



REVIEW YOUR TERMS OF TRADE

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In turbulent times you will want to rely on your Terms & Conditions of trade to ensure you get paid or reduce your losses. But, do your terms cover give you the legal rights you need to collect your bad debts.

Whether you call them: 'Terms of Trade', 'Conditions of Sale' or 'Terms & Conditions', the terms on which you do business should be designed to protect your rights as seller, limit your potential liability and assist the recovery of debts, losses or expenses incurred where money is owed to you.

Outlining your Terms of Trade is particularly important where your commercial customers may be relying on their own purchase terms. While it isn't practical to seek legal advice before every contract, it is worthwhile to take legal advice when your terms are being drafted or reviewed.

Credit Management is not just about following up invoices and issuing court proceedings against customers. A crucial goal is to incorporate terms that give you the power to manage the situation before it escalates to court proceedings and to minimise your financial exposure if it does.

This article outlines some of those terms:

- retention of title (the right to seize back unpaid goods);
- the right to interest and compensation for debt recovery costs;
- time limits for raising disputes; and
- the right to suspend deliveries and credit accounts.

Retention of Title (RoT Clauses):-

In essence, an RoT Clause provides that the supplier retains ownership of goods delivered to a customer until the goods are paid for by the customer. RoT Clauses can permit a supplier to enter premises where goods are stored and to seize those goods, either while they remain unpaid or, importantly, if a receiver or liquidator is appointed. Because of well established legal rights, a supplier's rights in this area are dependent on the terms of their RoT Clause, so care is needed to ensure you can rely on your RoT Clause.

An RoT Clause can be a 'simple' clause, which relates only to goods which are unpaid for, or it can be an 'all-monies' clause. An 'all monies' RoT Clause provides that ownership in goods will not pass until the goods are paid for and any other monies owed by the customer to you are discharged. This type of RoT Clause may not be as acceptable to your customer as a 'simple' RoT Clause.

Generally, RoT Clauses are useful where goods supplied are identifiable and have not been altered physically, mixed with other goods or irreversibly incorporated into other goods. However, an RoT Clause could give a customer the right to sell the goods and hold any monies received from the sale in trust for the supplier, until the goods have been paid for.

This is a very broad area of law and the extent of rights under any given clause can well be subject to legal scrutiny. However, if you do not have such a clause, you are not at the races.

Interest and Compensation for Debt Recovery Costs

Unless otherwise agreed, all contracts with commercial customers are subject to the Late Payment in Commercial Transactions Regulations. The Regulations apply even if there is no clause dealing with interest on unpaid bills.

The Regulations provide that, unless otherwise specified in the contract, the interest rate will be the European Central Bank main refinancing rate plus 7 percentage points. The ECB rates in force on 1 January and 1 July apply for the following six months in each year. Only one rate will apply to a late payment – that is the rate in force on the payment date. The rate in force on the 1st July 2009 is 1% so the 'penalty' interest on any unpaid contracts which fall due for payment in this period will be 8%. You can provide for a higher rate of interest in your own contracts or provide for interest in your contracts with private clients.

Your Terms of Trade can provide that your customers will be responsible for your costs and expenses in



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collecting unpaid monies. For example, if you issue court proceedings, any judgment you obtain will provide for costs on a court scale to be reimbursed by the debtor. However, these scale costs rarely cover the actual legal costs involved and sometimes there is quite a significant shortfall and you will have to pay your solicitor those fees.

Time Limits for Complaints:-

Often when demands for payment are becoming more urgent and the threat of legal proceedings arise a customer suddenly raises complaints about the quality of the goods delivered, which were somehow never raised before. A good way to ensure only genuine complaints are raised and to manage your business is to provide a time-limit within which complaints must be identified to you so that you can take appropriate steps to resolve the complaint.

Suspension of Credit Accounts and Deliveries

How regularly do you ring up clients seeking payment and instead they want to get more goods from you on credit? Or, how often do you think that if you would suspend supplies for non-paying clients that might make them pay up? Your Terms of Trade can provide for this and should do wherever there is a breach of credit terms or where a liquidator or receiver or other matters might trigger concern about your customers' ability to pay you.

Finally, any Terms of Trade must be incorporated into your contract. A good way is by having customers complete a credit application which specifically refers to the terms of trade; order forms and delivery dockets might have your terms of trade printed on the reverse and your most important terms could be highlighted on the front. Your client may have their own purchase terms and you must be beware of a 'battle of forms' developing. You must be clear that your terms of trade apply to any order.