

## Drafting Terms and Conditions

Most likely, the contracts that support the daily operations of your business—regardless of your industry or size—were written based upon pre-established terms of trade. These terms and conditions are intended to protect your company's rights, limit the potential liabilities that you may be exposed to and offer some security during your business operations. In addition, whether your company is drafting a contract for business-to-business or business-to-consumer, you need to have comprehensive, well-defined terms and conditions to help ensure that both parties fulfil their requirements.

Regardless of the type, each contract that your company enters into should be formally backed by the terms and conditions, as informal arrangements—such as those agreed to verbally rather than in writing—provide you with no tangible support in the event of a dispute. This is especially necessary when your company commits to a more complex arrangement—such as large purchases by a customer or regular work with another company.

Therefore, in order to ensure the health and success of your business, it is absolutely necessary that you establish robust terms and conditions.

### *Drafting Terms and Conditions for Business-to-Business*

While your company could draft a bespoke set of terms and conditions for each contract that you enter into, it would be more beneficial and time-

efficient to have a standard, boilerplate set. Each of the terms outlined in one of your contracts—regardless of whether you are acting as the buyer or supplier—should ensure that both parties' rights and responsibilities are clearly defined.

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Even though the specifics for your contracts will vary, each should include the following nine terms:

- 1. Description of goods:** Provide as many details about the goods in order to mitigate the potential for ambiguity.
- 2. Price:** Specify whether the listed price includes the cost of packing, shipping, insurance and any relevant taxes.
- 3. Payment:** Specify when the payment is due and how it should be made—in one instalment or multiple.
- 4. Delivery:** Specify where the goods are to be delivered or collected, and clarify who will be responsible for the safety and quality of the

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## Drafting Terms and Conditions

goods prior to them being delivered or collected. In addition, clarify what the repercussions will be if the delivery of the goods is delayed or the buyer fails to collect them at the specified time.

- 5. Recourse for faulty goods:** Specify the time frame and process in which the buyer can return defective goods, and what actions the supplier must take to address the issue.
- 6. Force majeure:** Outline the provisions that relate to unforeseeable circumstances—such as war or a natural disaster—which would cause one or both parties to be unable to fulfil their responsibilities.
- 7. Retention of title clause:** Clarify that if the goods have not been paid for, then the supplier has the ability and authority to recover them from the buyer.
- 8. Limit of liability:** Specify the fixed amount that the supplier is liable for in the event that the provided goods are in some way damaged or defective. Generally, this amount reflects the value of the goods.
- 9. Termination:** Specify the circumstances under which the contract can be terminated—such as insolvency, breach of the terms and failure by the buyer to pay.

### Drafting Terms and Conditions for Business-to-Consumer

Drafting the terms and conditions of a contract between your company and a consumer is different from drafting them with another business, as your company is required to adhere to the Consumer Rights Act 2015 (Act). The Act combined existing pieces of consumer protection legislation in order to provide consumers with more comprehensive protection.

To ensure that your company is not in violation of the Act when drafting a contract with a customer, you should clearly outline the terms and conditions of your agreement—even if these have already been communicated verbally, included in a sales script, printed on promotional materials or displayed digitally. Under the Act, none of the terms and conditions can be hidden—including within the small print of a contract.

In addition, you must verify that each of the terms and conditions outlined in the contract are considered fair. The Act creates a ‘fairness test’, and considers terms and conditions unfair if they cause a ‘significant imbalance in the rights and obligations outlined in the contract’ and provides your company with the advantage. This unfair advantage would be considered contrary to the requirement of good faith. When you review your terms and conditions to verify that they are fair, be sure to adhere to the following checklist:

- The terms should be written in plain, intelligible language and should not be hidden away with small print. Bring disadvantageous terms to customers’ attention.
- The terms that refer to specific details, such as price, payment and delivery, should be clearly outlined.
- The terms should not provide your company with an unfair advantage in the agreement.
- The terms should respect the legal rights of your customers.
- The terms should be available for customers to review before they agree to them.

Even by following the guidance outlined above, drafting terms and conditions for a contract between your company and a consumer can be complicated. Therefore, it may be beneficial for a

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legal professional to review the contract to ensure that it is fair, comprehensive and compliant with the Consumer Rights Act 2015.

### *Best Practices for Drafting Terms and Conditions*

Whether your company is drafting terms and conditions for a contract with another business or a consumer, follow these five general pieces of advice:

1. Avoid including dense, obtuse legalese.
2. Understand who the business or consumer is that you are entering into the contract with, including their goals, reputation and brand.
3. Establish a rapport with the business or consumer that you are entering into a contract with in order to help streamline the process in the future.
4. Organise the terms and conditions with bullet points, standalone sentences and short paragraphs to increase the readability of the information.
5. Include charts, tables or illustrations to better explain the responsibilities and expectations for each party involved.

### *A Profitable Agreement is a Well-written Agreement*

The continued health and success of your company depends on how the terms and conditions of your contracts are drafted. If your terms and conditions provide inadequate cover, then your company may be exposed to complications, such as a dispute. However, by formally drafting the terms and conditions for each of your contracts with the proper guidance, your company can adequately protect itself and

its future. For more information on protecting your business, contact **Crendon Insurance Brokers Ltd** today.



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