

## TIGHTENING UP YOUR TERMS AND CONDITIONS OF TRADE

Terms and conditions of trade are an essential feature of any supply arrangement. To ensure that you are getting the most from your terms and conditions, it is important to review them regularly and confirm that they address the issues most likely to arise in your supply context. We set out some of the most important elements of effective terms and conditions of trade below.

Generally speaking, terms and conditions should clearly outline each party's rights and obligations under the contract of supply, and resolve any ambiguities that may otherwise generate uncertainty. (Invariably, uncertainty results in non-payment!). Key aspects of most supply agreements include the procedure for placing orders, delivery of the goods, the nature and extent of any warranties and limitations of liability, and when ownership and risk in the goods will pass to the customer.

Terms and conditions are also an ideal place to clarify a number of practical matters, such as those surrounding the price of the goods to be supplied and how payment is to be made. In addition to the agreed price of the goods, payment-related issues to consider include responsibility for GST and other taxes or duties, whether and when any deposit is payable, whether the price is subject to change and how this change will be determined, when payments should be made (i.e. upon placing the order, on an installment basis or upon delivery), and interests and costs on overdue accounts.

Where your terms and conditions defer payment, it is important to state that the contract for supply creates a security interest in the goods for the purposes of the Personal Property Securities Act 1999, and to obtain the customer's agreement to this in writing. To maximise the benefit of your security interest, it is essential that you comply with the provisions of the Act, including registering a financing statement over the goods on the Personal Property Securities Register as soon as possible. Where payment is deferred, it is also worthwhile to specify in your terms and conditions that the customer shall not be entitled to withhold any payment for the purposes of any set-off or counterclaim.

If your terms and conditions set out a right to repossess goods, it is also necessary to ensure that they confer a right to enter onto premises occupied by the customer for this purpose. In the past the Hire Purchase Act 1971 provided for a right of entry onto premises for the purposes of repossession. This Act has since been superseded, however, by the Credit (Repossession) Act 1997, which applies when a creditor has a right to take possession of consumer goods, but does not confer a right to repossess, or a right to enter premises for the purposes of repossession.

Terms and conditions should be tailored to your business and to the particular trading situation, but also be drafted broadly enough to govern a wide variety of potential issues. General factors which you should consider include the circumstances in which you are entitled to refuse or cancel orders, which country's laws will apply if orders are accepted from overseas, what will constitute a default for the purposes of the contract and the effect of any such default, and to what extent optional statutory and/or implied warranties and conditions are excluded from or incorporated into your supply agreement.

Finally, it is important to be aware that to form part of a contract for supply, terms and conditions must be brought to a customer's attention prior to reaching a formal agreement. It is advisable, therefore, to have the customer sign a declaration stating that he or she has read and agrees to be bound by the terms and conditions, and to retain a copy of this declaration for your records. This will go a long way towards ensuring that no question later arises as to whether or not your terms and conditions apply to a particular transaction.

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