

# Terms of trade - train staff to get it right first time

ALAN KNOWSLEY  
LEGAL MATTERS



In a recent situation a company found itself significantly out of pocket for disbursements incurred on a client's behalf.

The company's standard terms and conditions made it clear that the customer had to pay all disbursements incurred, but the court found them unenforceable.

A staff member, without management approval, had agreed to a variation of the terms to "keep the client".

The standard terms had therefore been modified at the company's cost.

If you use standard terms and conditions you must train your staff in their use. This includes ensuring the forms are:

\*Filled out; a blank form is no use to anyone, except the debtor. Too often we see partially completed forms missing the vital information.

Ensure that the correct legal entity is named in the agreement. Are they an individual, a company, a trust, a partnership or an incorporated society?

You need to know which and for the correct one to be recorded

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as the other party.

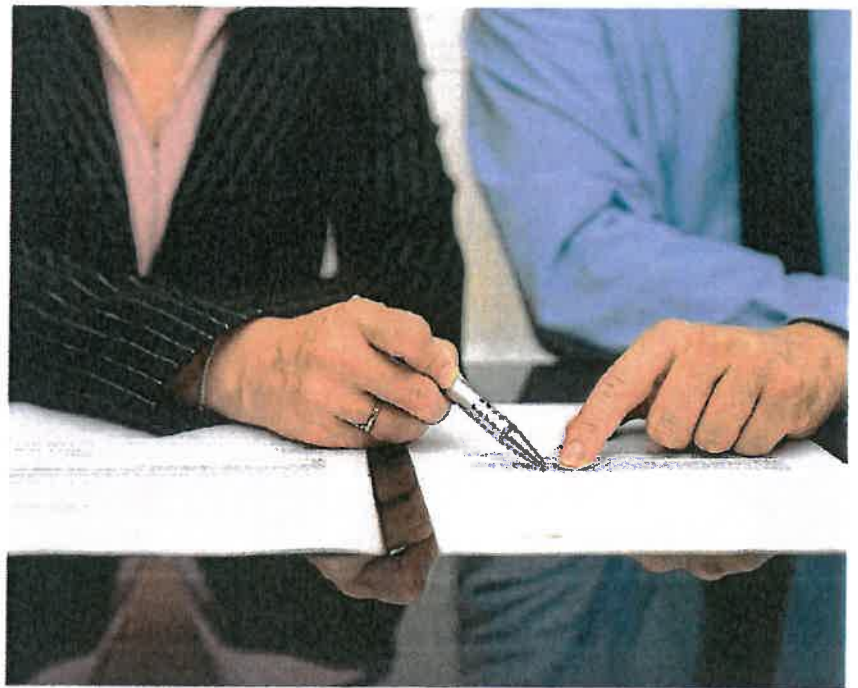
\*Given to the customer before the contract is entered into. All terms need to be in the contract.

Putting your terms on your invoice, as often happens, is too late. They are not part of the contract as the terms are set at the beginning, not when it is time to ask to be paid.

\*Everything is signed by the client; an unsigned form is not proof of acceptance by the customer. An oral agreement or one that is partly oral and partly written is still binding, but the terms are harder to prove.

You will need to prove acceptance of the terms by some other means than by having a signed acceptance and that is more difficult - witnesses may not recall events or may have left your company - and expensive as you need to get those witnesses to the court hearing fully briefed as to their evidence.

\*Signed by any guarantor; a guarantee is not binding unless it



is signed. We often see guarantees with the name inserted but unsigned.

\*Contain all necessary customer information; including contact details so they can be tracked down, and the referees so they can be contacted before credit is given etc.

\*Not modified without management consent. Removing clauses to please the client may win the job, but that is no use if the work is not paid for because the contract is unenforceable.

A copy must be retained on file to show the client's signed acceptance or proof of receipt. If there is a change in the customer's name or identity then a new contract must be entered into.

A contract with an old entity will not cover the new company's purchases. The guarantor of the old company will also not be bound to guarantee the new company's debts.

There are now significant penalties for using standard

terms which are unfair up to \$600,000 for a business and \$200,000 for an individual, so it also pays to ensure your terms comply and have not been declared unfair.

\* Column courtesy of RAINIEY COLLINS LAWYERS phone 0200 733 484, rainieycollins.co.nz

\* If you have a legal inquiry you would like discussed in this column please email Alan knowsley@rainieycollins.co.nz