

How User Agreements  
Protect Your Business and Website  
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Regardless of the industry, companies often fail to consider the benefits of having an agreement on their website which binds their users. While for purely information sites, agreements offer little benefit, they have great advantages for product or service sites.

Enforceable Contracts

Many believe user agreements are not binding, however there have been several cases which state that “clickwrap” agreements can be binding under certain conditions. The term “clickwrap” has evolved from term “shrinkwrap” which describes the agreements in shrunken font size which wrapped around software disk boxes or envelopes. Based on current case law, for clickwrap agreements to be binding, the user must be forced to view the agreement, take some action to agree to it and be prevented from proceeding with use if the user does not agree, and have an option to return or end use of the product and receive a full refund.

As a binding contract, a user agreement offer a contractual remedy against the user for failing to comply with any provision in the agreement. This is in addition to any other legal remedies that may be available, such as copyright law. Also, the agreement can determine the venue for any litigation which can save future costs if disputes arise. A Website Agreement set, including User Agreement, Site Submission Rules and Privacy Policy, are available for purchase from the author [here](#).

Two warnings however. 1) What law will apply, where the case will be litigated and whether the contract will be binding is determined on a country by country basis, wherever a user chooses to bring the case to court. Therefore, international use of your site, products and services also increases your risks and costs of future litigation, so be sure that your revenue justifies these unknown risks. 2) Persons under 18 who agree to contracts can be released from obligations under them, so it is best to set up your user agreement as part of a credit card or other process which ensures that users are over 18.

Agreement Terms

Who Can Use the Site and How

A user agreement should set forth both who can use the site and permitted uses, such as the following:

- That the users are over 18. This can ensure that the user is either over 18 and bound by the contract, or supervised by a parent who agrees to the contract and the

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<sup>1</sup> Readers are cautioned not to rely on this article as legal advice as it is no substitution for a consultation with an attorney in your state. Based on jurisdiction and time, the law varies and changes.

minor's use. It is important to be aware that the FTC has regulations regarding collection of information from minors which also apply to your website.

- That the user is truthful in information disclosed on the site and agrees to what he or she is buying and to pay for it. This can provide a remedy against the user if fraudulent credit card information, contact information or other information is provided, or if the user disputes the charge later. Threat of litigation regarding the agreement can some times result in faster resolution of payment disputes.
- That the user agrees not to copy materials on the site, not to reverse engineer or break into the site, and not to use the website materials, products or services to violate law.
- That the user agrees to use the site as per the instructions, not to disclose his password to others for use, and that the site has a license for use of anything the user submits or posts to the site.
- That the use of the site is at the discretion of the company and that any use by anyone may be terminated by the company at any time

#### Statement of Any Purchase Policies

The user agreement should clearly state any policies regarding the purchase, including warranty, shipping, returns or otherwise, and the user's agreement to such policies. It is important to be aware that FTC regulations and other laws govern sales of products over the internet, as they do mail order and store purchases.

#### Waiver of Implied Legal Warranties

The user agreement can also serve to waive legal warranties which are implied by law regarding the sale of products under the Uniform Commercial Code. Despite its name, the uniform commercial code varies by state, but generally is uniform. The UCC implied warranties include the following: merchantability (that the item will do what it is intended to), fitness for purpose (that if the items fitness for a particular purposes is stated, it will meet that purpose), non-infringement (that the product does not infringe other parties' rights) and title (that the seller owns what she is selling). These warranties can be waived so that they do not apply through insertion of waiver language as set forth in the UCC.

#### Liability Limits and Postings

The user agreement should also limit the liability of the company for damages of all kinds regarding use of the site, errors on the site, viruses on the site or products, failure of the site to operate, third party links, and any purchase or service. This is an extremely beneficial provision to lower risk, especially regarding purchases and postings on the site.

Site postings can have a lot of liability associated with them. Users may post materials that are libelous, obscene or infringing of a copyright or trademark. Sites can be legally liable for these postings. Therefore, it is vital to incorporate site submission rules and the liability limit into the user agreement, which anyone making or viewing postings must agree to. It is also helpful to include a provision which permits disclosure of user information to law enforcement authorities or as a result of subpoena. In some cases, users have sued to prevent disclosure of such information by sites.

### Indemnification

The user agreement can require that the user indemnify the company for any claims resulting from such user's use. This means that if the company is sued due a user's actions, the company has a legal remedy to sue the user and require the user to pay for any costs that the company is forced to pay from such a claim.

### Conclusion

A user agreement can offer tremendous legal benefit both in lower risk and ensuring remedies for websites. A Website Agreement set, including User Agreement, Site Submission Rules and Privacy Policy, are available for purchase from the author [here](#).