

Guide to: Terms and Conditions

If you're selling goods or supplying services and you don't have any terms and conditions, you could leave yourself exposed by relying solely on statutory provisions or, even worse, the terms and conditions of your customer.

Liability limits

Without a set of terms and conditions, your financial liability to your customer could be limitless if you do something wrong. If they can show they've suffered a loss because of your actions, then there's no upper limit to the amount of that loss. If you're selling to businesses then it's very normal to put a reasonable upper limit on the amount you'll pay out on a claim (other than in some specific circumstances such as where your negligence causes death or personal injury). Not only that but you ought to be able to limit the types of loss you'll be on the hook for – for example, only in very rare circumstances would you agree to cover someone's loss of profits. It's more difficult to limit your liability in consumer contracts but you can still usually make clear you won't be liable for any types of loss that you wouldn't reasonably expect.

Late deliveries

Even the best businesses have occasional problems with timeliness. Strictly speaking, late delivery is a breach of contract. A well-drafted clause can make clear that, while you'll do what you can to hit agreed dates, you won't be liable if you are late (within reason of course).

Delivering the wrong amount of goods

If you're selling a quantity of products to businesses and you supply the wrong amount, that is technically a breach of contract. Again, a sensible clause can ensure that (provided you're only out by a reasonably small amount) then there'll be a price adjustment but the customer can't cancel the whole order.

Dealing with refusals to accept delivery

If you're selling to a business and they won't accept your delivery of goods on the agreed date, you may incur costs as a result – for example, storage and insurance. Your terms and conditions can seek to pass these costs on to your customer.

Rejected goods and services

There are special rules for consumers (set out in the Consumer Rights Act) but if you're selling goods or services to businesses, you'll want to limit the time within which they can reject your goods or services for being defective. For example, with goods, you might want to state that any obvious defects must be reported within 48 hours of delivery.

Late payment

If you've given credit to your customers, you'll want remedies if they don't pay within your agreed payment terms. As well as your statutory right to recover interest (which your customers will seek to reduce if they're trying to impose their own terms) you'll want the right to suspend any further delivery of goods or supply of services until the outstanding sums are paid.

Customer insolvency

If you're selling goods and granting credit, the default position is that ownership passes on delivery even if you've not been paid, meaning you can't get the goods back. If your customer goes bust before paying you, you'll have a claim for the price of the goods but probably little chance of receiving it. A well-drafted retention of title clause may give you the right to recover the goods from the liquidator/administrator if you've not been paid.

Confusion over legal systems when exporting

If you're exporting goods overseas then it's not always clear whose laws and court system applies if there's a dispute. When selling to businesses, most countries will respect a term stating that English law and the courts of England and Wales should apply. Not only that, but you might want to give yourself the option to use arbitration which can sometime be more expedient when dealing with an overseas customer.

Problems you just can't help

If you're prevented from fulfilling a contract for reasons that are simply outside your control, it's very common to state that you shouldn't be liable for your failure or lateness in fulfilling your obligations. This is often known as a force majeure clause.

Don't forget consumers

Much of the above applies mainly to businesses – consumers benefit from various special protections which cannot always be avoided through terms and conditions. However, there are still good reasons to have terms and conditions for consumers to give yourself the best possible position where there is some flexibility in the law. Not only that, but if you're selling goods or services to consumers remotely (e.g. by telephone or through a website) or if you sell goods or services to consumers away from your business (e.g. at their home), then they may benefit from a 14 day right to cancel the contract. If you do not inform the consumers of this right then the cancellation period could be extended much longer. In addition, where a consumer opts to return goods within 14 days after delivery, you will have to pay the cost of return unless your terms and conditions state otherwise.

Professionally drafted terms and conditions

A well drafted set of terms and conditions, coupled with sensible administrative procedures to incorporate them into your contracts, can improve your position if you end up in a dispute with your customer or your customer becomes insolvent owing you money.

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