

Protecting your cashflow – the importance of your terms of trade

Terms of Trade are the terms and conditions on which a business sells goods and services to customers and on which they buy goods and services from suppliers.

These terms form the basis for the trading relationships for all businesses.

If a business is the supplier of goods or services then it should have written terms of trade which:

- are professionally prepared;
- tailored to fit the business;
- reflect the terms on which it is prepared to supply goods or services to customers; and
- allow customers to easily understand their obligations.

A lot of businesses don't take the opportunity to set the terms on which they do business which can mean they are left at a commercial disadvantage, or worse, a legal disadvantage if the transaction does not go according to plan.

It is important that the terms of trade are set and understood before any commercial dealings have taken place.

Key issues to consider

In most commercial transactions involving the supply of goods or services there are some standard issues that should be covered by the terms of trade.

The terms should set out the basis of the business relationship between supplier and customer and should cover such things as:

Goods/Services. The goods and/or services to be provided should be identified and described.

Price. The price should be defined, either the amount or with reference to other documents like invoices that will be provided. Is GST (or other taxes) included or excluded?

Payment Terms. The price could be payable in cash on delivery or on terms which have been pre agreed. If credit is provided then describe the interest rate and other applicable terms.

Delivery. The method of delivery (if any) - where and when will delivery occur? How will delivery be made and who is responsible for the delivery costs?

Risk and Insurance. When does the risk in the goods pass to the buyer? If insurance is required, who is responsible for paying for it?

Warranty. Is there any warranty provided for repairing defects in materials or quality of work? If so, what is the warranty period and the limitations on the obligations under the warranty?

Reservation of title. This is often called a “Romalpa” clause. Does the ownership of the goods pass to the buyer when the goods are delivered or does the seller retain ownership until full payment is received? Suppliers will also need to register their interest in accordance with the Personal Property Security Act to ensure that their reservation of title clause remains enforceable against, and continues to have priority over, other interests as intended.

Providing credit. Credit should only be provided where information and consent that enables credit and reference checking has been provided and the terms of the credit have been agreed in writing.

Personal guarantee. Where commercial credit is provided to a private company the directors or owners of that company should provide a personal guarantee for the money owed to the business. The guarantee should be provided before any goods/services are provided.

Depending on the individual business there are many other terms that can/should be included in the terms of trade that address specific issues faced by the business.

Where possible the terms of trade should also limit the liability of the business to the extent allowed under the Competition and Consumer Act and the Australian Consumer Law.

Some common traps

Businesses often supply goods and services based on informal arrangements which are open to misunderstanding and misinterpretation. Disputes can be avoided if there are clear, written terms of trade from the beginning.

Terms of trade are sometimes printed on the back of an invoice. These terms are difficult to enforce because the invoice is sent after the deal has already been done. The best practice is getting the customer to agree to the terms of trade before any commercial dealings.

If the business provides quotations or estimates it is good practice to send out the terms of trade when the estimate/quote is provided and to get the customer to sign off on the terms and to agree to be bound by them.

All businesses are different and it is very dangerous to simply copy the terms and conditions used by a competitor (or found on the Internet) unless those terms have been reviewed and tailored to fit the particular business.

In more complex cases not covered by your terms of trade you will need professional assistance in preparing a contract that caters for the specific business transaction

Summary of the benefits

Clear and concise terms of trade are an effective way of minimising disputes and protecting cash flow and you are better off setting the terms on which your business trades rather than accepting someone else's terms forced upon you.

If your terms of trade are professionally prepared to cater for your business model and trading terms you will find it much easier to successfully recover or prevent bad debts.

If you would like to discuss your business requirements or you need any help or advice please contact us on (03) 9600 0162 or email info@lordlaw.com.au.