

Most UK sales legislation is directed at protecting the rights of consumers however, where contracts are entered into in the course of business, different rules apply. This guide relates to the areas of law which cover B2B sales.

Sale of Goods

The rules governing sales from one business to another are fairly limited, as the contracting parties are deemed to be more sophisticated; in a stronger negotiating position; and able to decide on fair terms. Therefore, unlike consumer contracts which have various terms implied into them by law, B2B sales are predominantly governed by the express contractual terms that the parties agree between themselves.

There are however some limited areas in which rights and obligations are implied by law.

The Sale of Goods Act 1979

The Sale of Goods Act 1979 implies four terms into any contract for sale regardless of whether such sales are B2B or business to consumer (B2C). These are as follows:

- the transferor has good title and has the right to transfer the item sold;
- the goods correspond with the description given;
- the goods will be of a satisfactory quality and fit for their purpose; and
- if a sample is provided, the goods will correspond with this sample.

Normally business buyers will not be entitled to a full refund under the terms of their contract if the product is only very slightly faulty, but this does not limit a business' right to compensation for any loss caused.

Whenever goods are bought or sold they should be of a satisfactory quality and match the description given. If a buyer believes something is wrong they can ask the seller to put things right, which could be by refund, repair or replacement.

Unfair Contract Terms Act 1977

Contracts made between businesses are subject to the Unfair Contract Terms Act 1977. This Act is particularly important when exclusion and restriction clauses are included in contracts.

Buyers and Sellers need to carefully negotiate the terms of the contract. B2B sale contracts may legally exclude liability for many (but not all) of the implied terms under the Sale of Goods Act 1979.

Liability can never be excluded or restricted in claims for death or personal injury and also cannot be excluded or restricted where it would be unreasonable to do so. In addition, liability cannot be excluded or restricted for matters of title ownership. So for example, a term in the contract which states that the seller will not be responsible if they do not have title to sold goods, will not be enforceable.

Buyers should check that any exclusion clauses are reasonable, and challenge any believed to be unreasonable. Exclusion clauses may be unreasonable if the contract was part of a standard form and not negotiated individually between the parties, or if the buyer did not have the bargaining power to negotiate better terms.

When an individual trades as a sole trader, their contracts will be governed by the rules applying to business buyers, not those in favour of consumers, however, in some circumstances, a sole trader may be able to rely on credit protection (normally only given to consumers). If, as a sole trader, goods have been paid for on credit, there may be a claim against the relevant credit provider under the Consumer Credit Act 1974 should problems arise. A standard business will not receive this protection, unless contractually agreed otherwise.

Competition Law

B2B sales in the UK are subject to competition laws. Businesses must be careful when setting up B2B agreements not to abuse a dominant position in the market or otherwise restrict, prevent or distort competition. There are certain anti-competitive activities which are blacklisted (such as price fixing) and businesses should be aware of how they interact with their business partners.

If companies are seen to be acting anti-competitively, for example in agreeing exclusivity agreements or sharing information then fines can be levied of up to 10% of worldwide turnover.

Email Marketing

In the UK, businesses can use email marketing to solicit B2B sales. Email marketing in the UK does not require businesses to opt-in to receiving such messages, however, it is compulsory for any company sending out marketing to include an unsubscribe option.

B2B marketing emails should only concern business matters, and should only be sent to individuals in their business capacity, not as private individuals.

Businesses using email marketing are under an obligation to keep all records up to date, and should only use records that have been updated or confirmed to be in date within the previous 6 months. Issues around data protection should also be born in mind when conducting email marketing, further information about which can be found [here](#).

If you require any further information or assistance in connection with B2B sales made by, or to, your business, then please contact Ben Robson at ben.robson@ocsolicitors.com or on +44 (0)207 067 4300.

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