

AISACT – online resources

Commercial contracts – Tips

- Commercial contracts should be as clear as possible, with as much details as possible about the scope of work to be provided, associated cost and account for contingencies for when things do not go to plan.
- When contracts lack detail or are ambiguous, this can lead to disputes as assumptions are made and/or clauses open to interpretation.
- If a school has a set of non-negotiable terms and conditions which apply to all commercial contracts or contractors, it may be a good idea to have these recorded in a standard terms and conditions document which can be annexed to any commercial contract. This can easily allow any contract to be conditional on the other party applying with the schools required commercial terms and ensures consistency.
- It is often a good idea for ASIC company searches to be done for any third party a school is contracting with, so the school can ensure it is aware of who the directors are and who the school is dealing with.
- A contract should include clear expectations of performance of the contract, so that if goods or services are not up to scratch the school has a clear documented an agreed right to withhold payment or take other action under the contract.
- Depending on the type of contract, it can be important to have clear termination rights, including what the consequences of termination are.
- Before signing any third party contract, schools should consider what could go wrong with the contract, and ensure the contract addresses what will happen if one of those events occurs.

Commercial Contract Checklist

Details of the parties

- Are you comfortable that you know who you are entering into a contract with? If a company, you may like to do a company search so you know who the directors are.
- Are the contact details for each party clear in the contract?
- Do the people who will be working on site need a Working with Vulnerable People card?

Services or goods being provided

- Is the scope of works clear?
- Are there clear timeframes for goods or services to be provided?
- How is proper performance of the contract obligations going to be measured?
- Does the contract allow for the scope of the services or goods to be varied, and how?

Fees and Payment

- Are the fees payable by the School clear?
- What are the payment conditions and terms?
- Is interest payable on late payments?
- Is there the ability for the school to withhold payment if performance of services or provision of goods is not satisfactory?

Termination

- Can the school terminate the contract prior to completion of the contract?
- Is it clear what happens in the event of early termination?
- Is it clear what happens if the contractor terminates before completion of the contract?