

Briefing Note

Terms of Business

Pros and Cons of using Standard Terms and Conditions

Pros

- They enable a business to introduce terms favourable to itself in a format that does not encourage heavy negotiation, for example, terms that limit its liability.
- They avoid additional time and expense involved in drawing up specific terms for each individual transaction.
- They provide certainty that the business will be trading on broadly consistent terms in all cases where the terms are used.

Cons

- Certain terms may be enforceable only if they satisfy tests of reasonableness.
- The standard terms must be incorporated into the relevant contract in order to be effective. Incorporation is likely to become an issue where the other party puts its own terms and conditions forward.
- Standard terms require regular review in order to ensure that they take account of legislative or regulatory changes or new case law and reflect any changes in the business activities of the company.

Effective Incorporation of Standard Terms and Conditions

Standard terms will only be effective if they have been properly incorporated into the relevant contract.

If standard terms are set out or expressly referred to in a contract that both parties sign, it can be assumed that the standard terms have been incorporated. More often than not, however, this will not be the case, and the owner of the standard terms must establish that the standard terms were put forward to the other party before the contract was made, and that the other party accepted their incorporation.

The simplest way of doing this is to expressly state in pre-contract correspondence that your business' standard terms will apply and to bring the terms to the attention of the other party in as much pre-contract and contract documentation as possible.

Certain rules relating to the interpretation of contracts must also be followed:

- Where standard terms are printed on the reverse of a document, the document should have a statement on the face of it clearly stating that the transaction is made on the terms printed on the reverse, and that they form part of the contract.
- If a standard term is unusual, particular attention should be drawn to it.
- If a standard term governs or potentially varies something on the face of the document, for example, price or delivery date, it should be cross-referenced.
- When introducing new standard terms, a copy should be sent to every customer or supplier, stating that the new terms will apply in the future.

It can be worthwhile enclosing a slip for return by which the customer or supplier acknowledges receipt and acceptance of the new terms. Such a confirmatory slip will not always be returned but, when it is, it can be invaluable evidence of acceptance of the terms.

Please contact Turcan Connell's Business Law team for more information on terms of business.

Please note that this briefing note is intended as a short summary of terms of business. No responsibility can be accepted for any action taken in reliance on this note and specialist advice should be taken in every case. Turcan Connell would be happy to provide such advice.

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