

Those pesky Ts and Cs

You and your customers enter into a contract every time you sell your goods or services. The contract exists whether you have exchanged letters or emails, or you have simply made a verbal agreement. In essence, terms and conditions of sale (often referred to as simply Ts and Cs) are written contractual terms provided by you to another person or organisation, stating clearly the terms by which you do business.

Your Ts and Cs will be different depending on whether you sell to the general public (from business to consumer – often abbreviated as B2C) or to other businesses (from business to business, frequently called B2B).

Why go to the trouble?

There are many benefits to having clear Ts and Cs:

- **to reassure** your customers that they are dealing with a professional business
- **to provide clear terms** that can be enforced against your customer, should the need arise
- **to provide commercial and legal certainty** – even though verbal contracts are valid, it is better to put terms in writing so as to avoid any confusion
- **to protect your business** (as far as possible) against legal claims that may be brought against you.

It's time to take action

Turn to the checklist '**Ts and Cs: What you need to know**' on **page 2** and read through the various sections. As you do so, remember:

- **You must draw your customer's attention** to your Ts and Cs *before* an agreement of sale, or actual sale, is made. This is important to remember and is why it's no good putting your Ts and Cs on the back of your invoice – that's too late in the proceedings.
- **It's worth getting legal advice** when it comes to your Ts and Cs to make sure that everything is covered and your business is fully protected.
- **Keep your Ts and Cs up to date**, taking into account any changes in your circumstances or changes in relevant legislation.
- **If you are selling goods or services to consumers**, as opposed to business customers, be aware that consumers have additional statutory rights.



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Ts and Cs: What you need to know

IMPORTANT: if you sell goods or services to consumers, rather than to other businesses, they have additional statutory rights. It is your responsibility to know what those are.

What are they again?

Terms and conditions of sale set out the particulars of your contract with your customer. Clearly written Ts and Cs:

- Help to make sure that **both parties understand the particulars of a sale**, for example, they can help to ensure customers are clear about the payment terms.
- **Form part of a legal agreement** between both parties, and any breach of them is a breach of contract that can be taken to court – for example, if a customer fails to meet the payment terms set out in your Ts and Cs, you can take action.
- **Help avoid confusion** and protect your business if there is a dispute.

What should they include?

Ts and Cs of sale are usually set out in a separate document with numbered, sections or clauses. They typically include:

- **Definitions:** any general words or phrases used in the Ts and Cs that could be thought of as ambiguous.
- **Price:** the price charged for goods or services, and whether it is inclusive of VAT or other charges such as delivery.

- **Payment terms:** when the customer should pay for the goods or service – for example on agreement of contract, on delivery, or within 30 days of the date of the invoice – and how they should pay, for example by credit card, cheque or bank transfer.
- **Delivery:** any delivery arrangements, explaining delivery timeframes and how you will deliver.
- **Warranty or guarantee:** any warranty or guarantee you offer to your buyer (which may be better than those provided under the buyer's statutory rights).
- **Cancellation:** the circumstances under which the contract can be cancelled or terminated, for example if both parties agree, or if one party is in breach of the contract.
- **Jurisdiction:** Ts and Cs typically end with a statement referring to the law of the country in which the business operates.

Other Ts and Cs that might be included:

- **Interest payable:** for example, if you charge interest on late payments and how much you charge.
- **Credit:** explaining your credit limits, credit periods (such as '30 days from date of invoice') and any other terms.

- **Indemnification:** an agreement that the buyer will not hold the seller liable for any future legal action, for example for third party claims arising from the use of the goods supplied.
- **Intellectual property rights:** where goods or services supplied are subject to copyright or other intellectual property rights, this clause specifies who owns and controls these rights.

This is not a definitive list, and you may need other Ts and Cs depending on your circumstances and the specific goods or services you are supplying, and to whom.

GET THE RIGHT HELP AND ADVICE

Your Ts and Cs are legal documents, and so it is wise to get them drawn up with the help of a solicitor.

You can buy template documents online and Ts and Cs used by other businesses can also be used as templates, but if you create your own Ts and Cs using these templates, you should still get them checked by a solicitor. They are important legal documents, after all.

Presenting your Ts and Cs

As we mentioned before, **you must draw your customer's attention to your Ts and Cs before the sale is agreed.** It is not enough to supply your Ts and Cs after the sale, for example with the payment receipt.

If you provide your Ts and Cs in a format that is not immediately obvious to your customer – on the back of a quotation, say, or on a separate page of your website – you should make this clear to your customer. You could put a note on the front of the quotation or have your customers tick a box on your website, to show that they have read them.

Ts and Cs do not necessarily have to be written down, and can be done informally, for example by verbal agreement. However, it is a good idea to set out your Ts and Cs in writing as this can help to avoid potential disputes going forward.

Note: the terms and conditions presented to visitors on your website are not the same as the terms and conditions of sale. Many people get them confused. Website Ts and Cs cover the content of the site and its use and ownership, not any sale of the goods or services from the website.