



Professional Practice in Engineering Management

University of Sydney Faculty of
Engineering & Information
Technologies



The Basics of Contracts

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Pre-Contractual Representations

- Risk of liability for statements and representations made before a contract is formed
 - ensure statements are true and not misleading
 - products and services supplied must correspond with any description given
 - exercise caution when comparing your products and services with those of competitors



Enforceable Contracts

- Enforceable contracts require:
 - an offer setting out the terms of the contract which must be made by one party and accepted by the other
 - “consideration”
 - completeness and certainty of terms



Enforceable Contracts (cont')

- To ensure you are forming an enforceable contract:
 - make certain that the contract is properly documented and executed
 - avoid using “preliminary agreements” such as letters of intent and heads of agreement – they create uncertainty as to whether a complete and binding agreement has been formed



Electronic Contracts

- General contract principles also apply to contracts formed electronically. Note:
 - Contracts can be formed via email without a formal agreement - ensure emails are expressed as an invitation to negotiate a contract and note that a formal agreement will be entered into
 - Written signature not required – must verify customer's identity and customer must approve of electronic contract formation



Deeds and Agreements

- Contracts are usually formed by an agreement – may be written, oral or a combination
- Where only one party obtains a benefit contract must take form of a “deed”
 - a deed is a formal written agreement signed by the parties under seal
 - a deed is often used to vary an existing contract as the variation may only benefit one party e.g. a price increase



Varying Contracts

- Standard practice that contracts can only be varied in writing signed by all parties
- However, written contracts can still be varied as a result of conduct or written representations made outside the contract
- Contracts cannot be varied by one party without the agreement of the other



Performance

- Time for performance and nature of obligations will be determined by terms of contract
- Parties obliged to co-operate in performance of contract
- Failure to perform, late performance or defective performance amount to a breach of contract



Breach of contract

- Breach of contract by one party will give the other party a right to claim damages
- Right to terminate after breach is not automatic – dependant on terms of contract
- Prohibition against knowingly interfering with a competitor's contractual rights e.g. by inducing a customer to terminate its contract with a competitor and enter into a contract with another



Termination

- A contract is discharged when both parties have performed all obligations under the contract, or when the contract is agreed to expire
- Written contracts usually include a termination clause which may specify:
 - when a party may terminate
 - how right to terminate is exercised
 - consequences of termination