Fact sheet – First Nations startups

#5 Contracts – external goods & services

Goods or service agreements are contracts used where a party proposes to acquire goods or engage the services of another party (an independent contractor). This fact sheet is a high-level checklist of some (but not all) of the key elements you should consider before entering into a contract with a goods or services provider.

What is a contract?

A contract is a legally binding agreement between two or more people (parties) that generally involves an exchange of promises that are enforceable at law.

Whose contract is used?

Often, a service provider will have a standard form contract which includes its preferred terms and conditions. Whilst these are sometimes characterised as being inflexible and "can't (or won't)" be amended, we recommend reviewing the terms and providing suggested changes before entering into any contractual arrangements.

Parties

The identity of the contracting party is important as only legal entities can enter into a contract. These are generally an individual (i.e. a person), company, incorporated association, or an entity established under laws. A common error when describing the party to the contract is the use of a trust (when the legal entity is the trustee) or business names (where the correct legal entity is the business owner).

Another important consideration is protection of assets. For example, where there is a group of companies, it is critical that the operating company enters the contract, not the entity that holds important assets (intellectual property for example).

Duration of contract (term)

It is critical that the parties agree on the length of time in which the contract is in existence. Terminology commonly used here are term, commencement date, termination date or expiration.

Scope of contract

Key elements to consider under the scope of the contract are:

1. the party to perform obligations under the contract (do you need to identify key personnel to undertake the obligations under the contract);
2. what acts need to be performed under the contract;
3. when must performance be delivered;
4. timing of payment; and
5. what happens if performance is not delivered – for example, is there an extension of time, can the contract be terminated, do the parties need to undertake a dispute resolution process?

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Conditions precedent

A condition precedent is a legal term which describes a condition or some event that has to occur before a contract is considered to be of effect or any of the obligations are expected of either party. If the relevant condition or event does not occur or come to pass by a certain date (usually the Conditions Precedent Date) then, depending on the terms of the condition precedent, either party may terminate the contract.

While it is not necessarily common for a goods and services to include any conditions precedent, it is something for the parties to consider – and, if considered necessary, it is critical that the condition be appropriately described so that there is no confusion as to whether or not the condition has been satisfied, and that there is a final date (sunset or expiration date) by which that condition must be satisfied.

Liability

Contractual liability refers to the responsibility of a party to the contract for any claims, obligations or debts that arise under that contract. For example, contractual liability is where one party to a contract agrees to pay or reimburse the other party for any damages, claims or losses suffered by the other party generally as a consequence of the acts of omissions of the first party.

There are a number of ways to limit liability or otherwise transfer the risk to the other party. This is a technical area of law and legal advice should be obtained.

Guarantees

A guarantee is a legally enforceable contractual promise by a party (the guarantor) to the other contracting party (the beneficiary) to discharge the obligations of the original contracting party (the primary party) in case the primary party fails to fulfill those obligations. Where the primary contracting party is a company, the other contracting party often seeks to require directors' guarantees to guarantee the performance of the primary company contracting party. Sometimes this is unavoidable, however, it is strongly recommended that personal (or director) guarantees be resisted as any guarantee of this nature makes the director will be personally liable for any obligations or liabilities arising under the contract. Other types of performance security should be considered instead (for example bank guarantees, bonds, funds held in escrow).

Termination

The contract should be clear on how and when a contract is able to be terminated. Common options for termination include:

1. **termination for cause** – this allows the party to terminate the contract if the other party fails to discharge its obligations under the contract. This is often referred to as termination for a material breach;
2. **termination for specific events** – this allows for termination where certain prescribed events have occurred (for example, non-payment under the contract, gross misconduct of key personnel, etc); and
3. **termination for convenience** – where there is no specific event or conduct required but the party is entitled to terminate the contract for example on giving the other party one month's written notice. The inclusion of a termination for convenience mechanism should be weighed against the business's needs, as this may not be appropriate in all circumstances. For example, if the contract is one for the provision of goods and services which are fundamental to the operation of your business, it would typically be preferrable to ensure the contract will remain in place for a fixed term.

Please see our other Fact Sheets for First Nations startups here.

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Disclaimer

The content of this fact sheet is current at October 2026 and is intended to provide a general guide to the subject matter only. The fact sheet does not constitute legal advice. Obtaining specialist advice about your specific circumstances is recommended.