

Notes to Standard Conditions of Contract 2004

These notes explain how the Standard Conditions apply to your business.

NB. Changing the Terms and Conditions without legal advice is not recommended except in the specific examples given in these notes. These examples relate to non-legal matters (eg the spoilage allowance) and should be within the competency of the printer. Other terms with direct legal implications (eg Retention of Title/Claims and Liability) should not be altered without legal advice. For ease of reference those clauses which should not be altered without proper legal advice are marked thus: **DNA**

Preamble

Often your sales people may have made promises to potential customers which the customer later wants to rely on. It is important therefore that it is made clear in these Terms that any earlier conversations/representations are null and void.

1. Definitions **DNA**

It is helpful to include these at the beginning of the contract so that everyone is clear about specific words used. It also cuts down on the amount of descriptions needed within the rest of the document. 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.

2. Payment

- a) This allows you to charge more than your estimate if there has been a rise in eg costs of raw materials between the order and the delivery.
- b) This clause points out that all estimates are exclusive of tax. You may estimate with VAT included, in which case this clause is not necessary. Whichever you do, it is important to be consistent.
- c) This clause ensures that you can charge for any preliminary work done even if the Buyer then decides not to continue or takes the job elsewhere. Thus if for instance you are required to do some preliminary design work, so long as these conditions have been brought to the attention of the Buyer, you are entitled to charge for it.
- d) This deals with the Buyer not providing you with enough instructions or material to do the job, or is late in providing materials, and ensures that you can charge for any additional work thereby arising.
- e) Under these Terms payment is due before delivery of the work. You may prefer to state that it is due on delivery of the work. This also allows you to ask for payment in advance should you consider it necessary.
- f) This sets out the credit facilities and allows for payment up to two months after invoice. You may want to change that to reflect your own credit arrangements. This clause also reiterates the statutory interest you are allowed to charge and also allows for any costs arising out of the debt collection process (eg the fees of a debt collection agent).
- g) This clause expects all deliveries to be charged extra. You will need to adapt this clause should your practices be different.

- h) This clause allows you to charge for storage if there is a suspension or delay by the Buyer.
- i) This clause allows you to demand immediate payment should that suspension extend beyond 30 days. Thus although the work is not completed if the Buyer seems to be taking his time to instruct you to get on with the work you are entitled to payment for work done and other costs. You may wish to include a different period of time.

3. Credit Facilities

This is a general definition of when facilities may be granted and you may wish to adapt for your own purposes.

4. Delivery

- a) This clause is to prevent work being turned away when delivered.
- b) This includes the fact that “time is not of the essence”. Thus the Buyer cannot return to you demanding a discount or rejection of the goods because they were not completed to a strict timetable.
- c) This states that delivery is to kerbside only with the off-loading and additional transportation being the Buyer’s responsibility.
- d) This allows for extra charges to addresses other than the Buyer’s address or delivery which involves difficulties with access.
- e) This allows an extra charge should expedited delivery be required by the Buyer.

You may want to make changes to these clauses to reflect your normal delivery terms

5. Materials Supplied or Specified by the Buyer

5.1 Electronic Files

- a) This clause is to deal with the situation where the Buyer has not kept a copy of his own electronic data and looks to you to reproduce the information which you may in fact have destroyed on completion of the work.
- b) This is an attempt to protect you from being supplied with inaccurate electronic data.
- c) This is to allow you to charge for or reject any electronic files which are not suitable or adequate.

5.2 Other Materials

- a) This confirms the Buyer remains the owner of any materials he provides. It also provides for the situation where you have used the Buyer’s materials to produce a design/text etc which is your original work and therefore your copyright. In those circumstances you are only obliged to replace the raw material, rather than hand over the material on which you have worked. Thus you do not risk losing control of your copyrighted material by handing it over to the Buyer.

- b) This allows you to reject any materials supplied by the Buyer or charge extra unless it has taken you a long time to give notice that the materials are inadequate.
- c) This covers the situation where the Buyer insists that you go ahead even after being told that the material he has supplied is not suitable. It requires the Buyer's instruction to be in writing – ensure you get it in writing or you won't be covered.
- d) This requires the Buyer to take spoilage into account when supplying you with materials.

5.3 Risk and Storage

- a) This states that all property belonging to the Buyer is at the Buyer's risk throughout the process unless otherwise agreed in writing.
- b) This entitles you to charge for storage both before and after the production process.

5.4 Finished Goods

- a) This confirms that the Buyer accepts all risk in the finished product from the moment that it is delivered.
- b) This notifies the Buyer that you will destroy any materials and work left with you for more than one month. You may wish to adapt this to your own normal business practices.

6. Materials and Equipment supplied by the Seller

- a) This confirms that any materials that you own and are used in the process remain your property.
- b) This confirms that any materials used in the process may be destroyed immediately after the process. If the seller wishes you to retain the materials, there must be an agreement in writing and storage can be charged.
- c) This deals with the situation where sometimes you are required by your customer to download large amounts of data to return it to him. This clause prevents the hassle of having to do that and also protects any intellectual property rights that you may have over the data. You can of course make some other arrangements but these should be in a written agreement to avoid disputes later on.

7. Retention of Title DNA

These clauses are most used in insolvency situations to avoid the insolvency practitioner treating goods which have been delivered and not paid for as if they belonged to the Buyer. It entitles you to enter the Buyer's premises and inspect, label and remove your goods and clause 7d) allows you to approach the end-user to try and do a deal.

In fact, although Retention of Title clauses do have their uses, they are not a magic formula for getting money out of an insolvency practitioner or the end-user. Their main usefulness is in the situation where you have delivered the goods, they have

not been paid for, and there is an end-user who still wants them. In those circumstances, under these Terms you can retrieve the goods from the insolvency practitioner and do a deal direct with the end-user. Other situations (for instance where the end-user has paid for and received the goods) are almost never retrievable, however lengthy your Retention of Title clause.

8. Proofs and Variations

- a) **Proofs** This really states the obvious that proofs approved by the Buyer mean that no liability for errors shall fall on your shoulders. It also states that you are entitled to charge extra if at the proofing stage the Buyer alters the original specification and requires you to produce more.
- b) This clause protects you if the Buyer decides not to examine the proofs. Although the courts may accept that if a Buyer does not bother to look at the proofs he gets what is coming to him, blatant errors by you may not be covered by this clause – you are the expert after all.
- c) **Colour Proofs** This allows for a variation in the colour proof unless the Buyer has stipulated otherwise in writing.
- d) **Variations in quantity** The variations in quantity set out here are merely intended as an acceptable average and you need to consider carefully what would be acceptable in your particular circumstances.

9. Claims and Liability

9.1 Claims DNA

- a) You will not be liable for any claims unless you are given the following written notice:

Written notice of:	Within:
Damage, delay, loss	3 days of delivery
Non-delivery	3 days of notice of despatch
Claim for compensation for:	Within:
Damage, delay, loss, non-delivery	7 days of delivery or notice of despatch
All other claims (eg defective work)	14days of delivery

Unless there was a good reason why the Buyer couldn't comply. You may consider those time limits too harsh and wish to adapt them.

- b) If your work is really badly defective, then the Buyer can reject, but must do so with 7 days of delivery.
- c) You must be able to inspect the goods within 7 days of being notified of a claim.

9.2 Liability DNA

- a) Your liability is limited to re-doing any defective work. "Consequential" losses are excluded.
- b) The Buyer must accept your offer to re-do the work or lose any right to sue for losses including "consequential" losses.

- c) This requires defective work to be returned prior to any remedial work or credit being given.
- d) This excludes liability for consequential losses as a result of delay however caused.
- e) This means that should a Buyer go elsewhere to have the work re-done without reference to you then he loses all rights against you.
- f) This covers the situation where you are forwarding work on for further processing (eg Finishing) – the Buyer must accept that it was good when it left your premises (and therefore any defect found later must have been due to the subsequent processor!).
- g) This is the mirror-image clause of d) above, and applies if you receive work from a previous processor. It gives you the opportunity to reject the work if there appears to be defects, and if the Buyer still insists you continue, you only have to do so after getting it in writing from the Buyer.
- h) This is a standard clause to establish reasonableness.

10. Insolvency **DNA**

Under this clause an insolvency practitioner cannot insist you finish any work, and all your invoices become immediately payable.

11. General Lien **DNA**

If the Seller doesn't pay, you may seize all his goods in your possession and sell them after 14 days' notice. Any balance is refunded to the Seller.

12. Illegal matter **DNA**

You cannot be required to print matter which may be illegal or infringe 3rd party rights. In addition, the Buyer indemnifies you should you find yourself in difficulties as a result of doing the above.

13. Periodical publications

This allows for a decent period of notice on termination of a contract to print periodicals. If you do not do this type of work you can delete this clause.

14. Force majeure **DNA**

The usual exclusion of Acts of God etc.

15. Data Protection **DNA**

You are required to notify if you are likely to pass on personal information (i.e. if you have to sue for payment). This applies only to Sole traders and Partnerships. Information about Limited Companies is not "personal information" under the Data Protection Act.

16. Law **DNA**

Any dispute is to be conducted in the English courts.

17. Notices

It is always better to have any further instructions/notices/variations properly authorised in writing. However, this clause can work against you as well as for you. Consider whether you can abide by the need for written notices and if you can't, it is probably better to remove this clause.

18. Consumers **DNA**

Another standard clause establishing reasonableness

19. Severability **DNA**

If a court finds a clause to be void for unreasonableness, it could make the whole contract void. This clause aims to prevent this.

Disclaimer

These Notes are for General Guidance only and should not be solely relied on to deal with any specific query. You should always contact your legal adviser to should you wish to make alterations to your Standard Terms and Conditions