

Unfair contract terms

# Responsibility if things go wrong (limiting or excluding liability)

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 which remove or limit your liability to customers when you are at fault may be unfair. This includes terms that prevent or make it difficult for customers to seek “**redress**” (eg, compensation) when you are at fault.



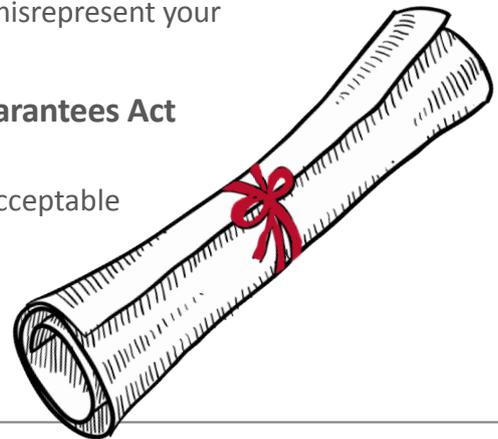
Terms that limit, or have the effect of limiting, one party’s right to sue another party are included in examples of terms that a court may regard as unfair under the Fair Trading Act.

## Consumers’ statutory rights cannot be removed by contract

Terms that take away or reduce a customer’s statutory rights may be unfair. They may also breach section 13 (i) of the Fair Trading Act if the terms misrepresent your customer’s legal rights.

**For example, statutory rights under the Consumer Guarantees Act that cannot be reduced or taken away include:**

- goods must match the description given of them, be of acceptable quality and fit for purpose
- services must be carried out with reasonable skill and care, be fit for purpose and completed on time, or within a reasonable timeframe.



## Tips for writing fair terms

**Your terms are more likely to be fair if:**

- Your liability for loss or harm is excluded or limited only when you are not at fault.
- You do not put in place barriers that stop customers seeking redress (eg, compensation).



Make sure your terms **respect** your customer’s **statutory rights**.  
Don’t use terms that reduce or take them away.

# Terms that may be unfair include:

**Excluding or limiting your liability for failing to perform your obligations.**

**EXAMPLE**

*“Management reserves the right to suspend the service without liability.”*

**Excluding your customer’s right of ‘set-off’. These are terms that don’t allow your customer to withhold payment if they have a claim against you under the contract.**

**EXAMPLE**

*“Payment may not be withheld because of any alleged defect.”*

**Excluding or limiting your liability for delays.**

**EXAMPLE**

*“We accept no loss or liability for any failure to meet the times and dates quoted.”*



**Excluding or limiting the amount or the availability of your customer’s legal remedies (including compensation).**

**EXAMPLE**

*“If we [the business] are at fault, we accept liability up to the value of the goods only.”*



**Excluding or limiting a customer’s statutory rights to return sale goods.**

**EXAMPLE**

*“There are no refunds for sale goods.”*

Under the Consumer Guarantees Act a customer cannot have their statutory rights limited or removed. A term that does this will also breach section 13 (i) of the Fair Trading Act as it misrepresents customers’ rights under the Consumer Guarantees Act.



**Using guarantee rights that are narrower or weaker than your customer’s statutory rights.**

**EXAMPLE**

*“We will repair or replace (at our option) any item found faulty within three months.”*

This term may also breach section 13(i) of the Fair Trading Act as it misrepresents customers’ rights under the Consumer Guarantees Act.

## 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/>