

ATN Business Sense  
May 2010

Barry Jenner is a Chartered Accountant and Management Consultant specialising in improving the profitability of road transport and associated businesses.

Transport operators know they are in risky businesses. Customers come and go and their freight volumes vary. While written cartage contracts are not as common as people outside the industry might expect, written employment, equipment, and property purchase and lease contracts are also important commercial agreements.

Cyril Jankoff, The Risk Doctor ([WWW.THERISKDOCTOR.COM.AU](http://WWW.THERISKDOCTOR.COM.AU)), details the risks faced when managing contracts and explains what is needed to negotiate and properly manage a contract.

Jankoff identifies 13 risks faced before coming to an agreement which are: ***Lack of clear understanding as to what is expected from the parties.*** Both the buyer and seller need to have a clear understanding of the project and the obligations of each party. The project must be thought through and include risk reduction strategies. ***Not getting the best out of the negotiated contract.*** Negotiations need to be prepared for and understood and egos need to be left in offices.

***Poor choice of seller/buyer/partner.*** You do not need to work with every party who wants to do business with you. Be discriminating. Determine why they have come to see you. Is it because everyone else has dumped them? ***Not getting the agreement in writing.*** Risks in not getting it in writing include the fact the fading of memories, the other party no longer being around to honour their promises (called the “terms”), other party denying the existence of the agreement, or there being a dispute as to what was actually agreed upon (the “terms”).

***Not keeping the written agreement simple.*** Jankoff asks “Were you aware that only a small percentage of contracts end up being litigated, but a large percentage involve disputes?” If you write a contract write it for the small possibility that it will end up in court and simultaneously to reduce potential disputes between the operational staff that need to administer it. ***Not taking time in drafting the agreement.*** Think through things before signing. Does the agreement enhance your firm’s objectives or will it do the opposite?

***Lack of clarity in the agreement.*** It is vital that the terms are clear and specify what was agreed, and preferably in writing for evidentiary purposes. ***Not specifying key contractual obligations.*** Key obligations to be determined *before* entering into the contract include: names of parties, payment obligations, subject matter and termination (how the parties expect to exit).

***Not being specific with the “deal terms”.*** Each contract is about a “deal”, that is each party agrees to obligations and benefits. Know you agreed obligations and benefits. ***Not understanding your “fine print” terms.*** Jankoff notes that large bitterly fought contractual disputes are not fought over the deal terms, but about meaning and existence of the “fine print” clauses. Don’t sign a contract unless you know what *each* term means and how it can affect your business.

***Not dealing with the person in authority.*** Ensure that the person you are negotiating with has the power to complete the transaction. It is not wise to be dealing with a junior person who must have everything approved by a person higher up the ladder who was not involved in the negotiations. ***Not taking into account potential risks.*** Risk is the effect of uncertainty on the business's objectives. Has the necessary preparation and research, including a due diligence investigation of the background of your contracting party been made? ***Terms more onerous on one party than the other.*** If the terms are more onerous on one party then that party may later look for every way possible to get out of the contract and/or cut corners to make a profits (or to reduce losses).

Barry Jenner is a profit and business improvement specialist. Email: [bjenner@mindshop.com.au](mailto:bjenner@mindshop.com.au) or phone 0418 821 183 any time.