

Terms and Conditions – an overview

Marie Kell
Andrew Jackson Solicitors LLP

Introduction

- **Why terms and conditions**
- **Key Clauses to consider in Terms and Conditions**
- **Current market trends**

The benefits of terms and conditions

- **Creates certainty**
- **Avoids dispute**
- **Minimises risk**
- **Helps with insurance**
- **Avoids being inadvertently bound by unfavourable arrangements**

Scope of the work

- **Warranties**
- **Operative provisions**
- **Details in the schedule**
- **Benefits of a clear scope**

Term and termination

- **Duration of the contract – triggers for termination**
- **Breach – insolvency –death**
- **Unsigned Contracts**

Best and reasonable endeavours

- **Common clause**
- **Often misunderstood**
- **Best / reasonable or an absolute obligation**

Liability (1)

- All exclusions must be “reasonable” in order to be enforceable
- Role of UCTA 1977
- Cannot exclude liability for death or personal injury, or some fraud
- Look out for exclusions and limits on liability in unobvious places, often hidden within other clauses

Liability (2)

- **What is “reasonable”**
- **Losses unlikely to be suffered**
- **Bargaining power of parties**
- **Insurance**
- **Important to consider all aspects on a case by case basis**

Liability (3)

- **Type of losses**
 - **indirect**
 - **direct**
 - **importance attached to indirect and direct loss of profit**

Indemnities

- **What are they?**
- **Advantages over damages**
- **Remoteness**
- **Mitigation**

How to manage Indemnities

- Resist giving one
- Try to get one in your favour
- Some indemnities are standard
- If you cannot resist giving one, take steps to limit its effects for example:
- Seek to include it in any limit on your liability

How to manage Indemnities cont...

- **Seek to cap it at a maximum monetary amount**
- **Use “reasonable”**
- **Exclude elements relating to legal/professional fees**

Force majeure

- Standard definition of force majeure
- Current situation with force majeure
- Impact of the global pandemic

Assignment

- **Standard clause but needs to be considered carefully**
- **Consider the impact of key personnel – substitutes**
- **The parties to the contract**

How to deal with third party terms and conditions

- **Often it will not always be possible to contract on your own terms and conditions**
- **Best way to deal with third party terms and conditions**
- **Review – consider – understand – push for key amendments and vary where possible**
- **At a minimum undertake a full risk assessment**

Conclusion

- **Always document in contract**
- **Scope of work is crucial**
- **Creating certainty where possible**

Contact Details

If you are looking for legal advice and solutions, talk to the team today.

Marie Kell

Partner and Head of Commercial & Intellectual Property

01482 601 347

marie.kell@andrewjackson.co.uk

Andrew Jackson

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