



CONSUMER AUTHORITY
NORWAY

The Consumer Authority's guidelines on digital terms and conditions



Terms and conditions:

Why are they important?

These guidelines are relevant to traders that enter into contracts with consumers in the digital economy.

A contract can concern everything from buying and selling products and services, to which rights and obligations apply if the consumers uses an app on their mobile phone. The contracts can also concern online services, such as social media or sharing economy platforms.

As a provider of this type of product or service, you will require terms and conditions that, among other things, govern what the contract entails, both parties' rights and obligations in relation to each other, and how any disputes that arise between you and a customer can be resolved.

It is your job to ensure that the terms and conditions include statutory information and that they are not unfair. Since the consumer cannot influence the content of your terms and conditions, the Consumer Authority is able to intervene. If your terms and conditions are unfair, we can hold you responsible for breach of the Marketing Control Act. This can also lead to financial consequences for you or your company.

The guidelines

The guidelines explain what we mean by 'unfair terms and conditions' and what you need to consider when drawing up contract terms and conditions that are not unfair.

This is based on Section 22 of the Marketing Control Act. It follows from the provision that:

'Terms and conditions which are applied or are intended to be applied in the course of trade with consumers may be prohibited if they are deemed to be unfair to consumers and if general considerations call for such a prohibition. (...) In the assessment of fairness, emphasis shall be given to the balance between the rights and obligations of the parties, and to the clarity of the contractual relationship.'

These guidelines express central legal requirements and what we emphasise when we supervise and enforce the law. They provide general tips for writing contract terms and conditions and cover selected topics that are particularly relevant to digital services. The guidelines are not exhaustive and will not provide answers to all the challenges and issues that can arise under consumer protection rules in the digital economy.

The Consumer Authority

The Consumer Authority protects consumers' interests by preventing and putting a stop to illegal marketing, unfair terms and conditions, and other practices that are in breach of the Marketing Control Act. Supervision of contract terms and conditions is an important part of our work. In recent years, we have dealt with cases concerning the contract terms and conditions of major Nordic and international companies, as well as many Norwegian enterprises.

For more information, see www.forbrukertilsynet.no/digitalterms



In addition to the rules concerning terms and conditions, there are also rules that apply to marketing and protection of privacy. Special legislation also applies to some services. At the end of the guidelines, we have collected information about a number of important laws and rules that may apply to you.

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What are unfair terms and conditions?

Unfair terms and conditions can be prohibited by the Consumer Authority and financial sanctions can be imposed on you or your company.



In addition to legal consequences, unfair terms and conditions can also give rise to discontent, complaints and disruption that can negatively affect your company or service's reputation.

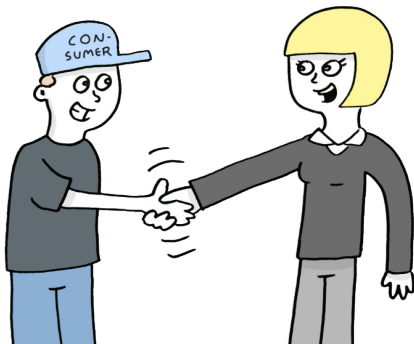
When considering whether contract terms and conditions should be prohibited, we examine three issues.

Are the terms and conditions:

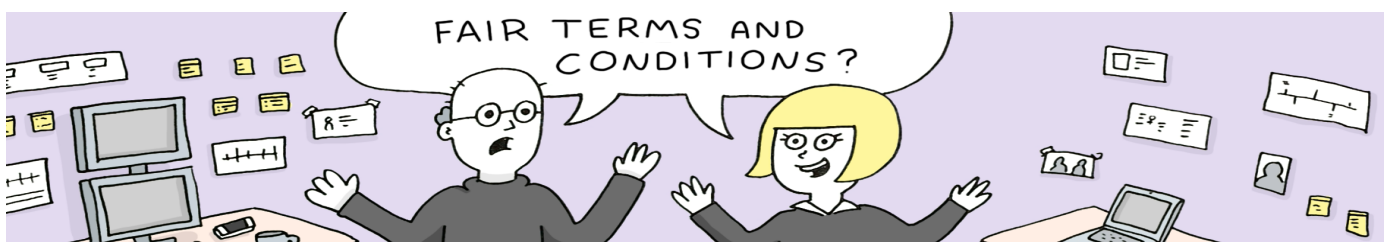
- in line with consumer protection legislation?
- clearly worded, enabling the consumers to familiarise themselves with and understand them?
- balanced, so that they do not favour you at the expense of the consumer's rights?

We take all aspects of the contract into consideration. This includes which products or services it applies to and which customer group the company targets. For example, there are more stringent requirements for how terms and conditions are drawn up if the customer group comprises minors.

Even if a consumer accepted the terms and conditions when entering into the contract, this does not necessarily mean that he or she is bound by unfair terms and conditions. They are never valid if they are in breach of the consumer rights stipulated in legislation. Other unfair terms and conditions can also be set aside if a dispute arises between you and a consumer.



Why use fair terms and conditions?



If you use fair terms and conditions, your company is assured that its terms and conditions cannot be prohibited or set aside in the event of a dispute. You also ensure that your customers better understand their rights and obligations under the contract.

You can therefore avoid unnecessary disputes and uncertainty, and save both time and money. You will also build better relationships with your customers.

How do you write clear, unambiguous terms and conditions?

When we consider whether terms and conditions are unfair, we look at whether the consumers will be able to familiarise themselves with and understand what they entail for them.



Language

You must ensure that the terms and conditions are written in a simple and understandable manner. This means that you should avoid using difficult legal jargon or technical expressions that are not used in everyday speech. If your product is aimed at Norwegian consumers, the contract terms and conditions must also be provided in Norwegian. If the terms and conditions are provided in another language, such as English, it is harder for Norwegian consumers to understand their content.



A useful tip is to put yourself in the consumer's shoes. Would you understand what the terms and conditions meant if you were to enter into the contract?

Length

Very long terms and conditions can quickly become difficult to grasp. This makes it harder for the consumer to follow them and understand what they mean.

When writing terms and conditions, we therefore recommend that you take a critical view of your own text. Do you need to include all of it? Is there a shorter and easier way of wording the terms and conditions?

Presentation

The contract terms and conditions should be readily available, both when the contract is entered into and if the consumer wishes to read them later. The consumer must also be able to save the terms and conditions.

You should ensure that the most important terms and conditions for the consumer are highlighted and not hidden in all the other information. We recommend presenting a summary of the most important contract terms and conditions at the top of the text, and using formatting, headings and a table of contents if this makes them easier to follow.

It is also important to consider where the terms and conditions are going to be presented. If the consumer reads the terms and conditions on a small mobile screen, it could be important for their layout. The document should be as easy to follow as possible in the media the consumer uses.

When contracts are entered into electronically, the Cancellation Act requires that information about the contract is clearly stated and highlighted before it is concluded. These rules apply in addition to the requirements for clear terms and conditions, which are described in these guidelines.

How do you write balanced contract terms and conditions?

Terms and conditions regulate rights and obligations between you and your customers. It is therefore important that the terms and conditions do not favour you in any way that affects the consumers' rights.

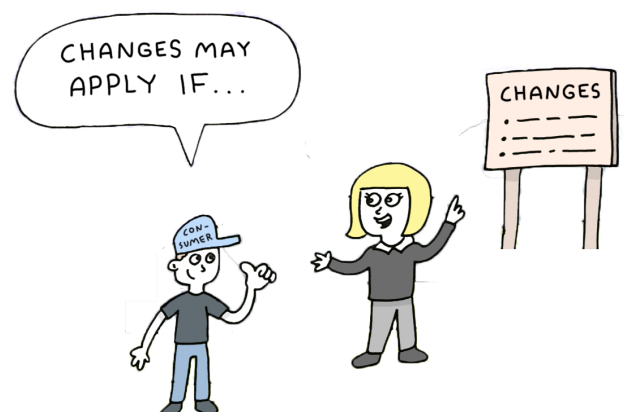


For example, a contract that gives you an unlimited right to amend, cancel or terminate the contract, while the consumers must pay a considerable fee if they were to do the same, is considered an unbalanced contract. This can easily lead to unfair terms and conditions.

Amendments to terms and conditions

In principle, a contract must remain the same as when it was concluded. For ongoing or long-term contracts, it may in some cases be necessary to amend terms and conditions – and in certain cases adjust prices – over time. The need to make such amendments can, for example, be due to unforeseen circumstances, increased expenses, market developments or product developments.

To be allowed to make changes to the contract, you must clearly state in the terms and conditions that you may make such amendments. When the terms and conditions are amended, the consumers may no longer wish to continue with their contract. The consumers must not be locked to an amended contract that has worse terms and conditions or higher prices than the original contract.



Examples of unfair terms and conditions:

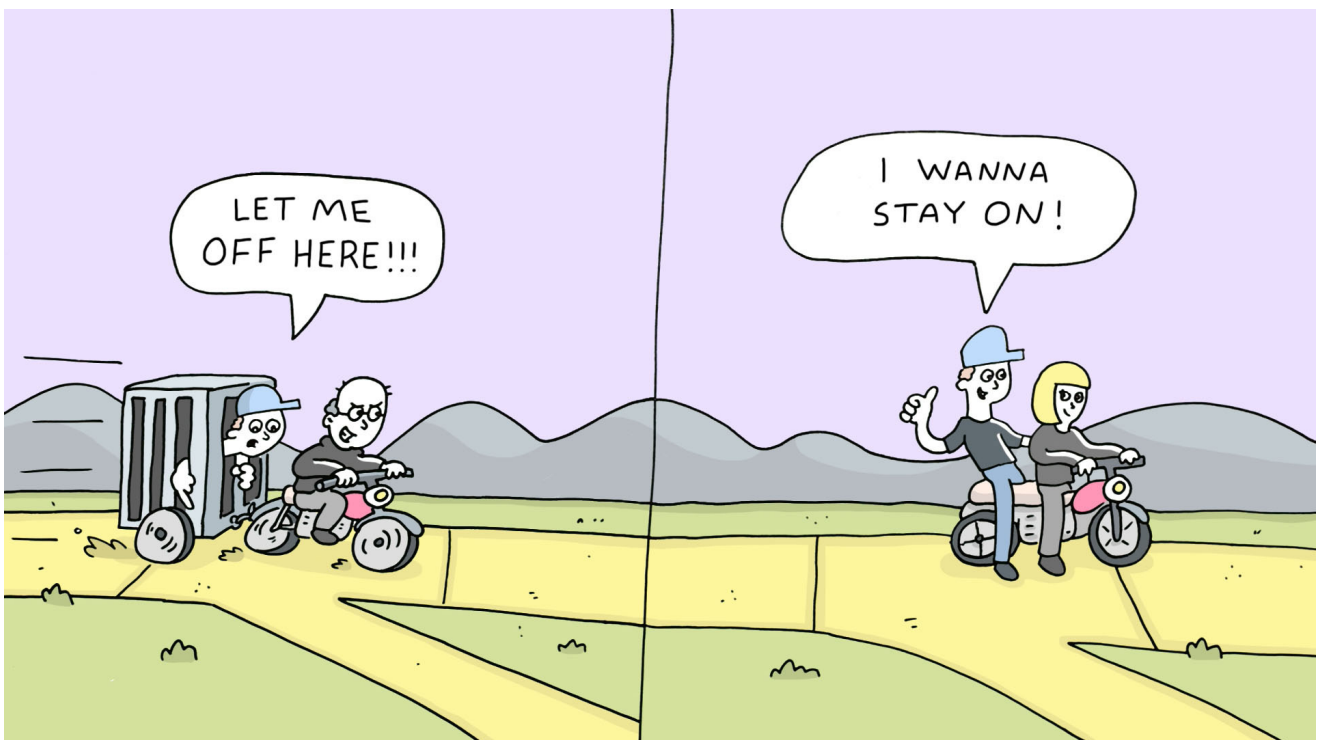
«We are entitled to amend these terms and conditions at our own discretion at any time without providing notification. It is your responsibility to check our website regularly to see whether any amendments have been made to your contract. If you continue to use the service after we have amended the terms and conditions, you consent to being bound by them»

Tips for writing terms and conditions an amendments

- Describe as clearly as possible in the contract what factors may lead to amendments being made, and what type of amendments are possible. This gives the consumer a better basis for assessing whether or not he or she wishes to enter into the contract with you.
- You must clearly notify the consumers well in advance of any amendments being made. The consumer must also be permitted to terminate the contract at no cost if they are not satisfied with the amendment. This must also be stated in the terms and conditions.

Terms and conditions that may be unfair

- Terms and conditions that give you an unlimited right to make amendments without providing details of what the changes are, when you can make them and why something is being amended.
- Terms and conditions where the consumers is not notified well in advance of any amendments being made, and must check your website to find out whether their contract has been amended.
- Terms and conditions that entitle you to amend prices or terms and conditions, but do not entitle the consumer to terminate the contract at no cost.



Termination

Examples of unfair terms and conditions:

«The contract can only be terminated by phoning customer service (...))»

«The customer may terminate the contract at three months' notice.»

«Pre-paid monthly fees will not be reimbursed on termination of the contract.»

Ongoing or long-term contracts usually need to include terms regulating when and how the consumer can terminate the contract.

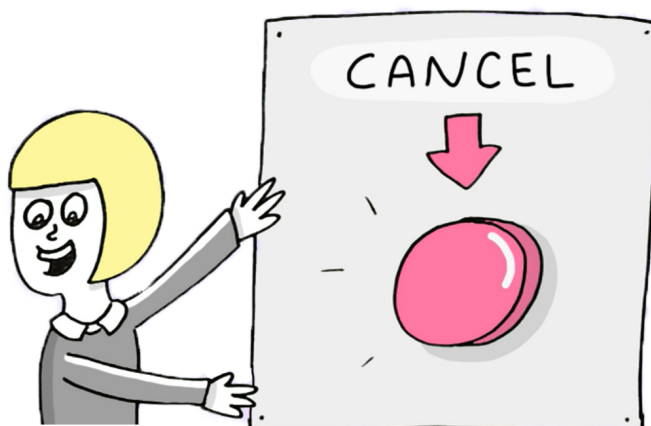
It should be easy for the consumers to terminate the contract if they want to. Terms and conditions that make this unnecessarily difficult or costly may be unfair.

Tips for writing terms and conditions on termination

- Make it easy for the consumer to terminate the contract. It should be as easy to terminate it as to enter into it. If the consumer has entered into the contract online, he or she should also be able to terminate the contract online.
- It should be possible to terminate the contract as quickly as possible, and preferably immediately. There may sometimes be technical or practical obstacles to the contract being swiftly terminated, but there must, in any case, be very good reasons for periods of notice exceeding one month.
- The consumer should be given written confirmation when the contract is terminated where this is clearly stated. This is to avoid discussion at a later date about whether the contract has in fact been terminated. Any pre-paid amounts that are not due must be reimbursed.

Terms and conditions that may be unfair

- Terms and conditions that force the consumer to send notice of termination in unusual, time-consuming, or impractical ways.
- Terms and conditions that impose unnecessarily long periods of notice.
- Terms and conditions that permit you to keep any pre-paid amounts if the contract is terminated.



Lock-in periods

- • • • •
- **Examples of unfair terms and conditions:**
-
- «This contract cannot be terminated by the customer the first 24 months. If the contract is not terminated before the lock-in period expires, a new 24-month lock-in period starts. We may terminate the contract at one month's notice..»
- • • • •

A lock-in period means that the consumer, in principle, cannot terminate the contract before a certain date. The lock-in period binds the consumers to the contract even if they have good reason to want to terminate it. The customers may no longer need the service, or feel that it does not meet their expectations. A lock-in period means that the consumer is not able to switch to a competing service that can provide him or her with a better product or terms, and therefore entails a significant disadvantage.

Tips for writing terms and conditions on lock-in periods

- A lock-in period for a service must be compensated by the consumer receiving a financial advantage that outweighs the disadvantage of the lock-in period. This could, for example, be lower prices or subsidised equipment.
- Give the consumer the possibility of terminating the contract early, for a reasonable fee.

Terms and conditions that may be unfair

- Terms and conditions that impose unnecessarily long lock-in periods.
- Terms and conditions that impose a lock-in period on the consumer, while you can terminate the contract in the normal way. The lock-in period should be mutual.
- Terms and conditions that automatically impose a new lock-in period if the contract is not terminated before the first lock-in period expires.



Liability if something goes wrong

Examples of unfair terms and conditions:

«The company has no liability to the customer if the service does not work as agreed or expected.»

«The company's liability in damages is never greater than an amount equivalent to one month's fee»

«If the customer acts in breach of these terms and conditions, a fee equivalent to a one-year subscription rate will be imposed.»

If problems occur in the relation between you and the consumer, for example that the service is temporarily shut down or does not work as agreed, the consumer may face extra costs and inconvenience. The terms and conditions must contain clear rules on your liability and the consumer's rights if something goes wrong.

You may also need to specify what happens if the consumer breaches the contract, for example rules concerning compensation if the breach of contract entails a financial loss for you. Remember that you have a duty to include reasonable measures to limit your loss.

Tips for writing terms and conditions on liability

- Clearly describe in the terms and conditions how you or the consumer is to report errors or breaches of contract, which deadlines apply and who has the burden of proof. In general, the party that reports an error must provide proof that it has happened.
- If an ongoing service is down or does not work for long periods, the consumer must receive a proportional reduction of the price. The consumer should not pay for a service that does not work.
- Give the consumer the right to claim for damages for direct financial losses if the loss is caused by circumstances under your company's control. If the consumer suffers a financial loss due to your gross negligence or that of someone for whom you are responsible, the consumer can always claim damages for the whole loss.
- Clearly describe what will happen if the consumer breaches the contract and how any fees or claims for damages will be calculated. If the customer is obliged to pay a fee or other form of compensation, the claim must be reasonable. It should not exceed your financial loss as a consequence of the breach of contract.

Terms and conditions that may be unfair

- Terms and conditions stating that you are not liable for a paid service not working as agreed.
- Terms and conditions that limit the size of the consumer's damages to a low amount in relation to the value of the contract.
- Terms and conditions that impose a disproportionately high fee on the consumer if he or she breaches the contract.

Exclusion of users

You may need terms and conditions that entitle you to exclude a customer from a service if he or she acts in breach of the contract or the guidelines for the service.

Since many consumers invest time and money in online services, an exclusion can lead to both inconvenience and costs for the individual. It is therefore important that the conditions for exclusion are clear and not too strict.

Tips for writing fair contract terms and conditions on exclusion

- Clearly describe in the terms and conditions what can lead to the consumer's exclusion from the service.
- Give the consumer written grounds for his/her exclusion from the service, and give him or her the opportunity to appeal the decision. If possible, the consumers should receive notice before their account is closed or suspended.

Terms and conditions that may be unfair

- Terms and conditions that give you the right to exclude consumers from the service at your own discretion, without being required to give them notice or grounds.

Examples of unfair terms and conditions:

«The company reserves the right to exclude users from the service as required. Such exclusion is not subject to a notification or compensation requirement.»

Other types of terms and conditions that may be unfair

Advance payment and deposits

Advance payment can be useful for your company, but will always be inconvenient for the consumer. As well as having to pay earlier, the customer risks losing money if your company encounters financial problems. You must therefore have good reason and a legitimate need to demand money in advance. It is important in any case that you do not exaggerate how much and how long the consumer has to pay in advance.

If, for example, the pre-paid amounts are placed in a deposit account in a bank, the consumer's financial security is safeguarded and their inconvenience is reduced.

The consumer must automatically be reimbursed for all pre-paid amounts that are not due, without fees, if the contract is terminated.

Example of unfair terms and conditions

- «The monthly fee must be paid in advance for six months' membership twice a year.»

Choice of law and where disputes are to be resolved

If your company is based outside Norway and a dispute arises with a Norwegian consumer, the consumer has the right to have the case heard in Norway at a legal venue in the place he or she lives. If the service is marketed and aimed at Norwegian consumers, the consumer has, notwithstanding a choice of law, as a minimum the same rights that follow from Norwegian law.

Example of unfair terms and conditions

- «The consumer agrees that all disputes or requirements that follow from this contract shall be decided under American law and fall under the exclusive jurisdiction of the courts of Santa Clara, California.»

Information about dispute resolution

The terms and conditions must state that the consumer can contact an alternative dispute resolution (ADR) body to settle cases between you. You must also include a link to the ADR body's website in the terms and conditions. In many cases, the Norwegian Consumer Council will be the relevant ADR body, but certain sectors have their own ADR bodies. An up-to-date list of recognised Norwegian ADR bodies can be found at: <https://www.regjeringen.no/no/tema/forbruker/forbrukarrettar-og-tvisteloysing/godkjente-klageorganer/id2506781/> [Only available in Norwegian].

Example of unfair terms and conditions

- «Disputes between the parties shall be resolved by an arbitration court of the company's choice.»

Lock-in mechanisms

In principle, consumers should be able to change services or service providers if they so wish. If a consumer is bound to your company or service, you create an imbalance in the contractual relationship. This can be unfair because the consumer is forced to accept your terms and prices at all times. When we consider such cases, we will emphasise factors including whether you as a business have a genuine need to limit the consumer's possibilities to change providers, for example in the event of lacking interoperability.



Examples of terms and conditions that may be unfair:

- «The SIM card is pre-installed in the SmartFridge™ and can only be used in this device. If you change SIM cards, this will be deemed a significant breach of contract.»
- «The songs you buy on this service can only be played on one of the company's music players.»
- «The Smarthus solution you have chosen only works with the company's electricity and internet subscription.»

Other rules and legislation you should take into consideration

In addition to the rules concerning unfair contract terms and conditions in the Marketing Control Act, there are several other acts that set out mandatory minimum requirements for different types of consumer contracts.

Terms and conditions are always unfair if they do not meet the minimum requirements stipulated in these acts. When drawing up terms and conditions, you should therefore check which rules apply to the product or service you are offering, and also ensure that marketing and customer follow-up comply with regulations.

Here is a short overview of some of the rules that may apply to your product. The list is not exhaustive.

- In general, if you are selling products or services via the internet, telephone or other places outside shop premises, the Cancellation Act will apply. Among other things, the Cancellation Act stipulates minimum requirements for what information you must clearly and plainly provide the consumer with before entering into a contract, and that the consumer has a right to cancel. You can find the Consumer Council's guidelines for the Cancellation Act in Norwegian here: <https://fil.forbrukerradet.no/wp-content/uploads/2015/09/veileder-angrerett-2017.pdf>
- If you are selling goods to consumers, the Consumer Sales Act applies. The Consumer Sales Act sets out a number of minimum requirements for you and the consumer's rights and obligations. You can read the Consumer Authority's standard terms of sale for online purchase of products here: <https://www.forbrukertilsynet.no/english/guidelines/guidelines-the-standard-sales-conditions-consumer-purchases-of-goods-the-internet>
- Online services are covered by the Electronic Commerce Act. The Electronic Commerce Act sets out rules on, among other things, supplementary information you must provide in connection with electronic marketing and the conclusion of contracts.
- There are a number of other specific laws and regulations that may apply depending on the type of services you offer.

Some examples are the Financial Contracts Act, the Craft Services Act, the Package Travel Act and the Tenancy Act. You must find out which rules that apply to your service before drawing up the contract terms and conditions.

Other rules and legislation you should take into consideration

The Consumer Authority has also developed guidelines on marketing and contract terms and conditions for different industries and marketing channels, which you may find useful for your business.

You can find this information at: <https://www.forbrukertilsynet.no/english/guidelines>

Rules on privacy and data protection

If your company processes personal data, you must meet the requirements set out in the Personal Data Act, which will implement the requirements of the General Data Protection Regulation.

The Data Protection Agency is charged with enforcing and supervising this. The Data Protection Authority's guidelines for traders' responsibilities under the new Regulation, and its start-up pack for new businesses, can be found in Norwegian at: <https://www.datatilsynet.no/regelverk-og-skjema/veiledere/virksomhetens-ansvar-etter-nytt-regelverk/> and <https://www.datatilsynet.no/regelverk-og-skjema/behandle-personopplysninger/startpakke-for-nye-virksomheter/>.

Information is also available in English at <https://www.datatilsynet.no/en/>.



Supervision, enforcement and sanctions

The Consumer Authority's task is to influence companies to comply with the Marketing Control Act and other regulations that the Consumer Authority supervises.

In the event of a breach of the Marketing Control Act or other legislation we enforce, the Consumer Authority may make decisions to prohibit (Section 40), on orders (Section 41), enforcement penalties (Section 42) and, in certain cases, infringement penalties (Section 43), cf. Section 39. The Consumer Authority's decisions can be appealed to the Market Council (Section 37).

To ensure compliance with decisions made pursuant to Sections 40 and 41, the Consumer Authority will impose an enforcement penalty on the person or entity the decision concerns, to be paid if the decision is not complied with (Section 42). The Consumer Authority can decide not to impose an enforcement penalty if special circumstances so indicate. The penalty may be stipulated as a one-time fee, a sum per violation or as a recurring fee (e.g. per day or week until the company complies with the decision).

Everyone is obliged to provide the Consumer Authority with the information it requires, and the Consumer Authority may also conduct investigations and demand that documents etc. be disclosed (Section 34). To ensure that orders to disclose information are complied with, the Consumer Authority may stipulate an enforcement penalty (recurring or one-time fee) that the entity or person concerned must pay if the order is not complied with (Section 42 third paragraph).



Ten tips for drawing up fair contract terms and conditions

1

Put yourself in the consumer's shoes

When drawing up the contract terms and conditions, you should also consider the consumer's interests. Would you have understood and entered into a contract on the terms you are offering?

2

Write in a way that people understand

Write in a way that the consumers will understand. Avoid legal or technical words and terms that are not used by most people.

3

Write in a direct, concise and brief manner

You cannot expect the consumers to read never ending information. Make sure that the contract is as brief and to the point as possible.

4

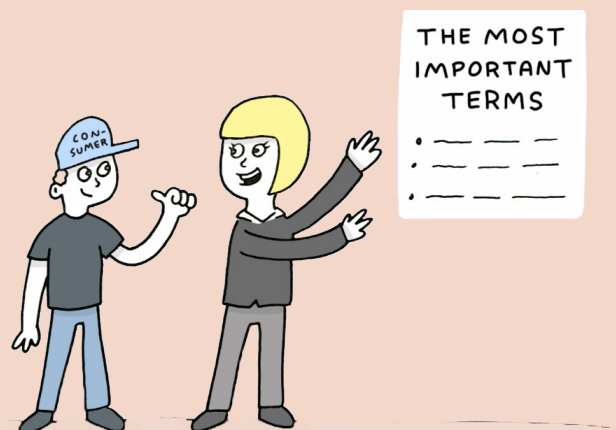
Give and take

Exercise caution when giving yourself expanded rights under the standard terms which will not apply for the consumer. The contract must safeguard both parties.

5

Highlight the most important points

Make it easy for the consumer to grasp the most important terms and conditions, for example by using a brief summary of the key terms at the top of the document.



Ten tips for drawing up fair contract terms and conditions

6

Familiarise yourself with the legislation that applies to your product

There may be many rules that regulate the product you are offering. Familiarise yourself with these and ensure that your terms and conditions comply with the law.

7

Don't hide the terms and conditions

Make sure that all customers have seen the terms and conditions before entering into the contract. Avoid pre-ticked boxes or dead links. The terms and conditions must also be easy to find later.

8

Notify consumers of changes

Notify consumers clearly if you amend the contract. Highlight which terms have been amended so that the consumers can consider whether they still wish to use your product.

9

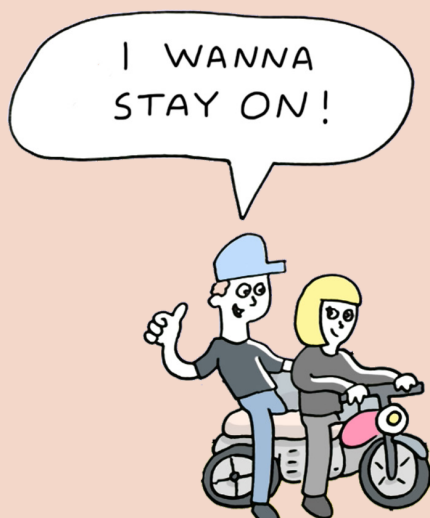
Don't lock consumers in

Don't make it unnecessarily cumbersome, difficult or costly for the consumer to terminate the contract if they want to.

10

If in doubt, seek legal advice

If you are in doubt about whether your terms and conditions are compliant, you should seek legal advice. You can also contact the Consumer Authority for general guidance on the law, but please note that we cannot pre-approve your terms and conditions.





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