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Consumer contracts:

How they work & your clients' rights

Chartered Trading Standards Practitioner **Clare Forbes** explains how contracts relate to building projects, why they're important, and what they should include.

Are you familiar with the [Consumer Contracts \(Information, Cancellation and Additional Charges\) Regulations 2013](#)? If not, you need to be. These regulations exist to protect both businesses and the consumers they serve. Failure to understand these rules or apply them could lead to breaches that have financial repercussions and could damage your business's reputation.

This document offers useful background information for anyone running a small building business to help you understand your obligations when entering into contracts with consumers.

What is a **consumer contract**?

A consumer contract legally binds a business to a consumer by way of an agreement that's consolidated in writing or verbally in relation to a product or service. In terms of the requirements in the Consumer Contracts Regulations, this includes agreements for building work such as renovations and extensions, but it does not cover new builds or significant conversions.

However, these type of contracts would still be covered by contract law in general, and you should ensure you have detailed contracts in place with homeowners. This also applies where contracts are between commercial parties such as a development company and a builder.

Consumer contract rules, therefore, apply to all businesses that sell products or services. Undertaking building work for a consumer would be considered a service.

The **elements** of a contract

Contracts are only legally binding when certain criteria are met, such as:

Making an offer

An offer occurs when your client either:

- + Receives a quote for work to be undertaken, or;
- + Approaches a business asking if work can be undertaken for a specified price.

Accepting the offer

Until an offer has been accepted (by either the consumer or the business), no legally binding contract is formed. The consumer might think the quote provided is too high, or likewise the business may not be able to supply the service for the price the consumer has offered. Either party may then respond with a counteroffer, which could be a reduced price, lesser amount of work or a lower specification.

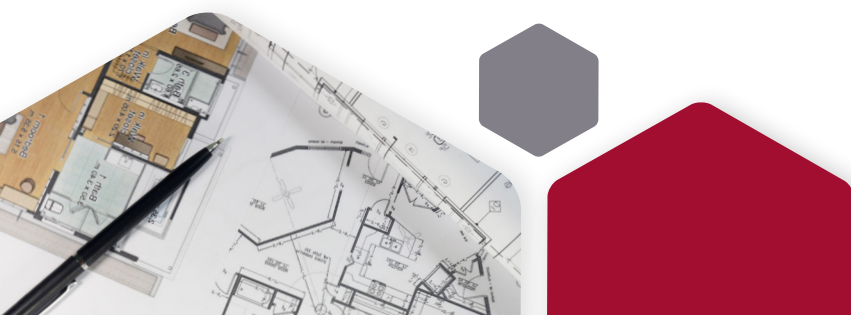
Consideration and intention

Each party must provide 'consideration'. In this context, consideration means the commitment to provide a product or service in return for payment or promise of payment.

Both the consumer and business must understand and intend to create a legally binding contract.

Legal capacity

A contract cannot be legal if the consumer is mentally unfit, underage, or in a state of inebriation or on drugs when making the purchase.



Can a business **withdraw** a contract?

Yes, your business can refuse to honour a consumer contract. But you must be certain of your legal grounds for withdrawing because the consumer could claim you misled them or are in breach of the contract. This could lead to accusations of unfair trading or civil claims in court.

The importance of **contractual terms**

Contractual terms aren't always written. They can be verbal too. But in the event of a dispute later on, relying on verbal terms could make proving what was or wasn't agreed very difficult.

What are the different types of **contractual terms**?

Terms that appear on all consumer contracts are 'standard', for example, your payment terms. Some terms – for example, where you agree on a special price with a consumer – are referred to as 'express.'

Regardless of what you sell, there are also some "implied" terms which are automatically built into consumer contracts. These are things that consumers have a right to expect, and even if they are not included as written terms in the contract or discussed verbally, the Consumer Rights Act 2015 states that goods must match the description advertised, be safe to use, and be of satisfactory quality. In terms of services such as building work, they must be performed with reasonable care and skill, for a reasonable price (where a fixed price was not agreed) and within a reasonable time.

Information you must **provide** to consumers

The legislation states that before a contract is made, you have a duty to provide certain information to the consumer concerning the goods or services you're selling to them (see next page). This was introduced to make sure consumers are well informed and can make good buying decisions, but it also protects businesses as well. Failure to provide this information could leave you in a vulnerable situation with them accusing you of breaching the contract and seeking financial redress, or you may be committing criminal offences by omitting key information that means a consumer has been misled.

Download **free** FMB contract templates

The FMB offers free contract templates to its members. They've been written with the Consumer Contracts Regulations in mind and we've got all regions of the UK covered, so members can use them safe in the knowledge that they're protected.

Members can log in to **view and download contracts** on our website, where you'll also find template forms for 'Changing Work' and cancellations, which can help to manage contract changes. We know that in some circumstances members may use contracts other than the FMB's, and that's when it helps to understand the Consumer Contracts Regulations.



3 types of contracts:

The information you need to provide depends on how the contract is made. There are three types of contract:



Distance contracts

Distance selling describes a situation where a business sells a product or service remotely - by phone, mail order, or via a smart television or website. No face-to-face contact takes place between the consumer and the business including when the contract is agreed.



Off-premises contracts

Sometimes referred to as doorstep selling, where a consumer is visited at home and the contract is either agreed there and then or, an offer is made by the consumer. This can also include contracts made at any place which is not the businesses premises.



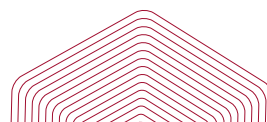
On-premises contracts

Clearly this applies where the contract is made on a business premises, but also covers other situations which are neither distance or off-premises contracts. For example, if you visit a consumer's home and provide a quote or an estimate, but do not at that point agree the contract, this would be classed as an on-premises contract.

Key information you must provide

The full list of required information is in **Schedule 1** (for on-premises contracts) and **Schedule 2** (for distance and off-premises contracts) of the legislation and will depend on the product or service you're providing but here are some of the key things to include:

- + **Information about you:** Your business's name, full address and contact details (if you are a limited company and/or VAT registered, you must also include your company number, registered office address and VAT registration number).
- + **Information about the service (or goods):** Detail the main components of the service – what is it that you are going to do, what materials will you use, what are the dimensions or other specifications.
- + **Information about the price:** How much is it going to cost in total. This should be inclusive of all costs payable by the consumer to you, including VAT. If for example it is not possible to give a definite price (which should be in very limited circumstances), you must provide information about how the cost will be calculated. You may know the cost of materials but labour costs will depend on complexity and issues found along the way. Be clear about this in your contract - an example might be "labour will be charged at £250 per day and we estimate that it will take five days to complete", or "£100 per square metre". You should also include payment deadlines and details of any deposit, whether a deposit or initial payment for materials is required and the deadline for any interim or final payments, as well as how payments should be made (cash, card or bank transfer).
- + **Information about the process:** What happens next? When will work start, how long will it take to complete, will there be any times when the consumer is without key services or cannot access the property, who is completing the work (are you using any subcontractors?), cancellation rights and instructions (see next page), how do they make a complaint, are you a member of any alternative dispute scheme?





Cancellation Rights

For all distance and off-premises contracts (except for where the consumer has requested urgent repairs or maintenance), consumers have a legal right to cancel a service within 14 days of the contract being made. You have a duty to inform consumers of this and provide them with instructions on how to cancel and a cancellation form (templates for these are also in the legislation).

When a consumer cancels, they should be refunded any money they have paid in full, although you may be able to deduct an amount for usage.

These cancellation rights don't apply to on-premises contracts.

Starting work within the cancellation period

Because consumers have the 14-day cancellation period in which to change their minds, the legislation also prohibits service contracts from starting within this period, unless the consumer has made a written request for the service to begin immediately. If this is the case, the consumer must also be given correct information about what this means. They will not automatically lose the right to cancel but by making the request they are agreeing to be liable for paying for any work undertaken if they do cancel once work has begun, and accepting that their cancellation rights will end once the service is completed.

Does the information have to be in writing?

The default position for off-premises contracts is yes, it should be in writing. But it can be given to the consumer in another format if the consumer agrees, so for example, you could send it all electronically by email or on a storage device, but it must be before the contract is legally binding. For distance contracts the information can be given on a website or verbally, but the consumer should be sent a confirmation including all of the information in a way they can store and refer back to, such as an email.


What are the risks if I don't comply?

As highlighted at the beginning, consumer law makes it a requirement that information and cancellation provisions are complied with; failure to do so could mean your contracts are unenforceable in the case of a civil dispute. But there are also criminal offences if you don't provide the cancellation information for off-premises contracts and perhaps more importantly, you'd be inadvertently giving consumers up to 12 months to cancel and have to give them a refund. If any of the information is incorrect, missed out or hidden in the small print, there could also be unfair trading offences.

FMB members have access to the FMB contract templates which will help businesses to comply with these regulations when making contracts with their customers. Members can also find further information on our website, along with a 7-part **FMB webinar series** on consumer contracts, giving further guidance on a range of issues. Members can find these by logging in at www.fmb.org.uk/members.

How to address pricing uncertainty in your contract

As the ongoing building material shortages push the price up on certain supplies, it helps to be up-front with your clients about the possible increase in the cost of building materials. You can do this by including a simple change clause in your contract. The FMB offers guidance on this for its members, as well as letter templates you can use to highlight industry issues relating to product pricing and availability to your clients.



Need further help?

FMB members have access to free legal advice via our legal helpline.

It's part of our range of services offering free, expert advice to help you manage, protect and grow your business. Log in to access the details:

www.fmb.org.uk/members

A compliant, well written contract could help to mitigate any disagreement between you and your client. But if you are unable to reach an agreement with them, our free dispute resolution service is there to help our members and their clients get projects back on track.

Becoming an FMB member

As the UK's largest trade association for small and medium-sized enterprises (SME) builders, we can help you to grow, promote and protect your business, and connect with other members regionally and nationwide.

FMB membership is a badge of quality to show to your clients as all our members are vetted and have their work inspected by an independent assessor before they can join. As a Master Builder, you'll benefit from access to:

- + Tailored insurance and warranties.
- + Our government-approved dispute resolution service.
- + Discounts and special offers with retailers and suppliers.
- + A profile on our Find a Builder search tool – find clients and boost your profile with support from our membership team.

Clare Forbes

Clare is a Chartered Trading Standards Practitioner with 20 years' regulatory experience in a broad range of legislative areas within local authorities and as a consultant. Clare provides support to organisations and businesses to achieve compliance through advice, auditing and training.

She is recognised as a leading figure in the Trading Standards field and has been operating as a consultant for six years, holding positions as investigator for the National Trading Standards Scams Team, subject matter expert contributing to development of guidance for the Chartered Trading Standards Institute and projects for the European Commission. She also delivers training on behalf of the Institute for the national qualification for Trading Standards professionals (CPCF) specialising in fair trading legislation and investigatory practice. Clare sits on the national CTSI Council as representative for Yorkshire & Humber and is Training and Events Officer for the Institute of Consumer Affairs.



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