

Contracts and intellectual property.

It is a common mistake to rely on a handshake rather than going to the bother of getting a properly drafted contract. But how can you be sure that all parties have the same understanding of their obligations and that relationships will always stay as friendly as they were at the outset?

I have a good relationship with my customer/supplier... why should I bother with a contract?

It might be tempting to rely on a "handshake" agreement as an alternative to investing the time and effort needed to document a deal. However, ensuring that your company's transactions are properly documented provides clarity and certainty around what has been promised, and can help avoid future disputes. Properly documenting a transaction:

- helps avoid misunderstandings, which can arise even where all parties have the best of intentions,
- may bring to light issues that hadn't previously been identified as relevant to the project or deal,
- provides a reference point to ensure that a long term project remains on track,
- assists the parties to identify, allocate and manage risk, and
- facilitates good project management.

What are the common types of technology contracts?

Typical contracts include:

Development agreements – where a customer requests a supplier to develop a product specifically for the customer.

Licensing – the terms upon which a supplier permits a customer to use products or services.

Escrow agreements – a customer may require a supplier to lodge documentation etc with an escrow agent, to be accessed by the customer if defined trigger events occur – for example the supplier ceases to support the product.

Maintenance and support agreements – defining the ongoing support to be provided by the supplier to the customer in relation to products or services.

Confidentiality agreements – protecting the confidentiality of information that is made available to another person.

Acquisition – the terms upon which products or services are to be purchased or leased.

Outsourcing and services contracts – a company may request an external consultant or organisation to provide services.

Distribution agreement – the terms upon which a distributor acquires and resells a supplier's products.

Commercialisation agreements - where the parties agree to work together, commonly bringing different assets and strengths to commercialise a product or service.

Research agreements - where the parties agree to work together to develop or improve a product or service.

I don't have the time or resources to invest in documenting all of my transactions.

IP contracts need not be time consuming or expensive to document. A good lawyer with experience in your industry can identify and help resolve issues efficiently, and tailor the scope of the legal documentation to the scale of the transaction. A multi-million dollar development project obviously calls for a more significant investment in contract documentation than a small acquisition from a local company, even though the legal issues will often be similar regardless of the size of the transaction. The costs of dealing with the consequences of failing to properly document a transaction (unhappy customer, dispute with supplier, litigation) can be enormous compared with the cost of documenting the transaction properly at the outset.

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