

WHAT CAN YOU DO TODAY?

A contract in its basic form is an agreement between parties that is legally binding on them.

When a dispute arises, the court looks to identify the enforceability of the bargain. This is no different in the online world. Streamline your business by using a standard form contract in all your repeat transactions and a 'clickwrap' check box to get agreement before people can continue to purchase.

There are legal and cultural differences in contract formation and the binding nature of contracts around the world. This checklist looks at the Australian context, which is similar to other Commonwealth countries.

1. USING STANDARD FORM CONTRACTS

Contracts do not have to be in a formal written document to be binding. A phone conversation, a series of instant messages or emails, or a combination of those things can be sufficient to form a contract. To avoid confusion, put it in writing.

- ☐ List all the areas of your business where there are repeat transactions, and whether you are the buyer or seller in those transactions.
- ☐ List the key elements of each of your most common transactions including: parties, timing, what the contract is for, the pricing and who is responsible for each task required to complete the contract.
- ☐ Decide whether to use clickwrap agreements, or another form of agreement where you keep and can prove that people had the chance to see it before they bought.
- ☐ Make it easy for people to enter into an agreement with you by including a statement that you accept typed names in place of electronic signatures.

2. FORMAT

The beauty of having something in writing is that you have a permanent record of what was agreed, whether a formal contract or exchange of written messages. Something in writing can be useful even a few days after you have concluded the deal because most people have imperfect memories.

- ☐ Consider whether there are any verbal agreements you have made recently that you can confirm in writing, even just via email.
- ☐ Always properly identify the parties to an agreement. If someone asks you to change the name on an agreement, keep a record that they have done so and check that they have that authority.
- ☐ Logically think through the topics to be covered and create a bullet point list.
- ☐ Make sure the document includes who gets paid, how much, when and by what means.
- ☐ Make sure there is a way for the parties to easily get out of the agreement if they need to, without unnecessary dispute.

