


Commercial contracts: top tips for academies and schools

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Key contract terms and common pitfalls

You frequently enter into commercial arrangements for the supply of goods and services, this being part and parcel of operating and maintaining a school. Any sort of supply arrangement, be it verbal or in written form, will inevitably be contractual and there are certain key questions a school ought to ask itself before entering into any agreement or arrangement.

Why are contract terms becoming an increasingly important issue for schools?

Besides the legal connotations of entering into a legally binding contractual arrangement, other reasons for schools being more diligent when entering into any contractual relationships are:

- increasingly restricted school budgets means there is a greater onus on schools to achieve better value for money when purchasing goods and services
- schools are forced to assume greater responsibility as local authorities are cutting back on the services it can provide and the support they can offer to schools
- the economic climate is such that there is greater financial scrutiny in schools and on their spending of 'public funds'
- there have been some well publicised issues concerning contracts that have been entered into by schools, namely photocopying leases
- for academies, the Academies Financial Handbook includes (amongst others) important rules on procurement and transactions with connected parties
- avoiding negative PR for the school or academy trust
- the focus on the changes to the education sector means an increasing number of service providers are entering into the market, meaning schools ought to be more demanding with the contracts they enter into to achieve a greater level of service.

Key issues for schools to consider prior to entering into any contractual arrangements

Faced with the financial, legal and limitation of risk factors, there are some key questions that must be considered before entering into any contract for the supply of goods and services. Before entering into a contract you ought to check or ask itself:

1. How established is the individual, partnership or company with whom the school is contracting? Undertaking appropriate due diligence on the supplier is prudent and the level of detail will of course be dependent on the value of the contract. High value agreements such as catering contracts will require a significantly higher level of due diligence than a one off, low value contract. Due diligence can involve undertaking credit checks, checking Companies House records and asking for references.
2. Check the language of the contract to ensure you understand every clause. Clarify any terms you do not understand so that it is clear exactly what the school is contracting for and what its obligations are.
3. Are the clear service standards that the supplier must meet? If so, do these match the statements made to you verbally in negotiations?

4. What is the term of the agreement? Is there an initial fixed term period during which the school cannot terminate the arrangement? A long initial fixed term period is not without risk if the school is contemplating contracting with a new supplier.
5. What is the notice period for terminating the arrangements? Is the school entitled to terminate the contract on reasonable notice or does notice need to expire on a particular date?
6. Are the costs of the arrangement properly set out in the contract? Are costs fixed or do they vary throughout the term of the contract? How often should payment be made and how?
7. Is the party with whom the school are contracting seeking to limit or exclude their liability to the school in any way? The importance of this largely depends on the nature of the contract. A straightforward exclusion clause operates by limiting the contracting party's liability for any breach which has occurred or the remedies which might otherwise be available. How much liability can be limited or excluded will depend on a number of legal and commercial factors, one of the most important being the reasonableness of the clause. When reviewing the contract, the objective is to protect the school so far as possible by extending the liability of the contracting party and maximising the extent of the losses recoverable by the school if the contracting party fails to perform.
8. Who has authority to sign the agreement on behalf of the school, have all internal financial procedures being followed? Do the governing body need to approve the contract before it is entered into?

It is clear there are a number of legal, financial and commercial considerations a school should take into account prior to entering into any contractual arrangement, there are of course times when it is appropriate for the school to take legal advice. Any high value contracts are likely to be sophisticated and professionally drafted agreements and the school should take a measured view as to whether to arrange for a full detailed legal review of its legal terms (including an assessment of potential risks).

Browne Jacobson can combine its sector understanding with commercial awareness to help you review your contractual arrangements. We are able to agree fixed fee arrangements to provide you with a review of any contract terms by a team with a track record of providing schools with pragmatic, commercial legal advice.

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