

Unfair contract terms guidance

Consultation on revised guidance for the Unfair Terms in Consumer Contracts Regulations 1999

Annexes

April 2007

OFT311cons

ANNEXES

A EXAMPLES OF FAIR AND UNFAIR TERMS

- A.1** This annexe comprises examples of standard terms actually used by businesses in consumer contracts. It is **not** a list of terms that will **always** be found fair or unfair (see below), but it is intended to illustrate, in a practical way, how the OFT interprets the Unfair Terms in Consumer Contracts Regulations, and so help businesses to ensure their terms are fair and enforceable. The examples have been selected from cases where OFT took action under the Regulations. They include:
- terms which the OFT successfully challenged as unfair under the Regulations, and
 - revised terms that businesses undertook to substitute – if any.
- A.2** Examples of fair and unfair terms were published in OFT bulletins until February 2005 and can be found at www.oft.gov.uk. Individual case summaries can now be found on the Consumer Regulations Website (CRW) by going to: www.crw.gov.uk.⁴⁶

Organisation of the list

- A.3** Like the main text of the Trader Guidance, this annexe is arranged on the basis of 19 main headings. The first 17 groups of terms correspond to the 17 types of unfairness listed in Schedule 2 to the Regulations. Group 18 consists of a number of terms that are unfair in ways comparable to, but not directly covered by, Schedule 2 (see the introduction of Part III above). Group 19 illustrates how the plain language requirement in Regulation 7 applies.
- A.4** Certain of the 19 main groups of terms are subdivided. For instance, Group 2, which relates to paragraph 1(b) of Schedule, is broken down into eight subgroups – 2(a) to 2(h). This reflects the fact that exemption and limitation clauses come in many different forms. Group 18 similarly has several subgroups. Some other

⁴⁶ The organisation of the listing in some earlier publications is slightly different. The OFT did not immediately encounter every type of term now identified as potentially unfair, and numbering of groups in them differs to that extent.

subsidiary headings are used purely for editorial purposes, and are not numbered.

- A.5** The index of types of term at the end of this publication includes references to all the headings and subheadings.

Status of the terms listed

- A.6** This annexe illustrates the Office's current view derived from enforcing the Regulations of contractual drafting that is, and is not, likely to fall foul of the Regulations. But the terms quoted in it are not included as being necessarily fair or unfair in all cases. This reflects the indicative nature of Schedule 2, which has been described as a grey rather than a black list. Only the courts can give a final ruling on what is definitely fair and unfair in any circumstances.
- A.7** In particular, the revised terms listed in this annexe are not recommended as being definitely fair. The OFT cannot 'clear' terms for the purposes of the Regulations. The terms included were all considered, on the evidence available at the time, to be sufficiently improved to require no further action. The OFT has a statutory duty to consider complaints about any terms brought to its attention, and that applies to these terms in the same way as to others.
- A.8** Though it rarely happens in practice, a term shown as having been revised could in principle be found unfair. New complaints and other evidence can and do shed new light on the potential for unfairness of terms which formerly seemed acceptable. The assessment of 'fairness', for the purposes of the Regulations, requires consideration of all the circumstances of each individual case, and of the effect of other terms in the contract – Regulation 6(1). A form of words which is considered acceptable in one agreement is not necessarily fair in another.
- A.9** Also, as noted in Part I, the OFT is no longer the sole authority with powers to enforce the Regulations. Measures are in place⁴⁷ aimed at ensuring co-ordination and consistency of view as between enforcement bodies. But the new Qualifying Bodies are legally entitled to form their own views on what is fair and unfair, and to take action accordingly.

⁴⁷ The new enforcement agencies are listed in Schedule 1 to the Regulations (see annexe C).

Editing of the terms listed

- A.10** The listing of terms is highly selective. The OFT keeps a record of the wording of all terms successfully challenged, and also of revised terms introduced after challenge, but the number now runs into thousands and it would be wholly impractical to publish them all in printed form. For a summary account of all the terms challenged and revised under the Regulations, please see the case reports in the OFT's *Unfair contract terms bulletins*. To facilitate cross-reference, for each term quoted the name of the business and the number of the bulletin in which the case report was published are given.
- A.11** The text of terms included has also been edited in order to help readers see more easily what the OFT considers to be fair or unfair. In particular, unnecessary wording is frequently omitted. Terms challenged by the OFT commonly contain redundant verbiage, as would be expected, since unclarity often causes or contributes to contractual unfairness. Or wording may be left out because what the supplier printed as a single term in fact deals with several issues, of which only one is relevant to any particular aspect of fairness. Where there are omissions **within** the text of a term quoted in this annexe, the usual symbol for ellipsis ('...') is used.
- A.12** Because a single term may consist of different elements that are unfair in different ways, parts of the same term may be found quoted in different places in the listing. Conversely, wording that covers a single issue for the purposes of the Regulations may be, for the supplier's own reasons, broken up into different clauses or sub-clauses. In these cases, extracts from different parts of a contract may be quoted alongside one another in the listing.
- A.13** Finally, the terms have also been edited to correct spelling and grammar to improve readability. In a few cases where a point might otherwise be missed, bold print is used to highlight significant wording.

Group 1: Excluding or restricting liability for death or personal injury

Schedule 2, paragraph 1, states that terms may be unfair if they have the object or effect of

- (a) *excluding or limiting the legal liability of a seller or supplier in the event of the death of the consumer or personal injury to the latter resulting from the act or omission of that seller or supplier.*

Original term

All Star Soccer Schools ... franchisees, their agents and their employees are not under any liability whatsoever in respect of personal injury, loss or damage howsoever caused whilst attending an All Star Soccer Schools' course.

Action taken

New term: All Star Soccer Schools franchisees, their agents and their employees are insured against loss or injury through their negligence.

Reference

All Star Soccer Schools – *Bulletin 1*

Original term

The use by the Member of any of the Company's equipment or machinery or the facilities of any gymnasium owned by or occupied by the Company is entirely at the Member's own risk.

Action taken

New term: In the absence of any negligence or other breach of duty by the Company the use by the Member of any of the Company's equipment or machinery or the facilities of any gymnasium owned or occupied by the Company is entirely at the Member's own risk.

Original term

We cannot accept any responsibility for the outcome of any contacts or meetings made through us, or for the accuracy of information supplied to us by members.

Action taken

New term: Initial Approach shall be under no obligation to provide Profiles which comply with all stated requirements of age, location, smoking preferences, etc, nor can it guarantee the outcome of any contacts or meetings.

Original term

Throughout the course of treatment ... I will report any problems encountered to the clinic and make myself readily available to undergo such medical examination as shall be deemed necessary from the Physician. In the event of my failure to do this I shall fully and completely absolve the Physician and LST Clinic from all liability whatsoever.

Action taken

Term deleted.

Excessively broad general exclusions

Original term

This car wash is used entirely at owner's risk.

Action taken

Term deleted.

Original term

The company does not accept responsibility for the failure of any fire protection equipment in the event of a fire.

Action taken

Term deleted.

Original term

The Company's Information Leaflet is provided from advice received from technical and professional sources in order to assist buyers. However it is expressly agreed that the Company provides this information without charge and the Company assumes no liability in any event whatsoever for the information given.

Action taken

Term deleted.

Original term

All conditions and warranties, express or implied, as to quality, description, fitness for purpose of the vehicle or otherwise are hereby expressly excluded and the lessor shall not be liable to the hirer or any driver or any third party for any loss howsoever caused.

Action taken

New term: *You will be responsible for ... all loss or damage to the vehicle (unless caused as a result of our negligence or our breach of this agreement) ... plus the loss of rental income incurred by us as a result.*

Original term

Neither we nor our servants or agents will be under any liability in respect of defects in goods delivered or for any injury, damage or loss resulting from such defects, whatsoever and however caused and whether such injury, loss or damage be by direct or consequential means and notwithstanding that the same may be due to the negligence act or omission of ourselves, our servants or agents, and our liability under this clause shall be in lieu of any warranty or conditions implied by law as to the quality or fitness for any particular purpose of such goods.

Action taken

Term deleted.

Original term

SH Cottages ... act as agents for the cottage owners. The contract being between the owner and the guest, SH Cottages can never be held responsible for the actions of either parties or any consequences resulting therefrom.

Action taken

Term deleted.

Original term

Hot Air Balloon Adventures will not be responsible for injuries or consequences for passengers who are pregnant or have any physical or mental infirmity.

Action taken

New term: *We are not qualified to express an opinion confirming that you are fit to fly and you must ensure that you are fit to fly. You must not fly if you are suffering from any serious medical condition, or have recently undergone surgery unless you have a certificate of your fitness to fly from your doctor. You must not fly if you are pregnant or under the influence of alcohol or drugs.*

Group 2: Excluding or restricting liability for breaches of contract

Schedule 2, paragraph 1, states that terms may be unfair if they have the object or effect of:

(b) inappropriately excluding or limiting the legal rights of the consumer vis-à-vis the seller or supplier or another party in the event of total or partial non-performance ... by the seller or supplier of any of the contractual obligations ...

Group 2(a): Exclusion of liability for faulty or misdescribed goods

Original term

No guarantee is given as to the age, make, date of manufacture or mileage of any vehicle, these are sold strictly as seen and approved. Any age, make, date of manufacture or mileage quoted, is given without prejudice to the Seller.

Action taken

Term deleted.

Original term

Unless expressly stated in writing to be accurate no representation or warranty is given as to the accuracy of any instrument purporting to record the vehicle's mileage or any record or other statement as to such mileage.

Action taken

Term deleted.

Original term

The Seller will assume no responsibility that the Goods concerned herein are fit for any particular purpose for which they are bought other than for the purpose set forth and specified in the User manual supplied therewith.

Action taken

***New term:** All hardware is sold in accordance with the manufacturer's specification subject to any qualification or representation contained in the brochures, advertisements or other documentation.*

Original term

All conditions and warranties whatsoever (whether expressed or implied and whether arising at common law or statute) ... are hereby excluded to the extent permitted by law.

Action taken

Term deleted.

Original term

The support provided hereunder shall be substantially as described. This warranty is exclusive and is in lieu of all other warranties and Microsoft disclaims all other warranties, express or implied, including but not limited to warranties of merchantability and fitness for a particular purpose.

Action taken

***New term:** Microsoft warrants that it will provide Support with reasonable care and skill, within a reasonable time, and substantially as described in this Agreement. Microsoft does not make any other promises or warranties about Support service.*

Original term

The Hirer and any driver shall not ... make any claim for loss of or damage to any property left stored or transported in or upon the vehicle.

Action taken

***New term:** You will be responsible for all claims, liabilities, damages, costs and expenses suffered or incurred by us as a result of your breach or default in the discharge of your obligations.*

Original term

Returns will not be accepted unless accompanied by:
ON ALL PRODUCTS – NO MANUAL– NO RETURN
The Invoice, Full & complete packaging inc Disks, Manuals etc.

Action taken

Term deleted.

Original term

No condition or guarantee is given by the seller as to the correctness of the recorded mileage shown on the Odometer.

Action taken

New term: Where the Buyer is buying in the course of their business no condition or guarantee is given by the Seller as to the correctness of the recorded mileage shown on the odometer.

Original term

... We cannot accept ... claims for damage whatsoever after delivery.

Action taken

New term: If for any reason you are not satisfied with the merchandise it should either be rejected on delivery, or if a fault is found within a reasonable time subsequent to delivery we will (subject to confirmation of the fault), exchange the goods or refund you in full.

Original term

No product of the company shall be deemed to fulfil any particular purpose or duty unless specified in writing on estimate.

Action taken

Term deleted.

Original term

Whilst every effort is made to ensure that your carpet is in perfect condition, no complaints can be accepted after the carpet has been cut into ... **you cut it, you own it.**

Action taken

Term deleted.

Clauses dealing with 'sale' goods

Original term

No claims whatsoever will be entertained and no liability attaches to the Company in any event for goods sold at discount prices as remnants or as sub-standard stock.

Action taken

New term: Goods sold at discount prices, as remnants or as substandard stock will be identified and will be stated to be sold as such.

Original term

SHOWROOM MODELS. Actual showroom models are sold as seen and inspected by the customer and it is the customer's responsibility to check that all such goods are of merchantable quality and fit for the purpose at the time the purchaser agrees to buy the same.

Action taken

New term: SHOWROOM MODELS. When an actual showroom model is sold it may not necessarily be in perfect condition. Customers should check the goods are of a satisfactory condition for their particular use and requirement.

Original term

Goods ... which for any reason whatsoever are sold at less the manufacturer's recommended list price ... shall be delivered to the purchaser in the condition as seen and approved by the Purchaser and without any ... condition or warranty ... implied by statute, common law or otherwise.

Action taken

Term deleted.

Clauses requiring consumers to examine goods

Original term

It is the customer's responsibility to make sure they have tried the goods before delivery and that they are fit for the purpose for which they are intended.

Action taken

Term deleted.

Original term

Prior to signing this order form the Purchaser (or if he does not have the mechanical knowledge a competent and experienced mechanical engineer) shall examine the vehicle and the items set out in the Purchaser's Certificate of Examination overleaf and the Purchaser is reminded that the condition of merchantable quality implied by Section 14 of the Sale of Goods Act 1979 does not operate in relation to such defects which that examination ought to reveal.

Action taken

Term deleted.

Original term

Your signature constitutes acceptance that all merchandise and indicates 100% satisfaction as per order.

Action taken

Term deleted.

Original term

The Renter or Approved Driver shall report immediately to GWR any defects which cause the vehicle to be in an unroadworthy condition.

Action taken

New term: *The Renter or Approved Driver shall report immediately to GWR upon becoming aware of any defects which cause the vehicle to be in an unroadworthy condition.*

'Passing of risk' clauses

Original term

Risk of damage to or loss of the Goods shall pass to the Buyer ... at the time when the Seller notifies the Buyer that the Goods are available for collection.

Action taken

Term deleted.

Original term

The risk in Goods which Maples agrees to supply shall pass to the Customer on the Goods being off-loaded at the delivery destination or the date (if earlier) on which the Goods being ready for delivery, delivery is postponed at the Customer's request.

Action taken

***New term:** As soon as we have delivered the goods or services, you will be responsible for them. If you delay a delivery, our responsibility for everything other than damage due to our negligence will end on the date we agree to deliver them, as set out in the contract.*

Original term

You shall be responsible for any loss or damage to the equipment however caused ... except by fair wear and tear.

Action taken

***New term:** You are responsible for any loss or damage to the equipment except if such loss or damage is: (i) caused by us or our employees; (ii) due to a manufacturing design or design fault; or (iii) due to fair wear and tear.*

Group 2(b): Exclusion of liability for poor service

Original term

The company ... will not accept liability for any of the following: a) pebble dashing, special rendering, or any decorative finishes or similar material, painting, decoration, woodwork or furniture, however caused; b) For any consequential loss or damage however caused.

Action taken

***New term:** The Customer ... accepts that the installation may cause damage to decorations ... this provision does not exclude the Company's responsibility for damage which is beyond what is reasonably commensurate with the fitting of the window or windows in the usual way (for example damage to other areas of the premises where the window or windows are not being fitted).*

Original term

All reasonable care will be taken but, the company shall not be under any

responsibility whatsoever for damage to internal or external decoration caused by the installation.

Action taken

***New term:** We will make good any damage caused in the course of installation to roof tiles, slates, render, brickwork and so on, but you accept that the installation may cause damage to exterior decoration and, except for damage caused by our negligence, we do not undertake to carry out any redecoration.*

Original term

The Company shall not be liable to the Member for damage to or the loss or theft of any clothing or other possessions which the Member has brought into such gymnasium.

Action taken

***New term:** The Company shall not be responsible or liable to the Member for any loss or damage to a Member's possessions which the Member has brought into the Gymnasium which is not locked in one of the lockers provided.*

Original term

All conditions, warranties and representations, whether express or implied, relating to the quality of Service whether arising by reason of statute, common law or otherwise, are hereby expressly excluded. This clause does not affect the terms implied by statute in favour of the Customer by the Sale of Goods Act 1979.

Action taken

Term deleted.

Original term

DAMAGE – The subscriber shall pay for the cost of all work required to be carried out to the installation and materials therefore due to damage for whatever cause.

Action taken

***New term:** **DAMAGE** – The subscriber shall pay for the cost of all work required to be carried out to the installation and materials thereof due to damage resulting from misuse or negligence by the subscriber.*

Original term

We will not be liable for any monetary loss. This includes currency notes, coins, traveller's cheques, money orders, premium bonds and securities of any kind.

Action taken

***New term:** Medication, money and valuable items should not be stowed in the luggage hold under any circumstances but should be taken on board. Such items may be placed in the overhead lockers or under the seat, but should not be left unattended by the passenger. Money and small valuables (such as jewellery) should be retained on the person at all times.*

Original term

On acceptance of the work by the client whether by signing a satisfaction form or by using the work and/or materials or by approval in any way he will be stopped from claiming that such material and/or work were unsuitable at the time of acceptance unless prior to or at the time of such acceptance he gave written notice specifying the unsuitable nature of the materials or work.

Action taken

Term deleted.

Original term

Wates Leisure Limited will not be responsible under any circumstances for loss or damage to the property of whatever description of members, guests or visitors, whether caused wilfully, accidentally, by theft or otherwise.

Action taken

***New term:** The company will not accept liability for the personal property of members or their guests brought into the club site unless such property is handed in at the club reception and a signed receipt is given.*

Original term

Welsh Nannies shall have no liability for any loss, expense, claim, damages or, delay or behaviour caused directly or indirectly by the introduction or engagement or the acts or omissions of the applicant.

Action taken

***New term:** The agency shall not be liable under any circumstances for any **unforeseeable** loss, damage or expense suffered or incurred by the client arising from or in any way connected with the introduction by the agents of the applicant to the client ...*

Original term

Where British Gas Services needs to connect new equipment to your existing central heating system it shall not be liable for any breakdown or poor performance of or damage caused to your existing system as a result of faulty pipework or some other defect or malfunction of your central heating system.

Action taken

***New term:** Where we need to connect new equipment to your existing central heating, we will not accept liability for the cost of repairing or replacing parts of your existing system which occurs due to faults in that system unless we have been negligent in not realising that such damage may occur or in the way we did the work.*

Clauses transferring responsibility to consumers

Original term

The customer shall prepare the work areas and walkways and fully protect or remove carpets, furniture and valuables and should the work areas and walkways not be fully protected or removed the customer shall accept all risks of spillage, leaks, stains, breakage and damage.

Action taken

Term deleted.

Original term

The Company will not be responsible for any assistance given with measuring. The Purchaser shall be responsible for all measurements.

Action taken

***New term:** The Purchaser shall be responsible for all measurements given to the Company, except where the Company's Surveyor has surveyed the site and supplied the measurements.*

Clauses covering gratuitous ancillary services

Original term

The company shall remove furniture, carpeting and valuables if so specifically requested by the customer but shall not be responsible for damage caused carrying out such work nor be responsible for their reinstatement or the cost thereof.

Action taken

Term deleted.

Original term

Unless otherwise agreed in writing, the contractor's estimate shall not include the taking down or putting up of unit furniture, fitments and fixtures, the disconnection and reconnection of appliances and fittings, the laying of fitted floor coverings ... Should such work be undertaken ... without prior agreement ... the contractor shall not be liable for any loss or damage occasioned howsoever caused, but in all other respects these conditions shall apply.

Action taken

New term: Work excluded from our quotations unless previously agreed in writing we will not:

- 1. Dismantle or assemble unit furniture (flat-packed), fitments or fittings,*
- 2. Disconnect or reconnect appliances, fittings or equipment.*
- 3. Remove or lay fitted floor coverings ...*

Original term

The hirer is responsible for the loading/unloading of equipment and goods and assistance given by HSS is at the hirer's risk.

Action taken

Term deleted.

Original term

If any of our staff does this kind of work for you without our written agreement we will not be liable for any loss or damage.

Action taken

***New term:** Our staff are not authorised or qualified to carry out such work. We recommend that a proper qualified person is separately employed by you to carry out these services.*

Group 2(c): Limitations of liability

Original term

Material is accepted on the basis that the value does not exceed its retail price. Material of exceptional value should be insured by the customer.

Action taken

Term deleted.

Original term

In respect of any direct damage to property caused by the negligence of Maples or the negligence or wilful default of its servants or agent Maples' liability hereunder shall not exceed £1,000.

Action taken

***New term:** We will pay for any damage caused by our employees.*

Original term

Claims are limited to the cost of the original component/s.

Action taken

Term deleted.

Original term

The Customer agrees that it is fair and reasonable for the Company to limit and exclude its liability as set out in Part 4, which specifies the entire liability of the Company including liability for negligence.

Action taken

***New term:** We do not know the value of the contents in your premises. You do (or should) know the value of the contents in your premises ... we*

are giving you the chance to discuss and agree different amounts from those set out in the following paragraphs of this clause, we will limit our liability to those amounts (unless we agree in writing to change those limits).

Original term

If we fail for any reason within our control to deliver you to your ticketed destination ... our **liability** shall be limited to the cost of providing a taxi to the ticketed destination.

Action taken

***New term:** If we fail for any reason within our control to deliver you to your ticketed destination ... any re-imbusement made by National Express of the **costs of alternative means of transport** incurred by the passenger ... shall be no more than the cost of getting to that destination by taxi.*

Original term

We shall only be liable to damage to premises caused by our negligence and our liability will then be limited to a maximum of £200 unless Premises Damage Insurance has been arranged.

Action taken

***New term:** We will not be liable for any damage to premises ... as a result of moving goods under your express instruction, against our advice, and where to move the goods in a manner instructed will inevitably cause damage.*

Original term

The contractor's liability if any for loss, damage and/or failure to produce, howsoever caused in respect of all goods entrusted to the contractor ... shall be subject to the following limitation: a sum calculated at the rate of £4.50 per cubic foot of the cubic capacity of the items lost or damaged or at

Action taken

***New term:** In the event of our losing or damaging your goods, we will pay for the reasonable costs of the repair or replacement (less wear or tear) of the item if we have been negligent.*

Original term

EUROPA COMPUTERS will accept liability for defective Goods only to the extent that EUROPA COMPUTERS is itself entitled to make a

corresponding claim under the manufacturer's warranty.

Action taken

Term deleted.

Clauses requiring consumers to meet costs

Original term

... Defective equipment or parts which are returned to the Seller must be carriage paid for by the Purchaser both to and from the Seller's offices and the Seller shall not be responsible for installation of parts so returned after repair exchange.

Action taken

***New term:** ... The Seller shall not be liable for the costs of carriage where the failure of goods arises from the Purchaser's misuse.*

Original term

Where attendance of the company's engineer is needed for any purpose other than a scheduled maintenance visit a charge for such attendance will be made on a time and material basis.

Action taken

***New term:** Where attendance of the Company's engineers is requested for any purpose other than a scheduled maintenance visit or for the company to meet its liabilities a charge for such attendance will be made ...*

Original term

On faulty items we regret you must pay shipping back to Scan and Scan will pay for the shipping back to you.

Action taken

Term deleted.

Clauses excluding the right to monetary compensation

Original term

The approved installer does not accept any liability for loss or damage to the property arising from their work beyond the making good of their work.

Action taken

***New term:** The approved installer does not accept any liability for damage caused by pre-existing structural defects.*

Original term

If the Goods (or any of them) have been lost or damaged while at Maples' risk, Maples shall at **its option** either rectify or replace them or refund the price paid by the Customer ...

Action taken

***New term:** If the goods (or any part of them) have been lost or damaged by Maples we will at **your option** either repair or replace them or refund the price you paid for them.*

Original term

Bennetts (Retail) Limited reserve the right in the event of a fault to exchange the unit or part of the unit, or issue a credit note to cover the cost.

Action taken

***New term:** In the event of a fault due to product failure, we will repair or replace the item, or part of it, or refund the purchase price, at the discretion of the purchaser.*

Original term

CUSTOMER REMEDIES – Microsoft's entire liability and your exclusive remedy shall be, at Microsoft's option, either a) return of the price paid or b) repair or replacement of the software or hardware that does not meet Microsoft's Limited Warranty and which is returned to Microsoft with a copy of your receipt.

Action taken

***New term:** Term disappplied to consumers*

Original term

Refunds if applicable will be made by form of credit note redeemable against any future works.

Action taken

Term deleted.

Clauses excluding consequential loss

Original term

If either you or we are in breach of the arrangements under this Agreement, neither of us will be responsible for any indirect or consequential losses that the other suffers as a result.

Action taken

New term: *If either you or we are in breach of the arrangements under this Agreement, neither of us will be responsible for any losses that the other suffers as a result, except those losses which are a foreseeable consequence of the breach.*

Original term

Our liability cannot extend to cover garage labour, recovery, vehicle hire or any other consequential or associated costs.

Action taken

Term deleted.

Original term

Sky shall have no liability under this Agreement in respect of any indirect or consequential loss resulting from negligence or any other tort on the part of Sky or any of its officers, employees or agents;

Action taken

New term: *We will not be liable under this contract for any loss or damage caused by us or our employees or agents in circumstances where:*

- i) there is no breach of a legal duty of care owed to you by us or by any of our employees or agents;*
- ii) such loss or damage is not a reasonably foreseeable result of any such breach;*
- iii) any increase in loss or damage resulting from breach by you of any term of this contract.*

Original term

In no event shall Microsoft or its suppliers be liable for lost profits or indirect, consequential, incidental, special or punitive damages ... arising out of any breach or failure of Microsoft even if Microsoft or its suppliers have been advised of the possibility of such dangers ...

Action taken

***New term:** Microsoft's and its suppliers' liability shall not in any event include losses related to any business of the Customer such as lost data, lost profits or business interruption.*

Original term

Nor shall Lessor be liable for any indirect or consequential loss or damage.

Action taken

***New term:** We are also responsible for losses you suffer as a result of us breaking this agreement if the losses are a foreseeable consequence of us breaking the agreement. Losses are foreseeable where they could be contemplated by you and us at the time the vehicle is rented. We are not responsible for indirect losses which happen as a side effect of the main loss or damage and which are not foreseeable by you and us (such as loss of profits or loss of opportunity).*

Group 2(d): Time limits on claims

Original term

All claims shall be absolutely barred and all remedies excluded unless legal proceedings are brought within one year from the date on which the goods have been delivered or should have been delivered.

Action taken

Term deleted.

Original term

... the Customer shall ... give Maples written notice of such loss or damage with reasonable particulars thereof within 3 days of receipt of the Goods.

Action taken

***New term:** ... You must tell us about any fault or damage as soon as is reasonably possible.*

Original term

Faulty goods will be exchanged if returned or notified within 7 days from the date of invoice and returned in original, clean and full packaging.

Action taken

Term deleted.

Original term

Any claim by the Purchaser for compensation for damage done by the Company must be made in writing to reach the Company within seven days of such damage occurring in default of which the Company will accept no liability therefore.

Action taken

New term: Any claim by the Purchaser for compensation for damage caused by the Company must be notified to the Company as soon as practicable after the damage is discovered.

Original term

ANY CLAIM MUST BE SUBMITTED IN WRITING to our branch overleaf within 7 days of the date upon which the item(s) involved in the claim leave our control or, in the event of non-delivery within 7 days of the date upon which the removal was due to be completed.

Action taken

New term: IMPORTANT NOTICE: TIME LIMIT FOR NOTIFICATION OF CLAIMS

All claims for damage or missing goods must be notified to the Remover whether unpacked or not within 7 days of delivery of the property or, in the case of non-delivery of the entire consignment, within 7 days of the anticipated delivery date, unless a time extension is requested by you and agreed by us in writing.

Original term

You are asked to notify any shortcomings or complaints to reception immediately, so that they can be remedied for you. No claim can be reconsidered for shortcomings not so notified.

Action taken

New term: You are asked to notify any shortcomings or complaints to reception immediately, so they can be remedied for you. Claims may be reduced or rejected if we have not been given an opportunity to put matters right.

Original term

Written notice of any defect in the goods when delivered shall be served upon the company within 7 days of delivery. The Customer shall be deemed to have accepted the goods 7 days after delivery.

Action taken

New term: The Customer is asked to examine the goods as soon as reasonably possible after delivery and notify the Company of any fault or damage as soon as reasonably possible.

Original term

Hirer must inform Lessor within 48 hours, excluding public holidays, of any loss of, or damage occurring to Vehicle and of any fault reasonably requiring repair, developing therein ...

Action taken

New term: You must let us know as soon as you become aware of a fault in the vehicle.

Group 2(e): Terms excluding the right of set-off

Schedule 2, paragraph 1, states that terms may be unfair if they have the object or effect of

- (b) *inappropriately excluding or limiting the legal rights of the consumer ... including the option of offsetting a debt owed to the seller or supplier against any claim which the consumer may have against him.*

Original term

Payment is due on completion of the installation. The purchasers shall not be entitled to withhold payment by reason of any alleged minor defect ...

Action taken

New term: Payment is due on completion of the installation. The Purchaser shall not be entitled by reason of any alleged minor defect to withhold more than a proportionate amount of the sum due ...

Original term

Payment shall be due in full immediately upon completion of the work.

Action taken

Term deleted.

Original term

On completion of the work the client hereby agrees to pay the balance due to the site foreman.

Action taken

New term: On satisfactory completion of the work the client hereby agrees to pay the balance due to the site foreman.

Original term

The balance referred to overleaf shall be paid to the company upon delivery or installation. The purchaser shall not be entitled to withhold payment by reason of any alleged minor defects. The company will investigate any alleged defect after payment in full ...

Action taken

New term: The Client named overleaf will pay the balance of the Contract Price after the items have been installed to the satisfaction of the client.

Original term

... you must pay without any deduction the amounts stated in Statements as being owed by you together with any taxes, duties and levies due in respect of those amounts.

Action taken

New term: ... You must (unless there has been a mistake) pay without any deduction the amounts stated in Statements ... If you do think ENG has made a mistake, you must notify ENG of that immediately. Once that mistake has been remedied ENG will send you another Statement and you must pay to ENG the total amounts stated.

Original term

In the event of non-completion of minor Works the Customer shall not be entitled to withhold payment greater than 5% of the Contract price.

Action taken

New term: In the event of any alleged minor defect, the Customer shall not be entitled to withhold more than a proportionate amount of the sum due.

Original term

If there is some minor defect in the work, Zenith expects you to rely on its assurance that it will be rectified in accordance with the terms of its guarantee. Your failure to pay the balance on substantial completion would be a breach of this agreement.

Action taken

New term: If you withhold more money than the value of any outstanding work or delay payment of our invoice then we will apply interest to the outstanding balance ...

Original term

In the event that any payment due ... is not made on the due date ... the subscriber hereby irrevocably authorises the company to request payment in respect of any sum due and owing ... from the credit card company indicated in this agreement.

Action taken

Term deleted.

Clauses subjecting set-off to penalty

Original term

DISCOUNT/SPECIAL OFFERS – ... should the buyer default in payment on the due date or countermand payment or take any other step to cancel or reduce payment to the Company ... then the terms of any discount or special offer will be automatically terminated and the buyer will become liable for the full price.

Action taken

Term deleted.

Original term

The company shall be under no liability under the above warranty, condition or guarantee, if the price of the contract has not been paid by the due date for payment notwithstanding that it may have been paid subsequently.

Action taken

Term deleted.

Original term

Your installation is guaranteed for a 5 year period provided your invoice is paid in full upon completion of the work.

Action taken

New term: The guarantee is only effective once full payment has been made.

Original term

Any balance outstanding after the fitters have left the customers will be looked upon as a D B Debt which means company collection by other extraordinary methods and in such case it will render the customer an additional 6% surcharge the least amount being chargeable of £60.

Action taken

New term: The guarantee period commences from the date of the invoice provided the invoice has been paid in full. Any monies outstanding after one month of invoice date will result in a 3% surcharge over and above the current bank rate this will be calculated on a monthly basis.

Clauses requiring full payment in advance

Original term

Payment of the total price (less any deposit already paid) shall be made by the Customer to the Company on delivery of the Furniture.

Action taken

New term: Payment of the total price, less any deposit already paid, shall be made by the Customer to the Company after delivery of the Furniture and installation has been completed by the Company. The Customer shall

not be entitled by reason of any alleged minor defect to withhold more than a proportionate amount of the sum due.

Original term

In the event that the customer cannot accept delivery of the goods within 14 days of the company receiving such goods, the company reserves the right to request payment in full ...

Action taken

***New term:** In the event that the customer cannot accept delivery of the goods within 14 days of the company receiving such goods, the company reserves the right to request payment of 60 per cent of the balance ...*

Group 2(f): Exclusion of liability for delay

Original term

The Company will make all reasonable endeavours to start and complete the works by the dates given but will not accept liability for delays.

Action taken

***New term:** The Company will do all that it reasonably can to meet the date given for delivery and/or installation. In the case of unforeseen circumstances, beyond the reasonable control of the company ... the Company will contact the Customer and agree an alternative date.⁴⁸*

Original term

Whilst the company may quote a delivery period ... time for delivery shall not be of the essence of this contract and in the event of supplies or labour being adversely affected by strikes, lock outs or any other disruptions or contingencies beyond the company's control, the company shall not be held responsible for ... loss or liability incurred by the customer.

Action taken

***New term:** We will make every effort to complete the work on time (or, if no date has been agreed, within a reasonable time from the date of your order) but we cannot be held responsible for delays due to weather or other circumstances beyond our control. In this case we will complete the work as soon as reasonably possible.*

⁴⁸ An identical obligation was placed on the consumer.

Original term

Crosville Wales Ltd ... will not be liable for any loss, hurt, damage, or inconvenience arising from the failure of its vehicles to start, to arrive at the time specified, or at all, due to circumstances beyond the Company's control, such as traffic delays, diversions, roadworks, mechanical breakdown ...

Action taken

New term: ... *we cannot be held responsible for any inconvenience arising from failure to provide the advertised service because of factors which could reasonably be considered to be outside our control, such as adverse weather conditions or unpredictable delays caused by traffic congestion, road works, diversions or mechanical breakdowns which are unexpected and could not have been prevented by the proper execution of a reasonable preventative maintenance programme.*

Original term

The Seller shall not be liable to the Purchaser for any loss or damage howsoever caused resulting from non delivery or delayed delivery but in the event that the Seller is unable to deliver the Goods for any reason whatsoever either the Seller or the Purchaser may terminate this Contract by seven days notice in writing and in this event the Seller shall be under no further liability.

Action taken

New term: *If a confirmed Date of Sale is shown overleaf: we guarantee that the vehicle will be available on this date. If a Provisional Date of Sale is shown: we guarantee that the vehicle will be available within 10 days of this date unless an unforeseen increase in demand for the model of vehicle you require prevents its manufacturer fulfilling the order. In the unlikely event that we do not supply a suitable vehicle within 60 days of the Provisional Date of Sale you will have the option of cancelling ... If we fail to meet either of the above supply guarantees due to our own negligence, we will compensate you for any costs which you incur.*

Original term

Where a time schedule has been agreed in writing with the customer the contractor will meet expenses reasonably incurred by the customer up to but not exceeding the cost of the removal or £150 whichever shall be the lesser amount. Nevertheless the contractor shall not be liable for any such delay outside his control.

Action taken

***New term:** If we do not keep to an agreed written time schedule and any delay is within our reasonable control we will pay your reasonable expenses which arise as a result of our not keeping to the agreed time schedule.*

Original term

Dates specified for the commencement and completion of the work are estimates only and time shall not be of the essence of the contract.

Action taken

***New term:** If we do not start or complete the work within 5 days of any date included in our estimate or quote you may nominate a date on which you want us to start the work or by which you want us to complete the work. If we have not started or completed the work by the date you have nominated you may cancel the agreement.*

Original term

Times quoted are estimated times only and shall not be binding on the Company and the Company shall not accept any loss or liability whatsoever arising out of any failure to adhere to the times and dates quoted and nor shall any failure be deemed to be a breach of this contract.

Action taken

***New term:** The Company will (subject to the company's duty to take reasonable care) install the units as efficiently and as quickly as is possible ...*

Group 2(g): Exclusion of liability for failure to perform contractual obligations

Original term

The management reserve the right to refuse access to the club without giving any reason for doing so.

Action taken

Term deleted.

Original term

If at any time it should become necessary to close the club premises for any reason whatsoever or to cease the club's activities, members shall have no claim of any kind whatsoever against the company, and shall acquire no proprietary rights in the club premises or any property of the club.

Action taken

Term deleted.

Original term

The Customer accepts that without notice for commercial, technical (see below) or other reasons:

a) The Service or part thereof may be suspended

... The Company may from time to time close down the whole or part of the network for routine repair or maintenance work ... The Company shall at its sole discretion decide when such action is necessary.

Action taken

***New term:** We will do our best to maintain the operation of the Service in accordance with the information that you have received about it. We cannot and do not accept any responsibility for the computer equipment and telephone services which you use to access the Service ... and cannot guarantee the continued availability of any other person's site or address.*

Original term

Purchase of this ticket signifies agreement to the following ... Right to admission is reserved.

Action taken

Term deleted.

Original term

We reserve the right to refuse to hand over a boat to any person who, in our opinion, is not suitable to take charge of it.

Action taken

***New term:** We reserve the right to refuse to hand over a boat to any person who, in our reasonable opinion, is not suitable to take a charge of it. Examples for which the company may consider a person not suitable are age, ill-health, disability, inexperience or suspected of being under the influence of alcohol or drugs.*

Original term

The company ... reserves the right to make partial installations.

Action taken

Term deleted.

Original term

[We may suspend the service] if we believe you may not pay any amounts you owe.

Action taken

***New term:** [We may suspend the service] if we have reasonable belief that you may not pay the amounts you owe and we have requested you to explain the position and you have failed to do so satisfactorily.*

Original term

Connections does not guarantee a specific number of introductions at any one time as they can only be made when a suitable member becomes available.

Action taken

***New term:** If a member raises a concern or dissatisfaction ... on the number of persons referred ... Connections agrees to ... provide an explanation ... [and] if at least 24 referrals have not been made in ... the two year period covered by the membership fee [it] shall be extended until the minimum number of referrals has been achieved.*

Original term

In the event of a dispute between 4 U and the subscriber over any of the terms of this contract ... [4 U reserves the right] wholly or in part to disconnect the subscriber's equipment from the system without compensation to the subscriber.

Action taken

Term deleted.

Group 2(h): Guarantees operating as exclusion clauses

Original term

All hardware sold by the Seller is guaranteed only to the extent of the original manufacturer's warranty.

Action taken

Term deleted.

Original term

All equipment materials and workmanship provided by the Company for the maintenance and service of the system are guaranteed for a period of six months from the date of their provision. The Company's liability under this guarantee is strictly limited to the replacement of parts of or repairs to the system.

Action taken

Term deleted.

Original term

All repair items under guarantee must be brought to the shop and collected by the consumer.

Action taken

Term deleted.

Original term

A [manufacturer's] guarantee for walls will be issued after completion of the work and all monies due to the company have been paid. The [manufacturer's] ... guarantee is issued in addition to and not in substitution for the customer's rights under common law.

Action taken

New term: *A guarantee relating to the work will be issued after completion of the work and all monies due to the company have been*

paid. The [manufacturer's] ... guarantee is issued in addition to and not in substitution for the customer's statutory rights relating to faulty or misdescribed goods or services.

Original term

C Anderson and Sons offers a 12 month guarantee on all new parts fitted by this company and a 2 month guarantee on labour ... A maximum of three free return visits will be made only during our period of guarantee, if any problem still arises the customer will be referred to the manufacturers.

Action taken

Term deleted.

Group 3: Binding consumers while allowing the supplier to provide no service

Schedule 2, paragraph 1, states that terms may be unfair if they have the object or effect of:

- (c) *making an agreement binding on the consumer whereas provision of services by the seller or supplier is subject to a condition whose realisation depends on his own will alone.*

Original term

RMCL may from time to time and without notice suspend the Services (... and during any period of suspension the Customer shall remain liable for the Annual Monitoring Fee) if the Customer does, or allows to be done, anything which **in RMCL's opinion** may have the effect of jeopardising the operation of the Services ...

Action taken

Term deleted.

Original term

Recipients may avail to these normal paying guests as per resort management's terms and conditions. All costs and expenses not covered by Worldwide Vacations (UK) Ltd are the recipient's responsibility.

Action taken

Term deleted.

[Not for inclusion. Reference: Worldwide Vacations (UK) Ltd. Bulletin 22.]

Group 4: Retention of prepayments on consumer cancellation – paragraph 1(d) of Schedule 2

Schedule 2, paragraph 1, states that terms may be unfair if they have the object or effect of

- (d) *permitting the seller or supplier to retain sums paid by the consumer where the latter decides not to conclude or perform the contract, without providing for the consumer to receive compensation of an equivalent amount from the seller or supplier where the latter is the party cancelling the contract.*

Original term

No order which has been accepted by Maples may be cancelled by the Customer except ... on terms that the Customer shall indemnify Maples in full against all losses and costs incurred by Maples as a result of cancellation. A minimum cancellation charge of 25% of the contract price will be payable.

Action taken

New term: You cannot cancel an order unless you ... pay any losses and costs we suffer because of the cancellation. If we cancel the contract, we must pay you any losses or costs you suffer because of the cancellation.

Reference

Maples Stores plc – *Bulletin 3*

Original term

Please note that we cannot provide a Refund on paid course fees.

Action taken

Term deleted.

Original term

The Customer shall pay the deposit (if any) specified in the Order Form upon the date of signature of the Contract by the Customer. Unless expressly prevented by Law the deposit shall be strictly non-returnable.

Action taken

Term deleted.

Original term

... In the event of the Purchaser cancelling the contract ... or failing to accept delivery or failing to complete this contract the deposit shall be forfeited to the Seller but such forfeiture shall not prejudice any other remedy which the seller may have for breach of any of these conditions.

Action taken

New term: ... *In the event that you wish to withdraw for some other reason, we will be entitled to retain a proportion of your deposit until we have found another buyer for the vehicle. The sum retained will be sufficient to cover the losses we are likely to incur.*

Original term

Should a hirer cancel a reservation, Fees paid to that date will be forfeit ...

Action taken

New term: *Should a hirer cancel a reservation, ROLLING will endeavour to re-hire the vehicle. If this is not possible for all or part of the original booking duration, fees paid to that date, or the relevant proportion will be forfeited ...*

Original term

Where a paid up Club Toyota member changes their vehicle for a non-eligible vehicle, Club Toyota membership will be rendered null and void without any rebate payable for the remainder of the period of membership.

Action taken

New term: *Where a paid up club Toyota member changes their vehicle for a non-eligible vehicle, Club Toyota membership will be rendered null and void. Club Toyota will refund a proportion of the subscription paid by the member... on a pro rata basis for the unexpired period of the membership subject at all times to Club Toyota retaining an amount of £15.00 for administrative expenses.*

Original term

Please note that in the event of an unsatisfactory references or aborted transactions, there is no refund of the holding deposit.

Action taken

***New term:** You have 48 hours in which you may withdraw from the transaction without penalty. If false information or references are submitted the company has the right to withhold reasonable costs incurred. In the event that the landlord withdraws the property from the transaction a full refund is given.*

Original term

Should you cancel your order at any time prior to the commencement of the work ... British Gas Services may retain the deposit as a contribution towards any costs which it has incurred.

Action taken

***New term:** We will permit you to cancel this contract by sending written notice ... no later than 7 days after the date on which this contract has been signed. If you request cancellation at a later date, then unless we are in breach of contract, we have the right to refuse ... [or] retain all or part of your deposit as a contribution towards any losses or costs we suffer as a result of the cancellation.*

Group 5: Financial penalties

Schedule 2, paragraph 1, states that terms may be unfair if they have the object or effect of:

- (e) *requiring any consumer who fails to fulfil his obligation to pay a disproportionately high sum in compensation.*

Original term

This invoice must be produced upon collection of garments. Failure to comply will result in all charges being made again.

Action taken

New term: This invoice must be produced upon collection of garments.

Original term

In the event of legal action ... for breach of payment, the customer shall be responsible for all costs and disbursements incurred by A&S on a full indemnity basis.

Action taken

New term: In the event of legal action ... for breach of payment, the customer shall be responsible for all costs allowable by the courts if an award is made in A&S's favour.

Late payment penalties

Original term

... any sum overdue for payment from the Client to the Builder ... shall bear interest at the rate of 2½ percent for each calendar month or part of a calendar month during which the sum remains unpaid.

Action taken

New term: The Client will pay the Builder interest at the rate of 1% per month compound interest on all outstanding sums from the due date until payment.

Original term

Interest will be charged at the rate of 10% per month or part thereof on any sum outstanding for more than seven days following the delivery and installation of the goods ...

Action taken

Term deleted.

Original term

Failure to comply with the payment of the balance on the due date ... will entitle the company to charge interest on the balance outstanding at the rate of 7% compound interest above bank base rate.

Action taken

New term: Failure to pay the balance outstanding will ... entitle the company to charge interest on the balance at the rate of 3% interest above Barclays Bank base rate.

Original term

[The tenant] ... will pay the rent to the landlord at the times and in the manner specified and will pay interest at the rate of £5 per day if the rent is in arrears for more than 14 days.

Action taken

Term deleted.

Uncertain and discretionary penalties

Original term

The Company reserve the right to suspend provision of service for the duration of any non-payment period and the customer may be liable (at the Company's discretion) to pay a reconnection fee to the Company to recommence subscription services.

Action taken

Term deleted.

Original term

... the college is allowed to charge students for cleaning services if they fail to keep their room up to the standard in which they found it on entry.

Action taken

***New term:** The college is allowed to charge students for cleaning services if they fail to keep their room up to the standard in which they found it on entry and such charge shall be the additional cost to the College incurred as a result of such failure.*

Original term

If the Purchaser shall fail ... to perform any of his obligations ... the Purchaser shall become liable to the seller for the loss of profit upon this agreement, and such other losses as the Seller may have suffered. A written statement of the amount of such damages prepared and signed by or on behalf of the Seller shall be conclusive proof of such loss.

Action taken

Term deleted.

Original term

Customer alterations necessitating additional work and re-submission of proofs may be charged extra at [XYZ Photolabs] discretion. Equally additional work caused by omissions where ambiguity in the clients copy or instructions may also incur an additional charge.

Action taken

***New term:** Client alterations, other than alterations arising from mistakes on the part of XYZ, may give rise to an extra charge. Equally additional work caused by omissions or ambiguity in the client's copy or instructions may also incur an additional charge. In either such case any additional charge shall be such reasonable amount as reflects the additional work which XYZ has had to undertake.*

Cancellation fees and penalties

Original term

In the event of a cancellation after seven days of order the customer will be liable to pay the balance due for the goods purchased.

Action taken

Term deleted.

Original term

The Company reserves the right to charge a cancellation fee, the minimum being 30% of the order value, this does not represent a penalty and serves to liquidate the company's costs.

Action taken

Term deleted.

Original term

In the event of the company being denied access for the delivery of the goods, the following charges shall be made.

- i) Administration charge £30
- ii) Survey fee £50
- iii) If the manufacture of the goods has commenced 50% of the contract value
- iv) If the manufacture of the goods has been completed 85% of the contract value.

Action taken

***New term:** ... if the company is denied access for the delivery of the goods, a claim for any abortive labour and materials costs may be made. In this instance the charges would normally be made by the company as follows:*

- a. If the manufacture of the goods has commenced up to 50% of the contract value.*
- b. If the manufacture of the goods has been completed up to 75% of the contract value.*

Original term

The company may in its absolute discretion agree to the cancellation of the contract provided that the customer reimburses the company for all expenses actually incurred together with the anticipated gross profit had the contract been completed.

Action taken

Term deleted.

Original term

Without prejudice to its right to claim damages for breach of contract the company may in its sole discretion agree to the cancellation of an order which a purchaser has no right to cancel, upon payment to the company of all expenses incurred.

Action taken

***New term:** If the purchaser cancels this agreement otherwise than in accordance with these provisions, the seller may be entitled to claim damages in accordance with the general rules of English law.*

Original term

In the event of cancellation of orders we reserve the right to make a cancellation charge sufficient to cover all expenses for handling charges and in any event a minimum of 20 per cent of the total order values will be charged.

Action taken

***New term:** If you cancel an order, we will lose the time we have spent on your order up to the time at which you cancel and so we reserve the right to charge you a cancellation fee which is sufficient to cover our lost expenses and handling charges.*

Original term

If the purchaser terminates ... this contract before the completion of the installation then without prejudice to any other rights it may have the company shall be entitled to retain for its own benefit absolutely 25% of the total cost of the transaction by way of liquidated charges.

Action taken

***New term:** The purchaser may cancel this agreement within 7 days following the making of this contract ... after the period referred to ... the purchaser must pay any reasonable losses and costs the company suffer because of the cancellation.*

Disguised penalties

Original term

After ... termination of this agreement, the customer should pay on demand all charges outstanding at the time of disconnection, including a £60 plus VAT disconnection fee ...

Action taken

Term deleted.

Group 6: Cancellation clauses – paragraph 1(f) of Schedule 2

Schedule 2, paragraph 1, states that terms may be unfair if they have the object or effect of:

- (f) *authorising the seller or supplier to dissolve the contract on a discretionary basis where the same facility is not granted to the consumer ...*

Group 6(a): Unequal cancellation clauses

Original term

We may cancel a membership at any time ... you will receive a pro rata refund of your subscription, unless the service has been used.

Action taken

***New term:** If excessive use of the service has occurred, eg: through failure to seek permanent repair following any temporary repair effected by an agent or due to lack of routine vehicle maintenance, we may cancel the membership.*

Original term

This Contract is not subject to cancellation by The Customer ... the Company reserves the right to cancel or refuse acceptance of any order at any time by refunding all monies paid less an administrative charge.

Action taken

New term: Either party shall have the right to terminate this Contract without penalty within seven days ... In the event of such termination by either party the Company shall refund to the Customer all sums paid by the Customer.

Original term

This is a binding contract, not subject to cancellation by the Purchaser. (If this is requested and agreed by the Company, a fee covering any expenses involved will be payable.) The Company reserves the right to cancel any order at any time by refunding all monies paid.

Action taken

New term: *The Company reserves the right to cancel this order within 21 days of the survey by notifying the Purchaser in writing of the reasons for cancellation and by refunding in full all monies paid. The survey will be carried out by the Company within 14 days of receipt of order.*

Original term

The Seller ... [may] cancel or rescind the Contract if the performance of its obligations under the Contract is in any way adversely affected by any cause whatsoever beyond the Seller's control including but not limited to the delays or defaults of the suppliers or the default of any sub-contractor, war, strike, lock-out, trade disputes, flood, accident to plant or machinery, shortage of materials or labour ...

Action taken

Term deleted.

Original term

... this agreement shall remain in force for a minimum period of 12 months ... Sky may terminate the Agreement at any time.

Action taken

New term: *You may end this contract at any time during the Minimum Term by giving us one month's notice if we [exercise variation rights in various ways – see details in terms listed under Groups 10 and 11] ... Except where you break the Conditions of this Contract we will not terminate this Contract during the Minimum Term.*

Original term

As all blinds are made to customers' individual requirements, this order cannot be cancelled.

Action taken

New term: *As all blinds are made to customers' individual requirements, this order cannot be cancelled unless we are in breach of our obligations to you.*

Original term

You may terminate this contract ... if you give us one month's written notice. We can terminate this contract at any time by giving you a minimum 7 days' written notice.

Action taken

***New term:** After the service has been provided you may terminate this contract by giving us 14 days' written notice ... we can terminate this contract at any time by giving you 14 days' written notice.*

Original term

If at any time the installation is, for a structural or technical difficulty, impractical, the company may cancel this agreement. ... any deposit will be refunded without interest. However, the company will not make to the customer any payment for any loss ...

Action taken

***New term:** If at any time the installation is, for a structural technical difficulty, impractical the company shall, on request, provide written reasons for the difficulty to the customer and may terminate this agreement ... any deposit paid will be refunded. However if the difficulty in question could not reasonably have been expected to have been anticipated by the surveyors, the company will not make to the customer any payment for any loss ...*

Original term

You may withdraw your instructions to Jackson-Stops & Staff to market the property at any time. Jackson-Stops & Staff may withdraw from their appointment as your agent at any time. If either party withdraws from the contract all agreed outstanding expenses are payable in full at that time.

Action taken

Term deleted.

Clauses providing for cancellation following an adverse survey

Original term

The Contract is subject to the Company Surveyor's inspection and report. If this Contract is terminated by the Company the deposit paid by the Customer will be refunded in full.

Action taken

***New term:** This Contract is subject to the Company's Surveyor's inspection and report which will be carried out within fourteen days from the signing of this Contract. If the Surveyor's inspection and report discloses material adverse structural conditions the Company will forthwith provide the Customer with a copy of such report and the Company will be entitled to terminate this Contract by written notice to the Customer and will refund the deposit in full.*

Original term

The Contract is subject to the receipt of a Surveyor's Report satisfactory to the Seller and the Seller reserves the right to cancel the Contract on the receipt of the Surveyor's Report or to alter without notice the specifications of the Goods in accordance with the Surveyor's recommendations.

Action taken

Term deleted.

Original term

The Company reserves the right to cancel if in the professional opinion of the company surveyor it is in the company's best interest to do so.

Action taken

Term deleted.

Original term

We reserve the right to cancel an order and refund all monies deposited in respect thereof in the case of either an unsatisfactory surveyor's report or unsatisfactory installation price check on the property at which the installation is to be made.

Action taken

***New term:** Subsequent to signing the contract we will carry out a survey for the proposed work within 10 days or a mutual time subject to agreement. In the event of an unsatisfactory survey report we will reserve the right to cancel the contract, after having given you a full written explanation of the adverse structural conditions encountered. We will also refund all money deposited by you.*

Group 6(b): Supplier's right to cancel without refund

Original term

In the event of failure to comply with these rules the management reserves the right to cancel the membership without refund.

Action taken

Term deleted.

Original term

Century 21 Harris and Martin require a 'holding deposit'... should the landlord decide not to proceed with the let, your deposit will be refunded minus the administrative charge of £25 plus VAT...

Action taken

New term: *Century 21 Harris and Martin require a 'holding deposit'... should the landlord decide not to proceed with the let, your deposit will be refunded **plus** the administrative charge of £25 plus VAT ...*

Original term

Club Toyota reserves the right to render an individual's membership null and void without any reimbursement of the member's subscription or any other consideration between themselves, Club Toyota and its agents.

Action taken

Term deleted.

Original term

Should ARTTS International be forced to close during term time on account of epidemic, national cause or any circumstances over which the staff have no control, fees cannot be returned ...

Action taken

New term: *Should ARTTS International be forced to close during term time on account of an epidemic, national cause or any circumstances over which the Directors have no control, any pre-paid fees will be returned **pro rata**.*

Original term

No refund of fees will be given if pupils are suspended or expelled.

Action taken

***New term:** No refund of that term's fees will be given if pupils are suspended or expelled ... If more than one term's fees have been prepaid, any surplus will be refunded.*

Original term

Connections reserves the right ... to withdraw or suspend membership when, in its sole opinion, a member ... is misusing the service or behaving inappropriately, without refund.

Action taken

***New term:** Connections is entitled to revoke a person's membership ... the member will be refunded his or her membership fee less an element representing reasonable costs and expenses incurred by Connections in ... administration and management of membership.*

Original term

In the event of death we would expect the resident's bedroom to be cleared within 48 hours. In the event of death the home reserves the right to withhold [pre-paid fees] or charge for a period of 4 weeks.

Action taken

***New term:** In the event of death we would ask for the resident's bedroom to be cleared within three days. However if you are unable to do so, please inform the Matron/Manager straight away and arrangements can be made for us to clear the bedroom, and items can be stored at Penerley Lodge for seven days ... In the event of death three days' monies will be due to the Home and after this period this contract will cease.*

Group 7: Supplier's right to cancel without notice – paragraph 1(g) of Schedule 2

Schedule 2, paragraph 1, states that terms may be unfair if they have the object or effect of:

- (g) *enabling the seller or supplier to terminate a contract of indeterminate duration without reasonable notice except where there are serious grounds for doing so.*

Original term

The right is specifically reserved ... to terminate this engagement at any time, where in Bradleys Estate Agents' opinion, the asking price is unrealistic in the light of the prevailing market conditions, ... or the vendor later raises any additional point which is unacceptable to Bradleys Estate Agents.

Action taken

New term: *We can end this agreement by giving 14 days notice in writing to you at any time in the following circumstances:*

- a) if we believe that the price at which you require to market the property is unrealistic: or*
- b) if you require us to take any step which may put us in breach of our legal or professional obligations.*

Original term

This agreement and the agent's Sole Selling Rights may only be terminated by the client upon 28 days written notice ... the agent reserves the right to terminate this agreement without notice and any termination shall be without prejudice to any liability the client may have to pay commission and any other costs and charges.

Action taken

New term: *Our agreement will continue until either you or we bring it to an end in writing and giving 14 days notice ... any termination will not affect liability previously incurred by either of us to the other.*

Original term

You must return the Car and any Extras to the Location at the Agreed End Time or at once if the Rental Agreement is terminated before that, in accordance with term 15.1. If you do not do so we may repossess the Car at your expense wherever it may be.

Action taken

You must return the Car and any Extras to the Location at the Agreed end Time or at once if the Rental Agreement is terminated before that, in accordance with term 15.1. If you do not do so we may repossess the Car at your expense wherever it may be.

Term 15.1 states:

... easyCar reserve the right to terminate this Rental Agreement and repossess the Car (at your expense) for any serious breach by you of the terms of this agreement, or if we reasonably believe you are in serious breach.

[Not for inclusion. Reference: easyRentacar (UK)Ltd – Bulletin 20

Group 8: Excessive notice periods for consumer cancellation

Schedule 2, paragraph 1, states that terms may be unfair if they have the object or effect of:

- (h) *automatically extending a contract of fixed duration where the consumer does not indicate otherwise, when the deadline fixed for the consumer to express this desire not to extend the contract is unreasonably early.*

Original term

If a member does not wish to renew membership in any subsequent year then written notice of at least 4 weeks prior to the expiry of 12 months from the date of the membership certificate must be given. If such a notice is given between 2 and 4 weeks expiry, then 75% of the renewal fee for the subsequent year will become payable and if less than 2 weeks of expiry then 100% of the renewal fee will become payable.

Action taken

Term deleted.

Original term

This agreement shall commence on the connection date and shall continue for the 'minimum period' of 12 months and thereafter until terminated by no less than three months' notice in writing given by either party to the other. Such notice to be given not before the expiry of the minimum period.

Action taken

New term: This agreement is for a minimum period of 12 months ... it may be terminated by giving one month's notice, which commences on or after the end of the initial 11 months.

Original term

This Agreement shall following the completion of the installation and the payment of the cost of this installation in full by the customer to the Company terminate: (a) at the expiration of 12 months written notice given by either party to the other to such effect

Action taken

This Agreement shall commence on the commencement date and shall continue in force for the term unless either party gives twenty one days written notice to the other party of its intention to terminate this Agreement, or if this Agreement is terminated by either party pursuant to clause 14.

[Not for disclosure. King's Security Systems Ltd – Bulletin 24/25]

Group 9: Binding consumers to hidden terms

Schedule 2, paragraph 1, states that terms may be unfair if they have the object or effect of:

- (i) *irrevocably binding the consumer to terms with which he had no real opportunity of becoming acquainted before the conclusion of the contract.*

Original term

Passengers, their luggage and accompanied vehicles are carried subject to the conditions of carriage of Stena Sealink Limited and associated carriers and where applicable, the conditions of carriage of Stena Line Service AB, Lion Ferry or other carrier, all of which include exclusions and limitations of the carrier's liability for death, illness or injury or for damage to or loss of vehicles and luggage ...

Action taken

New term: *Our liability in respect of death or personal injury shall in no case exceed the appropriate limit under the Athens Convention, being £93,956 as at March 1996.*

Our liability for loss of or damage to property (regardless of where the damage may occur) shall in no case exceed an amount equal to the respective limits under the Athens Convention, being £782 for cabin luggage, £3,128 for a vehicle and £1,126 for other luggage as at March 1996 ...

Original term

... the Seller and this contract shall be subject to any conditions which the Company may from time to time attach to the supply of the vehicle and the accessories to the Seller.

Action taken

Term deleted.

Original term

All orders shall be subject to these Conditions. The acceptance by the Seller of any order [*ie, including telephone orders*] shall be deemed to incorporate these Conditions.

Action taken

***New term:** All orders are subject to these conditions. If this is not acceptable the Seller should be contacted within 7 days and a full refund will be given for unopened and unused goods.*

Original term

... By completing your order form or electronic registration you will be deemed to have agreed to these terms and conditions.

Action taken

Term deleted.

Group 10: Supplier's right to vary terms generally – paragraph 1(j) of Schedule 2

Schedule 2, paragraph 1, states that terms may be unfair if they have the object or effect of:

- (j) *enabling the seller or supplier to alter the terms of the contract unilaterally without a valid reason which is specified in the contract*

Original term

We reserve the right to alter hours of business if found necessary and change the annual membership system and/or price structure.

Action taken

Term deleted.

Original term

Sky may at any time vary or add to these Conditions as it deems necessary.

Action taken

***New term:** [Sky may] change or add to Conditions ... for security, legal or regulatory reasons ... We will give you at least one month's notice of any changes or additions. We will not use this right to vary the terms of any special offer which applies to you ... you may end this contract at any time ... by giving one month's notice, if we tell you ... we are going to change these conditions.*

Original term

Management reserves the right to vary, revoke or add to these rules from time to time at its absolute discretion.

Action taken

Term deleted.

Original term

The University may change any of these regulations from time to time as it see fit.

Action taken

***New term:** The University may change any of these academic and other Regulations in order to assist the proper delivery of education and these changes will normally come into effect at the beginning of the next academic year. The University reserves the right to introduce changes during the academic year when it is in the interests of students.*

Original term

Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the seller shall be subject to correction without any liability on the part of the Seller.

Action taken

***New term:** Any error or omission in any information, or document issued by us shall be subject to correction provided that the correction does not materially affect the contract.*

Original term

The university ... reserves the right to make variations to the contents or methods of delivery of, to discontinue, or to merge or combine courses, if such action is reasonably considered necessary by the university.

Action taken

***New term:** The university ... reserves the right to make variations to the contents or methods of delivery of, to discontinue, or to merge or combine courses, if such action is reasonably considered necessary by the university ... if, after an application for a course has been accepted, the course is substantially varied from that described in the Guide, the student is entitled to withdraw from the course. In the event of such withdrawal ... an appropriate refund of course fee will be made.*

Group 11: Right to change what is supplied – paragraph 1(k) of Schedule 2

Schedule 2, paragraph 1, states that terms may be unfair if they have the object or effect of:

- (k) *enabling the seller or supplier to alter unilaterally without a valid reason any characteristic of the product or service to be provided.*

Clauses claiming the right to vary goods/materials

Original term

If, for any reason, the Company is unable to supply a particular item of furniture or a particular appliance, the Company will notify the Customer. The Company will normally replace it with an item of equivalent or superior standard and value.

Action taken

New term: If, for any reason beyond the Company's reasonable control, the Company is unable to supply a particular item of furniture or a particular appliance, the Company will notify the Customer. With the agreement of the Customer the Company will replace it with an item of superior standard and value.

Original term

All orders are taken subject to the availability of goods and materials in stock and the seller reserves the right to alter the specification of, or to withdraw any item without prior notice. Provided however that such alternative materials that are used shall be of satisfactory quality.

Action taken

Term deleted.

Original term

... pursuant to the company's policy of continuous development in the standard of its products and installation methods the company reserves the right to modify the design and specification of its products and method of installation without notice.

Action taken

***New term:** We ... reserve the right to change the specification of the products to be supplied to you if it is necessary to meet current building standards or to comply with safety requirements or other changes in legislation so long as the changes do not materially affect the appearance or performance of the installation.*

Original term

All material may vary in colour and finish.

Action taken

Term deleted.

Original term

In the event of the manufacturer ... altering the specification of the Goods, the Seller reserves the right to deliver in fulfilment of this contract goods conforming to the manufacturer's specification prevailing at the time of delivery in which case such goods shall be deemed to be within the description of the goods contained in these Conditions of Sale...

Action taken

***New term:** [If] a significant change in specification will prevent us from supplying a vehicle which precisely meets the specification detailed overleaf ... we will offer you an alternative vehicle, on the understanding that you have the option of accepting it or cancelling this agreement without penalty.*

Original term

The company reserves the right to vary design and/or specification of any installation and/or product used without prior notice to the customer.

Action taken

***New term:** As it is our policy to continually improve products, methods and materials, we reserve the right to change specifications from time to time, we will not make any significant variations without your agreement.*

Original term

Zenith reserves the right to propose such modifications to the schedule of work as their surveyor deems necessary.

Action taken

***New term:** We may make minor technical changes to the specification of your products which will not be to the detriment of their function or approval and will not affect the price.*

Clauses claiming the right to vary services

Original term

The management reserve the right to change the training days to alternate training days for men and ladies if they felt it was to benefit the club without any refund or reimbursement of any kind.

Action taken

Term deleted.

Original term

Stena Sealink accepts no liability for any inaccuracy in the information contained in this publication, which may be altered at any time without prior notice, and also reserves the right to alter, amend or cancel any of the arrangements shown in this publication.

Action taken

***New term:** We reserve the right, **before you book**, to vary the services described in our brochures, including prices and departure dates and times and to designate a different ferry for a particular journey.*

Original term

[This firm took advertisements for its 13 regional magazines on the basis of different set of terms and conditions containing up to six variation clauses. These allowed the company complete discretion to reject, suspend, alter or delete any advertisement – or any element of an advertisement (such as an illustration) without giving the consumer any notice or any reason for doing so.]

Action taken

***New term:** Auto Trader reserves the right to re-classify, edit the copy, or alter the size or colouring of any advert. Where Auto Trader makes changes to a Customer's advert it shall use every effort to contact the Customer to explain the reasons for those changes (provided this is practicable given the production timetable). Where Auto Trader prints a changed advert of a lesser value, the Customer shall be entitled to a refund of the difference in price between the type of advert purchased by the Customer and the advert printed by Auto Trader.*

Original term

... a reduction or other variation in the number or identity of the channels included in the Sky Multi-Channels Package will not vary the Subscription Payments payable by the Subscriber ... bonus Channels will be supplied to Subscribers at no additional cost ... Sky may at any time without notice vary the terms on which these Channels are supplied including but ... not limited to introducing or otherwise making a charge ...

Action taken

***New term:** You may end this contract at any time ... if we ... withdraw any Sky Premium Channel or reduce significantly the level of service of the Sky Multi-Channels Package.*

Original term

... The Management reserves the right to alter the opening times as it sees fit.

Action taken

***New term:** ... The Management reserve the right to adjust the hours for the purpose of cleaning, decorating, repairs or special functions and holidays ...*

Original term

If in the opinion of the Company it is impracticable for any reason to carry out any of the work it is instructed to carry out it shall be entitled to refrain from carrying out or completing such ... and carry out only such work as in the opinion of the company may be practicable.

Action taken

***New term:** If in the opinion of the Company it is not reasonably practicable for any reason to carry out any of the work it is instructed to carry out it shall be entitled to refrain from carrying out or completing such work ... and will consult with the Customer as to what if any work is to be undertaken. The Company will, if requested by the Customer, provide a written explanation as to why any work is not considered to be reasonably practicable.*

Original term

WST does not accept any liability for changes to course dates or arrangements made by applicants. WST may make changes to the dates, times and content of its courses without prior warning. Though these will always be broadly in line with Trinity College London requirements.

Action taken

Term deleted.

Group 12: Price variation clauses

Schedule 2, paragraph 1, states that terms may be unfair if they have the object or effect of:

- (l) *providing for the price of goods to be determined at the time of delivery or allowing 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.*

Original term

Fluctuations. Invoices are strictly nett and the quoted price will be adjusted to meet any price variations in labour or materials occurring after the date of quotation.

Action taken

Term deleted.

Original term

Prices of the Goods shall include delivery of the Goods to the Buyer's premises. Provided however, that the Seller reserves the right to impose a delivery charge where the Seller sees fit. Any charge for delivery will be at the Seller's rates from time to time in force.

Action taken

Term deleted.

Original term

To cover at least one of your security or fire protection equipment products for a minimum of 60 months with a maximum service available of 120 months. Changes to equipment specification, attachments or features may result in the adjustment of the annual maintenance charge.

Action taken

New term: To cover the security of fire protection products specified in the Service Schedule for a minimum service period of 60 months with a maximum service available of 120 months at a fixed price agreed at the time the Service Contract is entered into.

Original term

The contract price is valid for 6 months' duration. However, should the installation not be ... completed within that time and payment not made then the Company reserves the right to recover any price increments.

Action taken

Term deleted.

Original term

Discounts may apply from time to time ... The Company reserve the right to withdraw a discount at any time or instance of actuality [sic].

Action taken

Term deleted.

Original term

[If] costs to the Company of labour material and spare parts [are subject to] any variation occurring before or after acceptance, the Company may if it thinks fit require the customer to pay, on completion of the work, any increase due to such variation.

Action taken

***New term:** If the cost to the Company of carrying out the work is subsequently increased by reason of increases in the cost materials and/or labour and/or any other factor outside the control of the Company, then the Company shall notify the Customer before undertaking any work to which the increase will apply and the Customer may require the Company to discontinue the work and shall pay the Company only for the work already carried out.*

Original term

All prices are subject to alteration without notice and the price applicable shall be that ruling the date of despatch ... the buyer is responsible for all carriage charges on orders. Carriage charges are subject to change without notice.

Action taken

Term deleted.

Original term

Any additional work requested which is not specified in writing within this contract shall be charged at current rate.

Action taken

***New term:** Any additional work requested ... which is not specified in writing within this contract will only be carried out if a new contract is entered into with the company.*

Original term

PRICE VARIATION – Prices applicable ... shall be the price ruling at the date of despatch. Jaymic Ltd therefore reserves the right to amend prices quoted at the date of the placing of an order.

Action taken

Term deleted.

Terms revised by the introduction of cancellation rights

Original term

The Company may increase the Service charges at any time after a period of one year from the installation date by giving notice in writing stating the increase and the date it shall become effective. The Subscriber may within one month after the service of any notice of increase give **three month's** notice in writing terminating this Agreement.

Action taken

***New term:** The Company may increase the Service charges at any time after a period of one year from the installation date by giving notice in writing stating the increase and the date it shall be effective. The Subscriber may within one month after the service of any notice of increase give **one week's** notice in writing terminating this Agreement.*

Original term

The Goods are sold at the Seller's ruling price at the time of delivery to the Purchaser. If prior to delivery there is any increase in the quoted price of the Goods the Purchaser may within seven days of receiving notice of such increase cancel this Contract and recover from the Seller any deposit paid. The Seller shall be under no further liability.

Action taken

New term: *If a Confirmed Purchase Price is shown overleaf: this is the price you will pay. If a Provisional Purchase Price is shown: the price of the vehicle on the Date of Sale may be higher or lower, but only if its list price is altered by the manufacturer or importer or applicable tax legislation is revised. ... You will be entitled to withdraw from this agreement if there is a price increase which you consider excessive.*

Original term

Membership subscription rates may be changed from time to time in accordance with the rules of the relevant Pinnacle Club and the member agrees to pay any increased subscriptions which may be due during the continuance of this contract.

Action taken

New term: *Members who do not wish to accept ... an increase in subscription may cancel their membership by giving written notice ... the member giving notice must continue to pay subscriptions at the rate current immediately prior to any proposed increase until the end of such notice period. The company will refund any subscriptions that have been paid by a member for any period after the expiry of the notice.*

Original term

MDT may vary all or any of its charges ... variations to charges may be made retrospectively and the subscriber will be charged accordingly.

Action taken

New term: *... you may terminate this agreement at any time whether in or after the Minimum Period in the event of ... any increase in the monthly charges or the call charges [which] will be notified in writing to you by us giving at least 14 days notice.*

Terms revised to become price indexation clauses⁴⁹

Original term

The Company may increase the service charge at any time after 12 months from the Agreement date by giving notice in writing to the Customer stating the new Service Charge and the date (not being earlier than the date of the notice) on and after which the new Service Charge shall become effective.

⁴⁹ See paragraph 2(d) of Schedule 2.

Action taken

***New term:** We can change our service or monitoring at any time after 12 months from the date of this agreement ...*

... Our new charges will be index-linked. The index we use is the latest monthly BEAMA index (electrical engineering) published before the date we send you the invoice ...

Original term

The maintenance charge is reviewable annually but will not normally over time be increased by more than the Retail Price Index.

Action taken

***New term:** Price increases year by year will generally be in line with increases in the Retail Price Index, but in any three year period will not in total exceed the Retail Price Index by more than 5 percent.*

Original term

The company reserves the right to increase the amount of the maintenance charge or any other charge in the case of increased costs, expenses and out-goings by giving the customer one months notice in writing ...

Action taken

***New term:** We may need to increase our prices. The increases will not be more than the change in the Retail Price Index since the last increase.*

Group 13: Supplier's right of final decision – paragraph 1(m) of Schedule 2

Schedule 2, paragraph 1, states that terms may be unfair if they have the object or effect of:

- (m) *giving the seller or supplier the right to determine whether the goods or services supplied are in conformity with the contract, or giving him the exclusive right to interpret any term of the contract.*

Supplier's right to decide if he is in default

Original term

The company shall not be responsible for scorch marks, stains, spillages or any other event causing damage which it deems as unavoidable in the circumstances prevailing at the time of the work.

Action taken

Term deleted.

Original term

The Company will repair or replace any part as it deems necessary and where a part which is a replacement is defective then the Company will issue a further part.

Action taken

New term: *The Company shall use all reasonable endeavours to supply minor spare parts and replacement components required to maintain the equipment in good working order and no extra charge will be made for the supplies. If, however, the equipment is damaged otherwise than by fair wear and tear, the Company reserves the right to charge the Subscriber for supplying the same.*

Original term

The company's decision that the installation has been completed will be accepted and be binding on the Purchaser.

Action taken

Term deleted.

Supplier's right to decide meaning of terms

Original term

Any dispute or difference which may arise in regard to the interpretation of the Rules shall be determined by the Management, whose decision shall be final.

Action taken

Term deleted.

Group 14: 'Entire agreement' and formality clauses

Group 14(a): Entire agreement clauses

Schedule 2, paragraph 1, states that terms may be unfair if they have the object or effect of:

- (n) *limiting the seller's or supplier's obligation to respect commitments undertaken by his agents ...*

Original term

Vacation 2000 (Holiday Club Anglian) Limited takes no responsibility for any verbal claims, or other offers made in conjunction with this offer by its distributors, agents which are not included in this promotion.

Action taken

New term: Vacation 2000 accepts responsibility under these Terms and Conditions for its commitments to you. It also accepts responsibility by its duly authorised agents.

Original term

The placing of an order with the company will be deemed to bind the customer to the following terms and conditions and no oral representation shall bind the company. Any variation or alteration in the following terms and conditions shall only be binding upon the company if made in writing and signed by a director of the company.

Action taken

New term: To protect your own interests please read the conditions carefully before signing them. ... If you are uncertain as to your rights under them or you want any explanation about them please write or telephone to our customer queries department, at the address and telephone number set out above.

Original term

No verbal agreements will be honoured.

Action taken

Term deleted.

Original term

All the terms of the Contract between the Company and the Customer are contained in the Contract and in these conditions and no oral or written arrangements between the Customer and any agent or representative of the company not contained in the Contract shall be in any way binding upon the Company.

Action taken

New term: The Company intends to rely upon the written terms set out here and on the other side of this document. If you require any changes, please make sure you ask for these to be put in writing. In that way, we can avoid any problems surrounding what the Company and you the Customer is expected to do.

Original term

No representations made by the Company, or by its agents, shall be treated as having induced the Customer to enter into the contract unless the same is included in this document.

Action taken

Term deleted.

Original term

The agreement is the entire agreement between the parties and supersedes all prior understandings and representations of the parties.

Action taken

New term: Neither Calortex nor you may alter the terms of this agreement ... without the agreement of the other.

Original term

The following terms and conditions alone are the basis of the contract.

Action taken

Term deleted.

Original term

All services provided to you by TWS are subject to these terms alone. They supersede and take precedence over any previous written representations given or made by TWS or any representatives of TSWS.

Action taken

***New term:** All services provided to you by TWS are subject to these terms together with any previous written or oral representations given or made by TWS or any representatives of TWS.*

Clauses requiring all variations to be in writing

Original term

ALTERATIONS or additions to these terms can only be accepted with the written consent of a Director of Dreams Limited. Any otherwise entered into agreements are not deemed to be binding.

Action taken

Term deleted.

Original term

This agreement is between the company and the customer, the terms of which shall not be changed without written confirmation from both parties.

Action taken

***New term:** ... If any amendments to this contract are required it is preferable that they be confirmed in writing ...*

Original term

Lessor hereby rents to Hirer and Hirer takes on rental the motor vehicle described overleaf (here in called Vehicle) subject to all the terms and provisions of this Agreement ... Any additions to or alterations of the terms and conditions of this agreement shall be null and void unless agreed upon in writing by the parties.

Action taken

***New term: Your contract with us** – When you sign the form over the page you accept the conditions set out in this rental agreement. Please read this agreement carefully. If there is anything you do not understand or do not agree with, please ask any member of staff at the place you rented the vehicle from.*

Clauses denying employees authority to vary contracts

Original term

The Seller's employees or agents are not authorised to make any representations concerning the windows unless confirmed by the Seller in writing. In entering into the Contract the Customer acknowledges that it does not rely on, and waives any claim for breach of any such representations which are not so confirmed.

Action taken

Term deleted.

Original term

Please do not rely on promises or claims written or verbally made by anyone other than as mentioned herein. Travel Time accepts no liability or responsibility for statements ... made unless there is documented proof in writing signed by an authorised officer of Travel Time.

Action taken

New term: Please do not rely on promises or claims written or verbally made by anyone other than Travel Time or its authorised agents.

Group 14(b): Formality requirements

Original term

DISCREPANCIES – Claims for shortages in number of products cannot be considered unless noted on the receipt copy of the Customers Advice Note.

Action taken

Term deleted.

Original term

... during the cooling off period ... any postal cancellations must be by recorded delivery or registered post and receipt of post will be required should there be doubt as to when the contract was cancelled.

Action taken

New term: ... during the cooling off period ... any cancellation must be given by written notice by either party.

Original term

... written notice of cancellation is sent by recorded delivery to the company's head office ...

Action taken

***New term:** We recommend that you send any notice of cancellation by recorded delivery post.*

Original term

Please keep this invoice in a safe place as it will **be required** should a need for after sales service arise in the future too.

Action taken

***New term:** Please keep the invoice in a safe place as it will **assist** should a need arise in future for after sales service.*

Group 15: Binding consumers where a supplier defaults

Schedule 2, paragraph 1, states that terms may be unfair if they have the object or effect of:

- (o) *obliging the consumer to fulfil all his obligations where the seller or supplier does not perform his.*

Original term

A failure by Maples to make an instalment delivery will not entitle the Customer to repudiate the contract.

Action taken

Term deleted.

Original term

Notwithstanding any suspension of the Network Services and/or the Recall Service under this condition 10 the Customer shall remain liable for all charges due throughout the period of suspension unless Vodacall at its sole discretion determines otherwise.

Action taken

***New term:** If you are unable to use all of the Services for a continuous period of 3 days ... you shall receive a refund of your monthly (or other period) charge. The refund will represent that part of the monthly (or other periodic) charge for the period of suspension.*

Original term

... any ... suspension or termination shall not be in breach of these terms and conditions. The Services are therefore provided on an 'as is' basis without guarantee of any kind ...

Action taken

***New term:** ... In the event the Service is unavailable to you in circumstances which are beyond our control for a continuous period of more than 30 days you are entitled to terminate your agreement with us and to obtain a refund for the period it was unavailable ...*

Original term

If the products are not installed at the same time, or any one or more of the products or part of the products cannot be installed for any reason, the units which have been installed will be invoiced when payment becomes due.

Action taken

***New term:** If with your agreement the products are not all installed at the same time the units which have been installed will be invoiced and payment becomes due.*

Original term

MDT may ... suspend the services ... in any of the following circumstances without prejudice to the liability of the subscriber to continue to pay the Minimum Charge.

Action taken

***New term:** During any period of suspension you will not be required to continue to pay the monthly charge.*

Group 16: Supplier's right to assign without consent

Schedule 2, paragraph 1, states that terms may be unfair if they have the object or effect of:

- (p) *giving the seller or supplier the possibility of transferring his rights and obligations under the contract, where this may serve to reduce the guarantees for the consumer, without the latter's agreement.*

Original term

The Company shall be entitled to assign this agreement either in whole or in part. The Customer shall not assign, re-sell, transfer or sub-lease the Services or his/her rights under these terms and conditions.

Action taken

Term deleted.

Group 17: Restricting the consumer's remedies – paragraph 1(q) of Schedule 2

Schedule 2, paragraph 1, states that terms may be unfair if they have the object or effect of:

- (q) *excluding or hindering the consumer's right to take legal action or exercise any other legal remedy, particularly by requiring the consumer to take disputes exclusively to arbitration not covered by legal provisions, unduly restricting the evidence available to him or imposing on him a burden of proof which, according to applicable law, should lie with another party to the contract.*

Original term

The reading shown on the meter shall be conclusive evidence of the volume of gas consumed under this Agreement.

Action taken

New term: *The reading shown on the meter or meters shall be prima facie evidence of the volume of gas unless that meter is found to be registering erroneously to a degree exceeding that permitted by the regulations.*

Compulsory arbitration clauses

Original term

If we cannot resolve any disputes about Ford Extra Cover you will accept reference to an agreed arbitrator or to one appointed by the President of the Law Society for the time being.

Action taken

Term deleted.

Original term

Arbitration. Any dispute or difference ... shall be referred to arbitration under the Arbitration Rules of the Chartered Institute of Arbitrators.

Action taken

New term: *Arbitration. Where the Customer does not deal as consumer any dispute or difference ... shall be referred to arbitration under the Arbitration Rules of the Chartered Institute of Arbitrators.*

Original term

Any disputes, difference or question ... between the parties ... shall be referred to the arbitration of a single arbitrator ...

Action taken

***New term:** If there is a dispute arising from this agreement which cannot be resolved, either you or we may refer it to the Conciliation Service provided by The National Guild of Office Removers and Storers ... or arbitration by mutual consent ...*

Exclusive jurisdiction and 'choice of law' clauses

Original term

English law will apply to these Terms of Membership. The English courts will have exclusive jurisdiction in the case of any dispute.

Action taken

***New term:** Relevant United Kingdom law will apply to the Agreement and the relevant courts of the United Kingdom will have exclusive jurisdiction in relation to the Agreement.*

Reference

Funeral Plans Ltd – *Bulletin 4*

Original term

Any dispute arising out of this agreement shall be subject to the jurisdiction of the High Court of Justice or the County Court local to Telco or the Central Office of the High Court of Justice at the option of Telco ...

Action taken

***New term:** We will try and solve any disagreements quickly and efficiently. If you are not happy with the way we deal with any disagreement and you want to take court proceedings, you must do this within the United Kingdom.*

Original term

... this Agreement ... shall be governed by the laws of England.

Action taken

***New term:** This contract is governed by the laws of England where the property is located in England or Wales and by Scots law where the property is located in Scotland ...*

Original term

This agreement shall be governed by and constructed in all respects in accordance with the laws of England and Wales and the parties submit to the jurisdiction of the Courts in England and Wales.

Action taken

***New term:** These terms and conditions are governed by English law and we both agree to submit to the non-exclusive jurisdiction of the English Courts.*

Group 18: Regulation 5 – other terms

Group 18(a): Allowing the supplier to impose unfair financial burdens

Original term

Advance payments. The Company shall reserve the right for whatever reason to require advance payments, stage payments or deposits before or during the work.

Action taken

Term deleted.

Original term

S&PG may at its discretion either estimate the meter index reading (an 'estimated reading') or be prepared to accept a customer's own reading (a 'customer reading', for charging purposes.

Action taken

***New term:** If information for charging purposes under this Agreement is not available we shall be entitled to make a reasonable estimate of charges and send you an estimated account.*

Original term

We may ... if you are unreasonably in arrears ... require you to pay a further deposit. When this agreement ends we shall return the balance of the deposit to you ... We shall add appropriate interest ...

Action taken

***New term:** We may ... if you are unreasonably in arrears ...require you to pay a further deposit subject to the same overall maximum [ie as any pre-contract deposit – £300]. When this agreement ends we shall return the balance of the deposit to you ... we shall add interest at Barclays Bank base rate.*

Group 18(b): Transferring inappropriate risks to consumers

Original term

Damage to Equipment. The Customer will accept responsibility for any damage that might be caused to Jetting machine(s) should the Work require them to operate away from a normal Tarmac or hard-surfaced road.

Action taken

Term deleted.

Original term

You will be still be liable for the minimum charge and all call charges [if] you ... lose ... the apparatus or it is stolen.

Action taken

***New term:** You will still be liable to pay these sums if the apparatus is lost or stolen. When we receive notice from you confirming the genuine loss or theft and that matter has been reported to the police, you will not be liable for call charges from that date.*

Original term

The price specified in this quotation does not include the price of removing any dangerous waste material such as asbestos found when installing your central heating. This will be subject to an extra charge.

Action taken

***New term:** The quoted price does not include the cost of removing any dangerous waste material, such as asbestos, which could not have been reasonably foreseen when we gave you the original quotation and which we become aware of only when doing the work. Such work will be at extra cost, the amount of which we will agree with you in advance.*

Indemnity clauses

Original term

Where the unloading of Goods is for any reason delayed the Customer shall indemnify the Company in respect of any loss or damage which it may sustain in consequence thereof.

Action taken

Term deleted.

Original term

The Advertiser shall indemnify the Publisher in respect of any claim, cost or expenses resulting from libellous or malicious matter or untrue statement in any advertisement published for the Advertiser or from any infringement of copyright, patent or design therein.

Action taken

***New term:** ... the Customer shall be responsible for any losses, expenses or other costs incurred by Auto Trader which are caused by an untrue statement made deliberately by the Customer.*

Original term

The client shall be liable for any loss or damage to the hotel's property ... or injury to persons including the Hotel's staff and shall indemnify the Hotel against any other loss or liability ... arising from the function.

Action taken

***New term:** The client shall be liable for any loss or damage to the Hotel's property including ... where such loss or damage has been caused by an intentional, reckless or grossly negligent act of the client or a member of his party.*

Original term

You must indemnify us against any claims or legal proceedings arising from use of BT Cable which are brought or threatened against us by another person.

Action taken

***New term:** If you use the service for **business purposes** you must also indemnify us against any claims made against us by third parties because the service is faulty or cannot be used.*

Original term

... any goods delivered to the customer's premises shall be entirely at the purchaser's risk and he will indemnify the company for any loss or damage thereto.

Action taken

***New term:** [After] delivery of any units to be installed ... you will be responsible for their safe keeping and you should make sure that you are adequately insured against any damage or loss which may occur to those units.*

Group 18(c): Unfair enforcement clauses

Original term

The Seller shall have no liability ... under the Contract unless the Purchaser shall have complied with the terms of payment agreed with him and all other terms binding on him ...

Action taken

Term deleted.

Original term

If the Customer shall commit any breach of this Agreement ... the Company shall be at liberty to treat this Agreement as repudiated and accordingly may terminate it forthwith by notice in writing to the Customer and shall be entitled to recover possession of the Company's Equipment together with the costs for so doing.

Action taken

***New term:** If the Customer shall commit and continue to commit a serious breach of this Agreement for 21 days or more after notice from the Company of the breach, the Company shall be at liberty to treat this Agreement as repudiated and accordingly may terminate it forthwith by notice in writing to recover possession of the system together with the costs for doing so.*

Original term

Forfeiture: ... if there shall be a breach of any of the obligations on the part of the Tenant the Landlord may re-enter the premises or any part thereof in the name of whole and immediately thereupon the tenancy shall absolutely determine without prejudice to any other rights and remedies of the landlord.

Action taken

Term deleted.

Reference

Primelets – *Bulletin 7*

Repossession

Original term

Until the Customer has paid in full for the goods, the Company will be able, at any time, to demand the return of the goods by the Customer. If the Customer fails to return the goods, the Company will be able to enter the Customer's premises or any other persons' premises where the goods are kept and repossess the goods.

Action taken

Term deleted.

Original term

It is clearly understood and agreed between the parties that the goods will not become fixtures of any property where they are situated.

Action taken

Term deleted.

Original term

Until such time as the property in the vehicle passes to the Buyer, the Seller shall be entitled at any time to require the Buyer to deliver up the vehicle and if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the vehicle is stored to repossess it.

Action taken

***New term:** Until such time as the property in the vehicle passes to the Buyer, the Seller shall be entitled at any time to require the Buyer to deliver up the vehicle.*

Original term

[In the event of cancellation] We may require the customer to deliver up the goods to us failing which we shall be entitled to remove the goods from the customer's premises and for such purpose may enter those premises without being liable for any damage caused by such removal.

Action taken

***New term:** We may require the customer upon reasonable notice to return and deliver up the goods to us failing which we shall take legal proceedings to recover the goods or their value.*

Sale of consumer's goods

Original term

If the monies due are not paid to the Carrier within 14 days of their falling due the Carrier ... may sell the Consignment and apply the proceeds of the sale towards the monies due and any reasonable expenses of sale.

Action taken

***New term:** We may sell all or some of your goods to recover any unpaid charges. We can only do this after giving you 30 days' written notice that we intend to do so. If we do sell any of your goods, and the proceeds from the sale are greater than the amount you owe us, we will pay you any excess amount after taking off the cost of selling the goods.*

Original term

The Insurers may at the time after loss or damage take and keep possession of the property affected and deal with the salvage and if the Insured or anyone acting on the Insured's behalf shall obstruct or prevent the Insurers from so doing all benefit under this Insurance shall be forfeited.

Action taken

***New term:** In the event of an insured item being lost or damaged beyond repair, upon settlement of claim, ownership of the item transfers to the insurers who may dispose of it as they see fit.*

Original term

The company reserves the right to ... dispose of any article left for examination or repair which is not claimed within 6 calendar months from the date of this document.

Action taken

***New term:** If you do not collect your article within 6 calendar months of the 'to be ready' date as shown above, we may dispose of it to recover our costs and notify you of our intention to do so.*

Group 18(d): Excluding the consumer's right to assign

Original term

This guarantee shall not be assigned to any other person, firm or company without the prior written consent of EYG.

Action taken

***New term:** EYG will not accept any liability under such guarantee unless the person seeking to rely on it is the original Purchaser or can produce a letter or chain of letters from the original Purchaser and subsequent Purchasers (where appropriate) transferring the benefit of the guarantee to the new owner of the property in question. EYG will be happy to supply a suggested specimen letter.*

Original term

This agreement is not transferable to new owner(s) of the Premises or of the system nor will any refund be made should any change of ownership occur.

Action taken

***New term:** Subject to the System being in serviceable condition and any incurred transfer charges being paid the Company will agree to the Customer assigning this Contract to a new user.*

Original term

This Airtime Agreement is personal to the subscriber and may not be assigned.

Action taken

***New term:** You must not transfer this Agreement, as it is personal to you, without written authority from Intercell. This authority will not be refused without good reason.*

Original term

You may not assign or part with any of your rights to the network or otherwise under the Customer Airtime Agreement without our written agreement.

Action taken

***New term:** You may only assign or part with any of your rights to the network or otherwise under the Airtime Agreement following a satisfactory credit check of the person you wish to transfer your rights and completion by them of a new airtime agreement.*

Original term

The goods ordered by the customers are for the customer's own requirements and as such cannot be resold by the customer to any other party.

Action taken

Term deleted.

Original term

The benefits of this contract are ... not transferable.

Action taken

New term: The benefits of this contract are ... assignable upon any change of ownership of the premises.

Group 18(e): Consumer declarations

Original term

In the case of purchasing a used vehicle I/we certify that before signing the document my/our attention has been drawn to the age of the vehicle and the fact that any defects may be present. In addition I/we understand that it is a Term of Contract that I/we should examine the vehicle before signing the order form to satisfy myself/ourselves as to its condition.

Action taken

Term deleted.

Original term

Used vehicle sales certificate

I have been advised that the mileage recorded on the Odometer must be considered incorrect. A similarly worded disclaimer of the mileage to that above, was affixed to the odometer when I viewed the vehicle. No oral representation whatsoever was made in respect of the accuracy of the recorded mileage, the vehicle condition or its fitness for any particular purpose.

Action taken

New term: Customer certificate

YES

NO

- | | | | |
|----|---------------------------------------------------------------------------------------------------------------------------------|--------------------------|--------------------------|
| 1. | Have you been shown the vehicle and controls? | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. | Has anything been said or shown to you to suggest the mileage may be considered correct? | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. | Was there a sticker adjacent to the mileage recorder to indicate the recorded mileage must be considered incorrect/disregarded. | <input type="checkbox"/> | <input type="checkbox"/> |

Original term

THE Member HEREBY DECLARES that he/she ... has read and understood the clauses contained in this contract and has not relied upon any representations whether written or oral made by the Company or by anyone on its behalf.

Action taken

Term deleted.

Original term

I/We have read the Conditions of Sale overleaf and agree to be bound by them.

Action taken

New term: *Before signing this order, the customer should carefully read the terms and conditions set out on the other side of this agreement.*

Original term

I the buyer declare I have read and understood this contract and have had the opportunity of a thorough examination of the vehicle before purchase of my own free will without any harassment from the seller.

Action taken

Term deleted.

Original term

This and all other documents have been fully explained to me by the sales representative.

Action taken

Term deleted.

Original term

I/we the undersigned hereby agree to enter this Airtime Agreement upon the terms and conditions set out overleaf which I/we acknowledge have been drawn to my/our attention and which I/we have read ...

Action taken

***New term:** It is important that you read and understand the terms and conditions that will apply to this contract before signing. If there is any term that you do not understand or do not wish to agree to, then please discuss it with Intercell's representative before signing. Only sign this agreement if you wish to be bound by the terms and conditions overleaf.*

Original term

There may be no service or very poor service in some areas. You have checked coverage map to be sure you have sufficient coverage in the areas you want.

Action taken

***New term:** Please make sure you check network coverage in your area ... before entering into the airtime agreement.*

Group 18(f): Excluding consumer's non-contractual rights and protection

Data protection rights

Original term

The Renter acknowledges that person-related data in this Agreement will be automated, processed and expressly agrees that such data can be communicated to third parties especially for credit protection purposes.

Action taken

***New term:** You consent to the computer storage and processing of your personal data by us in connection with this agreement and to the transmission of this data among the Hertz group of companies and its business partners for the purposes of our legitimate interests including statistical analysis, marketing of our services and credit control. If you breach this agreement your personal data may be disclosed or passed to third parties to the extent necessary to assist recovery procedures.*

Original term

I hereby waive my rights under the Data Protection Act ...

Action taken

Term deleted.

Rights relating to unsolicited goods

Original term

I understand that I may be offered the opportunity to view other Golden Wedding Anniversary Coin Covers always on approval and always without obligation should they become available.

Action taken

***New term:** I understand that I will receive other XYZs in the XYZ collection at 4–6 week intervals. I am under no obligation and may return any XYZ within 10 days. I may stop collecting at any time.*

Rights relating to doorstep selling

Original term

A customer may cancel the agreement without a penalty by notifying Aspen in writing within seven days of the date on which the agreement was signed. Such a notice must be sent by recorded delivery or delivered by hand ...

Action taken

***New term:** A customer may cancel the agreement without a penalty by notifying Aspen in writing within seven days of the date on which the agreement was signed. Such a notice must be sent or delivered by hand ...*

Group 18(g): Supplier's discretion in relation to obligations

Rights for supplier to decide how to perform his obligations

Original term

The customer agrees to the work being carried out at a time convenient to Protectawall Ltd under the block installation plan.

Action taken

Term deleted.

Original term

The Company shall be entitled to make delivery of the goods by instalments.

Action taken

New term: Delivery of any units to be installed will be on a mutually agreed date.

Original term

Lessons will be suspended during such periods as the teacher shall determine ...

Action taken

New term: I will give at least one Series Notice in writing of my holiday breaks, when lessons will not be given ...

Rights for the supplier to decide if the consumer is in breach

Original term

The General Manager may suspend or expel from the Club any Member whose conduct, in the opinion of the General Manager, is harmful to the character or interests of the Club or renders the Member unfit to associate with other members ...

Action taken

New term: The General Manager may suspend or expel from the Club any Member whose conduct is unlawful or illegal or which shall bring the Club into disrepute, or who persists in acting or whose conduct is in substantial breach of the Rules of the Club.

Original term

Connections reserves the right ... to withdraw or suspend membership when, in its sole opinion, a member ... is misusing the service or behaving inappropriately

Action taken

***New term:** Connections is entitled to revoke a person's membership if a member has ... misused the dating agency service provided by Connections or behaved in way which objectively could be regarded as inappropriate ... Connections will first provide the member with written reasons ... the member will be entitled (without affecting any other method of recourse available to the member) to challenge Connections' decision by referring the matter to the ABIA ...*

Group 18(h): Unreasonable obligations and restrictions

Original term

Upon receipt of Notice that the goods are ready for installation by the company the customers shall afford access to the premises forthwith.

Action taken

Term deleted.

Original term

You should know about the laws relating to Wireless Telegraphy and Telecommunications Services.

Action taken

Term deleted.

Original term

The Matron and RGN in charge has the right to refuse residents to go out due to medical conditions.

Action taken

Term deleted.

Group 19: Regulation 7 – Plain and intelligible language

Regulation 7 states that:

- (1) *A seller or supplier shall ensure that any written term of a contract is expressed in plain, intelligible language.*
- (2) *If there is doubt about the meaning of a written term, the interpretation which is most favourable to the consumer shall prevail but this rule shall not apply in proceedings brought under Regulation 12.*

Sub-group 19(a): General

Original term

[The revised terms replace the original conditions of sale which contained a set of standard commercial terms, comprising more than 60 paragraphs of small print including much legal jargon and numerous technicalities, as well as 13 exclusion clauses.]

Action taken

New term: IMPORTANT NOTICE TO OUR PRIVATE (ie NOT TRADE) CUSTOMERS

The conditions of sale below this notice do not apply to your purchase of tiles. Our contract with you is subject to the terms of this important notice.

It is unavoidable with the production of tiles that discrepancies in colour, or size, or design or quality can occur within a box or in a batch.

So please inspect your tiles as soon as possible. If you are in any way dissatisfied we guarantee to replace them or refund your money provided no attempt has been made to fix the tiles and provided you return them to us in a saleable condition within 21 days of purchase.

Original term

[The revised term replaced three pages of clauses and sub-clauses which included a number of cross-references and references to statutes.]

Action taken

***New term: Limitation of Liability** Except for death or personal injury caused by our negligent acts or omissions we shall only be liable for any loss or damage which is a reasonably foreseeable consequence of a breach of this Agreement. In the event that you are using the Supply Address in part for commercial purposes then no liability for loss of profits or other economic loss arising out of a breach of this agreement can be accepted.*

Original term

Failure of the substrate to which our products are applied will nullify our guarantees.

Action taken

Term deleted.

Original term

Severability – The clauses of these Conditions and each sub-clause thereof are several and if any part of any clause or sub-clause shall be void, invalid or unenforceable then the remainder of such clauses or sub-clauses shall nevertheless be valid and enforceable.

Action taken

Term deleted.

Original term

E & OE

Action taken

Term deleted.

Original term

The masculine includes the feminine gender and the singular shall include the plural and vice versa and a reference to a statutory provision will be interpreted as a reference to the provision as amended or re-enacted from time to time including any regulation or statutory instrument issued pursuant to such provision at any time.

Action taken

Term deleted.

Sub-group 19(b): Specific revisions

This sub-section illustrates how plain language can be used in contracts, particularly in certain kinds of terms that are commonly characterised by legal jargon. Its purpose is not to parade the worst examples of unintelligible drafting encountered by the Office. Some of the original terms listed here were considered unfair for other reasons than non-compliance with Regulation 7 (and thus may also be found listed under other headings in the annexe). However, in all cases the revisions quoted are considered to represent a worthwhile improvement from the point of view of clarity.

Assignment clauses

Original term

This Agreement and the benefits and advantages herein contained are personal to the Member and shall not be sold, assigned or transferred by the Member.

Action taken

New term: Membership is not transferable.

Bankruptcy, termination on

Original term

The agreement shall determine forthwith if a receiving order is made against Hirer (or being a company Hirer goes into liquidation, whether voluntarily or compulsorily) or if Hirer shall call a meeting of his creditors or any distress or execution is levied against any of his goods ...

Action taken

New term: If you are a customer we will end this agreement straight away if we find out that your belongings have been taken away from you to pay off your debts, or a receiving order has been made against you.

Cancellation

Original term

Such determination shall not affect any then existing rights of Lessor whether for damages or otherwise.

Action taken

New term: If we end the agreement it will not affect our right to receive any money we are owed under the conditions of this agreement.

'Force majeure'

Original term

Force Majeure. Time shall not be of the essence of the Contract and the Company shall not be liable for any delay in installation in the event of any strike, lock out, trade dispute, accident, fire, flood or any natural disaster or act of God or any contingency whatsoever beyond the reasonable control of the Company affecting the supply or installation of the Contract overleaf. Such suspension or cancellation shall not constitute a breach of Contract by the Company, nor will the purchaser be liable to claim for any loss or damage howsoever arising as a result of these circumstances.

Action taken

New term: The Company will manufacture and install the items within a reasonable time.

Hirer's duties

Original term

Hirer shall not sell or offer for sale, assign, mortgage or pledge Vehicle or the tools or equipment or any part or parts thereof or otherwise deal with the same in any manner inconsistent with the Lessor's rights.

Action taken

New term: You must not sell, rent or dispose of the vehicle or any of its parts. You must not give anyone any legal rights over the vehicle.

Indemnity clauses

Original term

Maples will indemnify the Customer in respect of any direct damage to property caused by the negligence of Maples or the negligence or wilful default of its servants or agents.

Action taken

New term: We will pay for any damage caused by our employees.

Jurisdiction clauses

Original term

Any dispute arising out of this agreement shall be subject to the jurisdiction of the High Court of Justice or the County Court local to Telco or the Central Office of the High Court of Justice at the option of Telco.

Action taken

***New term:** We will try and solve any disagreements quickly and efficiently. If you are not happy with the way we deal with any disagreement and you want to take court proceedings, you must do so within the United Kingdom.*

Liability of supplier

Original term

Telco will accept liability without limitation for death or personal injury resulting from the negligence of Telco ... [and] for direct physical damage to tangible property of the Subscriber to the extent it is caused by the negligence of Telco, subject to the exclusions set out in 10(a) below.

Action taken

***New term:** We will accept all liability if something we do causes death or injury. We will also accept all liability for damage to your property if the cause is our fault.*

Original term

Lessors shall not be liable for damages arising from defects or mechanical failures which are not attributable to any breach of this warranty or any warranty implied by law to take reasonable care or exercise reasonable skill.

Action taken

***New term:** If you are not renting the Vehicle for business purposes, we are responsible for loss caused by:*

- *the Vehicle not matching our description of it;*
- *the Vehicle not being of the quality you would be entitled to expect from a rental vehicle.*
- *the Vehicle not being fit to drive.*
- *us not having the legal right to rent out the Vehicle.*

Lien

Original term

The Carrier shall have a general lien on any Consignment for its charges for the carriage or storage of that or any other Consignment for the Customer or for any other monies due from the Customer to the Carrier.

Action taken

***New term:** We may keep hold of all or some of your goods until you have paid all the charges you owe us, even if the unpaid charges do not relate to those goods ... This clause does not apply to a private consumer.*

Original term

Our lien

Action taken

***New term:** Our rights to withhold or dispose of goods.*

Liquidated damages

Original term

If such notice is received after these dates, the Governors will require payment of fees for what would have been the pupil's first term at school by way of liquidated damages.

Action taken

***New term:** If such notice is received after these dates the Governors will require payment of fees for what would have been the pupils first term at school by way of agreed compensation to the school.*

Lost property liability

Original term

Lessor shall not be liable for loss of or damage to any property left, stored or transported by Hirer or any other person in or upon Vehicle either before or after the return thereof to Lessor. Hirer hereby agrees to hold Lessor harmless from, and indemnify Lessor against all claims based on or arising out of such loss or damage unless caused by the negligence of Lessor.

Action taken

New term: We are only responsible for loss or damage to property left in the vehicle if the loss or damage results from our negligence.

Merchantable quality

Original term

Materials and goods supplied under this contract should be of merchantable quality and fit for their normal purpose.

Action taken

New term: Materials and Goods supplied under this Contract will be of satisfactory quality and fit for their normal purpose.

Minimum term

Original term

This agreement ... shall subject to Clauses 7 and 8, continue for a minimum term of 15 months inclusive of the 90 day notice period referred to in Clause 8(c).

Action taken

New term: The minimum term of this agreement is 12 months.

Notification of claims

Original term

The Customer shall ... give Maples written notice of such loss or damage with reasonable particulars thereof ...

Action taken

New term: You must tell us about any fault or damage ...

Passing of risk

Original term

Subject to any agreement in writing by Maples the risk in Goods which Maples agrees to supply shall pass to the Customer on the Goods being off-loaded at the delivery destination or the date (if earlier) on which the Goods being ready for delivery, delivery is postponed at the Customer's request.

Action taken

***New term:** As soon as we have delivered the goods or services, you will be responsible for them. If you delay a delivery, our responsibility for everything other than damage due to our negligence will end on the date we agree to deliver them, as set out in the contract.*

Power of sale

Original term

Where the Carrier is unable to deliver a Consignment and the Consignment is not claimed by the customer or its agent within 28 days of notice of such non-delivery served on the Customer the Carrier shall have the right to sell the undelivered Consignment as if the Carrier were the absolute owner and to pass unencumbered title to the Purchaser.

Action taken

***New term:** If we cannot deliver your goods we will contact you for instructions. If you do not give us instructions, we will give you 30 days' written notice that we intend to sell all or some of your goods to recover any money you owe us.*

Original term

Payment or tender of the proceeds of sale to the Customer after the deduction of all the Carrier's reasonable charges and expenses and all outstanding charges in relation to the carriage shall discharge the Carrier from all liability in respect of the carriage and storage.

Action taken

***New term:** If the proceeds from the sale are greater than the amount you owe us (if any) we will pay you the excess amount after taking off the cost of selling the goods.*

Pro rata

Original term

The teacher's fee is £ per hour or pro rata for part of thereof.

Action taken

***New term:** The tuition fee is £ per hour. The hourly fee is adjusted in proportion to the length of lessons.*

Statutory references

Original term

The Insurers shall not be liable for claims directly or indirectly arising from ...

Financial circumstances or employment other than redundancy (where the Insured Person qualifies for payment under the Redundancy Payments Legislation)

Action taken

***New term:** The Insurers shall not be liable for claims directly or indirectly arising from ... your financial circumstances or employment other than redundancy (if you qualify for payment under the Redundancy Payment legislation, that is, you are under 65 and have 2 years' continuous employment).*

Original term

The above conditions do not affect your statutory rights.

Action taken

***New term:** Nothing in these conditions will reduce your statutory rights relating to faulty or misdescribed goods. For further information about your statutory rights contact your local authority Trading Standards Department or Citizens' Advice Bureau.*

Original term

These terms and conditions shall not be construed so as to affect the statutory or common law rights of the purchaser save in so far as the same may be lawfully excluded or varied.

Action taken

***New term:** As a consumer, the purchaser has certain statutory rights regarding the return of defective goods and claims in respect of losses caused by any negligence on the part of the seller or failure by the seller to carry out its obligations. These terms and conditions shall not affect the purchaser's statutory rights.*

Time of the essence

Original term

If any payment shall be more than one month in arrears the Company shall have the right to withhold further deliveries of constituent components of the Chubb System and to withdraw immediately the service provided for the System. Time for payment shall be of the essence of this Agreement. Written notice of withdrawal of the service will be given to the Customer.

Action taken

***New term:** If you are more than a month behind with your payments to us we can withdraw the service (including emergency service) or monitoring we provide to your Chubb system at any time. We will give you 7 days written notice before we do this.*

Title

Original term

Title to ... property in the goods shall remain vested in the Company (notwithstanding the delivery of the same ... to the Customer) until the price of the Goods comprised in the contract and all other money due from the Customer to the Company on any other account has been paid in full.

Action taken

***New term:** We shall retain ownership of the goods until you have finished paying for them.*

Original term

TITLE ... [circa 500 words of legal jargon]

Action taken

New term: Goods remain our property until paid for.

Group 19(c): Non-transparent 'core' terms

Original term

If any loss destruction or damage covered by this Memorandum of Insurance is also covered in all or part by any other Policy or Indemnity, this Policy shall not be called upon in contribution except in respect of any excess over the sum recoverable under such policy or indemnity, the existence of which shall be disclosed as a pre-condition to any payment for settlement under this Policy.

Action taken

Term deleted.

Original term

Our commission in addition to any other costs and charges agreed will be payable solely for the introduction howsoever affected of a purchaser who enters into an unconditional contract to purchase the property.

Action taken

Our commission in addition to any other costs and charges agreed will be payable solely for the introduction directly or indirectly of a purchaser who enters into an unconditional contract to purchase the property.

[Not for disclosure: taken from Lampons Residential Ltd Bulletin 23]

B THE UNFAIR TERMS IN CONSUMER CONTRACTS REGULATIONS 1999

A copy of the *Unfair Terms in Consumer Contracts Regulations* (SI 1999/2083) is included overleaf for ease of reference but is also available from the Office of Public Sector Information (OPSI) at www.opsi.co.uk.

STATUTORY INSTRUMENTS

1999 No. 2083

CONSUMER PROTECTION

The Unfair Terms in Consumer Contracts Regulations 1999

<i>Made</i>	<i>22nd July 1999</i>
<i>Laid before Parliament</i>	<i>22nd July 1999</i>
<i>Coming into force</i>	<i>1st October 1999</i>

Whereas the Secretary of State is a Minister designated^a for the purposes of section 2(2) of the European Communities Act 1972^b in relation to measures relating to consumer protection:

Now, the Secretary of State, in exercise of the powers conferred upon him by section 2(2) of that Act, hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Unfair Terms in Consumer Contracts Regulations 1999 and shall come into force on 1st October 1999.

Revocation

2. The Unfair Terms in Consumer Contracts Regulations 1994^c are hereby revoked.

^a S.I. 1993/2661.

^b 1972 c.68.

^c S.I. 1994/3159.

Interpretation

3. (1) In these Regulations:

“the Community” means the European Community;

“consumer” means any natural person who, in contracts covered by these Regulations, is acting for purposes which are outside his trade, business or profession;

“court” in relation to England and Wales and Northern Ireland means a county court or the High Court, and in relation to Scotland, the Sheriff or the Court of Session;

“Director” means the Director General of Fair Trading;

“EEA Agreement” means the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as adjusted by the protocol signed at Brussels on 17th March 1993^d;

“Member State” means a State which is a contracting party to the EEA Agreement;

“notified” means notified in writing;

“qualifying body” means a person specified in Schedule 1;

“seller or supplier” means any natural or legal person who, in contracts covered by these Regulations, is acting for purposes relating to his trade, business or profession, whether publicly owned or privately owned;

“unfair terms” means the contractual terms referred to in regulation 5.

(2) In the application of these Regulations to Scotland for references to an “injunction” or an “interim injunction” there shall be substituted references to an “interdict” or “interim interdict” respectively.

Terms to which these Regulations apply

4. (1) These Regulations apply in relation to unfair terms in contracts concluded between a seller or a supplier and a consumer.

^d Protocol 47 and certain Annexes to the EEA Agreement were amended by Decision No. 7/94 of the EEA Joint Committee which came into force on 1st July 1994, (O.J. No. L160, 28.6.94, p.1). Council Directive 93/13/EEC was added to Annexe XIX to the Agreement by Annexe 17 to the said Decision No. 7/94.

- (2) These Regulations do not apply to contractual terms which reflect:
 - (a) mandatory statutory or regulatory provisions (including such provisions under the law of any Member State or in Community legislation having effect in the United Kingdom without further enactment);
 - (b) the provisions or principles of international conventions to which the Member States or the Community are party.

Unfair terms

5.
 - (1) A contractual term which has not been individually negotiated shall be regarded as unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer.
 - (2) A term shall always be regarded as not having been individually negotiated where it has been drafted in advance and the consumer has therefore not been able to influence the substance of the term.
 - (3) Notwithstanding that a specific term or certain aspects of it in a contract has been individually negotiated, these Regulations shall apply to the rest of a contract if an overall assessment of it indicates that it is a pre-formulated standard contract.
 - (4) It shall be for any seller or supplier who claims that a term was individually negotiated to show that it was.
 - (5) Schedule 2 to these Regulations contains an indicative and non-exhaustive list of the terms which may be regarded as unfair.

Assessment of unfair terms

6.
 - (1) Without prejudice to regulation 12, the unfairness of a contractual term shall be assessed, taking into account the nature of the goods or services for which the contract was concluded and by referring, at the time of conclusion of the contract, to all the circumstances attending the conclusion of the contract and to all the other terms of the contract or of another contract on which it is dependent.

- (2) In so far as it is in plain intelligible language, the assessment of fairness of a term shall not relate:
 - (a) to the definition of the main subject matter of the contract, or
 - (b) to the adequacy of the price or remuneration, as against the goods or services supplied in exchange.

Written contracts

7. (1) A seller or supplier shall ensure that any written term of a contract is expressed in plain, intelligible language.
- (2) If there is doubt about the meaning of a written term, the interpretation which is most favourable to the consumer shall prevail but this rule shall not apply in proceedings brought under regulation 12.

Effect of unfair term

8. (1) An unfair term in a contract concluded with a consumer by a seller or supplier shall not be binding on the consumer.
- (2) The contract shall continue to bind the parties if it is capable of continuing in existence without the unfair term.

Choice of law clauses

9. These Regulations shall apply notwithstanding any contract term which applies or purports to apply the law of a non-Member State, if the contract has a close connection with the territory of the Member States.

Complaints – consideration by Director

10. (1) It shall be the duty of the Director to consider any complaint made to him that any contract term drawn up for general use is unfair, unless:
 - (a) the complaint appears to the Director to be frivolous or vexatious; or
 - (b) a qualifying body has notified the Director that it agrees to consider the complaint.

- (2) The Director shall give reasons for his decision to apply or not to apply, as the case may be, for an injunction under regulation 12 in relation to any complaint which these Regulations require him to consider.
- (3) In deciding whether or not to apply for injunction in respect of a term which the Director considers to be unfair, he may, if he considers it appropriate to do so, have regard to any undertakings given to him by or on behalf of any person as to the continued use of such a term in contracts concluded with consumers.

Complaints – consideration by qualifying bodies

11. (1) If a qualifying body specified in Part One of Schedule 1 notifies the Director that it agrees to consider a complaint that any contract term drawn up for general use is unfair, it shall be under a duty to consider that complaint.
- (2) Regulation 10(2) and (3) shall apply to a qualifying body which is under a duty to consider a complaint as they apply to the Director.

Injunctions to prevent continued use of unfair terms

12. (1) The Director or, subject to paragraph (2), any qualifying body may apply for an injunction (including an interim injunction) against any person appearing to the Director or that body to be using, or recommending use of, an unfair term drawn up for general use in contracts concluded with consumers.
- (2) A qualifying body may apply for an injunction only where:
 - (a) it has notified the Director of its intention to apply at least fourteen days before the date on which the application is made, beginning with the date on which the notification was given; or
 - (b) the Director consents to the application being made within a shorter period.
- (3) The court on an application under this regulation may grant an injunction on such terms as it thinks fit.
- (4) An injunction may relate not only to use of a particular contract term drawn up for general use but to any similar term, or a term having like effect, used or recommended for use by any person.

Powers of the Director and qualifying bodies to obtain documents and information

13. (1) The Director may exercise the power conferred by this regulation for the purpose of:
- (a) facilitating his consideration of a complaint that a contract term drawn up for general use is unfair; or
 - (b) ascertaining whether a person has complied with an undertaking or court order as to the continued use, or recommendation for use, of a term in contracts concluded with consumers.
- (2) A qualifying body specified in Part One of Schedule 1 may exercise the power conferred by this regulation for the purpose of:
- (a) facilitating its consideration of a complaint that a contract term drawn up for general use is unfair; or
 - (b) ascertaining whether a person has complied with:
 - (i) an undertaking given to it or to the court following an application by that body,
 - or
 - (ii) a court order made on an application by that body,as the continued use, or recommendation for use, of a term in contracts concluded with consumers.
- (3) The Director may require any person to supply to him, and a qualifying body specified in Part One of Schedule 1 may require any person to supply to it:
- (a) a copy of any document which that person has used or recommended for use, at the time the notice referred to in paragraph (4) below is given, as a pre-formulated standard contract in dealings with consumers;
 - (b) information about the use, or recommendation for use, by that person of that document or any other such document in dealings with consumers.
- (4) The power conferred by this regulation is to be exercised by a notice in writing which may:
- (a) specify the way in which and the time within which it is to be complied with; and

- (b) be varied or revoked by a subsequent notice.
- (5) Nothing in this regulation compels a person to supply any document or information which he would be entitled to refuse to produce or give in civil proceedings before the court.
- (6) If a person makes default in complying with a notice under this regulation, the court may, on the application of the Director or of the qualifying body, make such order as the court thinks fit for requiring the default to be made good, and any such order may provide that all the costs or expenses of and incidental to the application shall be borne by the person in default or by any officers of a company or other association who are responsible for its default.

Notification of undertakings and orders to Director

- 14. A qualifying body shall notify the Director:
 - (a) of any undertakings given to it by or on behalf of any person as to the continued use of a term which that body considers to be unfair in contracts concluded with consumers;
 - (b) of the outcome of any application made by it under regulation 12, and of the terms of any undertaking given to, or order made by, the court;
 - (c) of the outcome of any application made by it to enforce a previous order of the court.

Publication, information and advice

- 15. (1) The Director shall arrange for the publication in such form and manner as he considers appropriate, of:
 - (a) details of any undertaking or order notified to him under regulation 14;
 - (b) details of any undertaking given to him by or on behalf of any person as to the continued use of a term which the Director considers to be unfair in contracts concluded with consumers;
 - (c) details of any application made by him under regulation 12, and of the terms of any undertaking given to, or order made by, the court;

- (d) details of any application made by the Director to enforce a previous order of the court.
- (2) The Director shall inform any person on request whether a particular term to which these Regulations apply has been:
- (a) the subject of an undertaking given to the Director or notified to him by a qualifying body; or
 - (b) the subject of an order of the court made upon application by him or notified to him by a qualifying body;
- and shall give that person details of the undertaking or a copy of the order, as the case may be, together with a copy of any amendments which the person giving the undertaking has agreed to make to the term in question.
- (3) The Director may arrange for the dissemination in such form and manner as he considers appropriate of such information and advice concerning the operation of these Regulations as may appear to him to be expedient to give to the public and to all persons likely to be affected by these Regulations.

Kim Howells

Parliamentary Under-Secretary of State for Competition and Consumer Affairs
Department of Trade and Industry

22nd July 1999

SCHEDULE 1

(Regulation 3)

QUALIFYING BODIES

PART ONE

1. The Data Protection Registrar.
2. The Director General of Electricity Supply.
3. The Director General of Gas Supply.
4. The Director General of Electricity Supply for Northern Ireland.
5. The Director General of Gas for Northern Ireland.
6. The Director General of Telecommunications.
7. The Director General of Water Services.
8. The Rail Regulator.
9. Every weights and measures authority in Great Britain.
10. The Department of Economic Development in Northern Ireland.

PART TWO

11. Consumers' Association.

**INDICATIVE AND NON-EXHAUSTIVE LIST OF TERMS
WHICH MAY BE REGARDED AS UNFAIR**

1. Terms which have the object or effect of:
 - (a) excluding or limiting the legal liability of a seller or supplier in the event of the death of a consumer or personal injury to the latter resulting from an act or omission of that seller or supplier;
 - (b) inappropriately excluding or limiting the legal rights of the consumer vis-à-vis the seller or supplier or another party in the event of total or partial non-performance or inadequate performance by the seller or supplier of any of the contractual obligations, including the option of offsetting a debt owed to the seller or supplier against any claim which the consumer may have against him;
 - (c) making an agreement binding on the consumer whereas provision of services by the seller or supplier is subject to a condition whose realisation depends on his own will alone;
 - (d) permitting the seller or supplier to retain sums paid by the consumer where the latter decides not to conclude or perform the contract, without providing for the consumer to receive compensation of an equivalent amount from the seller or supplier where the latter is the party cancelling the contract;
 - (e) requiring any consumer who fails to fulfil his obligation to pay a disproportionately high sum in compensation;
 - (f) authorising the seller or supplier to dissolve the contract on a discretionary basis where the same facility is not granted to the consumer, or permitting the seller or supplier to retain the sums paid for services not yet supplied by him where it is the seller or supplier himself who dissolves the contract;
 - (g) enabling the seller or supplier to terminate a contract of indeterminate duration without reasonable notice except where there are serious grounds for doing so;

- (h) automatically extending a contract of fixed duration where the consumer does not indicate otherwise, when the deadline fixed for the consumer to express his desire not to extend the contract is unreasonably early;
- (i) irrevocably binding the consumer to terms with which he had no real opportunity of becoming acquainted before the conclusion of the contract;
- (j) enabling the seller or supplier to alter the terms of the contract unilaterally without a valid reason which is specified in the contract;
- (k) enabling the seller or supplier to alter unilaterally without a valid reason any characteristics of the product or service to be provided;
- (l) providing for the price of goods to be determined at the time of delivery or allowing 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;
- (m) giving the seller or supplier the right to determine whether the goods or services supplied are in conformity with the contract, or giving him the exclusive right to interpret any term of the contract;
- (n) limiting the seller's or supplier's obligation to respect commitments undertaken by his agents or making his commitments subject to compliance with a particular formality;
- (o) obliging the consumer to fulfil all his obligations where the seller or supplier does not perform his;
- (p) giving the seller or supplier the possibility of transferring his rights and obligations under the contract, where this may serve to reduce the guarantees for the consumer, without the latter's agreement;

- (q) excluding or hindering the consumer's right to take legal action or exercise any other legal remedy, particularly by requiring the consumer to take disputes exclusively to arbitration not covered by legal provisions, unduly restricting the evidence available to him or imposing on him a burden of proof which, according to the applicable law, should lie with another party to the contract.

2. Scope of paragraphs 1(g), (j) and (l)

- (a) Paragraph 1(g) is without hindrance to terms by which a supplier of financial services reserves the right to terminate unilaterally a contract of indeterminate duration without notice where there is a valid reason, provided that the supplier is required to inform the other contracting party or parties thereof immediately.
- (b) Paragraph 1(j) is without hindrance to terms under which a supplier of financial services reserves the right to alter the rate of interest payable by the consumer or due to the latter, or the amount of other charges for financial services without notice where there is a valid reason, provided that the supplier is required to inform the other contracting party or parties thereof at the earliest opportunity and that the latter are free to dissolve the contract immediately.

Paragraph 1(j) is also without hindrance to terms under which a seller or supplier reserves the right to alter unilaterally the conditions of a contract of indeterminate duration, provided that he is required to inform the consumer with reasonable notice and that the consumer is free to dissolve the contract.

- (c) Paragraphs 1(g), (j) and (l) do not apply to:
 - transactions in transferable securities, financial instruments and other products or services where the price is linked to fluctuations in a stock exchange quotation or index or a financial market rate that the seller or supplier does not control;
 - contracts for the purchase or sale of foreign currency, traveller's cheques or international money orders denominated in foreign currency;

- (d) Paragraph 1(l) is without hindrance to price indexation clauses, where lawful, provided that the method by which prices vary is explicitly described.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations revoke and replace the Unfair Terms in Consumer Contracts Regulations 1994 (S.I. 1994/3159) which came into force on 1st July 1995.

Those Regulations implemented Council Directive 93/13/EEC on unfair terms in consumer contracts (O.J. No. L95, 21.4.93, p.29). Regulations 3 to 9 of these Regulations re-enact regulations 2 to 7 of the 1994 Regulations with modifications to reflect more closely the wording of the Directive.

The Regulations apply, with certain exceptions, to unfair terms in contracts concluded between a consumer and a seller or supplier (regulation 4). The Regulations provide that an unfair term is one which has not been individually negotiated and which, contrary to the requirement of good faith, causes a significant imbalance in the parties' rights and obligations under the contract to the detriment of the consumer (regulation 5). Schedule 2 contains an indicative list of terms which may be regarded as unfair.

The assessment of unfairness will take into account all the circumstances attending the conclusion of the contract. However, the assessment is not to relate to the definition of the main subject matter of the contract or the adequacy of the price or remuneration as against the goods or services supplied in exchange as long as the terms concerned are in plain, intelligible language (regulation 6). Unfair contract terms are not binding on the consumer (regulation 8).

The Regulations maintain the obligation on the Director General of Fair Trading (contained in the 1994 Regulations) to consider any complaint made to him about the fairness of any contract term drawn up for general use. He may, if he considers it appropriate to do so, seek an injunction to prevent the continued use of that term or of a term having like effect (regulations 10 and 12).

The Regulations provide for the first time that a qualifying body named in Schedule 1 (statutory regulators, trading standards departments and Consumers' Association) may also apply for an injunction to prevent the continued use of an unfair contract term provided it has notified the Director General of its intention at least 14 days before the application is made (unless the Director General consents to a shorter period) (regulation 12). A qualifying body named in Part One of Schedule 1 (public bodies) shall be under a duty to consider a complaint if it has told the Director General that it will do so (regulation 11).

The Regulations provide a new power for the Director General and the public qualifying bodies to require traders to produce copies of their standard contracts, and give information about their use, in order to facilitate investigation of complaints and ensure compliance with undertakings or court orders (regulation 13).

Qualifying bodies must notify the Director General of undertakings given to them about the continued use of an unfair term and of the outcome of any court proceedings (regulation 14). The Director General is given the power to arrange for the publication of this information in such form and manner as he considers appropriate and to offer information and advice about the operation of these Regulations (regulation 15). In addition the Director General will supply enquirers about particular standard terms with details of any relevant undertakings and court orders.

A Regulatory Impact Assessment of the costs and benefits which will result from these Regulations has been prepared by the Department of Trade and Industry and is available from Consumer Affairs Directorate, Department of Trade and Industry, Room 407, 1 Victoria Street, London SW1H 0ET (Telephone 020 7215 0341). Copies have been placed in the libraries of both Houses of Parliament.

C LIST OF ENFORCERS

The following bodies (Qualifying Bodies) are listed in Schedule 1 to the Regulations (as amended) as having the power to enforce the Regulations (at Annexe B). They also have the power to take action against unfair terms under Part 8 of the Enterprise Act 2002.

- Information Commissioner's Office
(formerly The Data Protection Registrar)
- Office of Gas and Electricity Markets (OFGEM)
(formerly The Director General of Electricity Supply and The Director General of Gas Supply)
- OFGEM Scotland
- The Northern Ireland Authority for Energy Regulation (NIAER)
(formerly The Director General of Electricity supply for Northern Ireland and the Director General of Gas Supply for Northern Ireland)
- Office of Communications (OFCOM)
(formerly The Director General of Telecommunications)
- The Director General of Water Services (OFWAT)
- Office of Rail Regulation (ORR)
(formerly The Rail Regulator)
- The Department of Enterprise, Trade and Investment in Northern Ireland
- The Financial Services Authority (FSA)
- Which?
(formerly The Consumers' Association)

The following body is a designated enforcer under the Enterprise Act but not a qualifying body under Regulations (ie it can only enforce the Regulations by means of the Enterprise Act).

- The Civil Aviation Authority (CAA)

D INDEX OF TYPES OF TERM

To find an explanation of the OFT's view of a term dealing with one of the matters listed below, look in the main text of the guidance under the numbered heading indicated. Where a particular paragraph is relevant, its number is given (where several are relevant, the first is given).

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PART C: LIST OF CONSULTEES

Better Regulation Executive
British Chamber of Commerce
British Retail Consortium
Citizens Advice
Citizens Advice Scotland
Civil Aviation Authority
Confederation of British Industry
Consumer Direct
Convention of Scottish Local Authorities
Department for Constitutional Affairs
Federation of Small Businesses
Federation of Small Businesses (Scotland)
Financial Services Authority
General Consumer Council for Northern Ireland
Information Commissioner's Office
LACORS
Law Society for England and Wales
Law Society for Scotland
Local Government Association
National Consumer Council
Office of Communications
Office of Rail Regulation
Office of Gas and Electricity Markets
Office of Gas and Electricity Markets (Scotland)
Scottish Consumer Council
Small Business Service
The Northern Ireland Authority for Energy Regulation

The Director General of Water Services

The Department of Enterprise, Trade and Investment in Northern Ireland

Trading Standards Institute

Trading Standards Service

Welsh Consumer Council

Which?