

# TERMS AND CONDITIONS



## 1 Information for you

This fact sheet is designed to assist suppliers of goods and services. It is not intended to act as a definitive guide, but highlights the key issues you should consider.

The content of this fact sheet is for information only and is not intended to be construed as legal advice and should not be treated as a substitute for specific advice. Morton Fraser LLP is authorised and regulated by the Financial Conduct Authority.

## 2 Legislation

It is important to remember that terms and conditions don't exist in a vacuum. There are many laws and regulations which apply to your business and some of these will continue to apply, regardless of what your terms and conditions say.

For instance, it is impossible to exclude contractually your liability for personal injury or death. Where dealing with consumers, there is a wealth of consumer protection legislation which prevents you from limiting the consumer's rights.

Your terms and conditions should be clear and if a standard term is unusual or onerous, particular attention should be drawn to this. The legal framework must be borne in mind when considering your terms and conditions.

### Things to consider:

- Will you be supplying to (i) other businesses, (ii) consumers or (iii) both?

## 3 Using standard terms and conditions

Having your own standard terms and conditions can offer certain advantages over individual, one off, bespoke agreements. For example, they can be used consistently to cover all standard transactions, avoiding the need to agree specific terms for each individual transaction. You can also include terms favourable to yourself, for example limiting your liability.

However, their use is subject to certain legal and practical limitations, including:

- there are greater restrictions on the extent to which a supplier is allowed to exclude or limit its liability when standard terms have not been negotiated with the customer;
- to be effective, standard terms must be properly incorporated into the contract between the supplier and the customer;
- the terms may inadvertently be used in circumstances where they are not appropriate; and
- standard terms require regular review in order to ensure that they still work for your business and take account of changes in the law.

All of these issues can be addressed by taking advice and putting in place robust contracting policies. If your business provides different products and services, you may need more than one set of terms.

Nevertheless, having standard terms and conditions can be highly beneficial for your business. They can save your business significant expense and delay by avoiding the need to negotiate individual contracts with customers. If you choose to contract without any written

terms and conditions, you are exposing your business to a significant level of risk and uncertainty. Having standard terms and conditions in place can reduce that exposure and ensure consistency across your transactions.

#### 4 **Effective incorporation of your terms and conditions**

Your standard terms and conditions will only be effective if they have been properly incorporated into the contract between you and your customer. This is simpler where two parties are signing a contract, but where you are using standard terms and conditions it is important to make it clear that these terms apply.

The best way of ensuring this is by making it clear in pre-contract communications that these terms and conditions will apply. You should consider either including or making reference to your standard terms in documents such as brochures or catalogues, quotations given to customers, order forms or confirmations, invoices and your website.

Where terms are going to be set out on the reverse of a document, the front of that document should make it clear that the terms are printed on the reverse and form part of the contract.

If you make changes to your standard terms and conditions, you should send a copy to every ongoing customer, stating that the new terms will apply in the future.

#### 5 **Your main terms**

It is important your terms and conditions reflect how your business works, as terms and conditions work best when tailored to your business.

##### 5.1 **Goods**

Depending on the nature of the goods and services, a general description may be sufficient or a detailed specification may be required. You will want your terms to put you in control of this process and limit any liability should there be any defects in the specification that the customer has approved.

###### **Things to consider:**

- What goods do you supply?
- Where do you set out which goods you provide and the prices?
- How does a customer place an order?
- How and when do you confirm acceptance of an order?
- How and when do you deliver an order of goods?

##### 5.2 **Services**

If you provide services, you need to be clear on exactly what you will do, what you won't do and what you will do at extra cost.

###### **Things to consider:**

- Which services do you provide?
- Where do you set out which services you will provide and the prices?

- How does a customer request services?
- How and when do you confirm which services you will provide?
- When do you start to provide the services?
- Do you give an estimate of how long the services will take to provide?
- How do you deal with requests for additional services beyond those originally agreed?

### 5.3 Payment

It goes without saying that payment terms are some of the most important. It is important to make clear what payment is expected, when it is expected and the consequences of late payment.

#### Things to consider:

- Where/when do you tell your customer how much is due?
- Do you require a deposit and, if so, how much?
- When does a deposit become due?
- What payment methods do you accept? e.g. cheque or VISA.
- What are your payment terms?
- Can customers pay by instalments? If so, where/when do you tell your customer when each instalment is due and how much it is?
- Do you issue invoices for the sums due and, if so, how often?

### 5.4 Defects

No matter how robust your business, you will always have to consider how you will handle things if they go wrong.

#### Things to consider:

- How should a customer tell you if they are unhappy with the goods or services delivered?
- Do customers have to inspect goods on delivery?
- How quickly after delivery/performance should a customer inform you of any defects in the goods or services?
- How do you deal with customer complaints about defects in goods/services?
- Can customers return goods? If so, who bears the cost of returning the goods?

## 5.5 Cancellation

Consumers have certain cancellation rights which cannot be avoided. Beyond these, and in non-consumer contracts, you will need to address cancellation and termination in your standard terms and conditions.

### Things to consider:

- Are there any special circumstances in which would you seek to cancel the contract?
- Are there any special circumstances in which you would permit the customer to cancel the contract?
- What happens in relation to costs incurred but not yet invoiced in the event of cancellation?
- How much notice of cancellation do you need? How much can you give?
- Are deposits, if any, returned on cancellation?

## 5.6 Other clauses

There are other standard clauses which you should consider including in your standard terms and conditions, known as "boilerplate" clauses. These will cover things such as which law should govern the contract (e.g. Scots, English, etc) and which courts, or alternative dispute mechanism, should be used in the event of dispute. An "entire agreement" clause will often be included, which prevents a customer from relying on anything outside the written contract.

Depending on the nature of your goods and services, you may also want to consider clauses protecting your IP and confidential information.

Last but not least, you should consider limiting your liability under the contract as far as possible. The extent to which you can limit your liability is, however, heavily regulated. There are certain things that cannot be excluded, such as liability for negligence leading to death and personal injury. Some things can be excluded to a certain extent, such as breach of contract in consumer contracts, which can only be excluded to the extent that it is reasonable.

## 6 Next Steps

Get in touch [with a member of our Corporate Law team](#) with any further questions.