

WHY A WRITTEN CUSTOMER CONTRACT IS IMPORTANT

Without a written contract, the legal relationship between subcontractor or supplier and its builder or contractor customer is either totally undefined or at least poorly defined. This can become fertile soil for misunderstandings and lawsuits. Forget for a moment the possibility that your customer decides at the last minute to use a lower bid or quarrels with you over payment terms, without a signed written contract there are many potential outcomes in the event of a dispute. Further, without a written contract, the subcontractor or supplier may have very little leverage in the event its customer attempts to overstep its bounds. Ultimately, in the event there is no written contract and a dispute arises, the only way to resolve the situation legally is for a court to resort to principles governing formation of contracts.

What Does it Take to Create a Contract?

Simply stated, all that is necessary to create an enforceable contract is that one party makes an offer and the other party accepts the offer. For example, a bid or a proposal for the supply of materials could serve as the offer and the acceptance could be the customer advising: *You have the job*. Under such a scenario, it could mean the supplier has a contract with only two terms: (1) the scope of the work as defined by the bid and (2) the price. Taken literally, this would mean the supplier gets paid nothing until the end of the job as there were no agreed payment terms providing for either progress payments or after all the materials have been delivered. In turn, the supplier would probably argue that the payment terms are supplied by customs and practices in the industry, which call for at least progress payments if the supply of materials is over time or at such time that all materials have been delivered as would be the typical case in a sale on a single family residence. Once that argument is made however, the supplier should expect that its customer would also argue other standard clauses apply, such as one-sided insurance requirements and indemnity and perhaps retainage, prompt pay discounts and waiver of lien provisions.

A Written Contract Should Clearly Set Forth Terms and Conditions

Without a written contract setting forth all applicable terms and conditions, if a court should determine that an enforceable contract exists, the precise terms of the contract will be unclear. That means that it cannot be predicted with certainty what the court will find the specific terms of the contract to be. Therefore, the subcontractor or supplier that runs the risk of working without a signed contract may find itself performing under contractual terms that are quite unfavorable.

Remember, a contract's primary purpose is not to provide a defense in court--but the purpose of a well written and carefully negotiated contract is the recording of a clear understanding between the parties to the agreement, and thereby make court appearances unnecessary.