

SALE OF GOODS / SUPPLY CONTRACTS

Terms and Conditions

The sale of goods and the supply of services will involve a contract whether in writing, by words or implied from the circumstances. The general rule is that businesses are free to set out whatever terms and conditions they wish in their sale and supply contracts. It is then a matter for the other party to accept or reject these terms.

It is important that a business considers the terms and conditions of contracts with those with whom it deals both as supplier and customers. When dealing with private customers, consumer protection laws may override some terms of the contract.

The use by a business of its own standard terms and conditions in both dealings with customers and other businesses can be a significant advantage. The business can prepare sales contract on terms that are favourable to itself. This can give an upper hand in negotiations. The business may be able to limit its liability, and thereby remove significant risks. It may retain title to goods until payment. It may change terms and conditions that apply by law. It can standardise procedures.

It is vital that the business' standard terms and conditions become part of the sale or supply contracts in order to be effective. One method is that the correspondence states specifically that the (e.g. seller's) standard terms and conditions apply to the sale. Another alternative is that the seller brings the terms and conditions to the customer's attention in advance and states that his sales are in accordance with them. For example, standard terms might be set out in brochures, catalogues and order forms. There must be something to show the other party has accepted the terms.

It is possible for terms and conditions to become part of the sale contract by virtue of a series of past dealings. This means that if a buyer deals with a seller over a period of

time, the sellers standard terms and conditions can be deemed to apply to the supply contracts.

Business and Consumer Contracts

In the case of a contract with another business, the terms of the contract may be negotiated. Certain rights are implied into most contracts for the supply of goods or services by law and in particular by the Sale of Goods Act. Many of the Sale of Goods Act provisions can be changed by providing something different in the contract. See our separate note on the Sale of Goods Act.

When dealing with customers, consumer protection laws may override the terms of the contract. Some key Sale of Goods Act rights may not be excluded in contracts between businesses and consumers (end users). See our separate note on Consumer Protection under the Sale of Goods Act.

Similarly, the Unfair Contract legislation places certain restrictions on what may not be validly inserted. For example, contract clauses excluding liability for death and injury are never permissible. Clauses excluding liability for negligence, defective or poor quality goods are only permitted if reasonable. Other unfair contract legislation restricts unfair terms in standard contracts. See our separate notes on Unfair Contract legislation.

There are some provisions in the Sale of Goods Act and the Unfair Contracts legislation which override the terms of business contracts as well as consumer contracts. For example, contract clauses excluding liability for death and injury are never permissible. Clauses excluding liability for negligence, defective or poor quality goods are only permitted if reasonable. The key Sale of Goods Act implied conditions on ownership and quality cannot be totally excluded in a business supply contract. They can be limited to an extent not possible with consumer contracts.

Implied Terms in Contracts

A contract will be interpreted in favour of the buyer or customer and against the interests of the party who has prepared it. Any ambiguity whatsoever will be interpreted in accordance with the interests of the customer or buyer.

The Sale of Goods Act provides certain default presumptions in relation to many aspects of the sale of goods. These may often be inappropriate. Many of them do not favour the seller. See our separate note of the Sale of Goods Act default position. This will illustrate why it is desirable to adapt specific changes to the default position which would otherwise apply.

Example of Key Terms

It is desirable to restrict the buyer's right to reject the goods and to limit the sellers obligations to repairing or replacing defective goods, specifying a time limit after which right to reject is lost and providing that goods cannot be rejected if they are altered or damaged. It is importance that any limitation of standard rights, such as exclusion or limitation of liability for breach or loss, is very clearly expressed.

A sale contract should clearly specify the price and specify when it is payable. It should provide for extras such as customs duty, packaging, delivery and insurance if appropriate. Under UK legislation VAT is included in the price unless otherwise specified. It should be made clear that standard arms are exclusive of VAT if the seller so requires. If the price can be varied based on cost of performance, then a very clause would be required.

The due date for payment should be specified. A retention of title clause can be a valuable way to secure payment. The default Sale of Goods Act position is that ownership is presumed to pass when the contract is made. It is highly desirable to change this position. See our note on retention of title

The seller should be entitled to terminate the contract if the buyer fails to pay on time. A

discount provision could be included to encourage prompt payment. Interest payments should apply if payment is not made promptly. There is legislation providing for fixed (relatively small) penalties and interest automatically in the event of late payment.

Representations and Contract Promises

A business may be liable for misstatements in sales literature, brochures and catalogues even though they do not form the sale contract. The buyer may be able to reject the goods and / or claim compensation, even if the statement is only entirely innocent or non deliberate.

It may be possible to insert a contract term excluding liability for misstatements and errors. Such exclusions must be fair and reasonable. It is not possible to exclude liability for deliberate misstatements. Contracts commonly state that the written terms contain the entire agreement and the buyer acknowledges that he does not rely on any statements that might have been made by or on behalf of the seller.

A warranty is a legally binding assurance or promise in addition to normal contractual rights. Sometimes warranties or guarantees or extended warranties are paid for by insurance policies. A warranty is in addition to the general responsibilities of a business under the sale of goods legislation.

A manufacturer's guarantee which excludes liability for loss or damage caused by goods proving defective while being used by a consumer as a result of the negligence of the manufacturer or distributor is wholly ineffective.

Enforcement of Contracts

Generally, when a seller breaches contract, i.e. do or deliver what the contract promises, he is liable to compensate the buyer in money for the loss caused. The party in breach of contract will be liable to pay damages to the innocent party for the direct financial consequences of the failure to comply.

The Unfair Contracts legislation provides that a clause which excludes liability for breach of contract or entitles one side to render contractual performance substantially different from that which was reasonably expected, is ineffective unless it is reasonable. Likewise, a term by which a consumer is required to indemnify another party is only valid if it is reasonable.

Where goods are supplied to a buyer and not paid for, the business is entitled to take legal action to recover the price. Generally there will be no defence and special expedited debt collection procedures will apply in obtaining a Court Order, which can be enforced to ensure collection.

This Guide is intended as an overview and broad outline of the matters covered in it. Its purpose is to inform and raise awareness. We are happy to offer specific legal advice on particular circumstances.

This Guide should not be relied on as a substitute for comprehensive legal advice with reference to the particular circumstances.

While we have taken due care in the preparation of this publication, we do not accept legal liability as a result of any reliance placed on anything in this Guide. The reader should rely only on specific legal or taxation advice.