

Commercial Contract Conditions Is your removal contract rubbish?



How do I find out more?

If you are offered a contract with terms you do not like, or are unsure of, *get advice or shop around for a better offer.*

To find out more, contact the ACCC Infocentre on 1300 302 502 or visit the ACCC website at www.accc.gov.au.

What should you do?

The ACCC receives many complaints from businesses and consumers who have signed contracts without reading them. The most common reasons are that the contract was too long, not easily understood or they fell for the line "it's just a standard contract".

Regardless of the type of contract you are entering into, make sure you read it over. If possible, have a business advisor, your accountant or lawyer look over it with you.

Remember: It is much easier to ask the right questions before you sign a contract than to try and rectify the problem once you've signed on the dotted line.

Did you know?

The ACCC has a publication called *Small Business and the Trade Practices Act* which is a practical guide for Australian small business. The booklet is available by calling the ACCC Infocentre on 1300 302 502 or log onto the Internet at www.accc.gov.au and download it for free!

The Australian Competition & Consumer Commission (ACCC) receives numerous complaints from small businesses in relation to contract conditions imposed by commercial service contractors such as rubbish removal, equipment hirers, or hygiene services.

The ACCC recently investigated complaints from small businesses in relation to alleged harsh or misleading conditions imposed on them by rubbish removal contractors, so in this edition of InfoLink, we've taken a rubbish contract as an example.

But wait... there may be a catch!

There are many things to watch out for when entering into a new contract. Protect your interests and read the contract carefully.

Watch out for:

Excessively Long Contracts

Commercial rubbish removal contracts are often for a fixed and extended period, such as 5 years. This condition is sometimes only disclosed in fine print. Some business complainants later allege that no effort was made to bring such clauses to their attention. The result is that some businesses which have contracts in place are under the mistaken belief they can vary or cancel the

service contract any time they like, such as when the contract is no longer needed or when a cheaper supplier is found.

Automatic Renewal Clauses

Some contracts include a clause that imposes an onus on the business operator, just prior to expiry of the contract, to notify if they wish to terminate. Otherwise the contract is automatically renewed. Again, it has been alleged this clause is often in fine print and, whilst binding, is not clearly brought to the business consumer's attention. In one example a clause stipulated that notice of termination must be given within 90 days of the expiry of a 5-year contract. If not, a 5-year extension was created.

Early Termination Penalties

Some contracts reserve the right for the contractor to claim for losses in the event that a contract is terminated prior to the expiry date. This could entail a fixed fee, or a formula based on the expected profits the contrac-

tor has 'lost' over the remaining time. It is important to remember that the right to assert payment for such losses is usually a legitimate means of recovering the reasonable costs sustained as a result of a breach of contract, provided the amount recoverable is just.

Compliance in Action Protects Small Business - An Adelaide Example

In 2002, the ACCC investigated a rubbish removal company in Adelaide which allegedly failed to adequately disclose that its contracts included clauses such as those described above, namely allowing for extended terms, automatic renewal, and early termination penalties.

The company agreed, as part of an administrative resolution with the ACCC, to ensure better disclosure of these particular clauses by placing a clear and prominent reference to them on the front of the service contract.

The company has instructed sales staff that the signatory to the contract must be authorised to agree to the terms of the contract. Also, it has reviewed and changed the formula used to calculate losses in the event of a breach of contract so as to reflect justifiable compensation.

