

Notes to Standard Conditions of Contract for Goods BPIF 2012

These notes explain how the Standard Conditions may be used in your business.

NB. Changing the Standard Conditions without legal advice is not recommended except for selecting one of the alternative versions which have been included in the square brackets. When the appropriate version has been selected the rejected provision and the square brackets should be removed. Certain conditions which exclude or limit your liability or provide you with specific rights (eg retention of title in the Risk and Title Section, Claims and Liability and Limitation of Liability) should not be altered without legal advice. For ease of reference those clauses which should not be altered without legal advice are marked thus: DNA

1. Definitions

It is normal to include definitions at the beginning of a contract so that everyone is clear about the meaning of specific words used in the contract. When using definitions they should always appear with an initial capital letter in the rest of the text to indicate that you are referring back to a definition. DNA

It should be noted that certain of the definitions refer to information which is included on the front of the contract and this information must be inserted at the time the contract is made. It should also be noted that the definitions contain a definition of the sellers specification (rather than the buyer's specification) of the goods which are to be supplied and it should be noted that clause 6.1(a) states that the goods will on delivery conform in all material respects with this specification.

2. Contract

This clause states that the contract between you and your customer is made on your standard conditions only. It is very important that your procedures ensure that your customers' orders are accepted by you in writing subject to your terms and conditions. DNA

3. Price and Payment

a) This clause states that the price is set out overleaf; alternatively it says that the price is set out in your written acceptance of the customer's order. It also states that the price is exclusive of VAT; if this statement is not made the price is deemed to be inclusive of VAT. DNA

b) It will be necessary for you to insert your normal payment terms in clause 3.5 and decide whether or not the time of payment of your accounts is of the essence as this provision may not be acceptable to your customers. Invoicing should really take place on delivery or within a specified period after delivery. DNA

c) The clause states that if your customer does not provide you with sufficient instructions or is late in providing you with instructions then you are entitled to charge your additional costs.

d) The clause provides that If your invoices are not paid then you are entitled to charge interest in accordance with the statutory provision for payment of interest or a rate of interest specified in the contract and/or to suspend your performance of the contract.

e) The clause provides that the costs of deliveries will be charged extra. You will need to adapt this clause should your practices be different.

f) The clause allows you to charge for storage if there is a suspension or delay by your customer and you may demand immediate payment should such suspension extend beyond 10 business days although you may want to substitute a shorter period.

g) The clause provides that any dispute with your customer should be referred to mediation or resolved by bringing legal proceedings. Further the clause provides that if only part of an invoice is disputed then the undisputed amount will be paid by your customer.

4. Credit Facilities

The clause contains a general statement about your willingness to grant credit facilities and you may wish to adapt the clause to suit your own arrangements or alternatively you may decide to remove the clause if you don't grant credit facilities to your customers.

5. Delivery

a) It will be necessary for you to insert the correct statement about the place where and how you will deliver the goods or whether your customer will collect the goods from your premises. The clause states that delivery is to kerbside only with the off-loading and additional transportation being your customer's responsibility and you may want to correct these statements to suit your arrangements. It also provides for extra charges for delivery to addresses other than your customer's address or delivery which involves difficulties with access and again you may want to change this statement if it is not consistent with your arrangements.

b) The clause states that delivery dates are estimates and that time of delivery is not of the essence. Therefore your customer cannot return to you demanding a discount or reject the goods because they were not delivered in accordance with a strict timetable in the contract. DNA

c) The clause provides for an extra charge should expedited delivery be required by your customer.

d) The clause entitles you to make deliveries by instalments without being in breach of the contract. DNA

e) The clause provides that you may deliver quantities of the goods which may not correspond precisely with the quantities ordered by your customer without being in breach of contract and thereby entitling your customer to terminate the contract for your breach or to reject the goods as not corresponding precisely with the quantity of goods which has been ordered.

f) The clause places an obligation on your customer to accept the goods on delivery (DNA) on the assumption that no inspection or testing of the goods by the customer after delivery is necessary in order to demonstrate that the goods are acceptable and in conformity with the contract. Proving that delivery has taken place is important in order for you to be able to invoice your customer.

g) The clause states if your customer fails to take delivery that delivery is deemed to have taken place so you may invoice and in addition the clause provides for you to recover the cost of storing the goods although you should consider whether additional transport, insurance, loading and unloading costs could be incurred as well and should be recoverable from your customer.

6. Quality

a) The clause states that the goods which you supply to your customer will conform in all material respects with the specification which you provide (if there is one) and/or the goods will be of satisfactory quality and fit for any purpose which is held out by you in relation to the goods. DNA

b) The clause contains an exclusion of the terms implied in respect of the goods by sections 13-15 of the Sale of Goods Act 1979. DNA

c) The clause provides that you will not be liable to your customer for any failure of the goods to comply with the specification or with the condition regarding quality and fitness for any purpose in any of the events set out in the clause. DNA

7. Risk and Title

- a) The clause states that risk will pass to your customer on delivery.
- b) The clause contains a retention of title clause so that your customer will not acquire title to the goods until all your unpaid invoices have been paid in full. DNA
- c) The clause contains restrictions in relation to retention of title which entitles you to inspect your goods and to recover them if they have not been re-sold if your customer has not paid for them. DNA But it should be noted that your customer has a right to re-sell or use the goods which you have supplied in the ordinary course of its business unless and until you exercise your rights under this clause.

These clauses are relevant in insolvency situations to avoid the insolvency practitioner treating goods which have been delivered and not paid for as the property of your customer. It entitles you to enter your customers' premises and inspect, label and remove your goods but where the end-user has paid for and received the goods from your customer it will be difficult to retrieve them despite the retention of title clause or to trace your claim for non payment into the proceeds of sale received by your customer for your goods.

8. Claims and Liability

8.1 Claims

- a) The clause seeks to limit your liability by stating that you will not be liable for any claims unless you are given the following written notice: DNA

Written notice of: Within:

Damage, delay, loss of 3 business days of delivery
 Non-delivery of 3 business days of notice of dispatch

Claim for compensation for: Within:

Damage, delay, loss, non-delivery
 5 business days of delivery or notice of dispatch
 All other claims (eg defective goods)
 10 business days of delivery

unless there was a good reason why your customer couldn't comply. In order to be enforceable at law these time limits must be reasonable and you may want to adapt them.

- b) If the goods are really badly defective, then your customer can reject them, but must do so within 10 business days of delivery and you must decide whether in relation to the nature of the goods this period is reasonable so that the time limit is enforceable.
- c) The clause provides that you must be able to inspect the goods within 5 business days of being notified of a claim.

8.2 Liability

- a) In respect of claims by your customer for any defective goods you supply your liability is limited at your option to rectifying the defect at your cost supplying replacements for the defective goods at your cost or crediting the value of the defective goods. DNA
- b) The clause states that your customer must accept your offer to replace or rectify any defective goods or credit the cost of the goods or lose any right to sue for losses.
- c) The clause requires your customer to return any defective goods to you for your inspection before you are obliged to repair or rectify any defective goods or issue any credit for them.

9. Limitation of Liability

- a) The clause contains a statement that the limitations or exclusions contained in the contract do not exclude your liability for death or personal injury resulting from your negligence. DNA
- b) The clause states that under no circumstances whatsoever will you be liable in contract tort (including negligence or breach of statutory duty) for the specific losses detailed in the clause or any indirect or consequential loss arising under or in connection with the contract. It will be necessary for you to decide which of the specific losses should be included in the clause. DNA
- c) The last paragraph of clause 9.2 and clause 9.3 contain suggested provisions which limit your liability to your customer to a specified sum or percentage of the price of the goods although such provisions may not be commercially acceptable to your customers unless your negotiating position is such that you are able to impose this limit on your liability and therefore you should decide whether or not to include them. Further the amount of any such limitation should be reasonable in order to be enforceable and if reasonable it would only be enforceable against a business customer and not against a consumer.

10. Insolvency

Under this clause an insolvency practitioner appointed in relation to your customer cannot insist that you complete the contract and all your invoices become immediately payable. DNA

11. General Lien

The clause states that if your customer doesn't pay your invoices you may seize all its goods in your possession and sell them after 10 business days' notice. Any balance remaining after payment of your outstanding costs is to be refunded to your customer. This provision may not be appropriate for inclusion in your conditions if it is unlikely that you will receive any materials from your customer in order to perform the contract.

12. Force majeure

The usual exclusions of force majeure events have been included in the clause (DNA) so that you will not be liable for any failure to perform the contract due to the occurrence of any of these events and you will be entitled to an extension of time.

13. Data Protection

There are rules about personal information and the clause states that you and your customer will comply with the Data Protection Act. DNA

14. General

- a) The clause states that you may assign, transfer, charge, sub-contract or deal with the contract so that you are not dependent on your customer's consent to do so. DNA.
- b) The normal statement that a third party has no rights under the contract has been included in accordance with the Contracts (Rights of Third Parties) Act 1999. DNA
- c) If a court finds a clause to be unenforceable, it could make the whole contract unenforceable and the clause aims to prevent this situation. DNA
- d) The clause contains the usual provision about not disclosing the other's confidential information although this provision may not be required if no confidential information will be disclosed in the performance of the contract.
- e) The clause states that any variation to the contract must be in writing. DNA

15. Termination

The clause entitles you to terminate the contract with immediate effect if your customer fails to pay any undisputed amount on the due date and remains in default for a specified period thereafter or commits a material breach of its obligations under the contract and fails to remedy such a breach (if remediable) within a specified period after receipt of notice from you or commits a series of persistent minor breaches which when taken together amount to a material breach or your customer is insolvent or your customer ceases or threatens to cease to carry on all or substantially the whole of its business. DNA

16. Consumers

The law provides that exclusions and limitations of liability in a contract are only permitted and enforceable in contracts between businesses and are not permitted where the customer is a consumer.

17. Notices

It is important that a contract should contain a provision setting out the arrangements for the service of notices. DNA

18. Law

The contract is stated to be governed by English law and also states that any dispute is to be conducted in the Courts of England and Wales so that these provisions would not be appropriate in Scotland. DNA

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