

## **What payment terms can you impose when you agree to carry out work for an individual or business?**

Often when agreeing to carry out works for either an individual or a third party there will be no formal written agreement, especially for smaller, less time-consuming jobs. These jobs are often carried out on good faith with only a handshake to seal the agreement.

This can lead to difficulties later on if the paying party fails, or outright refuses, to pay for the work you've carried out, either at an interim stage or on completion of the works. If this happens and there is a written contract, the paying party's obligations revert to what was agreed in that written contract. However, if there is no written contract, it can lead to uncertainty as to what the parties rights are and what can be legally enforced against the paying party.

### **Do you have a contract?**

The fact that you do not have a written contract does not mean that you don't have a contract at all. It is a staple of English and Welsh contract law that all there needs to be for a contract to exist is an offer, consideration, acceptance and an intention to create legal relations.

When a party provides a quotation to carry out certain works, it will likely include a scope of works to be carried out in return for payment. This is the offer and the payment is consideration. It is then up to the paying party to accept that offer and once they do, a contract has been created even if there is no written agreement. It is difficult in these circumstances for either party to argue that there was no intention to create any legal relations (unless it is specifically excluded).

You should be aware that the above relates to contracts for services, and there may be specific legal provisions for other contractual agreements (such as for the purchase of land or contracts of employment).

Construction contracts whether written or verbal are also subject to specific provisions.

### **Construction Contracts**

A construction contract, in brief terms, is governed by the Housing Grants, Regeneration and Construction Act 1996 (more commonly known as the Construction Act). Section 104 defines a construction contract as an agreement:

- For the carrying out of construction operations (directly by the contractor or by third parties such as sub-contractors), defined in section 105 of the Act;
- Providing labour (again, one's own or other's) for the carrying out of construction operations.

If a construction contract exists, section 110 of the Act stipulates that an adequate payment mechanism must be in place that determines what payments become due and when. If the contract period exceeds 45 days, (i.e. you are on site for more than 45 days cumulatively or are required to be available for a period of longer than 45 days), section 109 entitles each payee under the contract to receive payment in stages.

### **What are the terms of your contract that relate to payment?**

In circumstances where there is no written contract, only a verbal agreement, the terms will largely be dictated by what you agreed at the outset with the paying party.

For example, you may have agreed that payment in full or in part should be made before the commencement of any works, or at an interim stage of the works, or even on completion. This will largely depend on commercial factors such as the relative size of the job (in relation to both time and cost). However, if it has been agreed with the paying party that payment is to be made at a certain stage, and the paying party have accepted that proposal, then that becomes a term of the contract (subject to the legal formation of a contract). Again, it makes no difference at this stage as to whether or not the contract is written or verbal.

One issue which commonly arises is referred to as certainty of terms. A contract can be declared void, or it can even be found that no contract was created at all, if the terms are too vague. It is important therefore that you ensure that both parties are clear, even if there is no written agreement, on what the terms of the contract are, especially in relation to the payment mechanism.

### **What payment terms can be imposed when invoicing the paying party?**

Payment terms in relation to your invoices can be agreed in advance. Whether those terms are verbally agreed or in writing, you will usually include a date in the invoice itself by which it should be paid.

If the paying party fail or refuse to pay in accordance with the terms you have set out, either at the start of the job or in your invoice, then you can take action against the paying party for late or non-payment. However, if the paying party is an individual, you will be subject to the Pre-Action Protocol for Debt Recovery contained within the Civil Procedure Rules.

Provided your debt is one that was incurred in the course of business and relates to a contract for a supply of goods or services, you will also be entitled to claim interest on the unpaid invoice subject to the provisions of the Late Payment of Commercial Debts (Interest) Act 1998.

However, if you do fall into dispute, you must be wary as to whether or not your contract is a construction one as referred to earlier in this article, and you may be subject to the provisions of the Construction Act.

If you have not agreed payment terms in advance, you are free to impose whatever payment terms you deem appropriate in your invoice (provided they are reasonable).

There is no statutory minimum or maximum amount of time that must be granted to a private individual or company to pay an invoice. You are entitled to set your own payment terms in relation to the date by which payment must be made after work has been invoiced. If no terms are set, the position reverts back to the contract if there is a written agreement in place.

If there isn't, however, the statutory position is contained within the Late Payment of Commercial Debts Regulations 2013 (which incorporated EU Directive 2011/7/EU, the 'Late Payment Directive'). In circumstances where a contract is silent as to how long a paying party has to pay an invoice, the timeframe for payment is 30 days.

You can agree with the paying party a shorter or longer period in which an invoice is to be paid. Bear in mind that the terms have to be reasonable – it is not reasonable, for example, to require a paying

party to make payment on the same day that an invoice is sent, but in the circumstances a period of 7 days may well be reasonable.

## **How can you protect yourself?**

Whilst a written contract is not absolutely necessary, it is preferable. It is not always commercially practical however to have a written agreement in place, especially for smaller jobs. You can take steps to protect yourself in other ways, however:

- Have a set of general terms and conditions that set out your payment mechanics and the term of any 'generic' job that you carry out;
- Ensure you have evidence that you have sent those terms and conditions to the paying party (best demonstrated by email) and, where possible, get them to sign the terms and conditions;
- Where specific terms of your agreement are set out, try and agree these terms in writing and have evidence that the paying party has agreed to them;
- Ensure that where you have sent an invoice it has been received by the paying party before you consider whether or not further action for non-payment is required.

You should always be wary, however, of the paying party negotiating on your terms. If you provide a quote and the paying party negotiate the price, the timeframe, or any other terms of your agreement, this will be deemed to be a counter-offer and the terms of the counter offer will form the basis of the agreement – not the terms that you initially set out in your quotation or initial discussions.

If you are interested in any of the topics raised in this article, or for further information, please call NAPIT Legal 0330 900 0720 or email [info@napitlegal.co.uk](mailto:info@napitlegal.co.uk)