

## TERMS OF BUSINESS

Making sure you have carefully drafted terms and conditions of business in place is extremely important, especially in the current market where people are tightening their belts and looking at ways to cut corners to save money and ease cash flow problems. If your terms of business aren't drafted to suit your specific business model and requirements, then you could find yourself in difficulties when trying to enforce them. The most important functions of agreed written terms are:

### Clarity

By writing down exactly what was agreed between the parties, there is very little room for ambiguity. Both parties are fully aware of their obligations and if one believes that the other is failing to comply with what was agreed, they can point to the terms and conditions and (hopefully) the matter will be resolved amicably. If you don't have any written terms, you could find yourself in a situation similar to the following:

You have a verbal agreement with a customer that you will provide certain services for an agreed price for a specific period. At the end of that period you submit your invoice and expect to be paid. Unfortunately, the customer refuses to pay because they claim that you did not provide all of the service that were agreed. The customer may be simply trying to avoid paying your invoice, or there may be a genuine misunderstanding between you both.

Either way, with no written terms to prove what was agreed, there is no way of proving who is correct. This will make it potentially very difficult (and expensive) to pursue your claim and take any necessary legal action because of the ambiguity.

### Limitation of Liability

Although it is not possible to limit your liability in certain situations (for example where someone dies or is injured as a result of your intentional or negligent acts), you are entitled to limit the amount that a customer or client can claim from you in certain circumstances (including your own negligence). If you fail to do so, the consequences can be extremely severe:

You operate a freight transportation business and have been contracted to transport some goods (with a value of £100,000.00) from a manufacturer to a retailer for an agreed price of £2,000.00. Unfortunately, for reasons beyond your control, the shipment is delayed. As a consequence, the delivery is late and the manufacturer has breached the terms of their agreement with the retailer and suffers loss as a result. Due to the lack of any limitations being placed on your liability, the manufacturer may be entitled to claim the full amount of their losses from you, which is likely to far exceed the £2,000.00 that you were going to be paid for making the shipment.

### Unfair contract terms

It is often tempting to make your terms of business as strict as possible so that you're fully protected and have very limited obligations, with the entire onus being placed upon the customer. If you were to act in this way, then (because your terms and conditions are likely to be non-negotiable and imposed unilaterally) a court is likely to find the offending provision(s) unfair and, consequently, illegal and unenforceable. This would mean that where you previously believed that you were fully protected, you are completely exposed (whereas it may have been possible to include a compromise that properly balanced the need to protect your interested with the need to protect the rights of the consumer).

One example of a common unfair contract term is a “penalty”. An example of a penalty will be an unreasonable “administration charge” that may be imposed if an invoice is paid late (for example, a £50 administration fee if an invoice is not paid within 14 days). You are perfectly entitled to charge a reasonable fee that equates to the cost to you of chasing late payments, but you cannot make a profit from it as this would be unfair.

## Consumer protection

If you supply goods or services to consumers (i.e. people who are acting in their private capacity rather than through their business), then you need to take additional care to comply with consumer protection legislation. There has been a great deal of publicity about “dodgy” sales techniques and the unreasonable terms that businesses attempt to impose on customers (such as £35 penalties charged by banks for sending a letter informing a customer that they are overdrawn), which is making people increasingly aware of their rights.

## Other issues

It is easy to remember and note down the obvious terms that you want included in your terms (i.e. how much you will be paid, when you’ll be paid, and what you’re agreeing to do for your money), but there may be various other issues that are not as obvious but should be considered. Common examples include:

- situations where you may want to be able to stop or suspend the provision of goods or services (for example, if adverse weather conditions prevent delivery);
- trying to prevent clients from “poaching” your staff (for example, if you have a staff member who does a lot of work for a particular customer, that customer may wish to consider hiring that staff member and benefit from the time and money you have invested in developing their skills);
- how the contract itself is formed (i.e. are you contractually bound to provide the goods or services when the customer places their order, or do you reserve the right to refuse?);
- the law that governs the contract between you and the customer (which is particularly important if you are an exporter).

With the abundance of information on the internet (and given the pressure on business to keep their costs to a minimum in the current climate), many businesses try to save money by copying their terms and conditions of business from other people. Although people may see this as a useful stop-gap, they will not be tailored to your business and may leave you potentially exposed as described above.

In light of the above, appropriately drafted terms and conditions of business should be viewed as an important business investment rather than as just another expense.

For more information on terms and conditions of business, together with any other commercial contract matters, please contact Chris Wills on 01872 226992, or by email: [chris@murrellashworth.co.uk](mailto:chris@murrellashworth.co.uk).

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