

When to Use Each Contract Type and Examples

Use a written contract when:

- It is advisable to have details and expectations clearly established before starting the business relationship.
- You want a contract that helps ensure both parties understand and agree to the terms, reducing the risk of misunderstandings.
- Easier enforcement is a priority of the business relationship.

Examples when written contracts are used:

- Significant Financial Transactions – A business putting contract terms into writing when purchasing expensive equipment or entering into long-term supply agreements.
- Long-term Business Relationships – A retailer signing a multi-year contract with a supplier for regular deliveries or a service provider for ongoing support.
- Employment and Independent Contractor Agreements – An employer using a written agreement to help define the terms of employment or contract work.

Use an implied contract when:

- A formal agreement has not been explicitly stated but the conduct of the parties involved, the circumstances, or established expectations suggest that a contract exists.
- Fairness or justice requires acknowledging a mutual understanding between parties.

Examples when implied contracts are used:

- Employment Relationships – An employer's policies or practices suggest an understanding about job security, pay raises, or promotions.
- Providing Goods or Services – One party provides goods or services with the expectation of payment, and the other party accepts those goods or services.
- Ongoing Business Relationships – Parties routinely working together create actions or communications that imply certain terms, such as payment, delivery schedules, or service quality.

Use an acceptance by performance contract when:

- You want to incentivize action but not be obligated unless the action is completed.
- Performance can be easily observed and verified (e.g., completing a specific task, achieving a result).
- You seek to minimize risk by only being bound if the desired outcome is achieved.

Examples when acceptance by performance contracts are used:

- Service Contracts – A business offers a unilateral contract where payment is promised only if the service is completed to certain standards. The contractor is only paid upon completing the agreed-upon work.





- Employment Recruitment with Conditional Offers – A company offers a bonus to employees if they refer qualified candidates who are hired and stay employed for a certain period.
- Construction or Freelance Projects – A client offers payment for specific deliverables (e.g., a completed design, software code, or a repaired structure), the contract is accepted only when the contractor or freelancer completes the work.

When do my communications become a contract?

Contracts are commonly negotiated and finalized without the creation of a formal contract document. Contracts can be formed through a series of emails or by accepting a purchase order. For small business, informal contracts created through communications may be as common as, and in some cases more common, than forming formal contracts.

Given the prevalence of informal contracts being created through communication, it is important for small businesses to be careful in day-to-day business interactions to ensure that they are not prematurely entering into contracts. Negotiation communications can transition into a contract and create performance obligations if it appears that the parties have reached agreement on the issue. It is important to communicate clearly and understand where you are in the process.

Here are some points on how to approach your communications:

- Negotiation documents like letters of intent, memoranda of understanding, or heads of terms can sometimes be binding if they include all essential elements and indicate an intent to be bound.
- Electronic communications like emails can be binding and a typed signature can be used to show acceptance of the terms.
- Choose your words carefully, both orally and in writing. Ambiguous or vague statements could be interpreted differently and used as evidence against you.
- Use phrases like “subject to contract” or “negotiations ongoing” to indicate that a final agreement has not been reached.
- Indicate that any documents or terms shared are only drafts or for discussion purposes.
- Send follow up emails to oral conversation stating the topics discussed and any consensus reached.
- Summarize your understanding of the agreement into a single communication (e.g. email) to ensure that all the relevant contract terms are in one place.
- Make sure that EVERYTHING that was discussed is clearly included in the final contract.





Conclusion

Understanding the basics of contracts and how they work is essential to running a successful business. Contracts are at the center of your business relationships with suppliers, vendors, customers, and workers. With the above knowledge, you can better navigate discussing potential agreements with other parties and enter contracts only when you are ready.

Looking for legal help? Contact the following legal organizations to see if you qualify for free legal assistance!

Legal Food Hub

legalfoodhub.org

legalfoodhub@clf.org

1-844-LAW-GROW (1-844-529-4769)

Northeastern University Community Business Clinic

<https://law.northeastern.edu/experience/clinics/community-business/>

617-373-6435

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