

Online merchants: Check your T&Cs before they bite

Terms and conditions DO apply – tales of an online store builder



By Dr Howard Rybko
CDO at Synchrony Digital

In my experience, terms and conditions (T&Cs) are one of the last 'to-do's' in the rush before a new online store goes live.

Many online merchants think T&C's are a chore. They palm the job off to some sucker in their team, which leads to a last minute find & replace of some pinched T&Cs or else a kick down the road to a legal person somebody knows.

Either choice carries too much risk for my liking. If you want to limit some potential unexpected costs, I suggest you read on.

The wine special offer

Let's take a quick look at what happened to one of our Magento store owners, who runs an online store as part of a successful wine farm.

Her marketing people came up with a special: two bottles of wine for the price of one, which only applied to two specific cultivars. To complicate matters, the special would run concurrently with



a storewide discount coupon that had previously been mailed to their customer base. Under no circumstances could this discount apply to the special because this would result in a significant loss to the winery.

Unsurprisingly, a few 'smart shoppers' found a sequence that allowed them to double discount the special.

First, they added other products to their carts and applied the discount coupon to these items.

Then they added the specials. At checkout, the system recalculated their carts and mistakenly applied the discount to all cart items including the specials. Then they paid and waited for their orders to be delivered. The few orders that were done this way caused the winery a substantial loss ... which brings us back to our Terms & Conditions.

I am not a lawyer and cannot offer legal advice, but I would like to point out some general principles that may save you from similar losses.

Offer and acceptance

To make a sale, a buyer and a seller are required:

- Buyer makes an offer
- Seller accepts the offer
- Acceptance triggers a contract of sale (written or oral)



The instant the seller accepts the offer, a contract is established. In the online world, this means that no amount of talking, clicking or emailing beforehand constitutes a binding agreement between the two parties.

How does offer and acceptance affect your online store?

From the buyer's perspective, an online sale is accepted as soon as payment is made.

As an online merchant, does this suit you? Does the trigger for your contract of sale necessarily need to be based on successful payment?

Definitely not!

The Contract of Sale Trigger depends on your T&C's

I'll wait while you go read yours ... probably for the first time.

Try to see if you can determine at which point your business accepts the order.

Spoiler alert! It does not have to be when payment is accepted.

The hidden costs of cut & paste T&C's

Because our winery's T&Cs originated in the way I described in the beginning of this article, acceptance of their orders was triggered by payment. This allowed the 'smart shoppers' to get away with their trickery and left the winery with no choice but to honour the deals.

It could have ended differently if someone at the winery had read this article.



What is the best time to Trigger Order Acceptance of an online purchase?

Many online stores, having sourced their T&Cs from real shops, initiate the contract at the point of successful payment. This strategy works best when the cash register's bell rings or when the credit card machine spews a warm receipt. The customer then grabs the goods and leaves.

Sale complete. Contract in place.

It doesn't work this way online. After online payment, several actions are required to assemble and deliver the order to the customer.

Anyone running an online store knows how many ways things can go wrong during this process.

Can your pilfered T&Cs cope with all these uncertainties?

No, they can't.

You can avoid all the risk with a single line in your T&C's, which goes like this...

“Your order is accepted upon delivery of the goods to you or upon your collection of the goods”

To be super clear, you can also add this...

“This is true, regardless of any communication from our staff or website indicating that your order or payment has been confirmed. We will indicate the rejection of your order by cancelling it and refunding you as soon as possible”

This way, your contract of sale is triggered only when the buyer physically receives their order. You can, at your option, cancel, refund or reverse an order at any time before delivery or collection, without any consequences.

This will surely save you money and stress in the future. **SR**

Dr Howard Rybko is an online sales specialist with many years of experience building, supporting and marketing online stores. As he is not a lawyer, he does not offer legal advice, so this article is intended to be a source of interesting and hopefully useful information for online store owners.

Synchrony is an established digital agency with years of experience in e-commerce and software development.

