



Sales Terms



TOWNSENDS BUSINESS
& CORPORATE **LAWYERS**



What I need to know about...

Sales Terms

Why do you need to advise your client of your sales terms?

Whether you sell your products or services by wholesale or by retail (although not over a shop counter), you need a contract to clarify the terms of sale. These are the terms on which you have agreed to sell the goods.

Even though they will often not read them, it is important to make buyers aware that you have sales terms that stipulate the basis on which you do business. You should also give the buyer the chance to consider the terms and obtain advice on the sales contract.

Sales terms are often found on the back of a company's quotation or confirmation of receipt of order. They are also found on the back of invoices (although if the company issues the invoice after the products or services are delivered, it is probably too late to be providing sales terms).

To be effective, sales terms must be brought to the attention of the buyer before the sale is completed. Ideally the buyer should acknowledge their agreement with the terms. This is sometimes difficult to arrange and administer when everyone is busy. The next best option is to draw the buyer's attention to the terms and the fact that they will apply to this transaction with the buyer.

Sales terms should not be hidden or printed so small or so faint that they could easily be missed. It could then be argued that a reasonable buyer could not be expected to know they were there and is therefore not bound by them.

A business can use their own sales terms regardless of whether they are selling their products or services or buying the products and/or services of others. Where both parties have their own sales terms good drafting may allow your terms to take precedence over the terms of the other party.

What should you include in your sales terms?

Sales terms need to include the following:

- The precise identity of the supplier: if you are selling, and you've prepared a quote, this will be your company. If you are buying and you've prepared your standard order form, then the supplier will be the business you are buying from
- The precise identity of the buyer: if you are selling, on your quote this will be your customer. If you are buying and you've prepared your standard order form, then this will be your business
- A precise description of the product or services being provided: the greater the specific detail you provide, the better

- Whether the sale is by sample: the buyer has been shown a sample of the end product and has approved that sample (which should be identified and retained for future reference)
- The time for delivery of the goods or services: is there a specific deadline which must be met or is the timing just approximate?
- An automatic extension period for delivery: this depends on factors outside the supplier's control
- Location of delivery: states whether delivery is at the supplier's site, the buyer's site or another site of the buyer's choice
- Any deposit to be paid and any other terms of payment: this includes the use of letters of credit and other documents designed to safeguard payment
- Buyer responsibility: if the product is being shipped, at what point does the buyer assume responsibility... and risk
- Completion dates
- Who pays the GST
- Interest on unpaid amounts: this includes some indication of the rate
- Retention of title clause: the buyer does not own the goods until payment is received. Does this clause mean that the Seller's interest should be registered on the Personal Property Securities Register?
- Variations to specifications after order: who can order and what arrangements will be made for variations to price
- Installation conditions: if appropriate
- Third party guarantee of payment: if the buyer seems financially insecure
- Limiting liability: for faulty product or services (to the extent permitted under the Australian *Competition and Consumer Act* (2010))
- Termination: How either party can terminate the contract
- Dispute resolution

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