

Key Consideration in Terms of Trade

What are "terms of trade"?

"Terms of trade" are the terms of the contract between a seller of goods or services and the buyer.

The terms can usually fit on one A4 page, and therefore they may be placed on the reverse side of an order form or of an application for credit.

Because these terms are the terms of the parties' contractual obligations to each other, you cannot vary the terms without the other party's agreement.

Why have terms of trade?

Many businesses supply goods and services on the basis of informal arrangements, and often disputes arise that could have been avoided if there had been clear, written terms of trade from the start.

In particular, having clear terms of trade is an excellent way of minimising and preventing bad debt.

What should be included in the terms of trade?

The terms of trade should include the following matters:

- *The other party*
 - The legal entity you are contracting with should be clearly identified (for example, is it a company or an individual person?)
- *The goods or services*
 - What is the exact nature of the goods and/or services to be provided?
 - If you've discussed dimensions and specifications with the buyer, are these to be treated as estimates only? Will customary or reasonable tolerances be allowed?
- *The price*
 - Is the price you state fixed or can it be varied (for instance, because of changes in the cost of inputs to the goods or services supplied)?
 - Does the price include or exclude GST and any other taxes or duties?
 - Is the price a firm quote or only an estimate?
- *Acceptance of quote*
 - If a quote is given, how long is the quote open for acceptance?
 - How is the quote to be acknowledged and accepted.
- *Payment*
 - Is the price payable "cash on delivery", or will you give credit?
 - What is the interest rate and other terms on which you are giving any credit?
 - Will interest accrue on the unpaid debt if payment is not made by the due date?
 - Will the debtor be liable for your legal costs for pursuing the debt?
 - Is a guarantee required if you are giving credit? This may be necessary when you are dealing with a company rather than an individual.
- *Delivery*
 - Where and when will the goods be delivered?
 - How will delivery be made?
 - Who pays for delivery costs?
- *Risk and insurance*
 - At what time does risk in the goods pass to the buyer?
 - If you, the seller, are to install the goods, who will bear the risk of damage while the goods are being installed?
 - Is insurance required, and who will pay for it?

- *Retention of title*
 - Does ownership of the goods pass to the buyer when the goods are delivered, or do you, the seller, retain ownership until you've received full payment? (A clause stating that the seller retains ownership until full payment is called a "Retention of title" clause, or a "Romalpa" clause. .
 - You should state whether you have rights to enter the buyer's premises and repossess the goods if you don't receive full payment. You should also state that, when the goods have been mixed or sold, these rights will still apply if the proceeds can be traced.
- *Installation*
 - If you are to install the goods, what are the obligations on the buyer to provide suitable premises, necessary services and amenities, and so on?
- *Seller's liability for products*
 - Is your liability for defective products to be excluded or limited? If you are supplying goods or services to consumers, you cannot contract out of the guarantees and remedies implied or required by federal or State legislation.. However, if the goods or services are acquired for a business it is open for both parties to agree in writing that liability is limited to, say, the contract price.
- *Delay by the seller*
 - Are you liable for any delay in delivering or installing goods, or in supplying services?
- *Copyright*
 - Who is to own the copyright in any works that you produce in carrying out the contracted work?
- *Warranty*
 - Are you warranting to repair any defects in materials or quality of work? If so, for what period are you giving the warranty and what are the legal limitations on the obligations under the warranty?

Make sure the other party signs the terms of trade

If you have written terms of trade, it is important that the other party be made aware of them and agree to them. The best way to do this is by getting the other party to sign the terms of trade before the goods or services are provided.

When standard terms of trade are not suitable

Standard terms of trade won't be suitable in all cases. For example, if you have a complex arrangement that will include matters not covered by your terms of trade, you will need to draw up a specific contract for that arrangement.

Other ways to prevent bad debt

There are a number of other things that you can do when allowing credit in order to prevent or minimise bad debt, including the following:

- Get the buyer to fill out a Customer Credit Application. This will clarify who you are dealing with and their credit record. The details the buyer provides might indicate that it would be wise for you to carry out a credit check.
- Check the buyer's trade references.
- Require the buyer to provide some security.

Nexus can provide you with a credit application and terms of trade based upon your specific industry. We do however strongly recommend that you seek independent legal advice to ensure the terms are appropriate for your business and the product or service that you will sell. Please call us on (07) 3360 9800 if we can assist.