

# Business

## What is the service we offer?

H.D. Keane & Co. offers a comprehensive range of legal services for businesses.

We are a progressive practice, providing clients with practical, commercial solutions tailored to their specific business needs. The service is delivered in a friendly, efficient manner.

Our experienced team provides professional advice on all aspects of commercial law, including:

### Business Sales and Acquisitions

- Business Assets Sales and Purchases including transfer of undertakings
- Share Purchases and Sales

### Business and Commercial Agreements

- Company Formations
- Directors Service Agreements
- Joint Ventures
- Partnership Deeds
- Shareholder Agreements
- Terms and Conditions of Business
- Banking – drafting security documentation for banks and working generally in perfecting bank securities.

## Who is it for?

Many of our services are equally as relevant for small businesses as they are for larger ones.

## How the service works

We will meet with you to discuss your specific requirements. We offer a full range of legal services necessary to support today's businesses including advice on employment, litigation, property law and general commercial.

Our objective is to provide a personal service and we are committed to quality, value for money and speed of response.

## How much will it cost?

As each case is different, clients will be advised of costs at an initial consultation and will be kept informed at all key stages.

## What you should do next

If you are interested in our services, please contact us by phone, fax or email.

## Contracts and Terms of Business

Whether you are a company, a sole trader or partnership, consideration should be given to adopting some form of written standard Terms of Business when dealing with customers or suppliers. Terms of Business regulate the contractual relationship between you and the parties that you deal with.

In the absence of these standard Terms of Business, you may find yourself subject to your customer's own Terms of Business or trading, some of which may prove costly to you.

### Written Terms of Business:

- create certainty for all parties
- avoid potential disputes arising from any alleged verbal agreement, as it is quite possible to be bound by what you say to a customer
- can help the parties understand what is being supplied and the terms of the purchase or supply

They will inevitably include terms for payment of the goods supplied and terms of delivery. Furthermore, if you are a supplier of specialist goods or services, you may wish to add particular provisions governing those products or services.

### Basic Provisions

There are some basic provisions which ought to be addressed in a set of standard Terms of Business. These include:

- **Payments**

For any business cash flow is critical to its success. Payment terms are therefore of great importance and bringing these to your customers' attention is essential.

- **Warranties**

Any warranties that you provide in connection with the goods or services supplied. If you do not supply warranties, the law will imply warranties that may be more

generous to your customer. By setting out your warranties in writing, you can help reduce the risk of claims if things go wrong.

- **Retention of Title**

This means exactly what it says. If you supply goods to your customer, who is unable to pay, you may claim back the goods provided certain conditions are fulfilled and legal title in the goods have been retained under your Terms of Business. Such a clause will also help if your customer becomes insolvent.

- **Liability**

Certain types of liability can be excluded provided they are reasonable. However, the law does not allow you to exclude liability for death or personal injury caused by your negligence. Any exclusion of liability clause needs to be thought about very carefully to comply with legislation.

- **Delivery**

Delivery is an essential part of the supply of goods and services. A customer will be keen to know when the goods or services can be delivered and may want a specific delivery date. However, you will want to guard against this, for example if you cannot supply because one of your own suppliers let you down. More often than not, any delivery dates are deemed to be estimates and time being the essence of the contract will be excluded.

**Commercial:** If your customer fails to pay on time you will want the right to refuse to deliver any further goods and you may also want the right to claim interest on any outstanding payments. Of course, much depends on the relationship between you and your customer. However, if matters did get to a point where you could no longer afford to provide your customer with free credit, recourse to the Court may be necessary and your payment terms will be an important element in the rights of recovery.

**Individuals:** When dealing with individual consumers rather than businesses, further care and attention is required as the law gives additional protection to them. For example, your Terms of Business must be fair and reasonable and you cannot exclude certain statutory consumer rights.

## **General information**

There are certain do's and don'ts when applying your Terms of Business. As a basic rule:

## Awareness

**EVERY customer should be made aware of your Terms of Business.**

This could take the form of:

- a pre-printed form on quotations or brochures
- pre-printed information on order forms
- a formal document setting out the details of the particular goods to be supplied and the terms surrounding the supply, which are signed off by you and your customer.

## Customers' own conditions of business

Consider these carefully. For example, a supplier may have conditions of supply, which may seek to override your Conditions of Purchase. It is important that you consider any supply conditions and ensure that your conditions of Purchase will apply. This is referred to as 'the battle of the forms' and the Courts will normally deem the last Terms of Business to be delivered to be the one to prevail. However, it is best not to rely upon this and negotiate with your customer or supplier in such circumstance with the help of your solicitors.

## Starting up or running your own business

### What is the service we offer?

If you are starting up or running your own business it is important that you understand the legislation and practicalities that directly affect you.

HD Keane can give you the sound legal foundations on which to build your business. We offer professional, practical and commercially focused advice for successful business development. Such as:

### Set Up

- How to set up a company
- Shares/Shareholder Agreement
- Partnership agreement

### Property

Sale and purchase  
Leasing  
Dealing in development land  
Investment property  
Landlord and tenant

## **People**

Employment law and contracts  
Terms and Conditions

## **Finance**

Loans and mortgages  
Debt collection

## **Other**

Wills  
Dispute resolution

## **Who is it for?**

The service is for anyone who is already running their own business or who is thinking of setting up a new venture, regardless of type of business.

## **How the service works**

Following an initial interview, we will undertake a situation analysis and other advice tailored to your needs.

We will make sure you are aware of any changes in the law and are prepared for them.

We can offer problem solving advice and help you plan for the next stage in business development.

## **How much will it cost?**

Depending on your requirements, we will give you an estimate of the likely costs involved at your first interview.

## **What you should do next**

If you are interested in our services, please contact one of our advisers by phone or fax.

## **What can we offer you legally to support you in establishing a solid foundation for your business venture?**

### **Cashflow is Critical**

As cash flow is critical in setting up any business it is vital that there is no misunderstanding with your customers on issues like credit facilities, which would result in a delay in payment to you. This ensures prompt payment, helps your cash flow and allows you to pay your own suppliers and your bank on time. Carefully worded Terms of Trading ensures that your customers clearly understand the terms of the contract (arrangement) between you and them which forms the basis on which you are doing business with them. This would deal with, amongst other things, any payments on account which should be made to you, any instalments that must be paid for work done and the date upon which the final payment is to be made to you. We can support you in advising you on the exact wording of the Terms of Trading depending upon your specific requirements.

### **Contract of Employment**

We can arrange a written contract of employment for your employees to ensure you comply with the complex law relating to this area, indeed, penalties exist for not having these contracts in place. A contract ensures that there is no confusion as to what was agreed with the employee if your relationship with the employee sours. Employment law, generally, now tends to favour the employee. There are a whole host of different acts and regulations which affect employers and it is advisable to have a general overview of what is involved before one takes on an employee. An employer who doesn't have full contracts in place is at a huge disadvantage if a dispute arises with an employee.

### **Partnership in Business**

The agreement should deal with, amongst other things, issues such as how much time each partner should agree to devote to promoting the business or should work in the business, how much capital (money) should be introduced by each partner, how profits are shared, how one would value the share of a partner if the other partner or partners wanted to buy out the selling partner's share, how disputes between the partners would be dealt with. Unfortunately, businesses do not always work out and people who started out in business together may have differences of opinion. To ensure that such differences do not end up in court a written agreement should be put in place, which clearly sets out the terms of the partnership and avoids any confusion, tension and unnecessary legal expense.

## **Leasing Premises**

We can advise you regarding the terms of your lease to ensure there are no hidden pitfalls. The lease should deal with, amongst other things, the rent payable, review of the rent to be paid after a number of years, insurance on the premises, what repairs the tenant is obliged to carry out to the premises, any other obligations of the tenant and what areas the landlord is responsible for. It is very helpful to have a written lease in place and to ensure that you understand the terms of any such lease. We can assist, if necessary, in drawing up a lease.

## **Forming a Company**

Depending on tax advice you may wish to form a company and we can help you in that regard.

## **Summary.**

In the same way as if you service your car regularly you are a lot less likely to run into problems later on if you give the above areas some thought in advance then you are far less likely to run into legal problems which will result in unnecessary stress, time and expense. We can help you in this regard by providing you with legal advice to help your business grow by providing you with down to earth practical advice on the areas set out above and various other areas. Our emphasis is on providing workable solutions in a friendly efficient manner to support you in achieving a good foundation to allow you meet your business goals.