



Dickins Hopgood Chidley

SOLICITORS

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Terms and Conditions

The importance of good Terms and Conditions

Written terms and conditions protect your business, and enable two parties (e.g. customer and supplier, or joint venture partners) to understand their rights, duties and responsibilities in relation to a business deal. Well-drafted terms and conditions should provide complete clarity for both parties on what should happen in a given situation, and avoid uncertainty and misunderstandings which can lead to unnecessary dispute.

You should consider including the following provisions when preparing terms and conditions for your business:

- A clear definition of the products, services or digital content to be provided
- Payment terms (including the right to charge interest for late payment)
- Delivery timeframes
- Guarantees or warranties
- Setting out what happens if either party is in breach of the agreement
- The duration of the agreement and the notice required from each party to end the agreement
- The law governing the contract

Consumer rules and guidance

There is extensive legislation to protect consumers (in particular the Consumer Rights Act 2015) which:

- Implies terms into contracts with consumers, giving consumers rights and remedies in respect of their

purchases of goods, services and digital content.

- Requires that consumers are given certain minimum information before a contract is formed.
- Gives consumers entering into distance contracts for most goods, services and digital content a cooling-off period, in which they can cancel penalty-free.
- Requires that any terms used in a consumer contract must be "fair".
- Prohibits misleading and aggressive sales practices by the trader generally, both in advertising and marketing and in the terms themselves.

Generally the trader cannot contract out of its obligations or exclude or (unreasonably) limit its liability for their breach. Terms and conditions which attempt to do so will be unenforceable and their use may in itself be a breach of consumer protection law.

Business-to-Business rules and guidance

A trader's dealings with business customers are far less strictly controlled than their dealings with consumers. Legislation and common law rules imply certain terms into contracts for the sale of goods and services between businesses, however in many cases these implied terms may be varied or excluded provided that it is reasonable to do so.

The important parts of standard terms are driven by purely commercial decisions and the business's operating

procedure, for instance, payment terms or how delivery is to be effected. In particular, if the standard terms incorporate technical specifications, care must be taken to ensure that these specifications comply with the business's standard terms.

Incorporation of terms and conditions

A business's standard terms and conditions will only be effective if they have been properly incorporated into a contract. Ideally they should be set out or expressly referred to in a contract that both parties sign. The next best option is for a business to bring its standard terms to the attention of the other party at the earliest possible opportunity in as much pre-contract and contract documentation as possible (this will also help in the event of a battle of the forms when two businesses are negotiating the terms of a contract and each party wants to contract on the basis of its own terms). This would include setting out the standard terms on the business's website, brochures, purchase order forms, quotation acceptances and, if a course of dealing has arisen between the parties, on invoices and delivery notes.

Finally, when introducing new standard terms, a copy should be sent to every customer or every supplier stating that the new terms will apply in the future.

For assistance in preparing terms and conditions for your business, contact **Charlotte Grew: 01488 683555** or cgreg@dhc-solicitors.co.uk