

Terms and Conditions

Sometimes, there will be a contractual relationship between a website operator and a website user; other times, there will not.

Where there is no contractual relationship, legal notices can still have legal effects. For instance, licenses of intellectual property rights and disclaimers of liability may be legally effective where there is no contract. Moreover, statutory and regulatory disclosure obligations can be fulfilled by means of legal notices irrespective of whether a contract subsists.

If however an operator is selling something to users, or wants to impose positive obligations upon users, or wants to institute prohibitions that are extraneous to any license of intellectual property rights, a contractual relationship will usually be necessary.

To help ensure that a terms and conditions document is properly incorporated into a contract, the document should be expressly accepted by the user.

Common methods of gaining acceptance include: (a) incorporating a statement next to a submit button providing that, by pressing the submit button, the user agrees to the document; (b) using a checkbox to gain consent, and blocking registration form submission if the checkbox has not been checked; and (c) requiring users to scroll through the document, and click an "agree" button after doing so.

In all cases, the document should be available to users at the point of acceptance, either on screen or via a hyperlink. If a contractual document includes unusual and/or potentially controversial provisions, it may be necessary to bring these to the particular attention of users.

In general, you should not ask users to affirm that they have actually read a legal document - almost none will do so, and the reading of the document is not a precondition to its incorporation into the contract.