

## ABOUT YOUR TERMS OF SUPPLY

If you supply goods or services, test your usual terms and conditions of supply against the issues below. If they fail the test, you might want to change them.

### All Supplies

**What:** Your staff know what are your usual terms are.

**Where:** Your staff know where to find paper and electronic copies of those terms.

**Changes:** Your terms cannot be changed without proper authority. Maybe your lawyer looks at any changes.

**Publication:** Your terms are attached to your published price list, brochures and quotes you give.

**Acceptance:** If in doubt, you ask your regular or significant customers to confirm they accept your terms as the basis for trading with you. Confirmation in writing is best.

**Quotes:** Your quotes are time limited (expire after a set number of days). You can withdraw or change a quote before its acceptance.

**Rolling orders:** If a customer places rolling orders with you, you reserve the right to decline any particular order.

**Delivery times:** Your terms state that a time for supply is an estimate only, not a fixed commitment.

**Delivery place:** Your terms are clear that goods and services are to be supplied at your premises, unless otherwise agreed.

**Price Lists:** You can change a price list without notice. Your price lists allow for changes in your costs of materials or labour, or movements in foreign exchange, that occur before acceptance of an order. Your price lists say that delivery costs are recoverable in addition to the listed price. You can recover a surcharge, if payment is by credit card.

**GST:** Your prices include GST, or your terms say you can recover from the customer any GST you are liable to pay because of your supply of goods or services.

**Defective specifications:** If you supply to meet the customer's special specifications, you can recover any additional costs if those specifications are found to be incomplete or incorrect.

**Customer's contribution:** The customer is obliged to give you any necessary instructions in good time. If you need access to the customer's premises, the customer must give you free access to the premises and amenities (such as power, water, lifting equipment) as reasonably required.

**Invoicing:** You can render interim invoices for goods or services being supplied in instalments or over time.

**Payment:** You can call for a deposit with order, particularly if you must order in unusual materials or unusual quantities or put on extra staff. You can require payment on delivery, subject to any credit terms you may allow. You may require payments by deposit of clear funds into a bank account you nominate.

**Set off:** You can set off amounts the customer owes you, against amounts you owe the same customer.

**Customer default:** If the customer defaults, you can: (1) suspend or terminate supply under that or any other contract with you; (2) suspend credit terms; (3) charge certain and reasonable interest on late payments.

**Termination rights:** You have express rights to terminate your future obligations if specified events occur. You can sue to recover "loss of bargain" damages if you exercise that power of termination.

**Force majeure:** You are not in breach if your performance is hindered by circumstances outside your reasonable control.

**Limited liability:** Brochures and other publications of yours are not to be taken as representations of specific characteristics of your goods or services. Your liability for a defective supply of goods or services is limited to the extent allowed by applicable law. Subject to law, you limit your liability for third party components or services to the warranties extended to you by the third party.

**Consequential loss:** You expressly disclaim liability for loss of profit and other consequential loss the customer may suffer from your breach of contract.

**Dispute resolution:** Your terms make litigation a last resort, after mediation or arbitration.

**Jurisdiction:** If you supply outside your home State or Territory, your terms make clear the laws of which jurisdiction apply to a contract.

**Notices:** If you are a large organisation, a notice to you must be addressed to a specific officeholder of yours.

**Intellectual property:** If you create intellectual property in your work, you own it and not the customer. If you allow a customer to use your intellectual property, your licence terms are specific to the circumstances (and are vetted by a lawyer). The customer is obliged to keep confidential your secret intellectual property.

A joint publication of Adam Gamble (solicitor) (mobile 0439 384 298; [agamble@arcuslegal.com.au](mailto:agamble@arcuslegal.com.au)) and Mark Sallis (barrister) (mobile 0438 834 430; [msallis@senet.com.au](mailto:msallis@senet.com.au)).

### Goods in particular

**Lien:** You can retain possession of goods being worked on or stored, until the customer pays for the work.

**Risk:** Risk of loss or damage to goods passes to the customer when the goods leave your possession, even if you retain ownership of them.

**Title:** You remain the owner of goods until the customer pays for them. Until then you can retake the goods and sell them to another customer.

**Acceptance of goods:** The customer accepts goods if you are not notified otherwise within a set time after delivery.

**Return of goods:** A customer has no right to return goods unless manifestly defective. A return you otherwise allow may attract a handling fee.

**International aspects:** For international sales, your terms allow for and are consistent with applicable Treaties and International Chamber of Commerce publications (such as INCOTERMS).

### Services in particular

**Time charges:** Time charges (including overtime and call out costs) are at current rates from time to time. Part hours may be charged as whole hours.

**Travel:** Travel and accommodation costs are recoverable for work at a distance.

**Control:** Your staff are under your control, not the customer's.

**Poaching:** Your customer should not entice your staff to join the customer.