

4.29 Limitation of Liability

Contracts typically include a clause to the effect that neither party shall be liable for consequential or indirect losses of the other party or for any loss of profit or opportunities.

Moreover, a contract often sets out the specific amount of a party's maximum liability towards the other party for losses incurred. It can be expanded to an amount per year or per event. However, limitation of liability clauses must be very clear and easily understood, as the starting point is that there is no limit to the sum of damages to pay if liable. The clause may refer to insurance coverage taken out, which is then described or details hereof exhibited, if the maximum is agreed to be equivalent to be the maximum of the insurance coverage.

Some clauses regarding the sale of goods would list various types of wrongful use of the goods within the limitation clause to have damages under these circumstances exempted entirely. Types of alterations and unauthorized service could also be mentioned here. Alternatively or as a supplement these instances would be included in the clause on defects and/or on product liability.

Despite limitation clauses there will be uncertainty about claims arisen out of willful actions or possibly out of gross negligence. The contract may address this explicitly. This would also be relevant if the parties may reduce their losses or obtain coverage of their claims by other additional means, for instance by holding back payments otherwise due, but the starting point would be that the limitation does not apply in the event of willful or grossly negligent breach of contract.

Some contracts also include limitations in time as to how long claims can be validly raised, i.e. an expiry of liability. In some lines of business, such as construction, this is regulated otherwise by agreed documents and customs, and in general the three year statute barring set out in the Limitation Act will apply if nothing else has been provided for.

It should here be emphasized that the limitation agreed is applicable only between the two parties to the contract setting out the agreed limitation, whereas a third party suffering damages may raise claims not only against his contract party,

but also against that party's supplier or manufacturer on the basis of rules regarding product liability and general principles of liability for damages. In construction matters related rules are found in AB92 section 5 regarding direct liability. Further rules are found section 36.

The underlying legal principles regarding exclusion and limitation of liability are of central importance here and so is the *contra proferentem* rule. However, in practice one would often first look at the basis for liability, i.e. the principles of causation, foreseeability and contributory negligence, before looking at the extent of any agreed limitation of the liability. These principles are also included in the CISG articles 74 and 80. One should also bear in mind the general obligation to seek to reduce or mitigate any losses in every respect, also included in CISG article 77.

4.30 Term and Termination

The contract should stipulate when it enters into force, typically either at the point in time when both parties have signed, or sometimes conditional upon another body's explicit approval of it within a certain timeframe.

A contract may set out a period in which it is in force, and this can be combined with an automatic evergreen renewal for periods unless terminated. Evergreen contracts can be difficult over time. The situation is clearer if it stipulated that the contract ceases at the indicated date of expiry unless a new contract has been agreed and signed before that date.

Often the agreed and contemplated expiry of a contract may cause losses in respect of goodwill, redundant stock of goods or even personnel. It is recommended to regulate this situation even if it is so that there will be no responsibility for losses or compensation in this situation. A distribution contract would normally include rules on the return and valuation of stock, as well as regarding the cessation of the use of any intellectual property rights. Alternatively, there could be rules applying to the continued marketing and sale of the stock, and after sales services in this situation. A franchise contract would often include rules providing a right for the franchisor to take over the franchised business as well as regarding the valuation hereof.