

# Subscriptions and automatic rollovers

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.

Your customer needs to know how long their contract is due to run and how to cancel it, if they don't want it renewed.

Terms that can be used to extend a contract beyond what your customer would normally expect may be unfair. The effect of these types of terms is to potentially tie customers into paying for something which they no longer want or need. Terms that allow you, but not your customer, to rollover the contract are included in examples of terms that a court may regard as unfair under the Fair Trading Act.



## Tips for writing fair terms

Your terms are more likely to be fair if:



It is made clear to customers **from the beginning** how their subscription or contract will be renewed and the contract requires that they are sent a reminder a reasonable time before it is due to be renewed.

The reminder should include clear information about the terms of the proposed renewal and the steps customers need to take to stop the renewal, if they wish to.

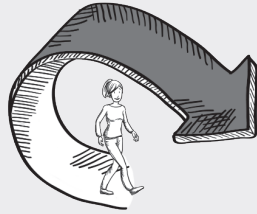
They give your customers the right to cancel a contract once it has been renewed, without having to pay a cancellation fee, and any requirement to provide notice of cancellation is reasonable (ie, it does not have the effect of tying the customer into the contract unfairly).



Be **clear** with your **customers** up front about **how** and **when** their contract will renew. Provide a reminder of what reasonable **steps** to take if they want **to stop** the renewal.

## Terms that may be unfair include:

Automatically renewing your customer's contract or subscription without taking sufficient steps to inform them before doing so.



### EXAMPLE

*"This will be a rolling contract that will automatically renew unless you contact us 24 hours prior to renewal in order to cancel."*

Using excessively long notice periods to tie your customer in for another fixed term.



### EXAMPLE

*"After expiry of the initial term, three months' notice of cancellation is required..."*

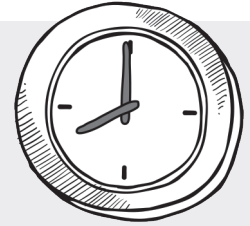
Imposing financial sanctions on your customer, which may prevent them from stopping a renewal.



### EXAMPLE

*"If notice is given between 2 and 4 weeks before expiry, then 75 per cent of the renewal fee for the subsequent year will become payable..."*

Lengthy notice periods may be unfair in a contract which lasts indefinitely. These can force customers to continue with a contract longer than they need or want to.



### EXAMPLE

*"This agreement shall continue indefinitely. If you wish to cancel at any time, you must give us 6 months' notice and continue your monthly payments up until the expiry of the notice period."*

## 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-/>