

EASY GUIDE TO TERMS & CONDITIONS

Easy risk management

If you're selling goods or services, having your own terms of business really is one of the best ways of managing legal risk. It means you can do business on terms that are favourable to you, and you can limit your liability if things go wrong. You also save time and money, and keep things simple, by having just one standard agreement for all of your transactions.

Do we need Ts & Cs?

We enter into contracts every day without giving it a second thought – every time we buy something, or we agree to do something. With B2B contracts, supplying goods or services without a written contract - or Ts & Cs - is risky. You won't know what your rights are when things go wrong – for example, when a bill is not paid, or someone doesn't do what they promised to do. Not putting things in writing greatly increases the chance of a misunderstanding. And, if you are at fault, you are exposed to a level of liability that could, potentially, kill off your business.

Terms of business ensure customers are clear about key aspects of your relationship – deliverables, payment, changes and so on. They are designed by thinking ahead about what could go wrong, seeking to avoid those issues, and, if the worst does happen, giving you rights and putting protections in place to reduce your exposure.

Businesses that have identified the potential problems and put suitable Ts & Cs in place will reduce the risks their business is exposed to, and be better prepared for when things do go wrong.

Getting the process right

Ts & Cs have to be legally enforceable to be effective. This includes being able to show that the customer has seen them, and accepted them, before any deal is agreed.

The simplest way of doing this is to make sure the Ts & Cs are included, and referenced, in communications with the customer **prior to** any sale being agreed, such as with quotes, order forms and any purchase order confirmations. Having your Ts & Cs in brochures and other publications will also help.

Just printing your Ts & Cs on the reverse of the invoice will not be enough – because invoices are usually issued **after** the sale or project has been agreed.

Finding the right format

It's important that your Ts & Cs are relevant to your business, or they won't be effective. 'Borrowing' them from another business is risky. They should reflect your supply process mechanics. Also, only you should be making the commercial decisions about what risks the business takes. You won't be in a much better position than having none at all, as you won't know if they do the right job for you or not.

Ts & Cs have to look and feel right for your business, too. You probably don't want to present customers with pages of impenetrable small print, as it puts people off. On the other hand, a well-formatted, straightforward and 'standard' looking document will encourage customers to accept it as it is, and discourage them from trying to negotiate with you.

Key terms

Your Ts & Cs, together with your sales documentation, need to set out the basis aspects of the transaction, such as:

- Quantities/ deliverables
- Price
- Payment terms
- Delivery schedule
- Changes/defective goods

They will also deal with **excluding or limiting liability**. As a supplier, when things do go wrong,

you'll want to restrict your financial responsibilities as much as you can. The law in this area is tricky. The basic position is that without any contractual restrictions, you could be liable for all of your customers' losses. Any restriction in Ts & Cs has to be within the law, or it will be completely unenforceable: meaning that here too, you would be responsible for all of your customers' losses.

So exclusion and limitation of liability provisions are a bit of a balancing exercise between capping liability as far as possible, but without crossing the line of what is allowed. Different rules apply to different types of contract – B2B, B2C, standard Ts & Cs and individually written agreements. Certain liability cannot be excluded (such as for death or personal injury), other types of liability can only be excluded to a certain extent. It's a complex area, and you should always take legal advice before including any limitation of liability in your dealings with customers.

What next?

The best thing is to talk to a lawyer who will help you with a legal risk analysis, and fit a set of Ts & Cs around the individual needs of your business. A cheaper option would be to download a set of Ts & Cs from an on-line legal document provider – bear in mind, though, that they won't be tailored to your individual business, and you may still be exposed if you haven't specifically thought out how to manage your business risk.

[Call us](#) or [email](#) us for a chat or a quote.

See how else we can help your business [here](#).

We recommend that you talk to a lawyer before going ahead with Ts & Cs or taking other legal steps on behalf of your business.

New Leaf Law does not take any responsibility for any events that arise as a result of your use of these guidelines.