



Disclaimer: This online publication describes the law in general terms. It is not intended to provide legal advice on specific situations and should not be relied upon as a source of legal advice.

Date produced: 21 April, 2021

qLegal Online Publication

Introduction to Supply Agreements

This online publication explains “supply agreements”. As the term would suggest, a supply agreement is an agreement between a supplier and a customer for the purchase of goods and/or services.

A supply agreement is necessary in order for both parties to be on the same page (in respect to what is being offered and for how much) and to protect each party (in respect of any rights/title that it has in the goods and/or services, such as intellectual property rights).

Whilst these types of contracts are often used by large organisations, it’s also important for a start-up to have its own standard / template supply agreement in order to comply with legal requirements and to protect it contractually. As a matter of fact, for the start-up, it is important to create its own standard / template supply agreement which you can use when selling goods and/or services (as it will save the time of creating a contract on each occasion).

Supply agreements can be Business-to-Business (also known as “B2B”) or Business-to-Consumer (also known as “B2C”). The terms that you will need to include in a supply agreement will vary based on whether the supply agreement is B2B or B2C.



The small print for BIG IDEAS

In this legal publication, we've provided you with some drafting tips and a summary of the key terms that you must consider when drafting a B2B or a B2C supply agreement. We have used the word "customer" below to cover both "businesses" and "consumers".

Key tips for drafting a Supply Agreement

- **Preliminary review:** You should first create a preliminary checklist incorporating all of the key points you want to include as well as any issues / risks that you envisage (so that you can think about how to mitigate those issues / risks from a contractual point of view).
- **Terms of agreement:** When you are drafting, make sure that the terms are clear and accurate. The terms should, at the very least, include a description of goods and/or services, acceptances and deliveries, price and payments, packaging (if applicable), risk and title.

Key terms to add in your Supply Agreement:

- **Parties to the agreement:** You need to include your full name and contact details and that of the customer.
- **Goods and/or services details:** You need to include details of the goods and/or services that you are selling to the customer.
- **Term/duration of the agreement:** You need to add the term/duration for the goods and/or services. You may also wish to state that the term of the agreement may renew if it has not been terminated in accordance with any notice period required.
- **Customer's rights:** Contingent on what is being sold and to whom, you may need to include additional terms outlining a customer's rights (such as the right to accept or reject certain goods and/or services and/or how to claim a refund).
- **Warranties and representations:** Contingent on what is being sold and to whom, you may wish to require the customer to make certain warranties and representations upon which you will provide the goods and/or services.
- **Method of delivery:** You need to reflect how the goods and/or services will be provided.



- **Fees:** You need to outline the fees/charges for the goods and/or services.
- **Payment terms:** You need to state when payment would be due (e.g., on demand, within 14 calendar days, upon receipt of an invoice etc.) and how payment is to be made (e.g., bank transfer, cheque etc.). You should also consider whether you want to charge interest for late payment.
- **Intellectual property rights:** You need to state who owns the intellectual property rights (such as copyrights, trade marks, design rights etc.) concerned and whether any of those rights will be transferred to the customer.
- **Confidentiality:** You need to state what information is considered to be “confidential” and ensure that any confidential information that is shared with the customer is protected and not disclosed.
- **Data protection:** You need to state that both parties will comply with data protection legislation. You may also need to include alternative and specific terms where you are considered to be a “data processor” and the customer is considered to be a “data controller”.
- **Termination:** You need to include terms regarding when and on what grounds the agreement may be terminated (e.g. upon 30 calendar days’ notice by either party).
- **Liability:** The important aspect to be considered here is how much liability can be excluded. A blanket exclusion of all liabilities is not possible as some liabilities cannot be excluded as per the relevant statutes and as a matter of public policy. For example, you cannot exclude liability for death or personal injury caused by negligence. There are other areas, however, where you can exclude your liability (such as for loss of profits or loss of business opportunity), so you should include a term covering these areas in order to limit your risk and exposure. As your customer is unlikely to agree to you excluding loss for certain things such as breach of the terms of the agreement, you should propose to include a cap on your liability (e.g., the total liability of the supplier under the agreement shall be for the fees paid by the customer to the supplier). This protects you in the event that you are sued as you can limit the amount of damages that you may be ordered to pay out.

- **Dispute and arbitration proceedings:** You need to consider how any issues or disputes will be managed between you and the customer. For example, you may wish to include language requiring the parties to attempt to resolve their disputes first by arbitration, mediation or by any other method before either party can proceed to litigation.

- **Boilerplate terms:** These terms are generally found at the end of the agreement and are necessary for the operation of the contract. Examples of boilerplate terms include the following:

- (a) Notices – Any notices made in connection with the agreement should be in writing and delivered in accordance with the appropriate method and place.
- (b) Force majeure – This term suspends the performance of the agreement when one party is prevented from performing the agreement by events beyond its control. You should ensure that the force majeure term is drafted broadly in order to protect you from eventualities such as the Covid-19 pandemic.
- (c) Waiver – This term is important in the event that either party acts or omits to act in such a way as to give up a right or remedy under the agreement. No waiver of any other right or remedy occurs unless either party has given the other party notice of the waiver in writing.
- (d) Variation – This term is important in ensuring that your agreement cannot be varied or amended in certain ways (e.g. verbal discussion). No variation of the agreement would be effective unless in writing and signed by both the parties.
- (e) Severance – The severance term keeps the sanctity of the other provisions of agreement if some part of the agreement cannot be enforced such as due to a change in a legal requirement.
- (f) Third party rights – This term is added to ensure that your agreement does not give rise to any rights under the Contract (Right of Third Parties) Act 1999 to enforce any terms of this agreement.

- (g) Entire agreement – This term prevents the other party from claiming later that the contract does not reflect their whole agreement or that it was changed by a



subsequent agreement between the parties. It is important for you to incorporate this term in writing.

- (h) Governing law and jurisdiction – This term is critical in identifying what law applies to the agreement (known as the governing law) and the location of the court where any disputes and breaches of the agreement will be heard (jurisdiction).

This online publication was drafted by students from the Centre for Commercial Law Studies, Queen Mary University of London: Vinesha Ambur Muralidhar, Marianna Novello, Manas Maheshwari.