

INFORMATION SERIES

E - C O M M E R C E F O R S M A L L B U S I N E S S

FACT SHEET # 6

ONLINE CONTRACTS

The basic legal machinery for conducting business is a binding contract between a buyer and a seller. This Fact Sheet explains how this works in an Internet environment.

ONLINE CONTRACTS

All the traditional offline rules apply to online contracts, although the way in which they apply may be different. The Electronic Transactions Acts (the ETAs) means that there is no doubt that online contracts can be made in Australia. This guide looks at the key elements necessary to establish a valid contract which the courts will enforce.

INTENTION TO CREATE LEGAL RELATIONS

The parties to a contract must intend to enter a legal relationship. This is generally clear in business transactions such as offering goods or services for sale on your Web site. However, it is well to make this clear in the Internet environment where there are many "special" offers made to attract visitors to Web sites.

OFFER AND ACCEPTANCE

A contract requires an offer followed by an acceptance of that offer (a conditional acceptance is not enough). On the Internet, the simplest way to do this is to use an "I agree" button which the customer clicks on to indicate acceptance of the offer you have made on your Web site. It is possible to have acceptance by email or fax but this can cause difficulties in monitoring terms or conditions which the buyer may attach to the email or fax.

Problems can arise if the price on the Web site is out of date or the product is out of stock (because you will be bound by a customer's acceptance). One way around this is to make goods available for the customer to select and make you an offer – this is called an invitation to treat. You ask the customer to click on the goods or services that are wanted.

This will give you an opportunity to reject an offer if you have some error on the Web site. On the Internet, a simple mistake as to price

can be very damaging because of the speed with which news of the mistake can be spread to so many people.

It is uncertain when the acceptance of a customer's offer is communicated on the Internet. You need to consider how you communicate your acceptance – such as when you debit the client's credit card or when you notify the client electronically that the offer (ie the order) has been accepted. It is suggested that electronic notification is the better form of acceptance.

TERMS AND CONDITIONS

The terms and conditions of a contract must be clear and be brought to the customer's attention before the contract is made. It is not possible to add them later. It is relatively easy to bring terms and conditions to the attention of online buyers by making them click on an "I accept" or a similar button before they can proceed with the transaction. Clients ought to be forced to scroll through the terms and conditions before hitting the "I accept" button.

CONSIDERATION

A contract is only valid if there is consideration ("something of value") passing from the customer to the person providing the goods or services. On the Internet, this will almost inevitably be the payment of money by the client.

SIGNATURE

A signature is not necessary for either online or offline contracts to be valid provided the other elements (above) are present.

OTHER FACTORS

There are a number of improper business practices that can make a valid contract ineffective, such as:

- Misleading or deceptive conduct by the seller (see the Trade Practices Act and Fair Trading Acts)
- State Contract Review Acts will provide protection against certain unfair practices
- Equitable rules imposed by the Courts for matters such as "unconscionable conduct"

OVERSEAS CLIENTS

Remember that on the Internet your clients may come from anywhere in the world. Your sale may be governed to some extent by the laws of the country in which your client resides. For example, in Australia, there is no law as to a “cooling – off period” for Internet goods. However, there is such a law in England and Europe and it will apply to clients from those countries.

The Federal Treasury’s “Building Consumer Sovereignty in Electronic Commerce: A Best Practice Model for Business” has a number of very good suggestions for contractual practices, including:

- Information given to consumers should be clear, accurate and accessible
- Details of the cost to the consumer should be provided
- Reference to cost should include the applicable currency
- Terms and conditions should be clear (eg distinguished from advertising material)
- The usual things you might find on the back of an invoice, including terms of delivery, conditions about termination, details of warranties and after-sales service should be shown.

USEFUL LINKS

“Building Consumer Sovereignty in Electronic Commerce – A Best Practice Model For Business”

<http://www.ecommerce.treasury.gov.au>

This guide by the Commonwealth Treasury provides a useful guide for SMEs contracting online.

“E-Commerce Law Basics – Contract Law”

<http://www.finlaysons.com.au/ipt/Library/pr0001.html>

This guide gives a general overview of the issues involved in contracting generally, and with specific focus on online transactions.

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