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Corporate & Commercial

A Guide to your Business's Terms & Conditions



Whenever a company agrees with someone else to supply goods or services to that someone else, or indeed order goods or services from that someone else, then in law a contract is created between the company and that someone else. A contract doesn't have to be in writing (unless it relates to land), but it is better that it is in writing, to create clear evidence of what has been ordered. However, what are the detailed terms of that contract?

In a specialist or complex situation, the parties may have a bespoke one-off legal contract drawn up to record what has been agreed, but this will rarely be the case. So a company will need to address the details of the contract which has been created, e.g. delivery times, payment terms and the like. A well-drawn set of terms and conditions often printed at the rear of a promotional brochure, or on your website, and also often shown on the reverse side of an order form, can address this.

Whether a company has just started out or has a long and prestigious history, there is no substitute for having a well-drafted set of terms and conditions, bespoke to your specific business situation and trading circumstances.

What are terms and conditions?

Also often referred to as "Ts & Cs", terms and conditions of business set out the contractual basis upon which you do business. Incorporating your terms and conditions into the terms of the contract which you create with your customer will ensure that the parties to that contract are fully aware of what is expected of them. This will substantially reduce the possibility of misunderstanding on the part of your customer, leaving the parties hopefully to enjoy a fruitful trading relationship. However, if things should turn sour, a well drafted set of terms and conditions will be invaluable (more often than not essential) to the dispute resolution process.

A set of standard terms will, ideally, cover every order or transaction undertaken by the

company. You may see a good set of terms and conditions as your recipe book for commerce, detailing the ingredients of your relationship with customers.

What should they include?

A well-drafted set of terms and conditions should cover all aspects of the contract which a supplier intends to enter into. The contents will vary from company to company depending upon the nature of business. For example, is your company one that sells goods or provides services?; are your customer's commercial enterprises or members of the public?; do you want customer-friendly terms or terms that are more protective to you? These are all questions to be asked when considering what should be included, but generally the terms will set out:

- A definition of the product or services you are selling;
- Price;
- Delivery times;
- Payment terms;
- The transfer of risk and ownership (in the case of goods);
- The extent of your liability including any warranties offered;
- What happens if one party becomes insolvent;
- What happens if either fails to fulfil their obligations; and
- The jurisdiction that will govern the contract.

Advantages of having terms

The core advantage of having terms is to ensure clarity and avoid dispute. Terms and conditions have a function which goes beyond the purely contractual. They serve as an indicator of a company's efficiency and act as a reference point for customers, employees, funders and others dealing with the company.

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