

The background features a complex pattern of diagonal stripes in various shades of red, orange, and brown. A hand, rendered in a simple brown style, is shown from the bottom left, holding a white, triangular sheet that resembles a piece of paper or a contract. The sheet is slightly crumpled and has a blue shadow on its right side. The text is centered on the white sheet.

**Unfair terms in contracts
between traders and
consumers**

Any contract concluded between traders and consumers for selling goods or providing services must contain clear, unambiguous contractual terms for whose understanding there are not necessary specialized knowledge.

To ensure adequate protection for consumers, GO nr. 21/1992 on consumer protection, republished, establishes in art. 10 the rights to end contracts of the consumers, as it follows:

- a) freedom to make decisions on the purchase of goods and service, without requiring unfair-terms or terms which may encourage the use of unfair trading practices in selling, likely to influence their their choice;
- b) freedom to beneficiate from a clear and precise wording of the contractual terms, including those regarding the quality and warranty conditions, the accurate indication of the price or tariff, as well as establishing the exact conditions credit and interest;
- c) to be absolved of the payment of the products and services that have not been requested and accepted;
- d) to be compensated for the damages caused by products or services that do not meet the contractual terms;
- e) to ensure the required service and spare parts through the medium duration of the use of the product, established in the normative technical documents or asserted by the manufacturer or agreed by the parties;
- f) to pay the prior exactly determinated amounts for the products and services that they benefit of; the original price increase is possible only with the consumer's agreement;
- g) to have recourse to consumer protection association and public administrations on the violation of they rights and legitimate interests, as consumers, and to make proposals on improving the quality of goods and services;
- h) to be notified in writing with 30 days before the date on which the contract was concluded and of whose validity term is automatically extended for a fix or indefinitely period of time , in order to make o choice regarding the extension of its validity.

Inserting unfair terms in the contracts between traders and consumers is expressly prohibited by the Law no. 193/2000. It includes warranty certificates, order details, invoices, bordereau or delivery certificates, bills, tickets which contain stipulations or references to general present conditions.

What does an unfair-term mean?

*A contractual term which **has not been directly negotiated with the consumer** shall be regarded as **unfair**, by itself or together with other contractual terms, if it causes a **significant imbalance between the rights and the obligations of the parties**, in the detriment of the consumer and the laws of good faith.*

It is considered that a term was not negotiated with the consumer if it **has been established without letting the consumer influence it's nature**, such as standard contracts or general selling conditions applied by the traders on the product's or service's market.

The fact that some aspects of the term or only one of the terms was directly negotiated with the consumer does not exclude the application of the law related to the unfair terms, to the rest of the contract, if an overall assessment indicates that it was individually pre-formulated by the seller.

If a trader claims that a standard pre-formulated term was negotiated directly with the consumer, it is his duty to prove it.

How to assess the nature of an unfair term?

The **unfair nature** of a contractual term is assessed according to:

- the nature of the products or services for which the contract was concluded
- all the circumstances attending the conclusion of the contract
- other clauses of the contract or of other contracts on which it depends.

Assessing the unfair nature of term **is not associated** with:

- Defining the main object of the contract;
- The quality to meet the requirements of price and payment;
- Products and services offered in return.

List of the terms which may be regarded as unfair

The list contained in the Annex which forms an integral part of the Law no. 193/2000 plays, by way of example, the terms which may be regarded as unfair. Thus, may be considered **as unfair those terms** which:

- a) Give the seller the right to individually change the contractual term, without any well-founded reason which may be stated in the contract;
The provisions of this letter shall not preclude the terms under which a supplier of financial services reserves the right to change the interest rate paid by the consumer, or owed to him or the value of other taxes for financial services, without prior notice, if there is a well-founded reason, where as the seller is obliged to inform, as soon as possible, the other parties of the contract about these giving them the right to cancel the contract immediately. The provisions of this letter shall not also preclude the terms under which the seller reserves the right to individually change the clauses of an indeterminate contract, while the trader is obliged to inform the consumer, in a notice sent in due time, giving him the possibility to cancel the contract.
- b) Requires the consumer to submit to the contractual conditions even if he didn't know in the date of signing the contract;
- c) Oblige the consumer to fulfil all his obligations where the seller does not perform his;

- d) Enable the trader to automatically extend a contract which was concluded for a limited period of time, by tacit agreement, if the deadline fixed for the consumer to express his desire is unreasonably early;
- e) Enable the seller to individually change, without the consumer's agreement, the terms related to the characteristics of the products or services which are going to be provided, or the delivery of a product, or the performance of a service;
- f) Give the seller the right to individually determinate whether the goods or services supplied are in conformity with the contract;
- g) Give the seller the exclusive right to interpret any term of the contract;
- h) Restrict or cancel the consumer's right to claim damages if the seller does not fulfil his contractual obligations;
- i) Oblige the consumer to pay disproportionately large amounts if he has not accomplished his contractual obligations, in comparison with the damages incurred by the seller;
- j) Restrict or cancel the consumer's right to cancel the contract if:
 - The seller has individually changed the term from point e)
 - The seller has not accomplished his contractual obligations
- k) Exclude or limit the legal liability of a seller in the event of the death of a consumer or personal injury to the latter resulting from an act or omission of that seller related to the usage of the products or services;
- l) Exclude the consumer's right to take a legal action or exercise any other legal remedy, particularly by requiring the consumer to take disputes exclusively to arbitration
- m) Enable ill-founded restrictions in managing clear evidences of the consumer or ask for proves which, by law, are the object of another part of the contract;
- n) Give the seller the right to transfer contractual obligations to a third person-agent, proxy etc.- without the consumer's agreement, if this transfer serves to reduce the guarantees or other responsibilities to the consumer;
- o) Prohibit the consumer to clear a debt to the seller with a book debit that he would have on the seller;
- p) Provide that the price of goods be determined at the time of delivery or allow 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

The provisions of this letter shall not preclude the price indexing, as long as they are legal, the main condition being that the method by which the prices vary be explicitly described.

- q) Permit the seller to gain some sums from the consumer in case of not performing or cancelling the contract, without any compensations in an equivalent sum for the consumer, in case of not performing the contract by the seller;
- r) Authorize the trader to dissolve the contract on a discretionary basis where the same facility is not granted to the consumer;
- s) Enabling the seller or supplier to terminate a contract of indeterminate duration without reasonable notice except where there are serious grounds for doing so; The provisions of this letter shall not preclude the terms under which a supplier of financial services reserves the right to individually cancel a contract for indeterminate duration and without a prior notice in case of a well-founded notice, provided that the supplier is obliged to immediately inform the other parties.

Finding irregularities and solving litigions

Monitoring compliance Monitoring compliance of the Law no. 193/2000 is made by the attorneys of National Authority for Consumer Protection and by authorized specialists of other units of public administration.

Stages:

- 1. Notifying the responsible units:** may be made by the affected people or ex officio;
- 2. The cheking up made by the supervizory body:** economic operators are required to submit to the supervizory body the original contracts concluded with the consumers;
- 3. The consequences of the verification-** supervizory bodies elaborate minutes of finding the facts and not of “finding and penalty”, according to common law, in respect of contraventions;
- 4. Court intervention-** minutes elaborated by the supervizory body is sent to the competent court: the court is whose territory the deed was committed or in whose territorial area the offender resides, or has his office.

Solutions available to the court:

Contravention:

1. The existence of unfair terms: - the court applies a fine and takes one of the following measures:
 - Carrying out the contract, with the consumer's agreement and only if, after their exclusion, the contract can continue with mentioning the change of those unfair terms, under penalty of damages;
 - Abolition of the contract as it may not take effect after excluding unfair terms; consumer may seek damages.
2. Lack of unfair terms- cancellation of the minutes laid down by the supervisory body.

Law-breaking:

- remove file pending and notify the competent organism, according to law

Court intervention may be required not only by the supervisory body, but also by the affected consumers, in accordance with the provisions of the Civil Code and of the Code of Civil Procedure- Article 14, Law 193/2000

To avoid any possible the pitfalls of the contracts concluded with the economic operators, **consumers are recommended:**

- not to sign a standard pre-formulated contract before carefully reading it;
- do not let tempting offers influence them and carefully study them;
- to make sure they have understood the contractual terms or the general selling conditions;
- to require time for studying the contract or the general selling conditions and to try to obtain an adequate advice from specialized persons.