

Key considerations for terms of business

Terms of business set out the basics of your relationship with your client. They state your obligations to each other and must be effectively incorporated into your relationship.

General considerations



Incorporation

- How do you engage clients and provide your terms?
- Online (through your website, or by email)
- By clients completing an order form?
- By agreeing a specification or scope with your client?

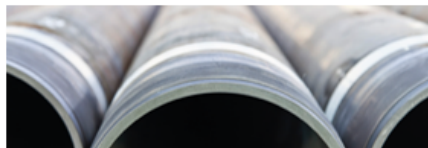
Consumer or business?

- Do you sell to one or the other, or both? Separate terms might be needed for consumers and businesses
- Consumers are protected by consumer law, which restrict what you can include in your terms, and make you set out certain consumer rights
- Businesses may want to negotiate your terms, making compromises in the terms might avoid this
- Consumer terms generally use simpler wording.

Intellectual property

- Will there be any intellectual property you want to protect or which is developed as a result of your relationship?
- Do you retain all ownership of the intellectual property?
- What rights do you grant to clients to use them?
- Does the client provide any intellectual property?

Services



- How (and in how much detail) you will set out, or agree, the specification
- Will you agree specifications or statements of work on a case-by-case basis?
- Are there any deliverables?
- Any approval/acceptance process?

Fees

- Fixed or time and materials?
- Extra rates for overtime?
- For day rates – how many working hours? Do you pro-rate or charge for half-days?
- When and how will you increase fees?
- What expenses you will charge for?

Term

- Do you lock clients in for a minimum term?
- Does that term automatically renew?
- How much notice is needed to terminate?

Warranty

- Are you prepared to give a warranty in relation to the services?
- Are the warranties subject to any conditions?
- What procedure do clients go through if they claim under a warranty?



Goods



- What specification or details will apply to the goods, and how they will be provided to the client
- What the client can do with the goods if they only pay after receiving them
- What conditions or guidance you might have around use or storage of the goods
- How delivery (and risk in transit) are dealt with
- When does title to the goods pass?
- If any goods will be made to order.

Price

- What is the price of the goods?
- How and when is payment expected to be made?
- Do you want to be able to vary the price of the goods from time to time?
- What expenses will you charge for?

Warranty

- Do you give a warranty, and if so for how long?
- Do different warranties apply to different goods?
- Are the warranties subject to any conditions?
- What procedure do clients go through if they claim under a warranty?

Other key terms

- Term and minimum commitments.



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