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Commercial / Company Law Overview

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Disclaimer

These notes and the accompanying presentation are given for general information and as a general guide only. It is not intended to constitute legal advice to any person or persons and no liability will be accepted for any reliance placed on the information provided.

Sale and supply contract

Practical Tips

Ensure that a contract is:

- clear and easy to read (Plain English)
- short and contains several clauses
- transparent as to meaning
- reasonable (not too one-sided)
- fully addresses the intention of the parties
- agreed before starting work
- clear as regards any 'change' (variation) procedure

By adopting this approach, the result is more likely to be a contract that is enforceable, drafted efficiently and with certainty, that meets the needs of the parties and complies with the legislative framework and avoids the risk of costly and lengthy litigation.

Incorporating Standard Terms

Battle of the forms

If one party makes an offer to another and the offeree indicates acceptance but subject to his usual terms, the offeree has made a counter-offer and not an acceptance. The original offeror must either accept the other party's standard terms or counter-offer again.

If it is the intention to always trade on your terms then a form of words such as "offer is accepted subject to [our] terms attached" (with the terms attached) must be used.

E-Commerce

The principles of contract formation apply to on-line transactions in the same way as they do to face-to-face sales. A valid contract requires:

- agreement
- consideration, and
- the intention to bind

Authority of Senders

Contracts can be established by email – as informal as a conversation but recordable and evidenced in writing.

On-line contracts

There are two types of web based / electronic contract:

Clickwrap: Clickwrap involves clicking on a link on the site, usually displaying text such as I agree, or accepted. It is established practice to provide an opportunity or obligation to pass through a page displaying the trading terms (in a downloadable or printable format), before the acceptance can be given by the act of clicking on the link.

Browsewrap: Browsewrap relies on a warning that continuation to view the site amounts to deemed acceptance of the terms of use and trading terms.

Cancellation

The expiry of the cancellation period will depend on when the required information has been provided in durable form. The cancellation periods for goods are:

- seven working days (not including weekends or bank holidays) after the day on which the goods are received as long as the trader has given the consumer the required written information no later than the time the goods are delivered
- seven working days from the day after the day on which the consumer received the written information and within three months of the goods being delivered when the written information is not provided at the time of delivery, or
- three months and seven days from the day after the day the consumer receives the goods if the required written information has not been given at all (or given after the three month period)

The cancellation periods for services are:

- seven days from the day after the contract was concluded if the consumer was given the required written information on or before the day the contract was concluded, or
- seven working days after the information was received but within three months (beginning the day after the contract was concluded), if the information was received after the contract was concluded

Exceptions

Cancellation rights will not apply to contracts that cannot readily be cancelled.
Exceptions include:

- services provided before the expiry of the cancellation period
- goods that are used before the end of the cancellation period, or
- goods made to the consumer's specifications

Returns

Traders will be responsible for the cost of returning goods where they are faulty or do not comply with the terms of the contract. The obligation cannot be excluded. However, where goods are returned for other reasons, and the contract states that the consumer will be liable for any return costs, such a term will be enforceable. If the seller wants to place the cost burden on the consumer include a term in the terms and conditions.

Refunds

Where a contract has been cancelled a trader is obliged to refund the price of the goods and any delivery costs as soon as possible after the cancellation has been made. The long stop date for refunds is 30 days from the cancellation notice. A refund must be made regardless of whether the goods have been returned.

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