

CONTRACTS

Updating Legacy Contracts

Bringing old agreements up to date through variations, deeds of variation and novation, and when a fresh contract is the better route.

Why old contracts become a risk

Contracts signed years ago reflect the business and the law as they were. Since then the company may have changed its name, its structure or its owners. Prices have moved, services have grown, data protection rules have changed, and the way people actually work may bear little relation to the paper.

An out-of-date contract can leave the business without protection it thinks it has. It can also bind the business to terms nobody remembers, such as an old auto-renewal or a personal guarantee.

Start with an audit

List the contracts that matter most: customers, suppliers, premises, finance, employment and key services. For each, note the parties, the date, the term and renewal, any notice dates and who holds the signed copy. Mark the ones where the business, the services or the law have changed since signing.

Choosing the right route

There are three main ways to bring a contract up to date.

- **Variation.** The parties agree to change specific terms. The contract continues, with the changes. A variation needs to be agreed by both sides and supported by consideration, or be made as a deed.
- **Deed of variation.** The same, but executed as a deed, which removes any doubt about consideration. It is the safer route where one side gives nothing in return.
- **Novation.** A new party takes over the contract in place of an existing one, with the agreement of all three. Rights and obligations pass together. Unlike assignment, which can pass the benefit of a contract but not the burden, novation transfers both.

Signs that a contract is out of date

Common signs include references to a company name or address that has changed, services that are no longer supplied, prices that have been varied by email, legislation that has since been replaced, and signatories who have left. If you find several, a general review is overdue.

Key points

- Audit contracts when the business or the law changes.
- A variation needs agreement from both sides.
- Use a deed where one side gives nothing in return.
- Novation moves the whole contract to a new party, with everyone's consent.
- Follow any variation clause in the contract itself.
- A fresh contract is often cleaner than many amendments.

Following the contract's own rules

Many contracts say how they can be varied, usually in writing and signed by both parties. Courts generally respect such clauses, so an informal change by email or conduct may not work if the contract says otherwise. Follow the process, and keep the signed copy with the original.

Common triggers

- **Change of company name or details.** Often needs only a notice or a short letter, not a new contract.
- **Sale or restructure.** Where the business moves to a new company, contracts must be novated, or the other side's consent obtained, unless the contract allows assignment.
- **Price and scope changes.** Record them in a variation, not an email chain.
- **Data protection.** Contracts that pre-date current data protection law may lack required terms. See our separate guide on data processing agreements.
- **Regulatory change.** New law may require different wording, for example in consumer terms or employment documents.
- **Brexit and legacy references.** Old references to EU law, EU courts or EU-wide territory may no longer be correct.

When to start again

If most clauses need changing, a variation can become hard to read, with the original and the amendments in different places. A fresh agreement, expressed to replace the old one, gives a single clear document. Check that it does not discard accrued rights, and deal expressly with any work already done or money already owed.

After the change

Update the contract register, the diary of notice dates and anyone in the business who relies on the terms. Keep the signed documents together.

Assignment compared with novation

Assignment passes the benefit of a contract, such as the right to be paid, to a new party. It does not pass the obligations, and the contract may restrict it. Novation replaces the original party with a new one, and the other side must agree. When a business is sold or restructured, novation is usually the cleaner route. Where the other side will not consent, the business may need to keep the original company in place.

Before you start

- Which contracts matter most?
- What has changed since they were signed?
- What does the contract say about variation?
- Do all parties need to sign?
- Is a new party taking over?
- Is a fresh contract cleaner?

How MTM can help

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We carry out contract audits and prepare variations, deeds of variation, novations and replacement agreements for practices and their clients. We also help when a business is restructured and contracts need to move to a new company.