# **Terms and Conditions on Invoices**

Each commercial transaction is a contract between the Seller and Buyer and minus a writing expressing the terms, it becomes an oral contract with all the problems inherent in proof and expense that oral contracts necessarily entail. (See the Article on the Web Site relating to Contract.) Put simply, it will be a question of veracity as to who the judge or jury believes in any dispute as to what the terms of agreement and such uncertainty is precisely what businesses must avoid.

In the United States, attorneys’ fees are not awarded to either party absent a written agreement so specifying. Further, arbitration can only be imposed if the parties so agree. With court cases sometimes taking years to get to trial, and with attorney’s fees often equalling tens of thousands of dollars, Sellers often discover that it is cost prohibitive to attempt to collect for sums owed unless they have appropriate ways to avoid the expense and delay of American courts.

For that reason, any sophisticated business will utilize standard terms and conditions of sale for each transaction and normally create a standard form with multiple copies created by carbon of different color, two of which are sent with the product with directions to the shipper not to release the product until the Buyer signs the shipping document which includes written terms and conditions which are binding on the parties. The form, often called a Shipping Form or Invoice, itemizes the products or services rendered, the price and delivery terms, and most importantly, a set of written terms and conditions pertaining to the sale. When the Buyer receives the products from the Shipper, the Buyer signs for the products and a copy of that form is left with the buyer with the signed copy being returned to the Seller. That becomes a binding written agreement and allows the Seller to enforce the terms effectively and efficiently.

Below are standard generic terms and conditions which our office recommends to Sellers. Terms would be required for specific industries. Thus, certain manufacturers would add specifications and allowed tolerances, sellers of produce would include means of shipment and spoilage tolerances, etc, etc. The key is the terms that allow effective and inexpensive means of enforcement via arbitration or Small Claims court (if the amount in controversy is small enough.)

It should also be noted that this allows the Seller to avoid being pulled into a hostile jurisdiction, perhaps far from the Seller’s locale of business.

International transactions require additional clauses of key import, such as issues of customs and payment by Letter of Credit. The terms below are illustrative of the basic ones which would be expanded for most transactions.

One must also be aware that many sophisticated Buyers have their own terms and conditions on their Purchase Orders which they seek to enforce and quite often there is the "battle of the forms" in which both sides have form terms and conditions on their contract papers, and each include clauses which claim that the others’ terms and conditions are superseded by their own forms. Normally, courts will refer to the standard terms and conditions of the Uniform Commercial Code to determine which clause will prevail as well as determining who was the last to execute which document, often finding that the last document executed is the binding one. Each case is decided on a case-by-case basis and the safest course of conduct is for the Seller to carefully review the Purchase Order before shipping and simply indicate to the Buyer that absent a written waiver of their Purchase Order, no shipment will occur.

The limitation on warranty clauses is often not enforceable against consumers but often can be enforced in transactions between merchants...and, at the least, give some defines to the Seller.

And the attorney’s fees clause often stops any trivial or invalid refusals to pay since most Buyers will hesitate before putting themselves in the position of having to pay not only their own attorney’s fees, but those of the opposing party! It is the type of provision which may stop costly litigation before it begins.

The terms below should be reviewed with legal counsel before being sent to the printer for inclusion in the contractual documents used in the commercial setting. Buyers may wish to review our suggested terms and conditions for Purchase Orders contained elsewhere in the Retainer Website.

**TERMS AND CONDITIONS**

**I.** **TERMS OF PAYMENT**

Net 30 days on all invoices. In addition, Buyer shall pay all sales, use, customs, excise or other taxes presently or hereafter payable in regard to this transaction, and Buyer shall reimburse Seller for any such taxes or charges paid by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (hereafter "Seller.")

**II.** **PAYMENT, PRICE, TRANSPORTATION**

Seller shall have the continuing right to approve Buyer’s credit. Seller may at any time demand advance payment, additional security or guarantee of prompt payment. If Buyer refuses to give the payment, security or guarantee demanded, Seller may terminate the Agreement, refuse to deliver any undelivered goods and Buyer shall immediately become liable to Seller for the unpaid price of all goods delivered & for damages as provided in Paragraph V below. Buyer agrees to pay Seller cost of collection of overdue invoices, including reasonable attorney’s fees incurred by Seller in collecting said sums. F.O.B. point shall be point of SHIP TO on face hereof.

**III**. **DELIVERY, TOLERANCES, WEIGHT**

Upon due tender of goods for delivery at the F.O.B. point all risk of loss or damage and other incident of ownership pass to Buyer, but Seller retains a security interest in the goods until purchase price is paid. All deliveries are subject to weight at shipping point which shall govern. Tolerances are as follows: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

**IV.** **WARRANTIES**

Seller warrants those goods sold hereunder are merchantable UNLESS manufactured in conformance with Buyer’s particular specification, and that Seller conveys good title thereto. IN NO EVENT WILL SELLER BE LIABLE FOR CONSEQUENTIAL DAMAGES EVEN IF CUSTOMER HAS NOT BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT FOR THE EXPRESS WARRANTY STATED IN THIS PARAGRAPH IV, SELLER GRANTS NO WARRANTIES, EITHER EXPRESS OR IMPLIED HEREIN, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND THIS STATED EXPRESS WARRANTY IS IN LIEU OF ALL LIABILITIES OR OBLIGATIONS OF SELLER FOR DAMAGES INCLUDING BUT NOT LIMITED TO, CONSEQUENTIAL DAMAGES OCCURRING OUT OF OR IN CONNECTION WITH THE USE OR PERFORMANCE OF ANY GOODS SOLD HEREUNDER. Seller specifically does not warrant the accuracy of sufficiency of any advice or recommendations given to Buyer in connection with the sale of goods hereunder.

**V.** **DEFAULT**

Buyer shall be liable for Seller’s damages including loss of reasonable profits, caused by Buyer’s default hereunder. If Seller, upon Buyer’s default, repossesses or retains any goods sold hereunder, Seller’s damages shall be the contract price of the goods plus freight, storage, handling & all other disposal costs incurred, less the then-current reasonable scrap value of the goods.

**VI.** **REMEDIES**

If goods supplied are not merchantable, Seller at its option may replace them or refund the purchase price upon their return. Buyer shall not return goods until Seller has had reasonable opportunity to investigate goods, and then only after receiving Seller’s written shipping instructions. THIS SHALL BE BUYER’S EXCLUSIVE REMEDY. Buyer waives all claims arising from breach by Seller unless Seller receives written notice of breach from Buyer within 90 days after Buyer receives goods.**In no event shall Seller be liable for any special consequential, or contingent damages resulting from Seller’s Breach of Warranty, delay or performance or any other default hereunder.**Buyer further agrees that Seller will not be liable for any lost profits nor or any claim for demand against Buyer by any other party.

**VII.** **FORCE MAJEURE**

Seller shall not be liable for any damages resulting from: any delay or failure of performance arising from any cause not reasonably within Seller’s control; accidents to, breakdowns or mechanical failure of machinery or equipment, however caused; strikes or other labor troubles, shortage of labor, transportation, raw materials, energy sources, or failure of usual means of supply; fire; flood; war, declared or undeclared; insurrection; riots; acts of God or the public enemy; or priorities, allocations or limitations or other acts required or requested by Federal, State or local governments or any of their sub-divisions, bureaus or agencies. Seller may, at its option, cancel this Agreement or delay performance hereunder for any period reasonably necessary due to any of the foregoing, during which time this Agreement shall remain in full force and effect. Seller shall have the further right to then allocate its available goods between its own uses and its customers in such manner as Seller may consider equitable.

**VIII.** **PATENT INDEMNITY**

Seller shall defend and hold Buyer harmless for any action against Seller based in a claim that Buyer’s sale or use of goods normally offered for sale by Seller, supplied by Seller hereunder, and while in the form, state or conditions supplies constitutes infringement of any United States letters patent; provided Seller shall receive prompt written notice of the claim or action, and Buyer shall give Seller authority, information, and assistance at Seller’s expense. Buyer shall defend and hold Seller harmless for any action against Seller or its suppliers based in a claim that the manufacture or sale of goods hereunder constitutes infringement of any United States letters patent, if such goods were manufactured pursuant to Buyer’s designs, specifications and /or formulae, and were not normally offered for sale by Seller; provided Buyer shall receive prompt written notice of the claim or action and Seller shall give Buyer authority, information and assistance at Buyer’s expense. Buyer and Seller agree that the foregoing constitutes the parties’ entire liability for claims or actions based on patent infringement.

**IX.** **WAIVER, MISTAKE**

Seller’s waiver of any provision herein or any breach thereof, shall not constitute a waiver of any subsequent breach thereof, nor of any other provision herein. Seller may correct any errors herein, on any invoice issued to Buyer, or on its published price sheets, and such correction shall operate to amend this Agreement.

**X.** **CHOICE OF LAW**

This contract is deemed to be made in \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. Buyer and Seller expressly agree this Agreement is to be governed by the Uniform Commercial Code as enacted and construed in \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

**XI.** **CONFLICTING PROVISIONS**

Buyer expressly WAIVES all provisions contained in any of Buyer’s correspondence or forms involved in this sale which negate, limit, extend or conflict with provisions herein and agrees that this Agreement constitutes the entire contract between Buyer and Seller except as expressly negated, limited, or extended by Seller IN WRITING and signed by an officer of Seller.

**XII**. **ARBITRATION FOR CLAIMS EXCEEDING $2,000.00**

Any and all disputes relating to this Agreement or its breach in which the amount in controversy exceeds Two Thousand ($2,000.00) Dollars shall be settled by arbitration in \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ in accordance with the then current rules of the American Arbitration Association, and judgement upon the award entered by the arbitrator may be entered in any Court having jurisdiction hereof. Costs of arbitration, including reasonable attorney’s fees incurred in arbitration as determined by the arbitrator, together with any reasonable attorney’s fees incurred by prevailing party in Court enforcement of the arbitration award after it is rendered by the arbitrator, shall be paid to the prevailing party by the party designated by the arbitrator or Court. The arbitrator is directed to strictly apply the law of the State of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

Should one party either dismiss or abandon its claim or counterclaim before hearing thereon, the other party shall be deemed the "prevailing party" pursuant to this Agreement. Should both parties receive judgement or award on their respective claim, the party in whose favour the larger judgement or award on their respective claim, the party in whose favour the larger judgement or award is rendered shall be deemed the "prevailing party" pursuant to this agreement.

This provision shall in no way effect or limit any rights Seller may have to enforce any security granted by law including but not limited to statutory right to repossession, garageman’s lien, mechanic’s liens, stop notices, or suit on payment bonds.

**XIII.** **SERVICE CHARGE**

A service charge of \_\_\_\_\_\_\_\_ per month (\_\_\_\_\_\_\_\_\_ per year) will be made on past due accounts.

**XIII. ANY OTHER TERMS AND CONDITIONS....**