



‘Terms of Supply’ and the PPSA regime

Do you provide credit to your customers? If so, you need to understand the full implications of the Personal Property Securities Act. If you do not, you risk losing title to your goods.

Hopefully you have written ‘Terms of Supply’ with your customers. Hopefully you also have a well drafted ‘retention of title’ clause in your Terms of Supply, to protect against non-payment.

A ‘retention of title’ clause typically says that the goods remain your property until you receive payment in full. Then if your customer does not pay, or goes broke (i.e. a company goes into liquidation, or a person becomes bankrupt), you can take back your goods.

However, your retention of title clause is not on its own enough to protect you. The *Personal Property Securities Act 2009* (Cth) (the **PPSA**) requires that certain ‘security interests’ (such as your retention of title clause) be registered on the Personal Property Securities Register (**PPSR**) in order to be effective.

What can you do to protect your business?

There are three key things you should do to protect your business:

1. Have your Terms of Supply **reviewed and amended** to specifically refer to the PPSA. If you do not have Terms of Supply, now is the time to get these in place.
2. Once your Terms of Supply are in place, get your customers to sign these – otherwise, they may be ineffective.
3. **Register** your interest in your goods on the PPSR – if you do not do this, you can lose your goods to someone who has a registered interest.

What happens if you do not register?

You can lose your goods to another party, even though you are the rightful owner of your goods. For example, if your customer is a company and a bank has a security interest in all of the company's present and future property, the goods you supply will be captured by that security. If the customer goes broke and you have not registered your interest, the bank can (and will) legally take your goods.

What happens if you do not change your Terms of Supply?

Are you considering using your existing documentation and just registering your ‘retention of title’ on the PPSR? Though this may create an effective security interest, it also creates the following potential problems:

- You will be required to comply with the onerous enforcement provisions contained in the PPSA. For example, if a customer has not paid and you wish to seize the goods, you will first be required to provide notice to the customer. If you then want to sell those goods to another person, you must also give notice of the proposed sale to your customer. Your Terms of Supply, if drafted properly, can enable you to contract out of these obligations.



- You may be required to disclose confidential information to third parties. The PPSA requires you to provide a copy of your agreement with a customer to certain people who request it. If your Terms of Supply are not carefully drafted, you may be required to disclose commercially sensitive information.

What next?

If you would like to speak to someone about updating your Terms of Supply or putting in place a new Terms of Supply, call us on [1300 654 590](tel:1300654590) or email us at wehelp@adlvlaw.com.au.

Further information can also be found on our website at www.adlvlaw.com.au.