



Contract law basics

Guidance for businesses on the basics of contract law

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trading standards law explained

This guide was produced as part of a business advice project by the Department for Business and Trade and the Chartered Trading Standards Institute.



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INTRODUCTION

The background to contract law

What is a contract?

A contract is not only a written document with a signature, it can take many forms. Contracts are entered into every day, formally and informally, verbally and in writing. Whether you are entering into a large contract with a supplier, purchasing a cup of coffee at the start of your day or entering into an end-user licensing agreement to use software, these are all examples of contracts.

A contract is an agreed offer where the parties intend to create legal relations and there is sufficient certainty as to what has been agreed. Understanding what a contract is, when you have entered into one, and what your obligations and rights are, is fundamental knowledge for all businesses. This Business in Focus guide provides an overview of contract law as well as some key points to help you understand the importance of contracts within your business.

Why are contracts important?

Contracts set out important information about agreements that you enter into with other parties. This can include essential information, such as:

- the nature of the contract and what it is about
- the benefits, detriment and responsibilities that the parties to the contract are agreeing to
- what happens if things go wrong
- the liability and any limits on such liability of the parties to the contract
- the legal jurisdiction that applies to the contract in the case of a dispute

Having a contract that clearly sets out the intentions of the parties can reduce the chances of unnecessary disputes and costs. It can also clearly set out your rights and responsibilities and the obligations of consumers and other businesses that you enter into contracts with.

There are also some legal requirements that your business must comply with when entering into contracts, such as providing certain pre-contract information in consumer contracts, and ensuring the terms of your contracts are fair. Businesses often include this information within their terms and conditions to ensure they are complying with these legal obligations, but sometimes key information has to be given particular prominence. It is also important that your advertising and sales literature accurately reflects the terms of your contracts, and highlights any points that your customers might find surprising or especially onerous.

Contracts with consumers must comply with the requirements of consumer law and contract law principles, some of which are detailed in this guide. You will also need to be aware that if you enter into contracts with consumers outside of England and Wales, such as those based in Scotland or Northern Ireland, you must ensure that your contract also complies with their laws.

PART 1. FORMING A CONTRACT

The stages involved in the creation of a contract

Identifying a contract

Many business situations involve contracts. It can be helpful to know when a contract is in place between your business and a supplier or

customer. The traditional way to recognise a contract is to identify whether the main elements of a contract are all present. These are:

- an offer
- acceptance of that offer
- consideration
- an intention to create legal relations between the parties, which can include certainty of the terms agreed
- that each party has the capacity to enter into the contract

When deciding whether a contract is in place, the law considers the intentions of the parties by considering such factors as any verbal and written interactions, where the discussions took place and the actions and conduct of the parties.

What is an offer?

An example of an offer is where one party communicates that they would like to buy or sell goods or services. The offer needs to have sufficient information to be capable of being accepted and it needs to be clear that the party (whether it is the business or the consumer) making the offer intends to be bound by their offer.

Quotations

Providing a quotation for home improvement work to a customer will usually involve an offer. Quotations will often be given to a customer after you have visited a consumer's home and will include a detailed breakdown of the goods and services to be supplied, and the total cost for that work, inclusive of VAT.

A quotation should only be given when you are happy that you understand the customer's needs and that you have priced the job correctly. Once the customer accepts the quotation, it is likely that you will have a legally binding contract.

What is not an offer?

Sometimes communications do not provide enough information to be legally considered an offer. For example, displaying goods in a shop window are not usually considered to be offers. These communications are called 'invitations to treat'.

An invitation to treat is a communication whereby you are inviting consumers or other businesses to engage in further negotiations to purchase your goods or services. A common example would be where you have goods on display in your shop. The invitation to treat is therefore advising other people that you have goods or services that you may be willing to sell and that further discussions or negotiations would be needed to form a contract. If the customer is interested in your goods, they may bring them to the till with the intention of purchasing them (in legal terms, this becomes the 'offer', which you can then choose to 'accept').

Estimates

Often, businesses will give estimates to customers who are looking to cost work that they may wish to have done. These are often given before a full site inspection or survey has been conducted and at the early stages of a discussion between a business and a customer. An estimate is not usually deemed to be an offer because it will be based on incomplete information.

The estimate should clearly state that it is an approximation of costs, and a full survey or additional information would be needed to provide a full quotation. This makes it clear to the customer that the costs could increase or decrease once full details, measurements, etc have been obtained. It is however very important that estimates are realistic and not misleading to avoid infringing consumer protection legislation.

Advertising your services

Most businesses will advertise their goods and services online, whether that is via an online shop on a website, through influencers, or the use of general marketing campaigns. The general legal principle is that advertisements or goods on display in online shops are usually 'invitations to treat' (see above). The consumer makes the offer to purchase the goods and services when they put them into their virtual shopping basket and go through the process of purchasing the goods. The business accepts the offer (usually signified by taking payment from the consumer or otherwise stating that the order has been accepted) and goes on to dispatch the goods to the consumer.

You also need to be aware that if you provide key information about your product and its price in a commercial communication that enables a consumer to decide whether to purchase your product, you may be making an 'invitation to purchase' under the Consumer Protection from Unfair Trading Regulations 2008 (CPRs). For example, pages on your website displaying products that consumers can order, or prices on products in a shop, are likely to be 'invitations to purchase'. If you are advertising your business generally and no prices are supplied, this is unlikely to be an invitation to purchase.

If you make an 'invitation to purchase', certain information becomes 'material information' (a term used in the CPRs) that the consumer needs to be given in order to make an informed choice. This includes the main characteristics of the product, your business details (including your trading name and geographical address) and information such as the price (including all taxes). You may breach

the CPRs if you fail to give consumers the information they need to make an informed choice in relation to your product if this would cause, or be likely to cause, the average consumer to take a transactional decision they would not have taken otherwise. More information about your responsibilities under these Regulations can be found in the 'Consumer protection from unfair trading' guide.

Accepting an offer

In order for an offer to be accepted, a party usually has to clearly communicate their acceptance of the offer. If any changes are made to the offer or if any further negotiations are entered into such as offering a lower price, this is considered to be a 'counter-offer'.

Any counter-offers made will set aside the original offer and the counter-offer will stand as the new offer to the other party. The other party would then be free to accept or reject that offer.

EXAMPLE: CHANGING DETAILS IN A QUOTATION

Your business provides a quotation to a customer. This is an 'offer', as discussed above. The customer is unhappy with the quotation, so they come back to you with their suggested changes. This is a counter-offer and they have made you a new offer. You can choose to either accept or reject the customer's proposed changes to the quotation. If you accept them, you have a contract with the customer. If you reject the changes, there is no contract and either you or the customer would need to make a new offer / quotation if you wished to continue with your transaction.

Offers can also be set aside in other circumstances – for example, if they are rejected or if they are not accepted after a reasonable amount of time has passed.

Time limits for offers

If you are making an offer, you may wish to put a time frame on any quotations or other offers made to customers. This should be a reasonable time frame to enable them to carefully consider your offer. Doing this will clearly show what you consider to be a reasonable time frame for accepting your offer.

Once acceptance has taken place, there is usually a legally binding contract between you and the other party. This is known as the formation of the contract.

When does acceptance take place?

This depends on how the acceptance has been sent. For most forms of communication, acceptance takes place when it has been communicated to the party who made the offer. If the acceptance is given verbally, it takes place at the time of the conversation.

If the acceptance is communicated by instantaneous communication methods such as via email or a text message, for example, then acceptance is deemed to be received when it would be reasonable for the other party to have received it. For businesses, this is usually during their opening hours, when the other party could reasonably expect them to have read it. It does not matter whether they actually have read the communication or not. The contract would therefore be formed from this time.

There is an exception to the general rule about acceptance being received by the person who has made

the offer. This exception is called the postal rule.

The postal rule

This is an area of law that was developed when the postal system was predominantly used for business contracts and it states that acceptance takes place when a correctly addressed and stamped letter is placed in the post box, not when it is received by the party. However, this area of law is rarely applied.

It is therefore advisable for businesses to make it clear that acceptance takes place when it has been communicated to the business who has made the offer. This will show that you do not intend the postal rule to apply to your offer.

Contracts made online

Many online businesses will state in their terms and conditions when acceptance of a customer's offer takes place. It is therefore advisable to make it clear to your customers at which point you are accepting their offer to purchase your goods and services, and it is vital that you do not mislead consumers about when you are accepting their order. Doing this can prevent misunderstandings and can make it clear when your business intends to be legally bound by a contract entered into online.

Consideration

Consideration is a right, interest, profit or benefit; or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other. For example, this is often the goods or services that you are supplying in exchange for the money being paid for them. For contracts in England and Wales, sufficient consideration must be present for there to be a contract.

However, the consideration given does not need to be adequate. This means that the law requires parties to have entered into a bargain where each side has provided something of value, but the value does not have to be equivalent to what they are getting in return. It is usually left to the parties to determine the appropriate value, as long as this agreement has been reached fairly and the price agreed is clear, transparent and not misleading. It is also important that you calculate the cost of your goods and services carefully and ensure you are happy with any quotations or prices that you give to customers before a contract is formed.

Intention to create legal relations

Parties to a contract must have intended to create a legally binding contract with each other. The law presumes that agreements made in a social or domestic context, such as with your friends and family, are not intended to create a legal relationship. Whereas agreements entered into in a business or commercial context are more likely to be viewed as intending to be legal contracts, unless the parties can demonstrate otherwise.

Capacity to enter into a contract

Parties must also have entered into a contract of their own free will and not due to factors such as undue influence, duress or by misrepresentation. As a business, it is important that you consider whether a person has the capacity to enter into a contract with you and you must not take advantage of any vulnerability that they may have. You can find out more information about this in our 'Consumer vulnerability' guide.

Contracts which have not been entered into fairly, contain unfair contract terms or try to bind a consumer to terms they could not possibly have been aware of, will not be legally binding. See part 3 of this guide ('Terms and conditions') for more details.

PART 2. TYPES OF CONTRACT

Contract law differs depending on whether you are selling to consumers or other businesses

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 they are 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 Consumer Protection from Unfair Trading Regulations 2008. More information about these responsibilities can be found in the 'Consumer protection from unfair trading' 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 which 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 which is not a distance sale

or off-premises sale, then you will usually be entering into ‘on-premises’ contracts. Further guidance for 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 ‘Starting an online business’ guide. If you are also selling your goods and services on online platforms, there is further guidance for you in the ‘Selling goods via online platforms’ and ‘Internet auction sites and marketplaces’ guides.

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.

If you sell goods to consumers, further guidance about your responsibilities and your customers’ rights can be found in the ‘Selling and supplying goods’ guide.

If you supply services to consumers, further guidance on your responsibilities and your customers’ rights can be found in the ‘Supplying services’ guide.

If you supply consumers with digital

content, further guidance on your responsibilities and your customers’ rights can be found in the ‘Digital content’ guide.

There is also guidance on what applies when you are selling more than one of the above at the same time – see ‘Mixed contracts’.

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 3. TERMS AND CONDITIONS

The importance of terms and conditions for contracts

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 included in consumer contracts, such as the requirements in the Consumer Rights Act 2015 for goods 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 have to consider all of the circumstances surrounding the contract and other legislation and terms that may be implied in 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.

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, 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 are often referred to as the 'grey list'.

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 need to be avoided will help you to get a better understanding of how to write a contract that is fair and legal.

ADVICE FOR WRITING TERMS AND CONDITIONS – A CHECKLIST

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

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 can be easily understood	
Avoid using legal jargon and explain key words used. Consider having a definitions section if needed	
Consider using headings or sections to help people find specific information easily and make sure these headings accurately describe each section	
Use short sentences	
Clearly explain your role and responsibilities and that of your customer	
Ensure that the type and size of the text makes it clear to read	
Consider the legibility of any printed terms and conditions, and ensure they can be easily read	
Make sure the terms and conditions relate to your business, and are fair, especially if you copy them from another business	
Ensure that you include any pre-contract information that is relevant and legally required, and that it is supplied in the correct format – for example, in a durable format, such as via email	
Ensure that you include any cancellation rights your customers are entitled to and the prescribed notice of cancellation, if relevant	
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 and that your terms and conditions are incorporated into the contract	
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 blacklisted or grey-listed terms 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 you are a member of	
Include information that applies to the contract in the case of a dispute, such as which courts have jurisdiction. (These should be the courts of the state where the consumer resides. The law of this state should apply to the contract too)	

Further advice and tips for writing your terms and conditions have been provided 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. You can also seek advice or support from a solicitor, or your local Trading Standards service if they offer business advice services.

PART 4. WHEN THINGS GO WRONG

Resolving problems with a contract

Breach of contract

Sometimes things go wrong and one party to the contract may not carry out their responsibilities; this is called a breach of contract.

What if you breach your contract?

Where a breach of contract happens, the other party is often entitled to seek a remedy from the party that has not met their responsibilities under the contract. This prevents parties from entering into contracts and then not following through with the agreement made. The most common remedy for a breach of contract is to claim money to cover the loss that has been incurred by the other party. This remedy is called damages.

There may also be specific remedies set out in the law that would also apply to the breach of contract.

EXAMPLE: BREACH OF CONTRACT

If you have entered into a contract with a consumer and the goods you have supplied are not of a satisfactory quality, this would be a breach of contract. The consumer would be entitled to a remedy such as a full refund, or a price reduction under consumer law (although, in some circumstances, you may be able to offer a repair or a replacement first). If the goods also damaged the table they were placed on, the consumer may be able to claim damages to cover the cost of the damage to their table.

What if your customer breaches the contract?

You may be entitled to a remedy if a customer breaches their contract with you. The remedy must be a true reflection of the loss you have incurred and must not be excessive. Businesses often protect themselves from breaches of contract by taking deposits and advance payments.

Deposits and advanced payments

What is a deposit?

A deposit is a payment to reserve your goods and services and should only be a small percentage of the total cost of the contract price.

What is an advanced payment?

These differ from deposits as they reflect the costs you are incurring at specific periods in the contract. They could be taken to purchase materials, for example. You should always leave the consumer with a reasonable amount to be paid upon completion of the contract.

Any deposit or advanced payment that is retained must reflect your actual losses and you must take all reasonable steps to reduce any losses you have incurred. More advice on how to ensure you are dealing with your customers fairly, can be found in the Competition and Markets Authority's guidance.

Cancelling a contract

Where the customer has a legal right to cancel, or where they have a right to cancel set out in your returns policy or terms and conditions, this will not be a breach of contract.

This is a cancellation and if the customer has complied with the law or your returns policy, they are entitled to either a full refund or, if they are outside their statutory cooling off

period, whatever rights your returns policy gives them. More advice about writing your returns policy can be found in the 'Writing a returns policy' guide.

Withdrawing from a contract

If either party to the contract changes their mind before the contract has been formed, then there is no contract.

Payment methods

If your contract is with a consumer, they may also have rights against their card provider or finance company – for example, if they have paid for your goods or services with a finance agreement or on a debit or credit card. If you breach your contract with the consumer, they may also contact the finance company. Consumers can hold the finance company jointly and severally liable for your breach of contract and seek a remedy from them. They could also use services such as chargeback, where the card provider may charge back the payment the customer has made to you, depending on the payment method used. You may therefore be contacted by the card issuer or finance company if a breach of contract is not resolved.

Resolving disputes

Having clear terms and conditions, which are fair to both parties, can often reduce the amount of disputes that a business will have with their customers. However, if you do have a dispute, it is important to have a clear complaints policy in place and to have good communication with the customer.

If you have followed your complaints procedure and have been unable to resolve the dispute, you may wish to consider using alternative

dispute resolution (ADR). You are also required to send a consumer a deadlock letter with certain information requirements in it. More advice about ADR and these information requirements can be found in the 'Alternative dispute resolution' guide.

LEGISLATION

The laws featured in this guide

Trading Standards

For more information on the work of Trading Standards services – and the possible consequences of not abiding by the law – please see 'Trading Standards: powers, enforcement and penalties'.

Key legislation

- Unfair Contract Terms Act 1977
- Business Protection from Misleading Marketing Regulations 2008
- Consumer Protection from Unfair Trading Regulations 2008
- Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013
- Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015
- Consumer Rights Act 2015

New guidance: February 2024

Please note

This information is intended for guidance; only the courts can give an authoritative interpretation of the law.