businesscompanion
trading standards law explained

Part 2. Types of contracts

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Businesses and consumers

A business may enter into a contract with either consumers or other businesses (referred to legally as a 'trader'). There are more legal requirements that apply to contracts between businesses and consumers. Businesses will often have a set of standard terms and conditions that they use for their contracts with consumers. Consumers will usually have to decide whether to accept these terms and conditions or not.

What is a trader?

If you are a person acting for purposes relating to your trade, business, craft or profession, then you are a 'trader'. A 'person' can mean more than one individual - for example, if your business is a partnership of two or more people. A person can also be a company, a charity (or other not-for-profit organisation), a Government department, a local authority or a public authority. If another person acts in your name or on your behalf, you would still be the trader for those contracts.

What is a consumer?

A 'consumer' is an individual who, in their dealings with a trader, is acting for purposes wholly or mainly outside their trade, business, craft or profession. If there is any dispute about whether a party to the contract is a consumer, the burden of proof lies with the business to prove that the other party is not a consumer.

Business-to-business contracts

Although there is more freedom when entering into contracts with other businesses, there are some legal requirements that you need to be aware of. The terms and conditions in the contract must be reasonable

and comply with the Unfair Contract Terms Act 1977. You must also be aware of your responsibilities under legislation such as the Business Protection from Misleading Marketing Regulations 2008. More information about these responsibilities can be found in the 'Business-to-business marketing' guide.

You should also make sure that you take your time to carefully read any terms and conditions presented to you, and to ask questions about any terms that may not be clear. You may also wish to seek legal advice with more complex contracts to ensure you understand the terms that you are agreeing to and the consequences of entering into the contract.

Business-to-consumer contracts

If you are a trader selling goods to consumers, you need to ensure that you are aware of your obligations under consumer law. This includes ensuring that your terms are not prohibited or unfair, and do not create a significant imbalance in the rights and obligations of the parties to the detriment of the consumer, as required under the Consumer Rights Act 2015. You must also be aware of your responsibilities under contract law and consumer legislation, such as the Digital Markets Competition and Consumers Act 2024 (DMCCA). More information about these responsibilities can be found in the 'Unfair commercial practices' Business in Focus guide.

Another good starting place is to think about how, where and what you sell.

How and where you sell

The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 set out requirements about pre-contract information that must be supplied by traders when entering into contracts with consumers. The Regulations also require traders to provide consumers with cancellation rights in certain circumstances and to provide them with a cancellation notice.

If you sell goods or services using distance means (such as online), then your business may be entering into 'distance contracts' with consumers. You must ensure that you comply with the requirements for distance contracts. Further guidance on these requirements can be found in the 'Consumer contracts: distance sales' guide.

If you sell goods or services away from your trading premises (such as in a consumer's home or at their place of work), negotiate a contract and then return to your premises to sign a contract, or if you enter into contracts whilst on excursions that you have organised for the purpose of selling goods and services, you will be entering into 'off-premises' contracts. Further guidance on these requirements can be found in the 'Consumer contracts: off-premises sales' guide.

If you sell your goods or services from your business premises or in any way that is not a distance sale or off-premises sale, then you will usually be entering into 'on-premises' contracts. Further guidance on these requirements can be found in the 'Consumer contracts: on-premises sales' guide.

If you are not sure which type of contract you are entering into, the scenarios-based document 'Where you sell: how to work out where a contract was made' can help you.

Familiarise yourself with the guidance that applies to your business and make a note of any pre-contract information that you need to include in your contract. If you sell goods online, there is also further guidance to help you in our online contracts guidance, which can be found in the 'Guidance for online businesses' Business in Focus guide. If you are also selling your goods and services on online platforms other than your own website etc, there is further guidance for you in the 'Internet auction sites and

marketplaces' guide.

What you sell

If you sell goods, services or digital content to consumers, then you need to be aware of your responsibilities under the Consumer Rights Act 2015. Your terms and conditions cannot restrict a consumer's rights under consumer protection legislation, and they must be fair and transparent. It is important that you know what these rights are and are aware of your obligations under consumer rights law.

Depending on what you are selling / supplying to consumers, further guidance about your responsibilities and your customers' rights can be found in the following guides:

- 'Selling and supplying goods'
- 'Supplying services'
- 'Digital content'

There is also guidance on what applies when you are selling more than one of the above at the same time; this can be found in the 'Mixed contracts' guide.

By reading through the above guidance and determining how, when and what you sell, you have already started to make a list of information that you need to include and things that you cannot exclude, such as any of the consumer rights that you read about in the goods, services and digital content guides. This will help you to start to think about your own terms and conditions and what should, and should not, be in them.

< Part 1. Forming a contract

> Part 3. Terms and conditions

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