

## Terms of trade

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What terms of trade best suit your business? Different industries have different conventions about what is suitable.

Nowadays it is not enough for a business to simply post out terms of trade to its customers and expect them to be bound by them. To ensure customers are bound by terms of trade, it is better to have them sign their acceptance. This is particularly important where directors or shareholders personally guarantee the performance of their company and where the provider of goods or services wants to be able to charge interest on unpaid monies.

When drafting terms of trade for a standard seller of goods or services, consider the following key elements.

Terms	Notes
The Parties	Clearly identify the legal entity you are contracting with
Goods and/or Services	An exact description of the nature of the goods and/or services is essential
Price	
Payment	Including whether the customer is liable for late payment or debt collection costs in the event of unpaid invoices
Delivery	
Risk and Insurance	
Reservation of Title	The Consumer Guarantees Act 1993 requires that for a reservation of title clause to be enforceable, it must be fully explained to the buyer and it is preferable for the buyer to acknowledge this in writing and to be given a copy
Installation	Specify the obligations on the buyer to provide suitable premises, accessibility, services and amenities
Limits on Liabilities	Consider liabilities for defective products and a policy on refunds. Supplying goods and services to consumers prevents contracting out of the guarantees and remedies implied by the Consumer Guarantees Act.  However, supply of goods or services to businesses is open to parties agreeing in writing that the Act does not apply, allowing the parties to agree on liability
Warranty	
Miscellaneous	For example, indemnity, credit checks, and so on

### Terms of trade checklist

Work through the checklist below to clarify what you would like to include in terms of trade for your business.

Terms of trade differ from business to business and from industry to industry. Small businesses providing goods and services often want and can fit terms of trade on an A4 sheet of paper. On the other hand, the terms of trade for more complex businesses can run to several pages long.

Terms of trade are often printed on the reverse of invoices.

It is best that the customer signs acceptance of these terms before the goods or services are provided. If they do not sign acceptance of your terms, then they could later claim they did not know about them or agree to them.

There are three areas in particular that you can only effectively enforce if the customer has agreed to them:

1. Interest on overdue accounts: if you intend to charge interest on overdue accounts, then customers must be aware in advance of these possible penalties.
2. If unpaid invoices progress to debt collection and the debt collection agency charges collection costs which you would pass on to the debtor, customers must know about this when they buy (or order) the goods or services. You have the option to include this in your terms of trade or to clearly display notices about collection costs, print notices on credit application forms, or ask the customer to endorse their cheque so they agree to be liable for collection costs if it bounces. A suitable notice might say something like: 'Unpaid accounts will incur late payment fees and collection costs'.
3. Ownership of goods: the same applies to any clauses retaining ownership of the goods until they are paid for.

# Terms of Trade Checklist



<p>1. <b>The Parties – identify the legal entity you are contracting with</b></p> <p><input type="checkbox"/> Corporate</p> <p><input type="checkbox"/> Individual</p> <p><input type="checkbox"/> Trust</p>	<input type="checkbox"/>
<p>2. <b>Goods and/or Services</b></p> <p><input type="checkbox"/> If dimensions and specifications are included, are these exact or just estimates?</p> <p><input type="checkbox"/> Will there be customary or reasonable tolerances allowed?</p>	<input type="checkbox"/>
<p>3. <b>Price</b></p> <p><input type="checkbox"/> Is the price fixed or can it be varied?</p> <p><input type="checkbox"/> Does the price include or exclude GST?</p> <p><input type="checkbox"/> Is the price a firm quote or only an estimate?</p> <p><input type="checkbox"/> If a quote is given, how long does it remain open for acceptance?</p>	<input type="checkbox"/>
<p>4. <b>Payment</b></p> <p><input type="checkbox"/> Is the price payable 'cash on delivery', or is credit given?</p> <p><input type="checkbox"/> If on invoice, how many days after receipt of the invoice must the invoice be paid?</p> <p><input type="checkbox"/> What is the interest rate on credit provided? _____ %</p> <p><input type="checkbox"/> Will penalty interest accrue on an unpaid debt if payment is not made by due date?</p> <p><input type="checkbox"/> Is the debtor to incur the supplier's costs of pursuing the debt?</p> <p><input type="checkbox"/> Should a personal guarantee be obtained from the directors of a Company, or the trustees of a Trust?</p>	<input type="checkbox"/>
<p>5. <b>Delivery</b></p> <p><input type="checkbox"/> How, when, and where will goods be delivered?</p> <p>_____</p> <p><input type="checkbox"/> Who pays delivery costs?</p> <p>_____</p> <p><input type="checkbox"/> _____</p> <p><input type="checkbox"/> What are the consequences of late delivery?</p> <p>_____</p>	<input type="checkbox"/>

<p>6. <b>Risk and Insurance</b></p> <p><input type="checkbox"/> When does the risk in goods pass to the buyer? _____</p> <p><input type="checkbox"/> What are the risks of installation of the goods? _____</p> <p><input type="checkbox"/> Is insurance required?</p> <p><input type="checkbox"/> Who pays the insurance? _____</p>	<input type="checkbox"/>
<p>7. <b>Reservation of Title</b></p> <p><input type="checkbox"/> Does ownership if the goods pass to the buyer when the goods are delivered, or</p> <p><input type="checkbox"/> Does the seller retain ownership until full payment is received?</p> <p><input type="checkbox"/> Does the supplier have right of entry to the buyer's premises to repossess goods?</p> <p><input type="checkbox"/> Where goods have been intermingled or sold, does the supplier still have the right to reclaim the goods or to claim against the proceeds of the sale?</p>	<input type="checkbox"/>
<p>8. <b>Installation</b></p> <p>What are the obligations on the buyer to provide:</p> <p><input type="checkbox"/> Suitable premises _____</p> <p><input type="checkbox"/> Accessibility _____</p> <p><input type="checkbox"/> Services and amenities _____</p>	<input type="checkbox"/>
<p>9. <b>Limits on Liabilities</b></p> <p><input type="checkbox"/> Parties agree that the Consumer Guarantees Act does not apply</p> <p><input type="checkbox"/> Parties agree on liability, specifically: _____ _____</p>	<input type="checkbox"/>
<p>10. <b>Warranty</b></p> <p><input type="checkbox"/> Warranty to be given</p> <p>Covering: _____ _____</p> <p>Period: _____</p>	<input type="checkbox"/>

**11. Miscellaneous Clauses**

- Right to cancellation
- Indemnity (against the failure by a buyer to use the goods in strict accordance with instructions)
- Terms of trade can be varied by notice in writing to the buyer from time to time
- Governing laws
- Force majeure
- Change of buyer details
- Notices
- Privacy
- Credit checks

Completed by: \_\_\_\_\_ Date: \_\_\_\_\_

Reviewed by: \_\_\_\_\_ Date: \_\_\_\_\_