

Unfair contract terms

Cancelling a contract: when and how

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.

You may want to include terms in your contract that allow both you and your customer to bring the contract to an end.

In this Quick Guide we have used the word 'cancel' to refer to situations where you or your customer wants to terminate or end the contract. If you cancel a contract you could leave your customer with significant problems and potentially facing costs.

Your terms should not give your business excessive rights to cancel a contract, and your customer should not be unduly restricted if they wish to do the same. Terms that allow you, but not your customer, to terminate the contract are included in the examples of terms that a court may regard as unfair under the Fair Trading Act.



In addition to any terms about cancellation that you include in your contract, there are special statutory provisions which can give consumers cancellation rights in certain circumstances, including in the **Credit Contracts and Consumer Finance Act** or under the **Fair Trading Act**. You cannot exclude these consumer rights in your contracts.

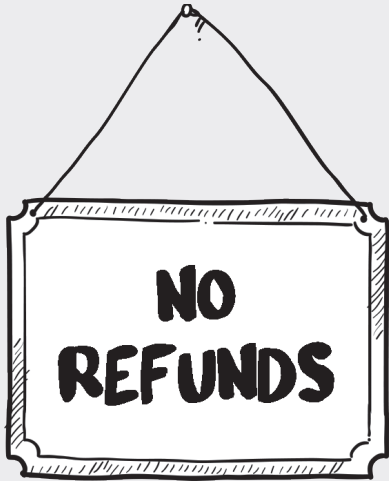
Tips for writing fair terms

Your terms are more likely to be fair if:

- The terms explain any right for you to cancel, so cancellation does not come out of the blue.
- The terms give your customer a refund of any advance payments they have made when you cancel and your customer is not at fault.
- You agree to give reasonable notice before cancelling, except where there are 'serious grounds' for immediate cancellation which are clearly set out.
- There is nothing to stop your customer cancelling if you break the contract.



Terms that may be unfair include:



Allowing you to cancel the contract whenever you want and without offering your customer any refunds of prepayments or other compensation.

EXAMPLE

“We reserve the right to cancel this contract at our discretion and without refunds.”



Stopping your customer from cancelling the contract in any circumstances.

EXAMPLE

“You cannot cancel this contract at any time.”



Terms giving you excessive rights to cancel.

EXAMPLE

“This contract shall remain in force for a minimum period of 12 months, unless we cancel it sooner, which we may do at any time.”

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-/>