

Identifying and avoiding the use of unfair terms in consumer contracts

Abstract/Preface

In its simplest form, the EC Directive on Unfair Terms in Consumer Contracts is a consumer protection measure, designed to protect the consumer in his or her relationship with the trader. It protects the consumer by providing a system whereby controls are available to challenge particular terms which consumers may be required to contract under. It is a recognition that more often than not the consumer is in a weak position vis-à-vis the seller or supplier, as regards both his or her bargaining power and his or her level of contracting knowledge. The Directive requires that *“acquirers of goods and services should be protected against the abuse of power by the seller or supplier, in particular against one-sided standard contracts and the unfair exclusion of essential rights in contracts”*.

It is appropriate that the CCPC would produce these guidelines now in light of the most recent legislative development and as traders are increasingly using standard form contracts. However, it is important to note that this guide is not a substitute for the actual wording of the Directive or the Regulations that give it effect in Ireland.

Introduction

This guide, while providing information relating to the law, is not a substitute for the law and readers are advised to directly consult the applicable Directive and Regulations when seeking specific information or prior to embarking on a course of action that relates to unfair terms in consumer contracts.

These guidelines will assist and explain to consumers, business and legal practitioners the operation of the Unfair Contract Terms Directive, 1993/13/EEC ('the Directive'). The Directive and the Regulations which give it effect are the primary legislative instruments which provide protection to consumers in Ireland from unfair contract terms. The Directive was given effect in Ireland through the European Communities (Unfair Terms in Consumer Contracts) Regulations, S.I. No. 27 of 1995 ('the Regulations') as amended by the European Communities (Unfair Terms in Consumer Contracts) (Amendment) Regulations 2000, S.I. No. 307 of 2000 and now more recently amended by the European Communities (Unfair Terms in Consumer Contracts) (Amendment) Regulations 2013, S.I. 160 of 2013.

The Directive, through the Regulations, provides that a consumer will not be bound by a standard term in a contract with a seller or supplier if that term is unfair. The Regulations also provide a number of mechanisms by which such terms may be challenged. It should be noted however that even where a term is adjudged to be unfair, the contract can continue where it is possible to do so in the absence of the unfair term.

Consumer contracts

As the title indicates the Unfair Terms in Consumer Contracts Regulations only apply to business to consumer contracts ('B2C'). They do not apply to contracts between one business and another business ('B2B') or to contracts between one consumer and another consumer ('C2C').

The commercial relationship that exists between business and the consumer is for the most part grounded in contract law. In its most basic form a trader agrees to sell a product or supply a service to a consumer at an agreed price. This agreement/contract may be created in a number of different ways, either orally or by conduct, or more formally by agreeing a written

contract which incorporates all the terms upon which the parties agree to perform their obligations. In commercial life, parties are generally free to contract as they see fit and appropriate. This is more commonly recognised as the parties having a 'freedom to contract'. Freedom to contract, when business deals equitably and fairly with consumers, rarely presents difficulties. This is based on the presumption that both parties contract on an equal footing and will agree the terms of the contract as appropriate to the transaction.

In consumer-contracting the reality can often be different. Consumers are more likely to be the weaker or more vulnerable party to the contract. Consumers may not have the opportunity to negotiate the terms of the contract in advance of concluding the contract. In addition consumers may not understand or be aware of the exact legal status of the terms upon which they are contracting. Many consumers may understandably consider that all terms of a contract represent 'the law' and as such may not feel empowered to seek any change to particular terms they are not satisfied with. While this is true of contract terms that reflect mandatory legal requirements, it is certainly not the case for those terms which a trader might introduce such as, and not limited to, those regarding the quality of the goods or services that will be provided, the financial obligations of each party, who takes the burden of risk if some aspect of the contract fails or similar default rules for other eventualities, etc. These types of contract term are open to challenge as to whether they are fair or not.

Standard form contracts

Standard form contracts are becoming increasingly prevalent as consumer purchasing behaviours change. It is often the case, particularly where traders have an online presence, that the consumer and trader never physically meet. In the digital era, with developments in E-Commerce as evidenced by the growth in distance selling and on-line purchasing, there is an increasing tendency for traders to contract through the use of standard contracting forms using standard terms. The trader prepares these standard contracting forms in advance. They are efficient for the trader, both in terms of cost and operation, and are more often than not presented to the consumer on a 'take- it- or- leave- it' basis. There will be very little opportunity for the consumer to negotiate aspects of the terms which they are presented with. When challenged as to the presence of an unfair term in a standard form contract, a trader is likely to use the following as a justification for its use;

“Consumers were aware of the term when they contracted with us. All consumers who contract with us do so in the knowledge that this would take place.”

This may have been the case, but should not be accepted as a justification. Consumers may well have been aware of its presence but consumers may have had no choice but to avail of this service as an alternative may simply not have been available.

This reality, whereby consumers may have little choice but to deal with such a trader on the terms presented, has been recognised as a failing in consumer-contracting and in response to such challenges there are now legal checks and increased formal controls in place to counter the use of terms which act unfairly to the detriment of the consumer. For regulators, business and consumers there is now a standard of fairness against which such terms can be measured and assessed. The legal framework required to assess this standard is set out in the Directive.

When might the Regulations apply?

The Regulations may apply to a term in a contract concluded between a seller of goods or supplier of services and a consumer, which has not been individually negotiated. This would arise where the term has been drafted in advance, which would therefore imply that the consumer had not been able to influence the drafting or substance of the term.

A consumer is an individual not acting for the purposes of his or her trade, business or profession. A person who is acting for a business purpose of any kind is not a consumer, even if the business in question is not his or her primary business.

A seller or supplier means any person or organisation acting for purposes of their business. This includes any trade or profession, and activities of government and other public bodies.

The Regulations have a very broad and general application. Areas where consumers may encounter difficulties would generally relate to price alteration, access to justice, exclusion or limitation of liability, unilateral release from contractual obligations, altering the characteristics of the product, changing the legal guarantee and retention of payments made.

These areas are reflected in the list of terms ('the grey list'), which is contained in the Directive and Regulations and is reproduced in the Annex to these guidelines.

Recognising a standard form contract

Standard form contracts are found throughout the economy in areas such as utilities, travel, construction, leisure, transport, finance and telecommunications to name but a few. Some standard form contracts are easily recognised, accessible and presented to the consumer as a single instrument. Others are more difficult to recognise and access, as the contracting terms in electronic consumer contracts may often be spread throughout the website in an incoherent fashion.

There are however features which are common to all standard form contracts. The more common features are where the contract is not individually negotiated and is presented to the consumer on a 'take-it-or-leave-it' basis. A good starting position is to consider whether the consumer has had any possibility of negotiating the terms of the contract? Will the trader who is presenting the contract entertain negotiations with regard to the terms? If the answer is in the negative then there is a strong presumption that the consumer is dealing with a standard form contract.

From the CCPC's research and experience in this area a number of factors are significant in considering whether a contract can be considered a standard form contract.

- The pre-formulated (drafted in advance) nature of the contract.
- The relative bargaining strength/power of the parties.
- The extent to which the standard terms were imposed without the consumer having the opportunity to negotiate the terms of the contract.
- The possibility of direct negotiation to alter/amend the standard terms.
- The general nature of the contractual terms or whether they take the consumer's particular circumstance into consideration.

This is a non-exhaustive list of factors and contracts will often differ however, in the CCPC's experience, these factors are usually present in standard form contracts.

A business may disagree with a consumer's belief that a standard term had not been individually negotiated. In that instance the onus will be on the business to prove that it was individually negotiated.

Do the Regulations apply to all terms in a standard form contract?

No. There are certain terms, which are excluded from the scope of the Regulations. These terms relate to "*the definition of the main subject matter of the contract*" and "*the adequacy of the price and remuneration, as against the goods and services supplied*". The exemption applies only if the terms in question are drafted in plain, intelligible language. Parties should be aware that even where a particular term appears to be part of the contract, if its effect is to apply particularly harsh or onerous terms then it may not be enforceable unless the party who is relying on it can provide evidence to show that it was brought to the attention of the other party.

It is worth considering each of these matters individually.

The definition of the main subject matter of the contract

This refers to the goods or services that the consumer is receiving under the contract. It means that terms defining the core element, or in other words the basic nature of the goods or services will be exempt. This exemption is based on the notion that the consumer knows what goods or services they are contracting for. The consumer and trader will have agreed to the core terms. Consumers cannot challenge the fairness of the contract term on the basis that they have changed their mind as to the goods and services that they have contracted for or that they felt they were too expensive.

What is a core term should be examined critically and restrictively. To interpret otherwise would allow terms, which ought to be subject to control, to avail of the 'core exemption'.

The adequacy of the price and remuneration as against the goods and services supplied

This refers to the amount that the consumer will pay either for the goods or performance of the service. It is up to the consumer to determine whether or not they feel they are getting value for money. As stated earlier, the Regulations do not allow consumers to challenge the fairness of the contractual term if they feel they paid an excessive amount under the contract. In other words the consumer will not be allowed challenge the fairness of the price if they feel they paid too much for the good or service. This is based on the notion that the consumer was free to make a judgement as to whether he or she was getting value for money at the time of contracting.

Sometimes, a contract may impose extra charges or contingent fees. The question of whether these are part of the price and remuneration will depend on the nature of the payment for the goods or services provided. In general terms, many fees and charges might come within this exemption. The question that a consumer should consider is whether these additional or ancillary charges are part of the core or essential bargain that he or she has contracted for. If they are not then they could very well fall within the scope of the Regulations. The consumer should consider whether in the event of performance of the contract if the trader would be entitled to retain the additional sums paid? An example of this might be the requirement to pay in advance for a liability that the trader would incur when the consumer performs the contract. If the answer is in the negative, i.e. if the consumer doesn't perform then the trader doesn't incur any liability, then the respective terms allowing for such a retention could be subjected to the examination for unfairness as in this instance the trader shouldn't be enriched at the consumer's expense.

Consumers should also be aware that clauses which allow a trader to retain monies when a consumer doesn't fulfil his or her obligations without a facility to compensate the consumer or counterbalancing measure when the trader doesn't fulfil theirs may be unfair.

The requirement of plain and intelligible language

The exemptions in respect of the main subject matter and the price and remuneration arise only if the term is expressed in plain, intelligible language. This requirement is part of a wider goal of ensuring that consumers should be able to read and understand terms before becoming bound by them. The Irish courts have not yet considered the test for what

constitutes *'plain, intelligible language'*. The question will most likely be decided from the perspective of the typical or average consumer. The fact that a term used would be intelligible to a lawyer does not suffice if it is not intelligible to an average consumer and could therefore be reviewable under the Regulations.

It is probable that, in deciding if a contract term is written in *'plain, intelligible language'*, the court would consider any accompanying documentation such as brochures or leaflets, which were provided by the trader to the consumer. If these are clearly expressed, the contract term is more likely to be found to be plain and intelligible. On the other hand, if accompanying documentation is not clear, the contract term is more likely to be found not to be in plain, intelligible language. Even if the actual words used are clear, the requirement for plain, intelligible language may not be met if the meaning of the term is not clear to a typical or average consumer.

Under general contract law, when there is a doubt about the meaning of a written term, the interpretation most favourable to the consumer prevails. This is also reflected in the Regulations.

What contracts or terms are excluded from the scope of the Regulations?

The Regulations do not apply to:

- Any contracts of employment;
- Any contracts relating to succession rights;
- Any contracts relating to rights under family law;
- Any contracts relating to the incorporation and organisation of companies or partnerships;
- Any terms in business-to-business agreements; and
- Any terms which reflect:
 - Mandatory, statutory or regulatory provisions of Ireland; or

- The provisions or principles of international conventions to which member States or the Community are party.

Terms reflecting mandatory, statutory or regulatory provisions are outside the scope of the Regulations and thus exempt from the test of fairness. An example would be where a trader is required to implement such provisions, for example in the collection of a government tax. Consumers and traders should be aware that this only relates to the specific tax term itself. It does not apply to issues surrounding how that tax may be refunded, retained or collected. Those issues may be subject to the Regulations when examined on a case-by-case basis.

When is a term in a consumer contract unfair?

A contract term will be regarded as unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations under the contract to the detriment of the consumer, taking into account the nature of the goods or services for which the contract was concluded and all circumstances attending the conclusion of the contract and all other terms of the contract or of another contract on which it is dependent.

The Test of Unfairness

The Regulations state that, in assessing if a term is unfair, account must be taken of:

- The strength of the bargaining position of the parties;
- Whether the consumer was offered an inducement to agree to the particular term;
- Whether the goods or services were sold or supplied to the special order of the consumer; and
- Whether the seller or supplier has dealt with the consumer fairly and equitably.

As a result of the latest amendment to the Regulations, the CCPC is authorised to form a view as to the unfairness of a contract term or terms. To inform its view, the CCPC breaks the test down into its constituent parts and thus applies them as distinct but connected requirements. Therefore in order to assess whether a contract term is unfair it is necessary to consider the issues of 'good faith' and 'significant imbalance'.

‘Contrary to the requirement of good faith...’

The preamble to the Directive explains that ‘good faith’ is based on an overall evaluation of the different interests involved. The trader is required to deal fairly, openly and equitably with the consumer having regard to the consumer’s own legitimate interests, which the trader must take into account. The principle of good faith looks to good standards of commercial morality and practice. The concept can be equated with the principle of fair and open dealing.

Fair dealing requires that the supplier does not take advantage of the consumer’s necessity, lack of experience and unfamiliarity with the subject matter of the contract, or weak bargaining position.

Open dealing requires that terms be expressed fully, clearly and legibly with no hidden traps for the consumer. For example, appropriate prominence should be given to terms, which operate disadvantageously to the consumer, thus avoiding the creation of an ‘unfair surprise’. Hiding an onerous term in the ‘small print’ is not acceptable under the Regulations. Important aspects of the contract must be fully and prominently disclosed so that consumers can adequately inform themselves as to the nature of the terms upon which they will be contracting. Transparency also means that the terms are accessible. By ‘accessible’ the CCPC is of the view that the terms should be centralised in one location and identifiable as the terms of the contract.

‘...a significant imbalance in the parties’ rights and obligations under the contract to the detriment of the consumer...’

The element of ‘significant imbalance’ overlaps to a degree with that of the absence of ‘good faith’. A term in a contract, which gives a significant advantage to the seller or supplier without providing an equal benefit to the consumer, i.e., a price reduction, might fail to satisfy this part of the test.

In considering whether a significant imbalance exists, it is necessary to take into account, the nature of the goods or services for which the contract was concluded, as well as all circumstances attending the conclusion of the contract and all other terms of the contract or of another contract on which it is dependent.

This requires that the term must be assessed in light of other aspects of the contract, which may serve to re-adjust an imbalance in the consumer's favour. If other terms in the contract were significantly to the benefit of the consumer, this might help to tilt the balance more in the consumer's favour and may prevent a term being found to be unfair. An obvious question in relation to the assessment of other favourable terms is, whether the benefit provided does in reality protect the consumer from the adverse consequences of the term under scrutiny?

In deciding if a term is unfair, the CCPC would favour an approach where the unfairness test is based on whether a reasonably informed individual, without knowledge of who the contracting parties were, would consider, when looking at the contract as a whole, whether the term was fair or not.

Are there any examples of contract terms, which may be unfair?

Schedule 3 to the Regulations provides a non-exhaustive illustrative/indicative list of seventeen contract terms, which may be found unfair. This is known as the 'grey list'. The list is contained in the annex to this document. A term that appears on the 'grey list' is not necessarily unfair. Equally a term that bears no resemblance to any of the terms listed on the 'grey list' may be found to be unfair if it weighs the contract against the consumer contrary to the requirement of good faith.

Specific categories of terms that may be unfair to the consumer are listed below. Some do not correspond directly with the 'grey list' but are strongly based on it.

- Terms excluding or restricting the liability of the supplier for death or personal injury.
- Terms which impose unequal obligations, i.e. the consumer is bound to perform the contract but not the seller/supplier.
- Terms which permit the supplier to retain pre-payments in the event of cancellation. Where the amount of such a pre-payment is in excess of a genuine pre-estimate of the trader's loss.
- Terms which act so as to impose disproportionate penalties on the consumer.
- Unfair cancellation clauses.

- Terms which provide for an automatic renewal of a contract without the consumer's agreement.
- 'Hidden' terms, i.e. terms not brought to the consumer's attention.
- 'Entire agreement clause' which rule out earlier commitments made by the seller/supplier or his or her agent.
- Terms which allow the seller/supplier a unilateral right to vary the terms of the contract.
- Terms that provide the trader with a unilateral right to interpret his or her own contractual obligations.
- Terms which allow the trader a unilateral right to transfer the contract.
- Terms which restrict or hinder legal actions or the exercise of a legal remedy by the consumer.

What is the effect on a contract of an unfair contract term?

If a court decides that a contract term is unfair then the term in question will not be legally binding on the consumer. For example, if a term purporting to limit or exclude the liability of the trader for the sale or supply of poor quality goods has been deemed unfair, the consumer having received such poor quality goods may ignore such a term and seek redress regardless of it.

It is important to note that finding a term to be unfair does not mean that the contract will automatically come to an end. If the contract can survive without the presence of the offending term then it will continue to be legally binding.

How can the Regulations assist in addressing the presence of an unfair term in a consumer contract?

Under the Regulations, authorised bodies may apply to the courts for a declaration that a term is unfair and may, at the discretion of the courts, be granted an order prohibiting the use or, as may be appropriate, the continued use of such a term or similar terms of like effect. Only the courts can make a declaration as to whether a term in a consumer contract is unfair

or not. Any person claiming to have an interest in respect of the application is entitled to appear before and be heard by the court in respect of the application. It is not necessary for the applicant party to show actual loss or damage or recklessness or negligence on the part of the supplier. In deciding if a term is unfair, the court must take account of all the interests involved and in particular, the public interest.

From a CCPC perspective, the preferred course of action, when encountering a possibly unfair contractual term is to deal with the trader directly and cease the infringement without the need to go to court. The CCPC is a strong advocate of the use of alternative dispute resolution ('ADR') mechanisms and will explore all avenues that may address the term outside of a court setting. The principal mechanism that the CCPC has at its disposal and which it has used to achieve this outcome is to accept a written undertaking, as provided for under the Consumer Protection Act 2007¹, from the trader to refrain from using the unfair term. This may also include a provision where the use of such a term has caused loss to consumers, that the trader provides an undertaking to compensate such consumers.

If the trader does not cease to use the term or refuses to engage in a meaningful manner with the CCPC, then the CCPC has now more general preventive powers whereby it or another authorised body, may apply to either the Circuit Court or High Court for an injunction (including an interim injunction) to prevent the use or continued use, as the case may be, of a particular term or terms.

Matters to consider if you think a contract contains an unfair term

If, in the course of your dealings as a consumer with a trader, you think you have been subjected to an unfair term in a contract then the CCPC would suggest the following as a preliminary measure in assessing its fairness or otherwise;

¹ Section 73 of Consumer Protection Act, 2007

Step 1

- You should first establish that the contractual term had not been individually negotiated, thus demonstrating that you were unable to influence the content/substance of the contractual term. In other words establish that it was drafted in advance or was part of a pre-formulated standard contract.
- If there are disagreements between you and the trader as to whether the term was individually negotiated or not the burden of proof is on the trader to show that it had been individually negotiated.

Step 2

- Having established that it had not been individually negotiated you should then consider whether the contractual term, contrary to the requirement of good faith, had operated so as to cause a significant imbalance in the parties' rights and obligations under the contract and that imbalance has acted to your detriment.
- In assessing whether the trader has acted in good faith you should reflect on whether the trader has taken advantage of your necessity, lack of familiarity with the subject matter of the contract or weak bargaining position.
- In assessing whether there has been a significant imbalance to your detriment, the assessment should consider whether the trader enjoys unduly beneficial rights or that you have had undue burdens imposed upon you.

Step 3

- You must then consider whether the term describes the main subject matter of the contract and/or the adequacy of the price.
- In assessing the fairness or unfairness of the term you must bear in mind that terms describing the subject matter of the contract or the adequacy of the price (value for money, etc) are excluded from the test of fairness.

Step 4

- You should consider whether the term is written in plain, intelligible language.

Step 5

- If you feel, based on the assessment outlined in steps 1 to 4, that you have been subjected to an unfair term, then the first port of call should be directly to the trader involved and to outline your concern.

Step 6

- If the trader refuses to accept that a term is unfair, you have the option of proceeding to court.
- If the court agrees that the term is unfair, the trader will not be allowed to rely on that term.
- A court determination is required before you can treat the particular term as null and void, however remember that if the contract is capable of continuing without the unfair term then it will.
- It is essential for you to seek good legal advice before becoming involved in a dispute that could lead to court proceedings.

Unfair Contract Terms and the Small Claims Process

Whilst the fairness of the contract term in question cannot be determined through the small claims process the CCPC is not aware of any impediment to using the Regulations to assist a consumer in presenting their case. The Regulations may be very useful in helping to determine the merits of the claim. Support for this view is evident in a recent UK Small Claims Court case which was widely reported. A consumer in the UK successfully challenged a clause in a holiday contract which allowed a tour operator to retain the full pre-payment when the consumer cancelled the holiday. The consumer introduced the UK's version of the Regulations to support his claim.

Summary of the key points

The guidelines address a number of matters in respect of the Regulations. The following are of significance;

1. These guidelines only refer to those terms in consumer contracts where one party to the contract deals as a trader/business and the other as a consumer.
2. Prior to the most recent amendment, only the High Court could make a determination as to whether a contract term was fair or unfair. This authority has now been extended to the Circuit Court.
3. The Competition and Consumer Protection Commission, the Central Bank of Ireland and a consumer organisation whose purpose is protecting consumer rights (such as the Consumer Association of Ireland) are all bodies that have the authority to make an application under the Regulations to the Courts. The Central Bank of Ireland shares with the Competition and Consumer Protection Commission the authority to challenge unfair terms where they relate to regulated financial service providers. Where the financial service is provided by an unregulated financial service provider the Competition and Consumer Protection Commission has the authority to challenge. This authority is without prejudice to the right of any consumer to rely on the provisions of the Regulations in any case “before a court of competent jurisdiction”².
4. In deciding if a term is unfair, the Courts have to take all interests into account and in particular the public interest.
5. For the purposes of taking proceedings under the Regulations, the CCPC and any other authorised body is entitled to take a view as to the fairness or otherwise of a particular term but only the Courts will make determination as to whether or not a term is unfair.
6. A contract term will be regarded as unfair based on the following criteria; if, contrary to the requirement of good faith, it causes a significant imbalance in the parties’ rights and obligations arising under the contract to the detriment of the consumer, taking into account the nature of the goods or services for which the contract was concluded and all circumstances attending the conclusion of the contract and all other terms of the contract or of another contract on which it is dependent.

² Extract from Regulation 8(6) of S.I. 27 of 1995

7. In assessing good faith, particular regard shall be had to the strength of the bargaining position of the parties, whether the consumer had an inducement to agree to the term, whether the goods were a special order for the consumer and consideration will be given to the extent to which the seller or supplier has dealt fairly and equitably with the consumer whose legitimate interests he has taken into consideration.
8. A term cannot be found to be unfair under the Regulations if it relates to the main subject matter of the contract or to the adequacy of the price and remuneration provided that the term in question is expressed in plain, intelligible language.
9. This requirement that the terms be expressed in plain, intelligible language is a further general transparency requirement that applies to all terms.
10. An unfair term is not binding on the consumer. However, the contract as a whole continues to bind the parties if it is capable of continuing in existence without the unfair term.
11. Given the very general nature of the concept of 'fairness' and the consequent difficulties in defining what it is, guidance is provided through a list of possibly unfair terms attached as an Annex to the Regulations. This list is commonly referred to as the 'grey list' in that it is not a list of terms which are definitively unfair but rather a list of those which may be unfair.

The CCPC would ask consumers who feel they have been subjected to an unfair term in a consumer contract to contact the CCPC with all details.

Information and advice

The Competition and Consumer Protection commission will publish details of the court orders and undertakings that it obtains. It is also obliged to publish its intention to apply to the Courts for an order in respect of a term in *Iris Oifigiúil* and in two national newspapers.

Annex – Examples of Terms that may be considered unfair

Note that terms of the kind outlined herein may not always be considered to be unfair. Whether or not the term will be considered unfair will depend on all the surrounding circumstances, as previously outlined.

- (a) excluding or limiting the legal liability of a seller or supplier in the event of the death of a consumer or personal injury to the latter resulting from an act or omission of that seller or supplier;
- (b) inappropriately excluding or limiting the legal rights of the consumer vis-à-vis the seller or supplier or another party in the event of total or partial non-performance or inadequate performance by the seller or supplier of any of the contractual obligations, including the option of offsetting a debt owed to the seller or supplier against any claim which the consumer may have against him;
- (c) making an agreement binding on the consumer whereas provision of services by the seller or supplier is subject to a condition whose realization depends on his own will alone;
- (d) permitting the seller or supplier to retain sums paid by the consumer where the latter decides not to conclude or perform the contract, without providing for the consumer to receive compensation of an equivalent amount from the seller or supplier where the latter is the party cancelling the contract;
- (e) requiring any consumer who fails to fulfil his obligation to pay a disproportionately high sum in compensation;
- (f) authorizing the seller or supplier to dissolve the contract on a discretionary basis where the same facility is not granted to the consumer, or permitting the seller or supplier to retain the sums paid for services not yet supplied by him where it is the seller or supplier himself who dissolves the contract;
- (g) enabling the seller or supplier to terminate a contract of indeterminate duration without reasonable notice except where there are serious grounds for doing so;

- (h) automatically extending a contract of fixed duration where the consumer does not indicate otherwise, when the deadline fixed for the consumer to express this desire not to extend the contract is unreasonably early;
- (i) irrevocably binding the consumer to terms with which he had no real opportunity of becoming acquainted before the conclusion of the contract;
- (j) enabling the seller or supplier to alter the terms of the contract unilaterally without a valid reason, which is specified in the contract;
- (k) enabling the seller or supplier to alter unilaterally without a valid reason any characteristics of the product or service to be provided;
- (l) providing for the price of goods to be determined at the time of delivery or allowing a seller of goods or supplier of services to increase their price without in both cases giving the consumer the corresponding right to cancel the contract if the final price is too high in relation to the price agreed when the contract was concluded;
- (m) giving the seller or supplier the right to determine whether the goods or services supplied are in conformity with the contract, or giving him the exclusive right to interpret any term of the contract;
- (n) limiting the seller's or supplier's obligation to respect commitments undertaken by his agents or making his commitments subject to compliance with a particular formality;
- (o) obliging the consumer to fulfil all his obligations where the seller or supplier does not perform his;
- (p) giving the seller or supplier the possibility of transferring his rights and obligations under the contract, where this may serve to reduce the guarantees for the consumer, without the latter's agreement;
- (q) excluding or hindering the consumer's right to take legal action or exercise any other legal remedy, particularly by requiring the consumer to take disputes exclusively to arbitration not covered by legal provisions, unduly restricting the evidence available to him or imposing on him a burden of proof which, according to the applicable law, should lie with another party to the contract.