

About “The Ultimate Unfair Contract”

The **Ultimate Unfair Contract** has been produced by the Consumers’ Federation of Australia.

The Contract is based entirely on what we consider are unfair clauses – from the actual contracts of banks, finance companies, car hire companies, telcos, internet service providers and consumer goods retailers. We simply chose the clauses we liked best and put them into just the one document.

This could save industry the thousands and thousands of dollars they are obviously spending on getting lawyers to draft these things.

If you’re an industry player - then look no further. Simply cut and paste clauses from the contract below.

If you’re a consumer – well, sorry. You’ve been getting a raw deal for a long time and there is not much you can do about it.

THE ULTIMATE UNFAIR CONTRACT

TERMS AND CONDITIONS

The Unfair Version - When the agreement starts and ends

- 1) This Agreement commences on the Commencement Date and ends on expiry of the Term unless otherwise agreed, provided a party has given no more than 6 months' notice in writing and not less than 3 months' notice in writing that it intends to terminate the Agreement on the expiry of the Term.
- 2) If a party has not given notice to terminate this Agreement as required under clause 1.1, this Agreement automatically renews for subsequent terms of 12 months ("Renewal Term") until a party gives no more than 6 months' notice in writing and not less than 3 months' notice in writing that it intends to terminate the Agreement on the expiry of the then Renewal Term.

And in English ...For the term of your natural life

You might think you know when this contract ends, but in fact it won't end on that date unless you write to us and remind us. If you forget, or if you remind us too early or too late, you will be stuck in this agreement for an extra year at the very least.

The Unfair Version - Some things you are not allowed to do

- 3) You are in default if:
 - (a) you breach any term of the contract or the terms of any other agreement or security you have with us; or
 - (b) any information you or another other person gives us in connection with applying for the account is incorrect or, in our opinion, misleading (by omission or otherwise); or
 - (c) we consider there has been a material adverse change in your financial circumstances.

And in English ...Tread carefully

Even if you do everything right in respect of this agreement, if you default on another agreement you have entered into with us, then you will also be in default with this agreement.

Even if the information you give us is correct, if someone else gives us information that is incorrect then you are in default.

If you lose your job or suffer unexpected financial hardship, that's a default too (even if it doesn't affect your payments).

The Unfair Version – What we can do if you do the wrong thing

- 4) Any breach by You of any provision of this Agreement which is not rectified within 7 days of notification will entitle Us to terminate this Agreement.
- 5) If at any time before the end of the Term, either We terminate this Agreement for cause or you Terminate this Agreement without cause, You must pay Us an early termination payment equal to 90% of the remaining Fees which would have been payable to Us under this Agreement but for its termination. You agree that the early termination payment is a reasonable pre-estimate of Our loss and damage caused by the early termination of the Agreement.

And in English ... Money for nothing

If you default, we can simply cancel the agreement.

If you want to cancel the agreement, you can simply pay us all remaining payments up front (less a generous discount of 10%), even though you won't be getting what you are paying for.

We know this sounds unfair, possibly even absurd, but you agree that it is actually OK.

The Unfair Term – Changes to the contract

- 6) From time to time we may:
 - (a) change the amount of or basis for calculating any fee or charge and change the fee charging cycle;
 - (b) impose and debit to your account any new fee or charge;
 - (c) change the frequency of repayments;
 - (d) impose a credit limit on your account and/or require the payment of a security deposit or interim payment;
 - (e) require you to pay your account at any time if we consider that you exceed a reasonable limit on your account;
 - (f) change the account number;
 - (g) change any other terms and conditions.

And in English ... Not worth the paper its printed on

You've shopped around, and signed up for what looks like the best deal at the best price. Good on you. In case you thought this contract set that deal in stone, we should tell you that if and when we feel like it, we can increase the amounts we charge, charge you new fees, charge you more often...

In fact, what we're asking you to sign up to is a bit irrelevant because we can change anything we want, at any time.

If you're lucky you can keep your name.

The Unfair Term – What happens if there are blank spaces

- 7) If you have not completed any part of this Agreement, you authorise us to complete this Agreement on your behalf and you agree to be bound by the completed Agreement as if you had completed all parts of this Agreement before you signed it.
- 8) Additional terms will apply to special promotions and offers of other products accepted by you. We will provide a copy of those additional terms if requested by you. Those additional terms will apply together with these terms.

And in English ... But wait, there's more

If you have left anything on the front page blank we won't bring this to your attention, we'll just fill it in ourselves. Whatever we put in there, you're stuck with, even though you weren't involved and never signed off on it (and if its wrong or misleading, you will be in default – see clause 3(b)).

There may also be other terms and conditions that we haven't included in this document. They'll probably be pretty important and will affect what you are entitled to, but we've decided not to tell you about them (and won't unless you specifically ask us).

The Unfair Term – What we said to you

- 9) This Agreement contains the entire understanding and agreement between the parties as to its subject matter. No oral explanation or information provided by any party to another shall affect the meaning or interpretation of this Agreement or constitute any collateral agreement warranty or understanding between the parties.
- 10) You agree you have not relied on any representation made by us.

And in English ... Never believe what you're told

Remember you asked us to explain the deal to you before you signed the contract? Hopefully you ignored everything we said, because it means nothing now.

(Especially that bit about being able to cancel any time you want – you might want to have another look at clause 5...)

The Unfair Term – A general disclaimer

- 11) We or our respective suppliers make no representations about the suitability, reliability, availability, timeliness, and accuracy of the information, products and services provided. All such information, products and services are provided "as is" without warranty of any kind. We and/or our respective suppliers hereby disclaim all warranties and conditions with regard to this information, products and services, including all implied warranties and conditions of merchantability, fitness for a particular purpose, title and non-infringement. In no event shall we and/or our suppliers be liable for any direct, indirect, punitive, incidental, special, consequential damages or any damages whatsoever including, without limitation, damages for loss of use, data or profits, arising out of or in any way connected with the use or

performance of the services or products provided, with the delay or inability to use those services or products, the provision of or failure to provide services, or for any information, products or services obtained through our web sites, or otherwise arising out of the use of our web sites, whether based on contract, tort, negligence, strict liability or otherwise, even if we or any of our suppliers have been advised of the possibility of damages. Because some States/jurisdictions do not allow the exclusion or limitation of liability for consequential or incidental damages, the above limitation may not apply to you. If you are dissatisfied with the services provided by ACE ISP, or with any of these terms and conditions, your sole and exclusive remedy is to terminate this Agreement.

And in English ...

Good luck!

Basically what we're saying is you're on your own. If you're not happy, or we don't do what we're meant to, then that's your problem, and you can just go away (please don't forget clause 5, it really is one of our favourites).

Still reading? You are keen.

We are bound to tell you that the law may not allow us to abandon you in this way, but we'll say it really quickly and move on. We were hoping you might have given up reading by the time we mentioned this.

And we'll just cover over it again for good measure. Discouraged? Excellent.