

# Purchasing Terms and Conditions: The Dos and Don'ts



Trying to play a game without knowing the rules is a fool's errand. And in the game of business, failing to set the right rules—and ensure everyone's playing by the same rulebook—is crucial to the growth, competitive health, and continued existence of your company. That's why it's so important to know and understand the most common purchasing terms and conditions, and use them effectively when composing your own purchase orders and other contractual agreements.

Fortunately, it's possible to master purchasing terms and conditions and put them to work for less risk, greater profits, and strong, healthy, and strategic supplier relationships that benefit all parties. Take a closer look at the things you absolutely should include in all your agreements—and the things you should avoid at all costs.

## Why Purchasing Terms and Conditions Matter

Like invoices, purchase orders represent a formal, written agreement between you and your vendor. And also just like an invoice, your purchase orders need to have complete and accurate information to ensure you get what you ordered, when you need it. But beyond the factual information of quantities and qualities, you also need to ensure your purchase order agreements have the correct purchase order terms and conditions.

Why? Because the terms (the details of the order) and the conditions (the conditions of purchase) establish a clear set of rules and boundaries for the expectations and obligations of both parties in the agreement. The vendor has their interests to pursue (profit, repeat business, access to new markets, etc.) and you, as the buyer, have yours (goods and services, a fair purchase price, a reasonable delivery schedule, etc.).

Meeting in the middle to ensure both parties are satisfied with such terms and

conditions within the framework of the purchase order agreement means engaging the law, which both enforces the agreement and shields both parties from damages caused by any non-compliance on the part of the other party (intentional or accidental).

By placing general terms and conditions in your purchase orders, you're leveraging the power of governing law to ensure:

- You get the goods and services you need.
- Your vendor is compensated appropriately.
- Both parties are protected by limitation of liability (including indemnification where appropriate) and risk of loss is minimized.
- Clear, legally-binding incentives for exceptional performance, as well as penalties for nonconforming parties, are laid out in detail. Individual acts of non-compliance may be further detailed, with attendant penalties as warranted.
- Any additional terms specific to the relationship between the two parties are spelled out to avoid miscommunications or misunderstandings that can lead to financial loss or damaged relationships.

Terms and conditions will vary by company, but generally speaking, well-established general purchasing terms and conditions should include:

- Supplier's obligations and expectations, including legal responsibilities related to deliverables such as delivery of goods, performance of services, quality of goods and services, industry and legal compliance, and other applicable laws.
- Buyer responsibilities and expectations, including their legal obligations to pay according to the terms of the agreement.
- Detailed descriptions of the quality standards established for purchases made from the vendor. This may include specific materials, or characteristics such as "freshness" in the case of comestibles. For services, these expectations may be framed around specific performance benchmarks, experience requirements, or absence of undesirable actions (e.g., X or fewer missed appointments each month, full system reviews every x months, etc.).
- Detailed pricing information, as well as essential contact information, purchase order number, etc.

- Payment terms, i.e. the method of payment, due dates for early, on-time, and late payments, and any late fees. Also includes discounts for specific quantities ordered, early payments, etc.
- Detailed information regarding penalties enacted if the buyer or seller fails to meet the terms of the agreement. Includes provisions for new shipments, replacement goods or services at the seller's expense, etc., as well as similar penalties for the buyer should they modify or cancel their order outside of the terms established.
- Delivery schedules, including anticipated delivery dates for goods and reasonable time frames (e.g., start/end dates) for services. Includes crating and cartage,
- Exception handling, or how late, inaccurate, or incomplete deliveries (as well as non-delivery) will be handled. Includes detailed information on any fees for order cancellations meeting certain requirements, as well as any service fees for order modification.
- Force Majeure (also known as "acts of God"), and how unforeseen incidents such as natural disasters, war/geopolitical conflict, labor strikes, etc. are to be addressed should they occur.
- Methods for modifying the agreement, and how such changes will be implemented.
- Notification requirements for changes to the agreement, and how such notice will be delivered.
- Any other terms specific to your agreement with that vendor, which may include:
  - Confidentiality measures to protect private data and intellectual property rights for trade secrets, trade names, proprietary information regarding processes and materials, and any other confidential information.
  - Environmental requirements, also known as "green initiatives." May include formal documentation regarding the recycling of packaging, shipping materials, etc., as well as detailed requirements for natural or organic products and environmentally-friendly shipping and delivery.
  - Legal considerations related to the international sale of goods, programs such as affirmative action, the use of independent contractors, focusing on hiring vendors or subcontractors with veteran status, etc.

- Limits of liability for both parties as determined by local law or other governing law. May include information regarding required liability insurance coverage, as well as other obligations such as worker's compensation claims due to non-compliance by one or both parties, encumbrances related to properties related to the agreement, property damage, automobile liability, etc.

Not every company will use every kind of terms and conditions. Service-based organizations, for example, won't have the same need to specify materials and delivery schedules as a manufacturing business dependent upon raw materials. However, they may have just as much need to ensure top-shelf subcontracting, adherence to labor standards, etc.

For small and medium-sized businesses who may not have the clout afforded other, larger organizations, it's especially important to negotiate the most favorable terms possible in order to preserve competitive performance and protect profits.

*Meeting in the middle to ensure both parties are satisfied with the purchase order agreement means engaging the law, which both enforces the agreement and shields both parties from damages caused by any non-compliance on the part of the other party (intentional or accidental).*

## **Digging Into the Dos and Don'ts of Purchasing Terms and Conditions**

Once you know and understand how the general terms of a purchase order agreement work, the next step is implementing a few best practices. Following some simple dos and don'ts will ensure you're making smart, strategic agreements—and avoiding the missteps that can cost you plenty in financial losses, damaged relationships, and reduced competitive performance.

### **The Dos:**

- **Start with a general purchasing agreement, and customize it for each vendor.** Working with your legal team, you can create “boilerplate” content that will speed the agreement creation process while enshrining

those requirements and protections you deem essential for *every* agreement your company enters.

- **Keep it simple.** Arcane legalese and endless instances of “hereunder” and “hereof” may sound fancy, but clear, plain language will serve you best. Of course, your legal team may find occasion to include their own instances of “hereunder” and “hereof” as appropriate when it’s time to finalize the agreement, and in those instances, it’s best to trust their skills and experience.

Avoid repetition, needless complexity in sentences, paragraphs, and sections, and any easily-misconstrued frippery throughout the document as a whole.

- **Expect the unexpected.** Ensure every agreement includes as many contingency measures as possible. Take a cue from Murphy’s Law and consider force majeure an inevitability, rather than a possibility.
- **Format for clarity and accuracy.**
  - Make sure the agreement is labeled as a contract.
  - Include essential information in the first paragraph of the agreement, including:
    - Date of the agreement.
    - Complete and correct contact information for both parties.
  - Define all technical terminology and provide context where necessary.
  - Have the wording, grammar, and phrasing reviewed multiple times before it ever reaches your lawyer or legal team. A single misplaced modifier, conjunction, or punctuation mark can transform the legal meaning of a sentence completely.
  - Create clear and easy-to-navigate headers and subheaders.
  - Number the sections, sub-sections, and paragraphs for easy reference.
- **Consult your lawyer or legal team before signing.** Make sure they review each agreement carefully before it’s signed.
- **Practice practical document management.**
  - Make sure all parties initial every page of the document.
  - Get the agreement notarized as required by applicable law.
  - Ensure you have both hard copies and digital copies of the original agreement in a secure location.

## The Don'ts:

- **Don't let assumptions guide you.** The other party may have a very different understanding of specific terms and conditions than you do. Defining all terms as clearly as possible guards against painful fallout later.
- **Don't rush things.** A purchase order agreement is a legally binding contract. It deserves time and careful attention, as well as a thorough review by your legal team. Remember, starting from a template with boilerplate is a time-saver, but every agreement should travel through your legal department or lawyer's office before it's ever signed.
- **Don't settle for spoken agreements.** Documenting and detailing every aspect of the agreement in writing protects both parties and ensures miscommunications don't create excessive risk exposure or costly penalties for either party.

Once the agreement's in place, don't accept any modifications to it without thorough review and approval, in writing.

- **Don't jump the gun.** Both parties should wait until the agreement is legally binding before performing any services or otherwise adhering to the terms of the contract.
- **Don't skip a legal review.** Because so much is hanging in the balance—your company's reputation, risk profile, competitive agility, bottom line, etc.—every single contract, no matter how minor, needs a thorough and complete legal review. You'll be glad you took the time should Force Majeure rear its misshapen head, or if you find yourself dealing with someone with less-than-honest intentions.

## Mind Your Purchasing Ps & Qs with the Right Ts & Cs

Part of effective spend management is establishing purchasing terms and conditions that serve your company's best interests. By identifying the right terms and conditions for your purchase orders, you can work with your legal team and your vendors to strike agreements that ensure you and your suppliers meet your obligations to one another, maintain positive relationships, and mutually benefit from every transaction you share.

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