



Trading Terms

Many businesses supplying goods and services do so on the basis of informal arrangements or inadequate terms of trade. This can lead to considerable difficulties if things go wrong.

Businesses should therefore ensure that they have adequate and easily understood terms of trade also known as conditions of sale or terms and conditions. Not only should customers be made aware of their terms of trade but businesses should ensure that customers have agreed to them. Customers must be allowed a reasonable opportunity

to accept the terms of trade so they need to be brought to the customer's attention at the outset of the relationship and before the contract is concluded. Accordingly it is inadvisable for a business to have its terms of trade set out on the reverse of its invoice which is often presented to the customer after delivery of the goods or commencement of the services. If this is the practice, the terms of trade should also be made available at the outset, i.e. with the estimate or quotation or other written correspondence between the parties.

The terms of trade for any business should reflect the way the business is actually conducted. Many businesses have terms of trade copied from those used for other businesses and, if this is the case, checks should be made to ensure that the terms used actually reflect the way the business is conducted and the nature of the business.

Businesses should also ensure that their terms of trade are regularly reviewed. Terms of trade could for instance contain a different product warranty to that included in promotional material which is often updated without businesses ensuring that their terms of trade are also reviewed.

As a general guideline terms of trade should cover:

- Delivery times – if this is not stipulated the supplier is bound to deliver the goods within a reasonable time frame and late delivery could allow a buyer to terminate the contract and claim damages – a supplier may want to attempt to limit this by stipulating that any time scale for delivery is an estimate only
- Retention of Title – a supplier will normally want to retain ownership of the goods until it has received full payment allowing the business in certain circumstances to retrieve the goods in situation of non payment

- Payment terms – the time for payment should be clearly stated and how payment is to be made – the rate of interest on overdue payments should not be excessive – businesses dealing with other businesses should be aware of the provisions of the Commercial Debts (Interest) Act 1998 which provides a statutory right to claim interest and a specified amount for reasonable debt recovery costs for late payment and as such their terms of trade can stipulate that they rely upon their rights in this regard
- Quality Commitment – the law imposes certain terms on suppliers in this regard some of which may be excluded in business to business contracts

Terms of trade are designed to protect rights for businesses and to provide some measure of security in recovery of debt situations which in today's economic climate is more important than ever.

Celia Worthington, senior partner of the Commercial Department of Worthingtons Solicitors Belfast Office