



Contracts

Contracts: the basics



Every time you buy something you enter into a contract, whether it's an ice cream at the corner dairy, the services of a hairdresser, or a mortgage for a house.

A contract is formed when you offer to buy something and the seller accepts your offer. For a contract to exist, something of value ('consideration') must be exchanged. For example:

- a piece of paper that says you will be paid \$30 an hour for painting a house
- a form that says you will pay \$50 a month to X company to rent a TV
- a lease to rent a house
- you want to buy a book. You give \$35 to the bookseller who gives you the book in exchange.

There are three basic steps to making a contract. There must be:

- an offer made by the buyer: "I'd like to buy this jersey"
- acceptance of offer by the seller: "that'll be \$59.95"
- consideration - both sides must give something. The seller agrees to sell the jersey. The buyer agrees to pay the price of the jersey.

The contract will exist even when money and goods are not actually exchanged at the time of sale. As an example, if you buy a sofa but want the shop to get it covered in a different fabric, you may agree with the shop that you will pay for the sofa when it is delivered.

Contracts that must be in writing

A contract can be spoken (verbal) or in writing. While a contract does not have to be in writing to be legally binding, the following consumer contracts must be in writing:

- consumer credit contracts
- door-to-door sales contracts
- contracts agreeing to act as a guarantor
- contracts for the purchase of a motor vehicle from a dealer
- contracts for the purchase of real estate.

Before you sign a written contract take time to understand what you are agreeing to. Discuss it with a friend, or take it to a Citizens Advice Bureau, or Community Law Centre who can explain anything that is hard to understand.

[Visit the Citizen's Advice Bureau website.](#)

[Visit the Community Law Centre website.](#)

A contract will be legally enforceable or binding if these four conditions are met:

1. Both parties intended to make the contract.
2. Both parties agree about what is in the contract.
3. The contract is legal. Contracts to buy or sell anything illegal are not enforceable.
4. The contract must be made by people who are legally capable. This is called 'capacity'. People who are legally not capable of making contracts are:

minors - people under the age of 18 (unless married) unless the other party to the contract can show the contract is fair and reasonable.

people of unsound mind - this includes people with protection orders under the Mental Health Act, people with a general mental disability, and intoxicated people. The key question is - is it obvious that one person does not understand what is being agreed to and is the other person taking advantage of this?

Before you sign a consumer contract

Understand the contract's terms and conditions before you agree to the contract. This can save you money and time later on because you won't be caught out by a term or condition you didn't know about.

Terms and conditions

These are the rules of a contract - the important information about the deal you are entering into. They set out what you (as the buyer) and the seller must do to complete the contract. Once you enter into a contract you have to accept the terms and conditions. There are express terms and implied terms.

Express terms

These are terms (or clauses) that are clearly stated and agreed when the contract is made. Express terms may be agreed verbally, written into the contract, or stated on a receipt or a notice at the counter. Contracts commonly have express terms about:

- who the contract is between
- what is to be sold or supplied
- what the price is
- how and when payment is to be made
- when a job is to be started or completed
- when goods are to be delivered.

Examples

Jane goes to a timber yard to order fence posts. A sign clearly displayed at the counter says "payment within 14 days of delivery". It is an express term of the contract that Jane will pay for the timber within 14 days of delivery.

Moana orders three cords of firewood from Joe. Joe agrees to deliver the firewood on Friday afternoon (an express clause). Moana agrees to pay on delivery (another express clause).

Implied terms

These are terms which are not specifically stated but which are part of the contract, nevertheless. Implied terms are most commonly implied by statute - i.e. that kind of contract is covered by a particular Act. For example, contracts for the sale of goods have an implied term which guarantees that goods will be of acceptable quality (under the Consumer Guarantees Act). The consumer contract does not have to specifically mention the Consumer Guarantees Act.

Conditions

Conditional contracts require certain conditions (or actions) to be met by one or both of the parties to the contract otherwise the contract does not go ahead, - it becomes 'void'. Both parties must agree to the conditions at the time the contract is made.

Examples

House buyers often agree to purchase a property on condition that they have a stated number of working days to arrange suitable finance, and if they can't get finance the sale will be cancelled and any deposit already paid will be refunded in full.

Car buyers often agree to buy a car on condition that the car passes a mechanical check, and if the car fails to pass the buyer can choose to cancel the contract and get any deposit already paid back in full.

Exclusion clauses

Some contracts have "exclusion" clauses written into them which removes some of the trader's responsibilities if the contract is broken.

An example of an exclusion clause is a statement that "The manufacturer is not responsible for a fault if the goods are used in a way that is not intended."

Exclusion clauses are not always clear, so always ask the trader what happens if something goes wrong with the goods not as a result of being misused.

Your rights

Cancelling a contract

You have a right to cancel a contract in some situations when things go wrong. What rights you have will depend on:

- whether you have a credit contract
- whether your contract was with a trader, and
- what went wrong.

The two main reasons why a contract may be cancelled are:

- the trader gave the consumer incorrect information about an essential part of the contract
- an important term or condition of the contract has been broken (breached).

Breach of contract

"Breach" means to break a term or condition of the contract.

For example: Steve contracts with a builder to build a garage on his property and they agree the work is to start in two weeks. The builder contacts Steve two days before the start date to say they have to complete several other contracts first and there will be a two week delay.

Remedies you may be entitled to if the seller breaches the contract are set out in laws such as the Consumer Guarantees Act.

Other remedies are available under "common law" (general principles which courts have established when they decide on contractual disputes about matters such as failure to complete the contract, time delays).

Cancelling a (written or verbal) contract for goods or services

The [Consumer Guarantees Act](#) covers the buying of goods and services for personal or household use and sets out the remedies and redress you are entitled to if there is a problem.

Cancelling a contract for goods bought on credit

There are special rules about cancelling a contract for goods which are being bought on credit. [Visit the section on credit and debt](#) for more information about this. There are also special rules for cancelling a "door to door" credit sale. Look at the section on the Door to Door Sales Act.

Buying privately

Generally, when you buy something privately you do not have the right to cancel the contract and you have only limited rights if something goes wrong. This is a case of "Buyer Beware". But you do have rights in the following situations:

The seller has misled you

The Contractual Remedies Act gives you a right to claim compensation if you agreed to the contract based on what the other party told you, and that information turns out to be incorrect. The amount of compensation should be sufficient to put you in the position you would have been if the misrepresentation hadn't been made.

For example: Tem tells Lisa that the car she is buying from him has recently had its engine reconditioned. She finds out a week later that the engine has not been reconditioned. Lisa can claim compensation from Tem for the cost of having the engine reconditioned.

The seller did not have the right to sell the goods

The Sale of Goods Act gives you the right to cancel a contract or to claim compensation where, unknown to you, the seller did not have the right to sell the goods, or the goods were being used as security.

Other opportunities to cancel

Normally you cannot cancel a contract when the other party is able to provide the goods and services contracted for. However, there are some exceptions:

- if the contract has a "termination" clause or term which gives you the right to cancel in certain circumstances, with notice
- if the other party agrees to your cancellation - this may happen if they have another customer waiting for the same goods or services (you may have to pay a cancellation fee).

For example: you buy a six month gym membership. Two months later you move to another town. The gym accepts your cancellation but because their terms of membership requires one month's notice of termination, you get a refund for three of the months remaining of your membership.

Partially completed contracts

This is best explained with an example of when you can cancel a partially completed contract. If a painter walks off the job for no apparent reason after painting only two sides of your house, and two weeks later still hasn't returned, you can cancel the painting contract and pay the painter only for the work that has been done.

If the cost of the work already done plus the cost of having someone else complete the job is more than the original price, you can claim the

difference from the first painter.

Paying a deposit

When you order goods or services to be paid for in full at a later date, you often have to pay a deposit. The deposit is a form of security that the contract to buy will go ahead. After the contract is completed, (usually when the goods have been delivered) you will pay the balance.

It is for you and the trader to agree on whether a deposit is to be paid, how much the deposit will be, and in what circumstances the deposit will be refunded. If the trader does require a deposit:

- ask whether the deposit will be refundable. If the trader agrees, this becomes a term of the contract.
- try to avoid paying a deposit of more than 10%. However, if the contract is for purpose-built goods such as kitchen joinery, a larger deposit may be reasonable.
- ask for a receipt showing the amount paid, the balance owing, and whether the deposit is refundable.

Getting a deposit refunded

The general rule is that a deposit is not refundable. But there are three exceptions to this rule:

- if the trader fails to meet their side of the contract - eg, they cannot supply the goods you ordered
- if you and the trader agreed that a term of the contract will be that the deposit is refundable (in full or in part).
- if you cancel goods you have on layby. The Layby Sales Act sets out specific rules for cancelling a layby.

Got a problem with a contract? Frequently asked questions

Can I claim compensation from a garage if my car has been driven while it was in for repairs?

Yes - if you can prove the car was used without authority. By leaving the car with the garage you authorise them to use the car in relation to making the repair, e.g. to test drive it. It should not be used for joy riding or private use by the mechanics.

If I decide not to go ahead with a repair after seeing a quote, can I be charged an inspection fee?

Yes. You entered into a transaction which has a financial cost to the repairer. A repairer can charge for the time taken to inspect the goods, check the availability of spare parts and prepare a quote or estimate. Repairers should consider having a clear sign on display that tells customers about the inspection charge.

My gym has moved across town and I want to cancel my membership. Can I do this?

It depends on whether it is still reasonable for you to use the facilities and whether the gym has breached its contract with you. For example, if a fitness centre was based in a business district and marketed itself to office workers then moves to the suburbs, it is arguable that the gym is breaching its contracts with office workers who signed up in order to use the gym during their lunch break.

Do I have to pay the extra when a travel agent misquotes a price for a travel booking or air fare?

A quote is binding unless the agent specified that the price is subject to change until full payment is received. If full payment has been received the agency would not be able to collect any further amount.

Can a service provider (like a dentist, doctor or hairdresser) charge a fee for a cancelled appointment?

Yes. When you make an appointment you enter into a contract with the service provider. Not turning up for the appointment is a breach of that contract. If there is a financial loss to the business as a result of being unable to refill the appointment slot they can recover the loss from you.

This is not as yet a common trade practice, but we recommend that you ask about any cancellation fees next time you make an appointment.

Traders intending to charge for missed, forgotten or cancelled appointments should notify customers or clients that a fee will be charged. This information could be put on the back of appointment cards or on a notice at the counter. Customers could also be told when appointments are made over the phone.