

Terms and conditions of trading

Some businesses have terms, some copy those of other businesses (or even mix and match clauses they liked/understood), and some use industry specific standard terms. Others, though, have no terms at all.

Why bother to have your own terms?

Risk, might be one reason. If you have no terms, or the wrong provisions, you could have unlimited liability to your customer. This could mean that you sell them a £500 component, and get sued for £1,000s or even more when it goes wrong and causes other damage. Imagine making £50 profit, and being sued for £100,000. Would your business survive? Was the deal worth it?

Warranties as to the suitability of the goods or services. There are a set of statutory provisions which apply, but where you are trading with businesses you can limit some of these.

Delivery times and locations should be specified. Do you limit your liability to delivery on tarmac roads, or could you be required to deliver across fields at risk to your vehicles.

At what point does the customer have to take delivery and insure the goods? What if the customer does not take delivery?

What about payment terms, and interest if they do not pay? Do you retain ownership to all goods supplied until you are paid in full? If you do, is the clause valid? Some retention of title clauses fall foul of company law, and must be registered as charges at Companies House. Failure to register means the clause is of no value.

Why not use someone else's terms?

There are a number of key dangers.

Firstly, you have to be sure that you understand all of the terms, and that they apply to your business.

Secondly, you need to know that the provisions are effective at law. If they have included limits on liability, for example, are they reasonable? Would they stand up in court? If they are unreasonable the Court will strike out the clause, it will not apply it in an acceptable form. So failing to address the issue will leave you back where you started – with no limit on your liability.

Thirdly, did they do the same, so at what point, if ever, were these terms checked for legal compliance?

Fourthly, are there areas of your business which need to be covered which do not appear. One such provision might be intellectual property rights. Do you own any intellectual property rights, and do they form part of your offering to your customers? If so, who owns the rights, and what right, if any, is the customer supposed to receive? Are you sure that you only give away what you intend. We regularly see terms and conditions which inadvertently give away ownership, or at the very least, shared ownership of all intellectual property rights.

Buyer's terms

If you are dealing with some companies you will find that they have their own purchase terms. These will often be one-sided and will include provisions substantially increasing your liability as a seller. You need to have your own terms to send back.

Of course, if you are the buyer, you may not want to accept your supplier's terms so you might want to have your own set of purchase terms on which you can rely.

Incorporating the terms

One point that should not be forgotten is that terms and conditions, to be effective, must be in place when the contract is made.

If you print them on the back of your invoice, it is unlikely that they will apply unless you have a substantial course of regular dealing. They need to be seen by the other side before the deal is agreed. This is why you will often find that, for example, employment agencies send you their terms periodically so that they can show that you will have seen the latest version.

We can advise you on how to make sure that your terms are incorporated in the contract, and how to deal with the "battle of the forms" where both sides have their own terms.

Dealing with consumers

There are a number of provisions which limit the terms which you can apply where you are dealing with consumers.

Statutory warranties cannot be excluded or limited, and in some cases there are criminal penalties for breach of the legislation.

If you sell or supply to consumers please talk to us about suitable terms.