the risks justify obtaining insurance?
- 8. Ensure Your Price Reflects The Risks** - Make sure your price reflects the risks. Do you need to increase your price to cover additional cost of protecting yourself with terms and conditions or insurance cover?

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9. **Carry Out Due Diligence** – Can the other party perform their obligations? Due diligence on the other contracting party will help avoid nasty surprises.

10. **Ensure Internal Communication Happens** - Make sure you communicate the contract terms and expectations to your staff or whoever is carrying out the work.

Summary

- Once the contract is agreed you cannot change the terms without the other party's consent. Therefore perform your risk assessment before you are committed to the deal.
- By following the above tips, you should be able to significantly reduce your risk of litigation. At the same time, by understanding other parties' expectations, you will reduce complaints and improve customer service.
- You will identify additional costs involved and can reflect this in your price.
- Taking time to think about these issues at the outset may save significant wasted time and expense involved in complaints and disputes.

Avoiding the risk of litigation need not be troublesome and can be relatively straightforward with the right approach.

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