

Terms of trade vital, but make them fair

Who does the work and who pays for it?

Good written terms of trade save businesses a lot of money.

From the part-time person dabbling in a new business venture to the big manufacturing company contracting internationally, written terms of trade help define who does what, and when.

Who will do the work, to what standard and when? And how much will be paid and when?

Well-written terms of trade save a lot of arguments when things go wrong.

You will protect your business from disputes caused by misunderstandings and will minimise the cost of any debt recovery action if your customers agree to and sign your terms of trade before you do business.

Terms often left out are interest on late payments and costs of recovery. Both these clauses mean you can seek to get back the losses you suffer from late payment, not just the payment itself.

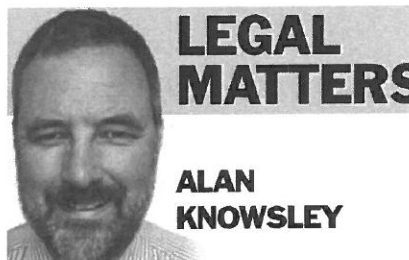
Other aspects to consider in more complicated matters may be who owns the intellectual property in the goods or services, dispute resolution processes etc.

Once you have your terms of trade sorted, make sure you provide them to the other party before you agree on the contract.

It is too late afterwards to add them in.

Some places put their terms on the back of the invoice, but that is too late.

Also, get some acknowledgement of the terms, such as a signa-



ture or email. That avoids later claims that the terms were not provided in advance.

Check that the parties are correctly named and identified. Are they individuals, companies, trusts or incorporated societies?

It may be too late to try to add the correct party later if the wrong one is named on the agreement.

Be aware, though, that just having terms of trade is not enough.

If you have terms of trade, you need to ensure that they are correctly completed before any credit is given so that they can be used to get your money into your bank account, where it belongs.

In a recent example, a business did not have its terms of trade in order. It had not been correctly filled out and the personal guarantee section was unsigned.

The debtor company had become insolvent and the creditor could not enforce the personal guarantee.

That cost the creditor tens of thousands of dollars that could easily have been avoided by following the procedure the business had gone to the trouble of setting up.

You should also ensure that security interests are registered on the Personal Property Securities Register if necessary.

Many businesses use standard form consumer contracts (essentially a "one size fits all" contract) that everyone is familiar with, but amendments to the Fair Trading Act will have an impact on all businesses that provide standard contracts to consumers, not just the big corporations.

From March 17, those in trade are prohibited from including unfair contract terms in standard consumer contracts.

Once a term is declared "unfair", a trader trying to enforce that term could be liable to a fine or conviction.

The fines can be \$200,000 for an individual or \$600,000 for a body corporate.

The Commerce Commission is the only body that can apply to the court for a declaration that a contract term is unfair.

Consumers will be able to refer contracts to the Commerce Commission for its consideration of applying to have the term declared unfair.

■ Column courtesy of Rainey Collins Lawyers, phone 0800 733 484. If you have a legal inquiry you would like discussed in this column, email aknowsley@raineycollins.co.nz.