

Protecting your company and avoiding litigation in UK Commercial Contracts

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Some of the main points to consider when you contract or trade in the UK are:

- **How to incorporate and trade on your own terms and conditions**
- **Does your business or product require intellectual property protection?**
- **Do you require a retention of title clause?**
- **Which law and jurisdiction do you want to apply?**
- **Do you want to include a provision for alternative dispute resolution?**
- **The terms agreed will preferably be recorded accurately in one concise document**

Incorporating your own terms and conditions

You should consider in advance whether or not you want to trade on your own terms and conditions, whether they are standard or need to be tailored for a specific contract. If so, you will need to ensure that they are incorporated as a matter of law and therefore form part of the contract.

If your own terms and conditions are properly incorporated into a contract it is likely to give you more protection and control, will enable you to impose obligations while limiting your own (although some will be implied in any event whether they are expressly included or not) and may make it easier to enforce your contractual rights.

Intellectual property protection

You should consider in advance what intellectual property owned by you is being utilised or exposed when you contract or trade. Confidential information including that relating to clients and customers, databases, designs, trademarks, patents and copyrights in particular may require provisions of this nature.

It is prudent to have express protection in a contract and we have a separate specialist team dealing with those issues with whom we will work to provide you with as much insulation as possible.

Retention of Title

If you are supplying goods we can ensure that ownership remains yours until you are paid in full. Retention of title clauses can also help you to retrieve goods if the company you contract with goes into liquidation or if the goods are seized by a third party before you are paid.

Law and jurisdiction

It is important, taking into account the circumstances of the contract, for you to consider which law will apply and which law you want to apply as well as whether it is better or more convenient for you to submit to the jurisdiction of the Courts in England and Wales or some other jurisdiction.

We can advise you of your options and expressly determine in advance which law and jurisdiction will apply to a contract.

Alternative dispute resolution

The Courts in England and Wales actively promote methods of alternative dispute resolution to encourage contracting parties to settle their differences out of Court. Often, that will enable a commercial relationship to continue amicably for the benefit of both contracting parties while a dispute is resolved.

We can advise you of your options such as arbitration, mediation and expert adjudication and discuss which, if any, is appropriate for your company and the type of commercial trade or sector you operate within. At the same time, we will work towards protecting your legal rights, which will be reserved in any event.

Documents

The importance of documents and correspondence cannot be overstated. Although preferably for the purposes of any contract or commercial activity it would be ideal to have all of the agreed terms in one concise document, in practice that very rarely happens. It is inevitable that some terms not expressly dealt with will legally be implied in a contract as a matter of fact in any event. We can advise you in that respect. We can also help and advise you on how to maximise and protect your position once a dispute has arisen or a contractual breach has taken place with a view to enforcing your rights or avoiding litigation altogether.

Disclaimer:

This note does not contain a full statement of the law and it does not constitute legal advice. Please seek legal advice if you have any questions about the information set out above.