

Protecting Your Business in the UK

This guide contains general information about the steps that should be taken to protect your business when looking to trade in the UK. This section should be used as a guide only and you are strongly advised to seek advice from a solicitor at an early stage, particularly if a dispute arises.

Intellectual Property (“IP”)

For many businesses, intellectual property is one of the most valuable assets they possess. Effective establishment, development and management of an IP portfolio is essential when trading in other countries to ensure that its value is protected. In particular, branding and the protection of business reputation and identity is critical, along with core technologies and designs.

There are a number of fundamentals which any business should consider in relation to its IP:

- Ensure that trade mark(s), design(s) and patent(s) registrations have all been applied for prior to disclosing information and/or launching in the UK.
- Put in place a confidentiality agreement with any third parties that you are planning to disclose sensitive product information and/or confidential business information to.
- Undertake research prior to trading in the UK to ensure that you are not infringing any existing third party IP rights in the UK.
- Keep a record of any pre-launch research that you have undertaken.
- Put in place a formal licence agreement with a third party business that is going to utilise your IP.
- Put in place design, development and supply agreements with third party suppliers such as designers, manufacturers, photographers and web/internet designers.
- Actively police the UK market to ensure that there are no counterfeit or infringing goods or “copycat” web-sites or trading materials as these can seriously damage your reputation and your competitive position in the market place.
- Seek legal advice early.

Terms and Conditions

Putting in place standard terms and conditions to govern your contractual relationships is an essential tool to ensure your business is protected and payments can be collected in a timely manner and without dispute.

Terms and conditions can be basic or complex; what is necessary depends on the business in question. It will sometimes be necessary to negotiate bespoke terms and conditions rather than relying on the business’ standard terms.

However, all businesses should consider the following when putting together their standard terms of business:

- Clear definitions on what products or services will be provided.
- When and how payment must be made.
- Timelines for delivery.
- Whether any guarantees or warranties will be given.
- Whether any limitations or exclusions on liability should be put in place.
- For businesses selling goods, when will title and risk pass to the buyer.
- How disputes must be handled.
- How, and in what circumstances the contract can be terminated by the parties.
- What, if any, obligations the parties will have post termination.
- What law will govern the contract and which Courts will have jurisdiction over disputes.

One size does not fit all with terms and conditions and consideration should be given to what your business does and what its risk factors are before terms and conditions are put in place. If in doubt, consult a lawyer to review your terms and conditions to ensure that they are valid and enforceable, and importantly that they are actually being incorporated into your contracts. Simply having terms and conditions is not sufficient. You need to bring them to your customer's attention, whether through your website, on your invoices or by providing the terms and conditions to each customer. This is particularly important if your standard terms and conditions contain unusual or onerous provisions.

Retention of Title

If you are in the business of selling goods, one way in which you can protect your business is by ensuring that your standard terms and conditions contain a valid and effective retention of title clause (ROT clause). An ROT clause means that the seller remains the legal owner of the goods until specified obligations are fulfilled by the buyer.

The most important obligation is that payment for the goods must be made before title in those goods passes to the buyer. A basic ROT clause should also ensure that the buyer stores the goods separately and it should give the seller the right to enter the buyer's premises to repossess the goods.

More complex provisions may be appropriate and legal advice should be obtained if you believe that your business would benefit from a robust ROT clause.

Insurance

Business insurance can be a large expense but it is essential and, for some businesses, mandatory. The level of cover required will depend on your business. One size does not fit all.

An insurance broker should be consulted to find insurance that has the appropriate level of cover taking into account your business risks.

Types of cover that should be considered include:

- Employer liability.
- Commercial vehicle cover.
- Property and stock.
- Public liability.
- Business interruption.
- Cybercrime and data loss.
- Theft.
- Trade credit.
- Key man cover.
- Director's liability.

Avoiding Disputes

It is important to stay alive to the commercial, legal and regulatory issues that can affect or threaten your business. Ongoing analysis as to best practice will assist, together with ensuring that the appropriate contracts, policies and risk registers are in place and are kept up to date. Giving consideration to the measures below will help to minimise the likelihood of disputes arising and should ensure that you have the resources to pay costs or damages in the event that litigation arises.

Points to consider:

- Make sure your terms and conditions are clear, valid and enforceable.
- Plan ahead and manage your business' risks.
- Make sure that you have suitable insurance cover.
- Make sure that you have appropriate policies and procedures in place.
- Make sure that staff are given appropriate training.
- Keep detailed records.
- Obtain legal advice early on.

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