

# Getting out of a contract FAQs



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Will I have entered into a contract, if I let the service provider start work?

Is my contract enforceable if I have not signed it?

There is no termination clause: how can I get out of the contract?

A variation to my contract has been signed by someone without authority. Am I bound by the new terms?



## Introduction

In order to obtain value for money, it is not unusual for commercial contracts to be entered into for a long period of time. Often well over a year. It is not surprising that over the life of the contract, the economic climate may change. What seemed like a good deal a year or so ago, may not be quite as good a deal today. Today the service provider's competitors have sharpened up their act and are providing a better service for the same or even less money. As a result you want to review your existing contractual relations. The following guide helps answer some of the more frequently asked questions we receive in this area.

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**Q1 I am looking to substantially refurbish my head office. I went out to tender and identified a contractor whose price and timeframe was almost acceptable. However, in its tender, the contractor identified some fundamental amendments that it required to the terms of the contract that I had proposed. While the negotiations are ongoing, the contractor has started works. All negotiations and correspondence between us have been marked "subject to contract". However, the contractor has just written to me stating that as I have allowed him to start work, he has an enforceable and binding contract with me on the terms which he put forward. Is the contractor correct?**

The contractor is correct to suggest that if the works have started, there is usually some form of contract. However, if your correspondence is marked "subject to contract", the negotiations are still ongoing as to the outstanding terms, it is very hard indeed to see how the contractor can successfully argue that a contract for the whole of refurbishment works has been agreed. If the ongoing negotiations concern price and the time by when the works should be completed (which are after all, essential in any contract and especially a building contract) you are even less likely to have an enforceable and binding contract. In summary, it does not appear that there is a contract which the contractor can enforce. You will however still be obliged to pay the contractor a reasonable sum for the work which it carries out.

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**Q2 Would it make any difference if the contractor had started works after having been provided with a fairly detailed letter of intent (deal memo) which referred to all the agreed terms (including, this time, price and timeframe) and there were set out, at the foot of the letter, one or two items which were still the subject of ongoing negotiations but were, in the scheme of things, pretty minor?**

The effect of letters of intent vary greatly depending on their content. Some express no more than a present intention to enter into a contract sometime in the future (and create no liability). However, if your letter of intent is detailed

and contains all of the essential terms of the contract (scope of works, price, time etc) it, is likely to amount to an enforceable (mini) contract which will be binding and take effect, until the other terms are agreed and formal contract documents entered into. Again, the fact that the contractor has started work is an important factor.

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**Q3 I need a new IT system and I thought I had agreed the terms of the contract with an IT provider (although the contract document itself has never been signed). The IT service provider has started installing the new system and I have been paying for the goods and services on the terms which I had thought had been agreed. However, 2 months in and the IT service provider has just written to me stating that the terms are not agreed and has provided me with revised payment terms (which are completely unacceptable). What should I do? Do I have an enforceable contract?**

It appears you have a binding and enforceable contract and that it is on the terms contained in the latest (although unsigned) version of the contract and upon which the IT service provider started works. It sounds like, in legal speak, the IT service provider is asking for a variation to the terms of the contract and that you are well within your rights to say "No. We have agreed the terms on which you will be paid and you are obliged to provide and install the agreed equipment on those agreed terms."

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**Q4 The catering at my company is carried out by a set of sub-contractors. They're a husband and wife team and we've worked together for a number of years now. Although I've always been happy with their efforts, I recently found that I can get a comparable service from a larger outfit for a lot less. I've looked at the contract and it's a very basic document. It doesn't say how long it lasts for or give any clue as to how I might terminate. Am I locked in to the agreement? Money is tight at the moment and I'd like to switch suppliers. If I get out, what's the best way to go about this?**

Agreements which have no specific term do not normally last indefinitely. Generally the courts will



allow you to terminate on “reasonable” notice. A variety of factors should be taken into account when determining quite how much notice you should give.

In this instance, you say that the supplier is a “husband and wife team”. This implies that they are a small company which might be particularly dependent on the contract. If so, this is a factor which will serve to increase the notice period you should give.

Another factor is the type of contract and industry standards for notice periods. Consideration should be given to whether there were substantial set up costs for the contractor.

Consideration should also be given to how long you have worked together and any intention the parties had regarding duration.

On the basis that this is a small company (but one whose survival does not depend upon keeping the contract), a notice period of 1-2 months ought to be reasonable.

As for the mechanics of serving the notice, make sure that you serve in accordance with notice provisions in the contract (if there are any). If the contract is silent, it would be sensible to send the notice to your usual contact at the normal address you correspond with them at and, if it is a company, to the registered office too.

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**Q5 I’m the office manager at a large company. We have around 500 employees on site. About 3 months ago, the vending machine company which supplies, services and stocks our snack machines delivered and installed some new machines. I had ordered these machines and assumed the new machines would be on the same terms as our existing machines. In the last week we’ve had a problem with one of the new machines.**

**The supplier is now trying to charge a ridiculous amount to repair it, relying on provisions in some new terms and conditions which appear to have been signed by a student who was with us on work experience in our loading bay when**

**the new machines were delivered. This seems outrageous. Are we bound by these new terms? Do we really have to pay them to repair their own faulty machines?**

From the sounds of things, the student who signed for your company did not have authority to do so.

Find out exactly what was said by the supplier when the new machines were delivered. It ought to have been made clear to the student that he was signing terms and conditions (rather than, say, just acknowledging delivery). It also depends on what was discussed when you ordered the machines in the first place.

The supplier may have known (or it may have been reasonably obvious) that the student did not have authority to sign a contract to bind the company. If it was obvious that he didn’t, it may be possible to disown the contract entirely.

However, you say three months have passed since delivery. This means the contract terms may have been ratified in the meantime.

You need to look carefully at the new (and the original) agreement. If you have bought the machines, there will be terms implied by law that the machines will be both fit for purpose and of satisfactory quality. If you have not actually bought the machines but are instead hiring them, you should check who is responsible for maintenance and, if it’s your obligation, whether you have to use the supplier’s services in this respect.

Any particularly onerous terms or exclusion clauses in the contract might not be enforceable if they weren’t specifically drawn to the student’s attention when signing (assuming that an enforceable contract came into existence).

All of these factors ought to put you into a negotiating position which can help you achieve a commercial result which will satisfy your needs. This is particularly so if the new terms depart markedly from the old terms or from discussions you may have had when ordering the new machines.

**For further information on this subject please contact:**

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