



By Eugene Collins

eugene@collinsmay.co.nz
DD: 576 1407

Lloyd Collins

lloyd@collinsmay.co.nz
DD: 576 1404

Paul May

paulm@collinsmay.co.nz
DD: 576 1400

Nicola Goss

nicola@collinsmay.co.nz
DD: 576 1404

Paul Whitmarsh

paulw@collinsmay.co.nz
DD: 576 1409

Davina Rowan

davina@collinsmay.co.nz
DD: 576 1411

Amy Haste

amy@collinsmay.co.nz
DD: 576 1405

Michael Moohan

michael@collinsmay.co.nz
DD: 576 1417

If you would like any of our previous newsletters or any of our free booklets on Wills, Family Trusts, Relationship Property of Business Law please email us or visit our website at www.collinsandmay.co.nz

WHEN IS A CONTRACT FORMED?

This may seem an unusual topic for a newsletter. You may be thinking why do I need to know this? Most people don't realise that they in fact enter into multiple contracts almost every day of their lives.

If you pop into the dairy to buy a bottle of milk you have entered into a contract. When you go to the supermarket and purchase your groceries you have entered into a contract. When you go on line and purchase something on Trade Me you have entered into a contract.

If you are in the business of selling goods or services then you will be entering into contracts on a daily basis through your business as well as in your personal life. Understanding the implications of when a contract is formed is important to ensure that you understand your correct legal position.

At its most basic level, a contract is entered into when there is an offer, that offer is accepted and the acceptance is communicated. Performance of the contract may occur at a later date. Most contracts will have explicit terms and/or implied terms, for example, when you go to the supermarket and you purchase your milk, you expect to be able to take it away with you immediately, not some future date. This is an implied term.

If you are in the business of supplying goods or services, then you may wish to have more explicit terms such as whether you have provided a quote or an estimate, whether there is a specific date for delivery and what happens if delivery is not made on that date. What if the buyer doesn't pay you on time?

These must be part of the contract at the time it is entered into. The importance of this is illustrated in the following example:

Peter is an electrician and runs his own business through a company, Top Class Electrical Limited ("TCEL"). TCEL provided a quotation to a customer, John Silk. The quotation simply said that it was open for acceptance for 14 days and that payment was required within 7 days of the issuing of an invoice. Mr Silk accepted the quote and TCEL carried out the work. However, Peter was particularly busy at the time and instead of carrying out the work within a week as he had represented to Mr Silk, it took him five weeks.

Upon completion of the job, TCEL issued an invoice and on the back of the invoice was the company's terms and conditions of trade, which included penalty interest if the invoice wasn't paid on the due date, a clause specifying that any estimation of time was an estimate only and was subject to change, and that any costs incurred by TCEL for recovery of outstanding invoices is payable by the customer on a full solicitor/client basis.

Mr Silk was not happy with the job. He raised a number of issues regarding the quality of the workmanship and delays which caused him some expense.

The matter went to the District Court and TCEL claimed to rely on the terms and conditions clauses on the back of the invoice. TCEL lost on the claim for penalty interest, full solicitor/client costs and all other clauses on the back of the invoice.

The Court stated that the contract was entered into at the time Mr Silk accepted the quote provided by TCEL. Any terms and conditions that TCEL wished to have included in that contract should have been in the quote.

The Court commented that one party to a contract cannot arbitrarily include the terms and conditions by placing them on the back of their invoice if they have not been brought to the attention of the other contracting party prior to entering into the contract. In other words, you must include all the clauses you wish to have in a contract at the time of negotiation because you can't impose them on the other party at a later date if they had no prior knowledge of them.

It is an essential part of any business where you provide quotes that your terms and conditions are on the back of the quote and that the quote provides a space for the customer to sign accepting the quote with its terms and conditions. This is when the contract is formed.

If you like assistance preparing your terms and conditions and quotation forms, please do not hesitate to contact Eugene Collins, Michael Moohan or Amy Haste.

- *The next newsletter covers the topic of **Enduring Powers of Attorney by Paul May***