



Standard Terms of Business

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Why have standard terms of business?

Each time you agree to do business with a client or customer, you will no doubt discuss and agree the most important issues. These might include: what will you sell or what services will you provide, and how much will the customer pay? You might also discuss other issues, such as dates for delivery.

It is unlikely, however, that you will discuss every last detail of what is to happen. Both you and your customer will probably make assumptions about various matters. More importantly, perhaps, you will probably not discuss what is to happen if things go wrong.

This is a risky situation. If you and your customer make *different* assumptions, this can lead to conflict. If you have a particularly difficult customer, he might claim he wasn't aware of things which you consider should have been obvious. If things do go wrong, there is no written agreement to which you can refer to try to sort things out without too much disagreement.

Having standard terms of business can help minimise these risks.

What are standard terms of business?

'Standard terms of business' simply means a list of the conditions which you want to apply to your agreement with your customer. Each time you agree to do business with a new customer, you will make it clear that such business is subject to your standard terms of business, perhaps by printing them on the back of your quotations, or by enclosing a copy with your letter of confirmation.

Standard terms of business are also sometimes called standard (or 'pro forma') conditions of business.

What should be in them?

The answer to this depends largely on the precise nature of your business. An example or 'style' standard terms of business will almost never be right for your business without at least some amendment.

There are four things you should do.

1. Think about how business with your customer will proceed if all goes well, and spell this out clearly.

For example:-

- Who are you?
- What will you do?
- By when will you do it?
- What will you *not* do?
- What do you expect the customer to do?
- When will you bill the customer?
- How quickly do you expect your bill to be paid?

Some of these might seem obvious to you, but remember that the customer might not know how you do business. Also, spelling out the above points clearly reduces the scope for awkward customers to argue that they didn't know these things.

2. Think about the sort of things that might go wrong, and try to deal with these in advance.

For example:

- What if the customer pays late? You'd probably want to be able to charge interest.
- What if the customer is unhappy with what you've supplied or done? You should spell out exactly *what* you guarantee (if anything) and *how long* you guarantee it for.
- What if you are late with performance? Do you guarantee to meet deadlines or not?
- What if the customer changes his instructions? You should make it clear you are entitled to charge more if the

- customer adds to the workload after you've already quoted.
- What if the customer cancels the job just before you're due to start it? Do you want the right to charge for costs already incurred, or perhaps even for time set aside for the customer which will now be wasted?
- What if you do perform poorly? What is the extent of your liability to your customer? You would probably want to restrict this to a reasonable amount.

3. If you have copies of the standard terms of similar businesses to yours, have a look at these.

You should not copy another business' standard terms (they will almost certainly not be completely suitable for your business, and you might be breaching their copyright). However, they might give you some ideas of the sort of other conditions you could usefully include in your own.

4. Take legal advice from a solicitor.

Most of the conditions in your standard terms of business will be common-sense issues which you can think through yourself, but there are a number of legal issues which will probably be relevant.

For example:-

- There are special rules applying to contracts with consumers.

- There are restrictions on your rights to limit your liability to your customer.
- Rules apply to the rights of the parties to transfer their side of the contract to someone else.

There will be other legal issues to be considered in the context of your particular business. These might include:-

- Are copyright issues relevant?
- What about a duty of confidentiality?
- If selling goods, should a retention of title clause be used? (This means the goods remain in your ownership until your customer pays for them, giving you a measure of protection if your customer becomes insolvent.)

There are also a number of legal issues which most contracts should deal with as a matter of course, such as:-

- Which country's laws apply?
- Are the parties responsible for the consequences of matters outwith their control?
- Are verbal changes to the contract valid?

A solicitor will also assist you with making your standard terms clear and unambiguous, and will advise on issues such as the steps which need to be taken to ensure your standard terms of business form a legally binding part of your agreement with your client.

This is a general advice note giving a brief indication only of some of the issues relevant to standard terms of business. For further advice contact **Chris Smith** or **Derek McCulloch** in our Corporate Law Department on 0131 225 1677.