

## Best Practice Guidelines for 'Applicable' Terms and Conditions

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For a business to rely on its terms and conditions, the terms and conditions must be deemed as 'applicable'. That is, that the contract between the consumer and travel agent has been implemented appropriately.

In order to meet the test of applicability, businesses must ensure:

- The terms and conditions are provided to a consumer **before** entering into any transaction
- The terms and conditions are accepted by the consumer

The Travellers Choice terms and conditions template available for use exclusively by members includes a Customer Acceptance form which should be used wherever possible.

Given the various ways that travel agents engage and transact with consumers, a range of scenarios are outlined below. In the event of a dispute, the burden of proof that 'applicable' terms and conditions are in place will fall on the travel agent. It is prudent to consider the worst-case scenario whereby a dispute falls before a court and what would be the best outcome for each type of transaction.

### Face-to-face transactions

Before making any confirmed bookings, the consumer should be presented with a printed copy of your terms and conditions and their acceptance obtained.

The Customer Acceptance form can be physically signed and dated during the face-to-face transaction. There should be no exceptions and if a consumer refuses to be bound by your terms and conditions, it would be prudent to refuse the business. You will not be able to rely on your terms and conditions if they are not formally accepted.

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### Email transactions

Before making any confirmed bookings via email, the consumer should be provided with your terms and conditions for acceptance. Your terms and conditions document can be emailed or posted to the consumer, or you can direct them to your website if the information is available online (this is the case for members who use Travellers Choice's template and have a Site Builder website).

Consumer acceptance via email can be received through any of the following mechanisms:

- A scanned copy or photograph of the signed and dated Customer Acceptance form
- An electronically signed and dated copy of the Customer Acceptance form if the consumer has the required software to facilitate electronic signing
- An email outlining that your terms and conditions have been read, understood, and accepted

From a court's perspective, all of the above are acceptable, however a real signature provides the greatest form of evidence in the event of a dispute.

### Telephone transactions

Transactions should only be committed to via telephone once your terms and conditions have been provided to and accepted by the consumer.

Your terms and conditions document can be emailed or posted to the consumer, or you can direct them to your website if the information is available online.

Once received, the terms and conditions can be accepted through the same mechanisms as outlined for email transactions.

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### Online acceptance

In the event that it is not possible to obtain the consumer's acceptance of your terms and conditions via a physically signed and dated Customer Acceptance form, an online form is available for members who use Travellers Choice's template and have a Site Builder website.

Obtaining acceptance using the online version of the Customer Acceptance form does not carry the same legal weight as having the consumer sign a physical Customer Acceptance form and it is therefore recommended that members do not use the online version as the default method for obtaining acceptance.

### Corporate or regular customers

If you have individuals or businesses who make regular bookings it may not be practical to obtain signed acceptance of terms and conditions for each transaction. It is possible to enter into an umbrella agreement, whereby the customer is provided with and accepts your terms and conditions for every booking made within a defined period. It is important that the acceptance in this instance is through a signature and that the duration of the agreement is defined, rather than being open-ended.

### Internal procedures

In order for your terms and conditions to be applicable for all bookings, it is imperative that every staff member follows these guidelines for every booking. Internal training or changes to existing processes may be required and it will be the responsibility of the business owner and/or manager to ensure compliance.

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### Supplier terms and conditions

By accepting your terms and conditions, the customer is acknowledging that they are aware of and understand the relevant terms and conditions for each Supplier involved in their booking.

In order to follow best practice in relation to customer acceptance of your terms and conditions, it is important that you have internal processes in place that support customers in accessing information regarding Supplier terms and conditions.