businesscompanion
trading standards law explained

Part 3. Terms and conditions

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What are terms and conditions?

Simple everyday contracts, such as the sale of a newspaper, may not require any formal written terms and conditions.

Contract terms may be communicated in many ways, including verbally. For other types of contracts, having written terms may be helpful. Written terms and conditions can provide evidence of what was agreed between you and a consumer or business, and can build confidence and trust between you and your customers.

They set out what has been agreed between you and the other party to the contract, such as your customers. They outline what the rights and responsibilities of each party are. Express terms are terms that have been written, discussed or communicated by the parties. This includes traditional written terms and conditions. Terms of a contract can also come from the conduct of the parties.

As well as the express terms of a contract, some terms are treated as being automatically included in consumer contracts, such as the requirements in the Consumer Rights Act 2015 for goods and digital content to be of a satisfactory quality or for services to be provided within a reasonable time. Other terms can be implied by custom, by the courts or where it is obvious that the parties would have been in agreement. It is therefore important to remember that a contract is more than just the terms that have been expressed. You should consider all of the circumstances surrounding the contract, together with any applicable legislation and terms that may be implied into the contract.

How and when should terms and conditions be given?

Terms and conditions have to be incorporated into a contract in order for them to be a legally binding part of the contract. Terms can be incorporated into a contract in different ways, such as by signature, giving the party reasonable notice of the terms, by custom or by a consistent course of dealing between the parties. It is important that the consumer or other business is given access to the terms and conditions before the contract is formed, to enable them to make an informed decision about whether to enter into the contract.

Some terms and conditions must be provided at a certain time or in a certain format. For example, with distance contracts between traders and consumers, certain pre-contract information must be clearly brought to the attention of the consumer before they are bound by the contract. Confirmation of all pre-contract information must then be provided in a durable form, such as on paper or via email, no later than when the goods are delivered, before performance of the service begins or, for digital content that is not on a tangible medium, within a reasonable time (which may mean that it has been sent, but not received, before the digital download begins).

If your contract contains any unusual or onerous terms and conditions, these need to be brought to the attention of the other party, particularly if they could have a significant impact on your customer or the other business.

Terms and conditions must also be transparent, which means that they must be written in plain and intelligible language. They must also be legible and enable consumers to understand how the term will affect them. You should know what the terms and conditions in your contract mean, and be able to explain them to your customers. If your terms in a consumer contract are not clear and can be interpreted in more than one way, a court must interpret them in the way most favourable to the consumer.

Unfair contract terms

Terms of a contract are only binding if they have been incorporated into the contract and are fair. Terms must also be transparent and be written in plain and intelligible language to ensure that consumers can understand the economic consequences of any terms that they agree to.

If a consumer contract term is unfair, then the consumer is not bound by that term. Action could also be taken against you, by bodies such as Trading Standards and the Competition and Markets Authority, to stop you from using unfair terms in your contracts. Where a term is unfair, the contract remains binding on you in all other respects, and you cannot simply replace the unfair term with a fairer one. It is therefore important to think about whether the terms in your contract are fair.

You cannot attempt to exclude any consumer rights under consumer protection legislation, such as the rights and remedies relating to purchasing goods, services and digital content. You also cannot restrict your liability for death or personal injury due to your negligence. Terms that attempt to restrict these rights and responsibilities are prohibited terms, which means that they are automatically unfair terms and a consumer will not be bound by them.

To help people understand whether a term is likely to be unfair or not, there is also a list of terms that may be unfair, which is often referred to as the 'grey list'.

There are some terms that are exempt from being assessed from fairness, such as any wording required by law to be included in the contract. Also, terms that set out the main subject matter of the contract or the price may be exempt from being assessed for fairness, but only if these terms are transparent and prominent. This does not mean that all price or subject-matter wording is automatically protected from being reviewed, as these exemptions are very narrowly applied. However, it is important that you ensure that pricing information, the subject matter of the contract and any important or unusual terms are presented clearly, prominently and brought to the consumer's attention early enough for them to take them into account before deciding whether to enter into the contract.

The Competition and Markets Authority has written some guidance on unfair contract terms, which can be accessed via our 'Unfair contract terms' guide. Reading through this guidance and making notes on terms that are likely to be unfair (and therefore need to be avoided) will help you to get a better understanding of how to write a contract that is fair and legal.

Consumer notices

Although they are not the main focus of this guidance, 'consumer notices' are also covered by consumer law. A consumer notice is wording that relates to rights or obligations between a trader and a consumer, or that tries to exclude or restrict a trader's liability to a consumer. The notice can be written or verbal, and does not have to form part of a contract. Examples could include a sign placed on display on your premises or in your car park, or an announcement made over a public address system or loudspeaker.

Advice for writing terms and conditions: a checklist

When writing your terms and conditions, the following checklist may be a useful starting point.

Terms and conditions checklist

Points to consider	Yes / no
Provide your business name, address and contact details clearly (you can find out more about these requirements in the 'Company and business names' guide)	
Use clear and plain language that customers can easily understand	
Avoid using legal jargon, and explain key words that are used. Consider having a definitions section if needed	
Consider using headings or sections to help people find specific information easily, and make sure that these headings accurately describe each section	
Use short sentences where possible	
Clearly explain your role and responsibilities, and your customer's responsibilities	
Ensure that the type and size of the text, layout and format are easy to read	
Consider the legibility of any printed terms and conditions, and ensure they can be easily read	
Use terms and conditions that are written for your own business, and avoid copying another business's terms. They may be unsuitable, unfair or legally inaccurate for the types of contracts that you enter into	
Include all relevant and legally required pre-contract information and provide it in the correct format, where required - for example, in a durable format, such as via email	
Include cancellation rights and the prescribed cancellation notice, where these apply to the contract	
Ensure that all important terms, such as the subject matter and price of the contract, as well as any unusual or significant terms, are brought to the customer's attention before the contract is made	
Ensure that your terms and conditions are properly incorporated into the contract (see the explanation of 'incorporation' earlier in this guidance)	

Points to consider	Yes / no
Ensure that the price of the contract is inclusive of VAT for consumer contracts, and includes all compulsory charges and taxes. For more information about pricing, see our 'Providing price information' guide	
Avoid any prohibited terms or terms that are likely to be unfair in consumer contracts	
Only include terms that would pass the fairness or reasonableness tests (as applicable)	
Include information about your complaints policy and any alternative dispute resolution (ADR) schemes that apply	

Guidance on writing your terms and conditions has been produced by the Competition and Markets Authority. The report *Improving Consumer Understanding of Contractual Terms and Privacy Policies: Evidence-Based Actions for Businesses*, written by the Behavioural Insights Team, also contains some good evidence-based suggestions that demonstrate what works in practice.

If you enter into online contracts with consumers, you may also find useful information in the British Standard BS ISO 21800:2025 *Guidance for organisations to increase consumer understanding of online terms and conditions*, although there is a charge for accessing guidance.

You can also seek advice or support from a solicitor, or your local Trading Standards Service if they offer business advice services.

< Part 2. Types of contracts

> Part 4. When things go wrong

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