

Before you sign on the dotted line...

Solicitor Katherine Hawes reveals three clauses that should be in every contract manufacturing contract.

FOOD and law is not generally a combination you'll see dished up on MasterChef. However, just like any other creative art, the creation of food does require the protection of law. We all know that written contracts are essential to any business, but they can be particularly important when it comes to the creation of recipes that are being produced by a third party.

Having a contract in place protects the creator's ideas, IP, and when written correctly, clearly states what action will be taken if either party fails to fulfil their side of the bargain.

In order for a contract to achieve this, it should include the following:

THE SCOPE OF WORK AND RESPONSIBILITY

Regardless of the type of contract in place, it is important to define the scope of work including what each party is required to undertake, service level agreements and key dates. Is it just the manufacturing of the product or is it the delivery to stores and packaging as well?

Most contracts also include standard exclusion clauses which may limit the liability for each party, so it's important to clearly state in the contract what is and is not included, and what you are responsible for. Remember, people have

different understandings and expectations, so spell this out clearly to avoid costly misunderstandings.

CONFIDENTIALITY CLAUSES

Confidentially agreements can be made with anyone you wish to impose an obligation of confidentiality in relation to the use and disclosure of your information. This can include employees, business partners, business associates or research academics.

When drafting confidentiality clauses and undertakings, also consider that the clause does not amount to an unreasonable restraint on that person's right to earn a living, as the courts will not enforce this.

Also, before disclosing confidential information to a joint venture partner or financier, ask that person to sign a confidentiality agreement.

PROTECTION OF INTELLECTUAL PROPERTY

Intellectual Property (IP) is a term that describes the application of the mind to develop something new or original and includes copyright and trademarks. For example, if you have to disclose the ingredients for a recipe, then you will need to protect it and include a clause in the contract.



Ownership of IP is based on being able to prove that you are the 'author' or 'creator' of the IP. This can be difficult where several people are involved.

One of the most common mistakes organisations make is not securing rights from a third party contractor. Unless specified by a legally binding agreement, it can be difficult to determine the 'author' or 'creator' of the IP.

Don't risk it – sort out the ownership aspects well before your new venture hits the market. Once the money starts coming in, it's often too late to get agreement over ownership conditions. *

★ PLUG THE GAPS

WATERTIGHT CONFIDENTIALITY CLAUSES

Here is a checklist of key things to include in confidentiality agreements:

- 1 Identify each person who has access to the information.
- 2 Be very clear about what information is to be treated as confidential.
- 3 Identify the use for the information (eg: evaluating a proposal).
- 4 Specify the number of copies that may be made of the confidential information.
- 5 Specify when to return originals, and when to return or destroy any copies.
- 6 Set a time limit for considering the information, or a date for its return.

★ ABOUT THE AUTHOR

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