

Avoiding Contract Disputes

Disputes cost time, money and – potentially – reputation. We do not know how frequently significant disputes occur because most are settled long before there is litigation or through an arbitration or mediation process, which does not become public. Disputes are most likely to occur in situations where there is considerable uncertainty or likelihood of change in requirements or business conditions. Therefore, when preparing or managing a contract, it is important to understand the nature of the market, the agreement and the overall context of the business relationship.



1. Clear and Precise Language

No matter what type of agreement you are entering into, use clear, precise, and unambiguous language when drafting contracts. Make sure underlying requirements are fully defined and understood, then define key terms and be specific about obligations, rights, and expectations and how these might be amended over time.

2. Comprehensive Drafting

The scope of work, delivery timelines, payment schedules, and quality standards are often the critical elements that lead to disagreements, yet they typically sit in separate schedules or annexes whose relationship to the core agreement may not be entirely clear. Address also potential areas of concern such as delays, changes in circumstances, and dispute resolution mechanisms.



3. Expert Review

Unless this is a standard offering being contracted on your standard terms, contracts and the critical elements should be reviewed by relevant experts before signing.

4. Open Communication

Maintain open and honest communication with the other party through formal performance reviews or problem resolution mechanisms and meetings. Transparency of data and information exchange is the foundation for a strong relationship that deals with issues when they first arise. Discuss expectations, concerns, and any ambiguities in the contract before and after signing to ensure mutual understanding and resolution before disputes occur.



Avoiding Contract Disputes



5. Negotiation and Flexibility

Be willing to negotiate and compromise on contract terms, both during the initial negotiation and during the contract lifecycle. Rigid templates often mean that the terms of contract are either inappropriate or incomplete. Flexibility can help address each party's concerns, provide an opportunity for discussion and foster a cooperative relationship

6. Due Diligence:

Perform thorough due diligence on the counter-party to ensure they have the capability and reliability to fulfil their contractual obligations. Check out the frequency with which their contracts lead to disagreements or disputes. Observe their behavior during negotiation – for example, an adversarial or uncompromising style. Being forewarned means you can be fore-armed.



7. Use of Resolution and Mediation Clauses

Consider paths of escalation, both internal and external, to seek resolution. If a disagreement occurs, seek to address it rapidly – evidence suggests that delay increases the likelihood of a major dispute. Consider whether to introduce mediation or arbitration clauses in the contract, or perhaps a formal 'expert intermediary' with the ability to make recommendations for resolution.

8. Regular Reviews and Updates

Regularly review and, if necessary, update contracts to reflect any changes in business operations, laws, or market conditions that could impact the agreement.



9. Training and Awareness

Ensure that all relevant personnel are aware of the contract terms and understand their roles and responsibilities within its framework.

Avoiding Contract Disputes



7. Document Everything

Keep detailed records of all communications, transactions, and modifications related to the contract. Documentation will be invaluable in clarifying intentions and actions if a dispute arises.

By following these tips, organizations can establish contracts as powerful tools for aligning expectations and fostering productive business relationships, rather than sources of costly conflicts. Proactive contract management with an emphasis on clarity, diligence, and cooperation lays the groundwork for successful dealings.

Learn more

Upskill and stay informed by watching, reading and listening to the latest developments on professional skills & development via our [Content Hub](#).