



INDUSTRY ARTICLE:

Mind the GAP

Tick to confirm you've read the below...

Are you aware of your own terms and conditions, and confident in applying them?





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At some point we've all been required to sign up to terms and conditions as part of buying a product or service. A smart phone software update, an online restaurant reservation, hiring a car, the list goes on.

In today's world there are many rules and regulations designed to protect consumers that suppliers must cater for in their terms and conditions.

Similarly, when dealing with your customers the onus is on you to ensure that customers have been provided with and have agreed to your terms and conditions.

But a contract works both ways. If a supplier does not follow their terms and conditions, how can they rely on them when something goes wrong?

The real point is not just what your terms say. It is understanding them, applying them, and making sure your business actually follows them in practise.



Contract Terms

Some parts of your contract terms will be fairly routine, for example:

- **keeping contact details up to date**
- **cancellation and/or termination notice periods**
- **access to your privacy policy**

However other parts are much more significant. Clauses such as trading hours, payment terms and prohibited goods are fundamental. Where breached as well as the validity of the contract being prejudiced sometimes there can also be other wider implications for your business.

Certain goods will be prohibited under your terms and conditions for several reasons, for example, that they present too high a security risk such as money /securities, or because they carry an unacceptably elevated risk of loss from explosion and/or fire such as gas bottles/aerosols/oils.

An example of this is lithium-ion batteries, a relatively novel development where only recently has the risks of fire from lithium-ion batteries been widely documented. They are now a growing cause of serious fires across a range of industries, including the storage sector. As a result, many businesses have introduced restrictions or conditions around their storage, based on factors such as battery type, watt-hour rating, or whether the battery can be removed.

From an insurance perspective, this is important.



Where gaps may appear

In an earlier article this year we detailed the issues and risks associated with the storage of lithium-ion batteries and items containing them. Intended as a general overview it did not directly link the implications of storing lithium-ion batteries/items to your terms and conditions. However, when an insurer looks at your business, they assess the likelihood of a major loss. That includes your premises, your security, your claims history, and your approach to risk management. But it also includes your terms and conditions. If your terms clearly prohibit certain items, insurers will expect that those items are not being stored.

If they are being accepted into store, that creates a gap between what you say and what you do.

That gap is important. Your terms and conditions set out the rules. Your customer acceptance process is what puts those rules into practise. And your insurance is based on the assumption that both are being followed. If those three criteria are not aligned, that is where your business is at real risk.

Under the Insurance Act 2015 businesses are expected to disclose information they know, or ought reasonably to know, that could affect an insurer's view of the risk. Having in place terms and conditions that prohibit customers storing certain items is an important part of prudent risk management, but then accepting those items into store would be information that insurers expect to be disclosed. Failing to do so could, in some circumstances, affect how a claim is handled.

A point of vulnerability can arise where you change to a new set of terms and conditions – it is your responsibility to have the necessary systems of check and control in place to ensure you are compliant in applying the requirements of the new terms and conditions now in use.

For many businesses, restrictions around certain items have evolved over time. The wording may have changed, but processes do not always keep pace. The difference in outcome can be significant.

A minor damage claim to the storage facility following a break-in being declined because customers were permitted to store prohibited theft attractive items such as money might be financially inopportune. A major fire claim being declined because lithium-ion batteries were being stored in contravention of your terms and conditions will by contrast have profound implications for your business.

Ultimately, lithium-ion batteries are just one example.

In not being aware of your own terms you will probably not be following and applying them.

Final Thoughts

As a takeaway – are you fully aware of your own terms and conditions and your day-to-day operation applying them? If not, then how likely is it that your customers will be complying with them?

Interested to know more?

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