

Terms and Conditions of Sale Checklist
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The terms and conditions of sale is (I'll use the singular, since the terms/conditions are a single document) an enforceable contract between seller and buyer—it's the small-font page included as part of a purchase order or is the document you quickly scroll through, and agree to, on your way to making an online purchase. But terms and conditions of sale are a key component in any U.S. market risk mitigation strategy. They should be developed by the Irish/Northern Irish seller and consistently used. They should be "U.S.-style" and reflect the unique risks related to the U.S. market. This checklist outlines some key considerations for an effective set of terms and conditions.

1. Terms and conditions should be regarded as a minimum baseline for exporting/expanding to the U.S., and can be augmented by Service Agreements, Distribution Agreements, and other business agreements (provided that the terms are referenced in or appended to the 'larger' agreement).
2. Be clear that the terms and conditions apply to each/any sale of seller's products. The seller should also be clear that it rejects any modifications proposed by the buyer in a document provided by the buyer or in conversations between buyer and seller.
3. Specify the payment terms and consequences for late or non-payment. Consider whether to apply a penalty rate/fee for late payments and/or to suspend unfulfilled orders. Remember to specify that if the seller has to go to court to enforce a payment obligation, the buyer would be responsible not just for the amounts owed but for seller's costs (including legal fees) incurred in securing payment.
4. Should the seller retain some kind of security interest in the products until the buyer has paid in full?
5. How should the goods be 'accepted' by the buyer? What happens if the goods are rejected?
6. Are there any warranties on the goods? In the U.S., like in Ireland and Northern Ireland, warranties can be explicit or implied. What happens if the goods don't meet the warranty? Should the consequence be limited to repair or replacement at the seller's election? Do unauthorized modifications or misuse void such warranties? Consider whether to disclaim all warranties, express or implied, that are not specifically offered by the seller.
7. Specify shipping terms with reference to a standard such as INCOTERMS. An INCOTERMS term will also cover transfer of title and risk of loss, and can specify the party responsible for taxes, fees, and other charges related to the sale.
8. Limit seller's liability by disclaiming incidental, consequential and punitive damages. Consider whether to cap seller's liability at the amount paid for the underlying product.

9. Include a specific reservation of intellectual property rights for the goods and any materials sold/provided with the goods.
10. Specify choice of law and choice of forum for disputes, as well as provisions related to dispute resolution, such as an arbitration clause.
11. Limit amendments to the terms to a writing signed by both seller and buyer, and specify that any one-time waiver of any condition by the seller is not to be construed as a permanent waiver.
12. Consider at what point (if any) the terms and conditions should terminate.