

# Written Contracts

## FIVE REASONS WHY IT IS USEFUL TO DRAFT AGREEMENTS

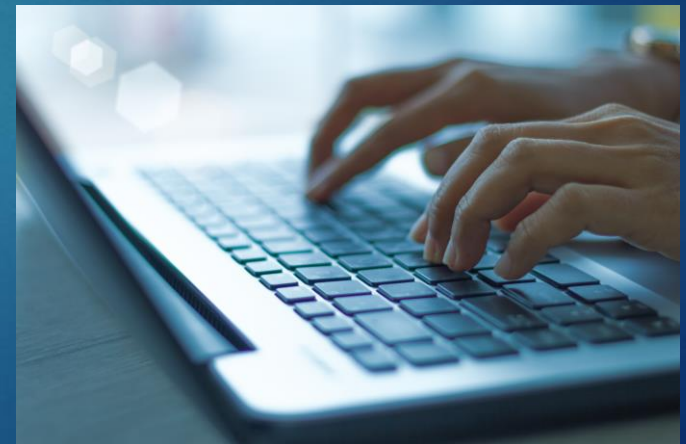
In today's hectic business world, many clients seek my assistance with issues related to transactions that are not secured by a written contract.

Even for international deals, more and more entrepreneurs tend to refrain from signing agreements. They trade through purchase orders and sometimes even solely through invoices.

Such an approach often proves to be risky.

If properly negotiated and drafted, written contracts are powerful tools enabling the parties to control how they do business.

From my experience of nearly 20 years as a business lawyer, I have listed five main reasons why it is useful to draft agreements.



# 1. TO ALLOW THE PARTIES TO KNOW WHOM THEY ARE COMMITTED TO AND WHO OWES THEM

It often happens that several companies have very similar names. And it sometimes becomes standard practice for a company to negotiate using its brand solely and the address of one of its warehouses.

Without accurate information regarding the company's registration number and registered address, the party who entered into an unwritten agreement runs the risk of not being able to obtain its rightful due.



Similar problems arise when one does business with a natural person who communicates under a pseudonym or does not specify that he is supposed to represent a company.

Drafting contracts allows the participants to minimize such risks by stipulating clauses identifying the parties and their contact persons.

## 2. TO ALLOW THE PARTIES TO KNOW WHAT THEY ARE COMMITTING TO

Drafting contracts allows the parties to set the extent and the nature of the obligations they agree to undertake.

In the absence of a written agreement, the law often imposes on them preestablished standardized obligations deduced from their actions and words. It sometimes even imposes liability on the grounds of the tort of deceit on those who lack precaution in making promises.

If the parties wish to retain satisfactory control over their contractual obligations (including the timing and the amounts due), they should clarify their commitments in a written agreement.

They may also stipulate that the written contract supersedes any prior agreement to avoid liability for allegations made during negotiations.



### 3. TO EMPOWER THE PARTIES TO MANAGE THE EXTENT OF THEIR LIABILITIES



By writing contracts, the parties can stipulate clauses that regulate the extent of their liabilities in a specific way.

Limitation and exclusion of liability clauses, force majeure clauses, and penalty clauses prove to be extremely useful.

## 4. TO EMPOWER THE PARTIES TO MAKE CHOICES CONCERNING DISPUTE SETTLEMENT

If the parties to a contract wish to derogate from the laws and regulations which impose jurisdiction and applicable rules, they must express their preferences in writing.

Mediation clauses, arbitration clauses, clauses conferring jurisdiction, and clauses setting the applicable law are all useful tools allowing the parties to retain some control in case of disagreement.



## 5. TO EMPOWER THE PARTIES TO BECOME CREATORS

Rather than being perceived as boring and time-consuming standardized burdens, written contracts should be viewed as effective instruments for parties to shape their common future.

By writing down their intentions, they can even create new deals hitherto unknown to the legal world.

A properly negotiated and drafted written agreement is a unique expression of freedom, creativity, and cooperation. Signing a contract is an act of power. In some cases, it can even resemble claiming a piece of art.

However, as badly written contracts can be partially or totally invalidated by the courts or become sources of unwanted liabilities, the assistance of competent legal professionals can make a big difference.

