

## **HEALTH AND SAFETY IN EMPLOYMENT ACT 1992**

This Act is intended to prevent harm to employees at work and to promote excellence in health and safety management by employers.

Your responsibilities as an employer are:

- (a) To ensure that your workers are safe while at work;
- (b) Identify all hazards where your employees are working;
- (c) Eliminate hazards;
- (d) Isolate hazards;
- (e) Minimise your workers' exposure to the hazard;
- (f) Monitor your employees;
- (g) Ensure your workers are adequately trained or supervised by someone with the appropriate experience;
- (h) Record, notify and investigate accidents.

If serious harm (including death, amputations, major injuries and illnesses requiring treatment by a doctor or hospitalisation) is caused to someone in your employment, you must report the accident to the Department of Labour.

It is also your responsibility as an employer to ensure that you have:

- (a) A register of each accident;

- (b) A plan for likely emergency situations such as fires, earthquakes or major accidents;
- (c) Equipment which you buy or hire is safe to use;
- (d) Ensured that every person who uses the equipment knows how to use it;
- (e) Ensured that the equipment is properly maintained.

If you contract or subcontract to anyone, you must ensure that the subcontractor's employees have a safety plan. It is a responsibility of every employee to use the safety equipment as supplied.

If you fall foul of any provisions pursuant to this Act, you can:

- (a) Be fined up to \$25,000.00;
- (b) If someone is seriously harmed or killed, be fined up to \$50,000.00;
- (c) If you do something or omit to do something and serious harm or death is caused to anyone, be fined up to \$100,000.00 and imprisoned for twelve months.

# **CONSUMER GUARANTEES ACT**

All businesses supply either goods or services to customers and are, therefore, subject to the Consumer Guarantees Act.

For suppliers of goods, the Act includes the following guarantees:

1. That the goods are of acceptable quality;
2. The goods will be fit for a purpose made known to the supplier by the customer;
3. The goods correspond with a description or sample;
4. That repair facilities and spare parts are available.

For suppliers of service, the Act includes the following guarantees:

1. That the service will be carried out with reasonable care and skill;
2. That the service is reasonably fit for a particular purpose and will be completed in a reasonable time;
3. In some circumstances that the consumer will not have to pay more than a reasonable price.

The remedies for a breach of the Act can include a requirement to:

1. Repair or replace the goods at your cost;
2. Remedy at your cost the problem caused by a service which is not supplied with reasonable care and skill;
3. Refund money paid;
4. Pay compensation.

## **FAIR TRADING ACT 1986**

This Act was passed in 1986 in response for demands for consumer protection against persons engaged in misleading and deceptive conduct, false statements and unfair practises in relation to the sale of their products or goods.

You are not permitted to make false statements in connection with the supply of your goods or your services and/or the promotion of supply of your goods or services.

You are prevented for example from advertising goods or services at a specified price, which you cannot offer for supply or that you have no intention of supplying for the price advertised. An example is the no-interest deal where the price has been increased by the retailer to cover the interest that would otherwise have been payable.

You must also take care to ensure that none of your statements are false or misleading relating to the possibility of risk or any other material aspect of your business.

If you are in any doubt as to whether or not your advertising is in breach of this Act, please contact us.

## **TERMS AND CONDITIONS OF TRADE**

There is no legal requirement as to what your terms and conditions of trade should be. The terms and conditions are determined solely by you and will vary greatly depending on the items or services which you supply. The following is a brief checklist as to what terms and conditions of trade should be:

1. Determine what items or services you are providing.
2. If appropriate, the hourly rate for the fees and services charged by you.

3. When payment is due, normally on the 20th day of the month after the goods or services are supplied.
4. Provision for additional charges ie. transport expenses, mileage allowances.
5. That the fees charged have Goods and Services Tax added to it.
6. A Romalpa Clause which should state that title in the goods supplied shall remain with the supplier, until such time as the goods are paid for in full.
7. Provision for Termination - perhaps 30 days.
8. Limitation of liability clause.
9. Dispute resolution clause - provision that any dispute be referred to:
  - (i) Mediation; or
  - (ii) An expert by agreement; or
  - (iii) By the President of the New Zealand Law Society; or
  - (iv) By an independent arbitrator.
10. Notices. You may consider it appropriate to nominate an address whereby a person who has supplied the goods can write to you (relevant especially in terms of the termination clause). You should of course obtain from the person you are supplying as much information as possible concerning their physical address, business/home, fax and contact numbers.
11. Entire agreement - provision should be made that terms and conditions of trade as stated will over-ride all previous agreements, written or oral and that the terms of business or trade are not to be amended except in writing and signed by both parties.

## **ROMALPA CLAUSES**

A romalpa clause is a clause reserving title to the supplier of goods until such time as goods have been paid for. It is now a common form of debt control and virtually every major supplier of goods has a romalpa clause in its agreement. To ensure that your romalpa clause is effective, you should take the following steps:

- (a) Advise the customer that the goods can be repossessed if not paid for and tell them in such a way that this is clear to a reasonable person;
- (b) Get the customer to acknowledge your oral advice in writing (they should sign an acknowledgement of advice slip);
- (c) Give the customer a copy of the romalpa clause which should be part of your invoice and more particularly part of your terms and conditions of trade.

It is important to note, however, that a romalpa clause will only be effective if the goods have not been turned into a different form. In other words, if the goods are no longer identifiable as being a product derived from the original goods.

It is important that you also ensure that the wording of your Romalpa clause is relevant to the goods which you supply. You should obtain legal advice to assist you in drafting such a clause.

## **DISPUTES TRIBUNAL ACT 1988**

The Disputes Tribunal is able to hear any dispute in respect of:

- (a) A breach of contract; or
- (b) A claim for destruction or loss of any property, any damage or injury to any property; and/or
- (c) Recovery of any property.

The Tribunal can deal with claims up to \$3,000.00 and by agreement between the parties up to \$5,000.00.

The advantage of this Tribunal is that it is user friendly and inexpensive.

You represent yourself, as does the other party, and no lawyers are permitted.

A referee, and not a judge, will conduct the hearing.

Often the referee will attempt to mediate between the parties in order to reach agreement but if no agreement is reached, the referee will make a decision and judgment will be entered against the party the referee believes is in breach.

## **SALE OF GOODS ACT 1908**

This Act outlines when a contract is formed and sets out the forms of actions for a breach of contract.

If you as a seller have sold goods and the Purchaser has not paid for them, you may sue the Purchaser. If the goods have wrongfully been rejected, you may claim damages for non-acceptance.

If you as a Purchaser have ordered goods and those goods have not been supplied, you can sue the seller for damages for non-delivery.

Under this Act, should goods not be of a quality as ordered by you in your capacity as a Purchaser, you may either reject the goods and sue for any loss or alternatively sue the seller for damages in respect of the defective goods.

## **CONTRACTUAL REMEDIES ACT 1979**

This Act sets out the steps which should be taken if you wish to terminate a contract. The steps which must be followed can be quite complicated and if they are not followed, could lead to you being in the wrong.

This could cause a financial cost to you in the way of damages.

## **THE CONTRACTUAL MISTAKES ACT 1977**

This Act will provide to you relief in circumstances, where there is a:

- (a) Unilateral mistake (where only one party is mistaken);
- (b) Common mistake (where all the parties in the contract make the same mistake);
- (c) Mutual mistake (where all the parties make different mistakes about the same matter of fact).



You will be granted relief by the Court if any of the mistakes, as recorded above, result in a disproportionate or unequal exchange of values.

You should be aware, however, that should any contract that you sign provide that each party to the contract shall bear the risk of any mistake, you will not be protected under this Act.

#### **DISCLAIMER**

Please note that the enclosed booklet is for information purposes only and is not to be relied upon. Before relying on any of the information set out herein, it is important you consult a solicitor first.

# COLLINS & MAY LAW

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