

Unfair contract terms

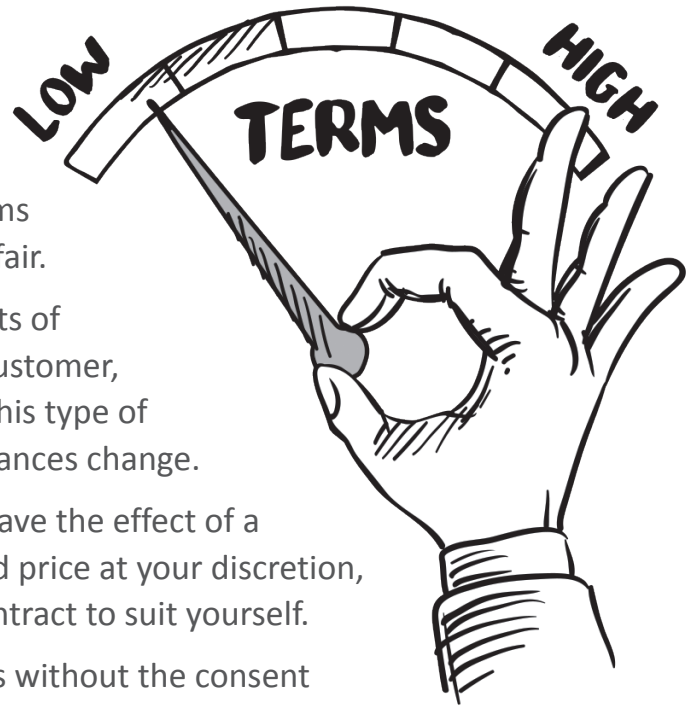
Changing the terms of a contract (variation clauses)

When a business enters into a contract with a customer and there is little or no opportunity for the customer to negotiate the terms then this is likely to be a standard form consumer contract. Under the Fair Trading Act, all the terms in a standard form consumer contract must be fair.

Terms that give you the right to change elements of a contract, after it has been agreed with your customer, are known as variation clauses. You might use this type of term to amend a long-term contract if circumstances change.

Variation clauses are likely to be unfair if they have the effect of a 'blank cheque', allowing you to adjust an agreed price at your discretion, or to change other important aspects of the contract to suit yourself.

A term that gives you the right to make changes without the consent of your customer may be unfair, under the Fair Trading Act.



Tips for writing fair terms

Your terms are more likely to be fair if:

You explain what, when and how a contract may change

So your customers can make an informed decision whether to enter the contract in the first place.



You give reasonable notice and a right to cancel without cost

So your customer can go elsewhere if they are unhappy with the change, without being left worse off.



The Commerce Commission can take action to stop you using an **unfair term** in a standard form consumer contract. If a court declares the term to be **unfair**, then it will **not be legally binding** on your customer.

Terms that may be unfair include:

Allowing the price of a product or service to be raised without seeking your customer's agreement before doing so or being unclear about what increases your customer can expect.

EXAMPLE

"The price may be adjusted if costs relating to the order increase prior to delivery."



Allowing the business to change the details about when/how a service will be delivered.

DELIVERY:

~~TUESDAY~~

FRIDAY



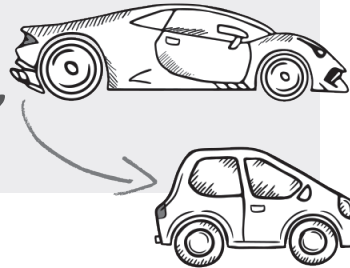
EXAMPLE

"The Company may make changes to the dates, times and content of its courses without prior warning."

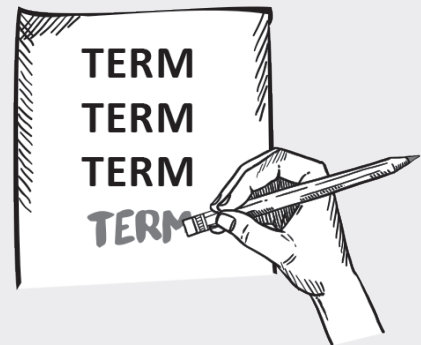
Allowing the business to change the description or nature of the product from what was previously agreed.

EXAMPLE

"All materials used may vary in colour and finish."



Allowing the business to change any of its terms at its discretion.



EXAMPLE

"The company may at any time vary or add to these conditions as it deems necessary."

Having clear and fair terms in your contract will:



- Save you time
- Help prevent disputes and reputational damage
- Protect your business if something goes wrong

A term in your contract that is declared unfair by a court, cannot be used, enforced or relied on. If you continue to use or enforce the term you could be prosecuted and face conviction, fines and other legal sanctions.

Want to know more?

Unfair Contract Term Guidelines – <http://www.comcom.govt.nz/fair-trading/guidelines/unfair-contract-term-guidelines/>

Other quick guides and videos – <http://www.comcom.govt.nz/fair-trading/guidelines/business-guide-to-unfair-contract-terms-/>