

# Key facts about the contracts

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## Relevant or related legislation:

The relevant legislative regulatory basis framing contracts with consumers is Consumer Rights Protection Law embodying Council's directive 93/13/EEC of April 1993 on unfair terms in consumer contracts, Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees etc.

## Key facts about unfair contract terms:

A consumer is a natural person who is not acting in the course of his or her business or profession.

A consumer is not bound by a standard term in a contract with the trader or service provider if that term is unfair.

Standard terms are those devised by a trader or service provider in advance and not individually negotiated with the consumer. They do not have to be in writing but typically are found in the 'small print' on the back of order forms etc.

All terms must be in plain intelligible language otherwise they are open to challenge as unfair.

One of Consumer rights Protection Center's (CRPC) main functions is to supervise compliance with consumer rights regarding draft contracts and contracts entered into between consumers and manufacturers, traders or service providers, also the performance of activities provided for in laws and regulations in order that the manufacturer, trader or service provider make changes in draft contracts or discontinue performance of the contract terms if unfair or ambiguous contract provisions are determined in the draft contract.

## What exactly does the definition of an unfair term mean?

An unfair term is one that creates a significant imbalance in the parties' rights under the contract, to the detriment of the consumer, contrary to the requirement of good faith.

A term is most likely to cause an imbalance if it has the effect of reducing the consumer's rights under the ordinary rules of contract or the general law. For example they either stop consumers from making certain sorts of legal claim against the trader or service provider which they could otherwise have made, or give the trader or service provider rights against the consumer that it would not otherwise have had.

But a term causing an imbalance must be capable of causing detriment to consumers taken together with the other terms in the contract.

The requirement of good faith embodies a general 'principle of fair and open dealing. It does not simply mean that a term should not be used in a deceitful way. Traders and service providers are expected to respect consumers' legitimate interests in drafting contracts, as well as negotiating and carrying them out.

## What does a consumer can do if trader or service provider refuses to accept that a term is unfair?

Consumer can seek for legal advice in CRPC and if CRPC establishes unfair terms, the trader or service provider will not be allowed to rely on that term.

If the trader or service provider does not comply with CRPC instructions or decision, consumer has rights to turn to court in civil

order.

**Standard terms are often in small print that is difficult to read. Is this covered?**

Plain and intelligible language must be used in consumer contracts. The plain language rule is part of a wider requirement that consumers should be able to read and understand terms before becoming bound by them. So, contract terms which are hard to understand because of obscure wording or unreadable small print can be found to be unfair.

**If a term of the contract is unfair does this invalidate the rest of the contract?**

The fact that an unfair term is unenforceable does not mean that the rest of the contract is void, unless it is unworkable without the unfair term.

**How does the CRPC assess whether a standard contract term is unfair?**

The CRPC starting point in assessing the fairness of a term is normally to ask what would be the position for the consumer if the term did not appear in the contract. Where a term changes the normal position seen by the law as striking a fair balance it is regarded with suspicion.

**What actions can CRPC take to prevent the continued use of unfair terms?**

Enforcement authorities are permitted to consider traders and service providers about the use of contract terms with consumers. If necessary binding decision can be made against the trader or service provider that willingly do not comply with CRPC instructions to stop the usage of the unfair term.

**Where can consumer get an advice about unfair contract terms?**

If consumer has an enquiry regarding unfair contract terms, please, contact CRPC.

<https://www.ptac.gov.lv/en/key-facts-about-contracts>