

User Guide

“Conditions of Sale”

A Useful Checklist

The “Standard Conditions of Sale” are incorporated into most contracts in England and Wales.

They set out the general procedure and rules governing the provision of goods and services by one trading company to another and the terms upon which they will do business, for example, sell, supply or purchase goods or services. Terms you will typically find used include; ‘The Seller’, ‘The Buyer’, ‘The Goods’ and ‘The Price’.

This useful checklist details important issues to consider when agreeing your Conditions of Sale.

1. Does the business supply goods or services or both?
2. Does the business supply to businesses, consumers or both? If dealing with consumers then consideration must be paid to the Distance Selling Regulations (if not contracting on a face-to-face basis), Unfair Terms in Consumer Contracts Regulations, Unfair Contract Terms Act as well as their statutory rights under the Sale of Goods Act and Supply of Goods and Services Act (these also have applicability if dealing with businesses).
3. Does the business supply overseas? Note that this will affect issues such as delivery, payment and jurisdiction.
4. Is the business part of a trade association which recommends or specifies certain terms that must be included?
5. How are the Conditions of Sale to be incorporated into the contract? Note ‘battle of the forms’ and that Conditions of Sale can not be relied upon if only put on the back of an invoice as the contract by that time has already been formed.
6. How are orders placed and how are they accepted? The Conditions of Sale should make it clear on what basis the contract is formed and at what time, making it clear when the business will be bound to meet the order.
7. Do the Conditions of Sale need to exclude any reliance being placed on pre-contractual representations of the business? Care should be taken to limit the contract to those terms contained with the Conditions of Sale.

8. Who within the business has the authority to vary the terms of the Conditions of Sale?
9. To what extent do the Conditions of Sale need to limit the businesses liability? Note that exclusion clauses must be reasonable in business to business contracts and reasonable and not unfair in consumer contracts and that any such clauses must be prominent.
10. Does the business offer warranties? If so, under what terms?
11. Is the business to deliver goods? If so on what terms? For instance, what is to happen if delivery is delayed? At what point is risk to pass? Who pays the cost of delivery?
12. Does the business wish to exclude or restrict the purchasers' right to reject the goods? If so in which way, for instance by introducing a time limit after which the right to reject is lost or refusing to accept rejected goods if they have been altered or damaged in some way by the purchaser. Are the goods of a type that can be repaired or replaced if defective? If so would the business prefer to offer repair/replacement rather than a refund?
13. The Conditions of Sale should be clear as to what is included in the price, for instance VAT and delivery. Further how are prices calculated, are they on a contract by contract basis, by reference to a price list or by some other method?
14. What terms of payment are to be offered? Is interest to be added to late payments, or alternatively discounts for early payment?
15. At what point does title in the goods pass? The business should consider including a retention of title clause (if the goods are of a non-perishable, easily identifiable and recoverable nature) which will provide that title does not pass until either all monies owed to the business are paid in full or the goods in question are paid for.
16. Does the business have any Intellectual Property that will require protection within the Conditions of Sale?
17. Conditions of sale should always contain a force majeure clause which will provide that should an 'act of god' prevent the business from performing the contract it is not automatically cancelled.
18. The Conditions of Sale should also specify how notices should be delivered, which methods of delivery will the business accept, i.e. fax, email, post?

To speak to a solicitor about any of the issues raised in this User Guide, please call 0161 785 3500, or email

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