



# THREE KEY (WRITTEN) CONTRACTS EVERY BUSINESS NEEDS

All businesses need written contracts. Determining what contracts are essential depends on many factors, including the nature of the business and its structure. That said, there are three written contracts that just about every business can benefit from.

## EMPLOYMENT AND CONTRACTOR CONTRACTS

It's best practice to have written contracts with employees and independent contractors.

At law, you have an employment contract with each employee even if there's "nothing in writing." Without a written contract, employment terms are implied by law—but it's more difficult to ascertain the terms. A written employment contract helps avoid and resolve disputes, saving time, money, and stress. However, courts interpret employment contracts to protect employees and closely scrutinize the terms. And many employment contract terms are subject to legal technicalities. It's important to get the wording right so a court will enforce them. A standard form contract is useful but should be reviewed for each employee and, if required, customized. It's also important to set the terms at the time of hiring or before a promotion or transfer. An employer can't unilaterally impose new terms that fundamentally change the employment relationship without giving the employee sufficient prior notice or consideration (something of value in exchange). Otherwise, the new terms aren't enforceable.

It's equally important to use a written agreement with independent contractors. Characterization as an employee or independent contractor is important because it carries certain legal consequences: employees get certain benefits and protections not afforded to independent contractors, and employers have certain obligations and liabilities to employees. While stating the parties' relationship in a written contract isn't determinative, it certainly helps.

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## A PARTNERSHIP OR SHAREHOLDERS' AGREEMENT

Many businesses start off as a sole proprietorship. But others start off as, or grow to, a partnership or an incorporated business. In those cases, a written partnership or shareholders' agreement is crucial to protect everyone's interests.

A partnership involves two or more people carrying on business together, pooling resources, dividing management responsibilities, and sharing the profits and losses. A written partnership agreement sets out the rights, interests, and responsibilities of each partner.

A corporation is a legal entity separate from its owners, with all the rights, powers, and privileges of a natural person. A written shareholders' agreement defines the relationship, rights, and obligations between the shareholders and the company and documents their agreement on matters related to the company's management and operation, financing, organization, and the transfer of shares.

Without a written agreement, the applicable partnership or corporation legislation governs the parties' relationship. But it might not cover everything the parties want or do so in the way they would choose. A well-drafted partnership or shareholders' agreement can override many provisions of the applicable legislation and also help avoid or resolve disputes. However, partnership and shareholders' agreements have long-term ramifications. Each partner or shareholder must understand the terms and obtain independent legal advice to ensure they do.

## SALE OF SERVICE OR GOODS CONTRACT

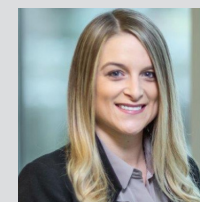
A contract for the sales of goods or services clearly sets out the business relationship between the seller and the buyer, creating clarity and reducing the likelihood of a future dispute. This contract is a written document in which a seller transfers or agrees to transfer property or services to a buyer in exchange for money. The basics of any such contract outline: the important details about the nature of goods or services, or both; the relationship between the parties; the price; the payment terms; any representations or warranties on the goods or services; the duties each party owes; and the contract term and circumstances under which it terminates. Depending on the nature of the business or the goods or services provided, a standard form contract or some standard terms will work, or it might be appropriate that all or some of the contract terms be negotiated and additional provisions added.

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Meghan King is a corporate and commercial lawyer in McInnes Cooper's St. John's office. Known for her collaborative approach and focus on client success, she routinely advises and represents businesses in a range of corporate matters, including business structuring and drafting and reviewing partnership and shareholders' agreements.

Contact Meghan at [meghan.king@mcinnescooper.com](mailto:meghan.king@mcinnescooper.com) or 709.724.8228.



Brittany Keating is a labour and employment lawyer in McInnes Cooper's St. John's office. A problem-solver who works with clients to find strategic solutions to complex issues, Brittany regularly represents and advises employers in employment, labour relations, and human rights matters, including employment contract drafting, review, and disputes.

Contact Brittany at [brittany.keating@mcinnescooper.com](mailto:brittany.keating@mcinnescooper.com) or 709.570.7301.