

## Basic Contract Law

### Golden rules of contract management

Under the BWF Code of Conduct, members are required to act fairly and equitably in dealing with their customers, meeting proper standards of workmanship, integrity and courtesy.

In terms of contractual arrangements, it is recommended that members use written contracts wherever it is reasonable to do so. Contract terms should always be clearly stated in language which can be understood by the Members themselves and their clients. A model set of terms and conditions of sale, which can be adapted by members, according to their business requirements, can be found on the BWF website. See also separate briefing guide on the issues involved in drawing up terms and conditions.

Members should however ensure that when they enter into a contract, they are sure fully aware of what their legal position will be.

The following is a brief guide to the do's and don'ts. If there is any doubt whatsoever, you should consult a solicitor or contact the BWF on 0207 637 2646 for further guidance.

### Making a contract

#### DO:

- Confirm contracts in writing. Contracts can be made verbally but they are much more difficult to prove if there's a problem later.
- Keep the originals of any contracts and other documents that you relied on when signing the contract. File them where you can find them again!
- Put any claims made by a salesperson or representative about the goods or services in question into the written contract (particularly if you were persuaded to buy the goods or services because of those claims).

- Check whether you can bring a contract to an end by giving notice. Make sure you are clear about how much notice must be given and if you must do specific things before giving notice (e.g. Pay all sums due in the contract).
- Be clear about how you will measure the standard of goods and services provided. If they fail to meet the required standard can the service be improved, the cost altered or the contract terminated?
- State in the contract when delivery or performance must occur. If it must
- Happen on the dates stated write on the contract that “time is of the essence”.
- Also write changes to the contract down and keep a copy with the original contract. Write to the other party confirming the changes with a copy letter for them to sign and send back to you.

#### **DON'T:**

- Sign anything without reading it first! You are bound to all the items in any document you sign whether you are aware of them or not.
- Sign anything you have read that you do not understand. If you don't understand something - alter it so that it is clear.
- Agree to a contract that lasts for more than two years unless you can end it earlier by giving notice.
- Forget to take and check up on references if the supply is for something important (e.g. Company searches, credit ratings or satisfied customers).
- Accept “standard conditions of sale (or purchase)” from the other side without reading them first. You may get some conditions changed if you ask.

## **Problems with a contract**

#### **DO:**

- State in writing any concerns that you have if you are dissatisfied with supplied goods or services quickly and clearly.

- Review any contract that you have before taking action. Refer to a particular clause of a contract when complaining.
- Be specific when you complain. Point out the failure in standards or quality and ask the other side to remedy it in a specified time.
- Send a copy of any letters or documents that will assist you (e.g. An estimate which is much lower than the eventual invoice).
- If dealing with a customer complaint, state that any offer of cash or
- Compensation has been made “without prejudice”. This means you are not admitting that you were at fault.
- Make any offer of cash or compensation clear and comprehensive, stating exactly what is being offered, how much and for how long. Give a deadline for acceptance and ask for acceptance or refusal in writing by that date.
- Keep a proper record of what has been stated and offered. If you have offered cash or re-performance of services - say how and when the relevant action will be taken and ensure that you do what you have agreed to do.

## **DON'T**

- Get emotional or angry. State the facts simply and do not threaten to take any action which you do not actually intend to take.
- Allow time to lapse between complaining and taking further action - the other side could think that you have given up your right to complain and seek a remedy.
- Just stop paying the other party if there is a problem. State what the problem is and why you have decided to withhold payment.
- Admit liability when dealing with complaints. Do not state that you are “sorry”, but that you are “disappointed” by any lapse in standards.
- Leave the matter open once you have dealt with a complaint. State that any offer is “in full and final settlement of any claims that you may have in respect of this matter.”

## Ending a contract

### DO:

- Try to get the other side to remedy any breach of contract they have committed before you try to terminate the contract (see Contract Guidelines: Problems with a Contract above).
- Read a contract first to make sure that you are entitled to terminate a contract before doing so.
- Consider all the relevant documents. A contract should usually state what you must do in order to terminate (e.g. The notice period required).
- Follow the contract's requirements for termination precisely. Make sure notices are sent to the correct address. Use first class post, recorded Signed for<sup>TM</sup> delivery and do not send by fax unless the contract says you can. Even then, send a hard copy in the post to make sure!
- Take legal advice if you are not sure whether you can terminate the agreement or not. If you terminate a contract incorrectly you could be sued for breach of contract.
- Review all your written contracts from time to time so that you are aware of your obligations and rights in the contracts.

### DON'T

- Stop making payments under a contract. This will not terminate the contract successfully.
- Just return any goods held on a lease to the company you got it from. You must make payments under a lease throughout its duration whether the equipment is still in your possession or not!
- Consider that a contract is terminated because you are suing the other party or being sued by them. You will still be liable to make payments under the contract until the court dispute is settled.

- Forget that if you terminate a contract, you may still have to pay something to the other party under that contract. If you ordered 100 goods and you received 50 of them (and they are acceptable) you will probably have to pay for the goods or services you actually received. If in doubt check before terminating the contract.

Note: Whilst every effort has been made to ensure the accuracy of advice given, the BWF cannot accept liability for loss or damage arising from the use of the information supplied in this publication.