



Guidance for Businesses on Terms and Conditions

Important information

Many businesses in the home improvement trade issue their customers with standard terms and conditions. It is essential that these are fair and balanced. Where possible you should seek legal advice about terms used to ensure your contracts are enforceable. We would also recommend that you follow advice offered by the Competition and Markets Authority.

The Consumer Rights Act 2015 covers terms and conditions issued to consumers, not businesses. Other regulations can also impact on terms and conditions for example the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013. (Please refer to our guidance documents for more information on these regulations).

We understand that terms and conditions can be a tricky area to get right, so we have highlighted some common terms which are actually unfair to consumers and must be avoided. This list is not exhaustive and there may be others that you will need to consider but it's a good place to start. As you go through the assessment process your Which? Trusted Traders assessor is also able to offer further advice.

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Unfair terms examples

Term: 'We are not liable for any delays caused that are beyond our reasonable control'.

All suppliers are required by law to supply goods and services when agreed in the contract and where no specific time is agreed it must be within a reasonable time.

Term: 'The customer will notify the supplier in writing, within 7 days of receipt of the goods or service, any defect and if received outside that time we will not be liable for any defects'.

Short time limits make the term unreasonable as some defects may only become apparent later. Customers should be expected to notify suppliers of problems as soon as reasonably practical.

Term: 'We will not be responsible for any consequential losses or damages howsoever caused'.

Consumers are entitled to seek redress if a supplier breaches the contract and this term makes it appear that this liability is restricted.

Term: 'All sums are due upon completion of the work and no deductions or set-off in the event of a dispute shall be allowed'.

If a customer has a dispute with a supplier during the contract about work quality or faulty goods, they are entitled to withhold part payment (set-off). This term attempts to deny that right and is unfair.

Term: 'The customer shall not be able to cancel the agreement and must pay XX cancellation charges as shown in this agreement if done so'.

There are regulations that cover a customer's right to cancel the contract within 14 days of the date the contract was made and these also dictate how the customer can cancel and what documents you must provide by law to enable them to exercise that right, for example you should provide a cancellation form.

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Term: 'If the customer does not pay the amount when due we will charge 10% per annum above the bank base rate accruing on a weekly basis until the sum is paid'.

Such terms are only applicable to business to business agreements and for business to consumer agreements you should not charge more than it reasonably costs to collect the amount due.

Term: 'Until goods are paid for in full we reserve the absolute right to enter and repossess all or part of such goods'.

Suppliers are not allowed to circumvent the law and may not enter the customer's property without consent. Ripping out goods that have been installed etc. may constitute criminal damage.

Term: 'We are not responsible for work carried out by subcontractors employed on our behalf and we are not liable for any damages caused by them'.

Suppliers are responsible for the entire performance of the contract agreed and cannot pass on their responsibility or liabilities for third parties engaged.

Term: 'We are not liable for faults or defects that occur with appliances supplied and which are covered by the manufacturer's guarantee'.

The supplier cannot escape liability for faulty products supplied.

Term: 'We can only accept liability up to XX'

A supplier cannot cap its liability for failing to provide services with reasonable skill and care or for ensuring services comply with information provided pre-contract at less than the price of the services. Any cap (including at the value of the contract) will be subject to a fairness test.

Term: 'We will not be liable for any oral statements or descriptions in brochures'

The supplier is bound by any statements or descriptions that the customer relies upon to enter the contract.

Term: 'The customer can only seek a repair through the warranty'.

The supplier cannot deny the customer's right to seek remedy under the Consumer Rights Act 2015 about work quality or faulty goods, they are entitled to withhold part payment (set-off). This term attempts to deny that right.