

Be Careful with Handshake Deals

The Recipe for Business Agreement Success Calls for More Than a Pinch of Trust

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Cooking up a successful business relationship requires trust between the parties involved, but having an agreement in writing is essential to the mix. A lack of agreement and understanding of common goals can lead to the headache of a broken relationship.

Business relationships are not always built on the right terms. It is just as important for business partners to focus on documenting the terms that can lead to long-term gain for each party and long-term growth of the business, as concern for how they are going to get along.

Nobody enters a business relationship thinking they are going to break up. However, just like marriage, inevitably, some relationships end; and having put an agreement into place during the 'dating' season makes it much easier to resolve business issues later on.

What are the key ingredients in a successful business relationship? Trust is required at the beginning and throughout the duration. Also essential is the ability of the parties to speak openly about their business philosophies and the venture as a whole, i.e. where they see it headed, how they see it getting there, and what to do when they arrive at their shared goal.

Various entrepreneurs and venture capitalists approach business or deals from different angles. Maybe you are focused on building the relationship of the parties joining together to start a new business, and maybe your partner is focused on the nuts and bolts of the transactions, i.e. where the money is coming from and establishing terms to ensure profitability.

Neither of you is off the mark or wrong in your approach, but

the essential differences in your philosophies could spell doom in the future if not addressed. You need to negotiate the essential specific terms of the venture, and then you need to draft a document that establishes the agreed upon terms of the deal.

While one of you may see how important the nuts and bolts of the deal are to your transaction,

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the other needs to be able to agree on the role each of you will play in the deal, or you risk not seeing eye to eye later on when things may not be so rosy or one of you wants to sell or be acquired.

It would be misleading to claim that a business agreement is easy to work out. But if the parties begin from a position of trust and open-mindedness, success will be more likely achieved. Parties need to state what they really want to see at the end of the tunnel. When the parties can outline their needs and desires, and everyone understands and responds to them, an outline of a plan can be drafted. This is part of the trust-building exercise, and it cannot be rushed.

When negotiating the agreement, all concerns of the parties must be addressed. This is not the time to dig in your heels and impose your position upon your partner. Not only will this undermine the trust you're building, but

it will stall your progress. Both parties' motives must be clearly understood, and you need to resolve your differences so that each can feel comfortable going forward.

Objective parties can be used to help facilitate negotiations and lead you into neutral territory. The concept of business retreats is not limited to brainstorming but

relationship and deepen trust.

Naturally, all this can be undone if one party decides that your agreement is more like a stone than the fluid agreement contemplated by the other party. However, the well-thought-out skeleton agreement should also have an exit plan for such circumstances of irresolvable disagreement of the parties.

Over time, you and your partner will learn what works and what doesn't. Start with the premise of 'if it ain't broke, don't fix it,' but revisit the parts of the plan that don't seem to work after having been in business for a time. No book or law dictates that an agreement should never change. A well-drafted agreement will provide for alterations, modifications, and amendments if mutually agreed to by the parties. Even the lawyers who draft these agreements recognize that you just can't think of everything at the beginning.

So what types of terms should be put into an agreement? The honest answer is that the specific terms will vary from agreement to agreement depending on the type, parties, purpose, and the business relationship or venture at issue.

Nonetheless, you should follow some general rules when creating the agreement itself.

- **Get it in writing.** Even though oral agreements are legal and binding in many situations, they're often difficult to enforce in court. So be careful with handshake deals, as they may be impossible to prove. In the business world, most agreements should be in writing even if the law doesn't require it. Spell out in writing each party's rights and obligations, to prevent future confusion or disagreement.

also widely utilized by parties developing a plan or new business strategy. Fresh scenery can do wonders for people who are having a difficult time seeing the ideas of their partner from a different perspective. Hang in there: if you can get through this, you are on your way to a well-designed and well-thought-out agreement.

Understand that once you get to a point of a skeleton agreement, you can put it into effect by setting it to writing. Regard the agreement as a work in progress that is expected to be mutually amended or modified to address matters that may arise unexpectedly or are not properly addressed by the current agreement. Things change, and parties can not anticipate all issues that may develop once the venture is up and going. By mutually understanding that you may need to revisit the agreement in the future, you bolster the

- **Keep it simple.** Legalese is not necessary to create an enforceable contract. Clear, concise, and well-organized terms will ensure that the parties can understand and follow the agreement later on.

- **Deal with the right person.** Be certain you are negotiating with the decision maker who is vested with the authority to bind the business. Otherwise, you can get every term you want, but the party will not necessarily be

bound, (agency law aside.)

- **Spell out all of the details,** including payment obligations, investment terms and any other necessary terms of the deal. Details, details, details. Don't leave out anything that is an essential term, as only the terms set forth in writing will be enforceable.

- **Specify what constitutes termination** of the agreement and agree on a way to resolve it.

More and more often, parties are agreeing to submit to alternative dispute resolution methods such as arbitration, mediation, and collaborative law, which can be expedient, efficient, and less costly methods of resolving disagreements.

There are many other terms and provisions that should be included in the agreement, and they will be recommended by your legal professional; however, if you start out with trust and

frank discussion, and sprinkle in good-faith negotiation, you are likely to end up with a recipe for success.❖

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