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NEXT ISSUE: Sale of Goods Act—When Does A Warranty Period Begin to Run?

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TERMS & CONDITIONS OF TRADE— HOW TO BIND THE CUSTOMER

It is a common misconception of many people in business that by having their Terms and Conditions of Trade on the back of their invoices they are protecting themselves, or worse still some don't even have terms and conditions.

Terms and Conditions are essential to protect you whenever there may be a dispute regarding the product or service you provide or someone simply hasn't paid you. But you cannot impose those Terms and Conditions on a customer or client after they have entered into a contract with you which is the case where they only appear on the back of your invoice.

For example, Geoff Sparky receives a call from Mary Money to provide a quote for some electrical rewiring work at her home. Geoff calls in and looks at the job, works out how much to charge and provides her with a written quote that simply sets out the work that he would carry out and how much he will charge. Mary accepts the quote and Geoff does the work and issues an invoice with his Terms and Conditions of Trade on the back. One of the terms is that he charges 2% per month on any outstanding invoices and that the customer is liable for his legal costs if he has to pursue them for payment.

Mary doesn't pay it and after four months Geoff decides to instruct his solicitor to commence proceedings.

To his surprise he is advised that the Terms and Conditions on the back of his invoice do not apply to the contract with Mary because he did not bring them to her attention at the time he provided the quote. The place for his Terms and Conditions was on the back of his quote, not his invoice therefore he couldn't charge interest and he couldn't claim his full legal costs.

This is a basic example of some essential terms. There are many terms that are considered essential to protect you and your business from people such as Mary otherwise you could end up spending a lot of money chasing a moderate debt which is never economic. When asked by a client to advise on a dispute they have with a customer the first question we ask is "what are the Terms and Conditions of your contract with your customer?"

It is not a costly exercise to draft Contractual Terms and Conditions which you can use on a daily basis and they would simply become part of your daily business practice when dealing with customers. Terms and Conditions are yours and are there to protect you and your business.

If you would like Terms and Conditions of Trade drafted for your business or your existing Terms and Conditions reviewed please feel free to contact Eugene Collins.