



Online Business



TOWNSENDS BUSINESS
& CORPORATE **LAWYERS**



What I need to know about...

Online Business

Doing business on-line

Getting the most out of e-commerce means using your website not just as an on-line brochure but to transact or attract business. This involves empowering your customers to carry out real-time buying or ordering of your product through your website.

Some commercial website businesses provide the goods or services themselves while others facilitate the sale and arrange for the goods or services to be supplied by someone else. These facilitators can be transparent in stating openly that they use a separate supplier, or non-transparent in allowing the customer to think that the facilitator will handle supply.

Setting up an on-line facility

What legal issues would you need to consider if you were seeking to operate your business either wholly or partly on-line?

- Who is your target market? What product or service will your website provide? Will it suit promotion and sale via the Internet?
- How will the buying/ordering system work? What are the system's specifications? Is the technology readily available and supportable?
- Who will design your website? What are the important features of that design? (A balance of both attractive design and technical functionality will be needed, so choose your designer carefully.)
- Who will build your website? What will the builder supply (website, software and/or hardware recommendations)?
- After the website is completed, will the builder provide maintenance, support, a helpline, training or documentation?
- Is the system/software warranted by the builder for a period after completion?
- What intellectual property is involved, and who owns it? Has the builder provided the necessary warranties to you that their actions have not breached the intellectual property rights of third parties? Have you been given the necessary acknowledgments of ownership?
- Is your business going to supply the product or service direct or simply take orders and subcontract the supply elsewhere? What are your agreements with those suppliers? How will you maintain the quality of their product and their customer service?

- How will your website be marketed? What steps will you put in place to bring people to your site? How will you get the web search engines to find you? What other methods will you employ to promote your site?
- Who will analyse visits to your site in order to improve its effectiveness?
- What software, hardware, browser or credit cards will your customers need to access your site and use your e-commerce system?
- What are the customers' obligations?
- How is your business to be paid in respect of purchases/orders placed through the site?
- Is a contract supposed to be established on-line when the customer orders the goods or services and, if so, what is the evidence of that contract? How can you prove that the customer made that order? What are your other risks in relation to on-line contracts? What laws apply in this area?

There are a number of regulatory concerns related to transacting business with third parties over the Internet.

Firstly, there is reputation risk where your customers might hold your business responsible for substandard products or services delivered over the Internet or for any unauthorised disclosure of personal information such as bank account details.

Secondly, there is a transaction risk that third parties have inadequate systems or security policies that might breach security, violate customer privacy or cause a transaction to fail.

Thirdly, there is a compliance risk – failure to comply with regulations applicable to business transactions such as consumer protection privacy laws.

Your business can address these risks in a number of ways.

- Due diligence can be carried out on web-linked parties to minimise strategic and reputation risks arising from non-compliance with privacy policies, consumer protection policies or misrepresenting the ability to deliver promised products and services which your business cannot meet.
- Contracts can define the rights and responsibilities of your business and any web-linked third parties to minimise transaction and reputation risks. These contracts should address the scope of permissible reputation activities, termination, indemnification and limitation of liability clauses.

- Website disclosures can avoid customer confusion and minimise transaction and compliance risk. The disclosure statement should state that your business does not provide, endorse or guarantee any products or services through third party web-links. Your business must take reasonable steps to distinguish your products or services from those offered by third parties.

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