

How to prepare standard terms and conditions



Standard (written) terms and conditions (T&Cs) are the legal basis on which you will be engaging with customers - and are essential when starting a business.

It is recommended that you don't copy T&Cs from another business; no two businesses are exactly the same, plus they may not have obtained legal advice. You are advised to use a commercial contracts lawyer with experience of your industry to prepare or check your T&Cs. Your lawyer will also ensure your T&Cs meet federal and state laws and any industry regulations.

Why are terms and conditions important?

When drafted correctly, T&Cs:

- are legally binding
- set out the rights and obligations (for you and your customers), relating to the sale of products or provision of services
- outline what customers can expect when dealing with your business and how problems or disputes will be dealt with
- state how and when goods or services should be paid for, and what will happen if payments are not made in line with the contract
- help protect your business and may limit your liability in certain circumstances

Key element of all terms and conditions

All T&Cs must adhere to the [Australian Consumer Law \(ACL\)](#). The ACL is the national law for fair trading and consumer protection, giving you and your customers certain rights and protections. You need to be aware of what it covers as there are penalties if you make claims that are false, misleading or deceptive.

Protection from unfair contract terms

The ACL also protects customers from unfair terms in standard form contracts (these are non-negotiable contracts offered on a 'take it or leave it' basis). This will apply to your T&Cs when dealing with individual customers or other small businesses. For further information about unfair contract terms and the types of protections that may apply visit the [ACCC](#) website.

Sections frequently included in terms and conditions

- A photograph or written description of your product or service.
- Methods of placing orders.
- Price and payment methods. You may wish to include a price list or quoted price, stating accepted methods of payment, payment terms, and the consequences of late or non-payment. Customers will pay you more promptly if the consequences of them not paying on time are clearly stated (include details about debt recovery, interest, charges and/or cutting off supply of your products or services).
- Warranties and disclaimers.
- Shipping and delivery information, including how any problems will be resolved.
- Website security, particularly in terms of privacy and payment details.
- Period of the agreement and how to terminate the agreement.



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Sections frequently included in terms and conditions continued

- Indemnities and limitation of liability. Your lawyer can advise as to how far you can limit your liability. You cannot exclude your liability from consumer guarantees.
- Returning goods.
- How complaints will be resolved.
- Insurance for goods in transit or in storage, or for services on site.
- The governing laws that may apply.
- The period of notice required for changes to orders.

Privacy policy

If your business collects customer information and credit card details, your T&Cs should outline how you collect, manage and protect customers' personal information and how long their details will be kept. If you use cloud-based systems, you should know where your data is located, (within or outside Australia) and mention this in your privacy policy. You may want to refer customers to a separate privacy policy displayed on your website.

Website terms and conditions

If your business has a website you will need to include specific clauses in your T&Cs. These can include:

- which protections are in place against misuse of your service or stealing your content
- a statement of ownership of any and all content posted on the website, along with the right to reproduce or share this content
- intellectual property protections such as copyright, trademarks or patents
- a disclaimer about the information on your website, such as not being liable for accuracy
- disclosing any advertiser relationships
- any accounts or subscriptions offered on your website, terms of their use and how they can be terminated

You may want your T&Cs to pop-up when a user first visits your website. You can also make it required information to read before they can progress further on your website.

General tips for terms and conditions

Accepting your terms and conditions

It is good practice to have customers sign acceptance of your T&Cs before you provide them with any goods and/or services. If a customer refuses, seek feedback about their concerns.

Keep them simple and accurate

Poorly worded and incorrect T&Cs could cause you financial loss and stress, and unhappy customers. Your T&Cs should:

- be written in plain English that is easy to understand (if you can't follow what a term or condition means, it is unlikely your customers will be able to)
- not contain misleading statements
- not be considered 'unfair'

Format, location and accessibility

Carefully consider the format, location and accessibility of your T&Cs. This will have an impact on their effectiveness, plus how (legally) binding they are. Your T&Cs should be clearly stated on all quotes, estimates, contract and related documentation.

Not providing the T&Cs of a sale of a product or service to your client before or during a transaction could affect your ability to enforce them at a later date.

How and where you present your T&Cs is very important; having everything on one page in tiny print will not endear you to your customers and may have legal consequences.

In addition to helping you to draft appropriate T&Cs for your business, your legal adviser should also recommend how they could be included in the overall sales contract.

More information

For further information or questions on establishing terms and conditions for your business, visit smallbusiness.wa.gov.au or call 133 140 to speak with an adviser.

NOTE: THIS INFORMATION IS NOT A SUBSTITUTE FOR LEGAL ADVICE