

Legal Torque

THE IMPORTANCE OF HAVING TERMS OF TRADE

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-Cathy Bormans-

It is certainly good business practice to have terms of trade in effect between you and your customers which record the obligations of you both in terms of providing and paying for the goods and/or services. In particular, if you have occasion to extend credit to your customers, your terms of trade need to be adequate to ensure the effective and efficient collection of unpaid accounts.

What are terms of trade?

Terms of trade are the terms of the contract between the person selling the goods or services and the person buying the goods or services. Because terms of trade are a record of the parties' contractual obligations to each other, they can only be changed if both parties agree to change them.

Why have terms of trade?

If goods or services are being provided on the basis of informal arrangements then disputes can arise that could have been avoided if there had been clear written terms of trade from the start.

Terms of trade are also important in that they can help to minimise the risk of bad debts.

What should be included in terms of trade?

For transport operators, terms of trade should cover at least the following:

- when goods are deemed to have been delivered
- Payment – when payment is due and the consequences of late payment. An interest rate for late payment should be provided for in your terms of trade otherwise you may only be entitled to the statutory rate imposed by the court which can only be claimed if you issue proceedings against the customer. Also, you can only claim your actual legal costs of pursuing the customer if you provide for it in your terms of trade. Otherwise you are limited to the amounts set by statute for costs in court proceedings. Those costs do not reflect the actual costs incurred in instructing a lawyer to assist in pursuing a reluctant payer.
- Risk and ownership of the goods.
- Liability—whether the contract of carriage is “at limited carrier’s risk”, “on declared terms”, “at declared value” or “at owner’s risk”.
- Any provisions of the Carriage of Goods Act which are being excluded or modified such as when notice must be given of a claim (you can only contract out of some of the provisions of the Carriage of Goods Act, not all).
- Insurance.



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Personal Guarantee

Terms of trade can also provide for a personal guarantee. These are a very valuable tool in collecting unpaid accounts. However, personal guarantees must be in writing, be clear and unambiguous and signed by the person being held personally liable to pay you if the customer does not. If the guarantee is not clear or signed it may not be enforceable. Personal guarantees are especially important if your customer is a company that has gone into liquidation or is otherwise impecunious.

Making customers aware of your terms of trade

In order to be enforceable, your terms of trade need to be brought to the attention of your customer and accepted by them before the supply of the goods and services.

Preventing bad debts

Having terms of trade in place is a means of preventing bad debts. There are other steps you can take to prevent or minimise bad debts, including:

- Making sure you address any potential problems with customers early on.

- Having sufficient details about the person or company—their correct full name and contact details.
- Undertaking credit checks to identify whether they are creditworthy.
- Having systems in place for monitoring and pursuing bad debts.

Terms of trade cannot guarantee that you will in fact get paid. However, the better they are the more likely you are to be able to effectively obtain payment of not only the amount owing to you, but the costs of doing so, as well as interest on the amount outstanding. You may also improve your chances of getting paid if the guarantee provision in your terms of trade is effective and enforceable.

If you have any queries regarding your terms of trade or if you wish to prepare terms of trade for your business, please contact Cathy Bormans on 915-2412 or Shafraz Khan on 915-2422.

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