

BUSINESS & Changes in Contract Terms

In a long-duration contract can the price suddenly be increased by a large amount?

Can the terms of a fixed-duration contract be changed at all?

If taxes and fees are lowered, should prices be lowered as well?

When a business and a consumer conclude a contract, it is mutually binding. Both parties must fulfil the obligations in the contract. Neither party can change the contract unilaterally except in exceptional cases. As a rule changes must be approved by both parties.

A business does not generally have the right to change contract terms unilaterally. This also applies to price, which is a contract term. The grounds on which a business can change a contract and what terms can be used regarding changes depend on the type of contract. Contracts that are valid until further notice and other long-duration contracts are subject to rules that differ in some respects from those applying to one-time or fixed-duration contracts. Whether a contract concerns an order or cash agreement also influences the matter.

LONG-DURATION CONTRACTS

Contracts that are valid until further notice include those which concern the supply of telephone, electricity, water, waste management and district heat service. Insurance contracts also fall in this category, along with standing subscriptions for newspapers and cable TV service contracts. Special rules apply to changes in the terms of bank account contracts and credit card account contracts.

Obviously long-duration contracts cannot remain in ef-

fect for the customer's lifetime without changes, including changes in price. A business does not have an unlimited right to change the content of a contract unilaterally in any way it wants, however.

As a rule, a business can change a contract unilaterally only if

- the grounds for such a change are legitimate
- the grounds are specified in the contract terms and
- the content of the contract does not change substantially from the consumer's viewpoint.

Legitimate grounds for a change can be

- a substantial rise in production, purchasing or other costs
- an essential change in circumstances (specified in terms if necessary) which the business could not foresee when the contract was concluded
- a change in legislation or an official ruling which the business could not foresee when the contract was concluded.

Legitimate grounds for changing a contract must be specified in the contract terms, exhaustively. A contract cannot be changed on any other grounds besides those specified in terms. Grounds must be stated "transparently" so that the prerequisites for a change and the procedure for determining the size of price increases are clear.

No substantial changes all of a sudden

Whether a change is substantial must be evaluated from the viewpoint of each customer, and the comparison should be based on the contract in force at the time, not the original contract. An exception is life insurance, in which case the comparison is based on the original contract.

Large increases cannot be made unilaterally in a long-duration contract all of a sudden, since a large increase is generally a substantial change in a contract. If necessary a change in pricing must be implemented gradually over a longer period.

The significance of price changes should not be evaluated on the basis of how much prices or charges rise on average. The overall evaluation of the change is important. There is no rule of thumb as to what size of price increase can be considered substantial. If an increase is substantial for an individual consumer, in real and relative terms, a business must consider how the change should be implemented. For example, if a water works adds a fixed basic charge to charges based on consumption, it must make sure that the change does not affect individual customers' charges in a substantial way.

A business can reserve the right to make minor changes in contract terms that do not affect the key content of a contract.

In the case of newspaper subscriptions the billing period can have significance when prices are increased. If a subscriber chooses to pay once a year and pays the subscription price that is in effect, a change in the subscription price can only be made from the beginning of the next billing period in this customer's case.

Change in price clause should work both ways

Both parties' rights and obligations should be balanced in a contract. Consequently a change in price clause should apply not only to price increases but also to situations in which the costs specified in the clause fall. If a power company has raised the price of electricity on the grounds that the cost of procuring electricity has risen, for example, it must also lower the price when its own procurement costs decline.

Clear information concerning changes in advance

A business must notify consumers

- how prices, charges or other contract terms will change
- when changes will come into effect and
- the grounds on which changes are being made.

The notification cannot be disguised in marketing as an improvement in service. The significance of the change compared with the existing situation must be clearly explained to consumers. The notification must clearly state how a contract will change, what the new charges will be or other contract terms. If insurance terms are changed, for example, consumers must be informed of any weakening or limitation of their coverage. If the price of electricity changes, sample calculations using individual customers' or typical customers' consumption can be used to illustrate the effect of the change.

To give consumers a reasonable time to prepare, notification of a change must generally be sent to consumers at least a month in advance. As a rule a shorter notice period is possible only if the grounds are a change in legislation or an official ruling.

Consumers' right to dissolve a contract

Naturally consumers always have the right to dissolve a long-duration contract, for example when they are notified of a change in contract terms. When a business notifies customers of a change in contract terms, it must also tell them that they can give notice and indicate the length of the notice period.

New terms or prices do not apply to a consumer during the notice period. Only if a change in price is based on a change in legislation or an official ruling can a new price come into effect during the notice period.

In practice consumers are not always able to dissolve a contract. They may not have access to another supplier of electricity or water, for example. The law requires that businesses' pricing must be fair, however. The Energy Market Authority or the Consumer Agency can intervene if excessive prices are charged.

Changes in an old contract or a completely new contract?

If a business wants to make substantial changes in contract terms that are detrimental to the consumer, what is involved is not the extension of a contract but rather the offering of a new contract. The business must dissolve the existing contract and offer the consumer a new one. The new contract with the changed terms comes into force if the consumer approves it.

There are some cases in which a business cannot dissolve a contract in order to make substantial changes from the consumer's viewpoint, however. The right to dissolve contracts for essential services such as electricity, water and telecom services is limited, for example. Insurance companies' right to cancel life insurance is also restrict-

ed by law.

At the end of a fixed-duration contract period, a business can of course offer the consumer a new contract with new terms. In the case of continuing indemnity insurance and certain types of life insurance this is possible at the beginning of a new policy period.

FIXED-DURATION CONTRACTS

The same principles generally apply to fixed-duration contracts as to contracts that are valid until further notice. The grounds for changing a fixed-duration contract must also be specified in the contract terms.

Changing a fixed-duration contract is subject to additional restrictions, however. The point of departure is that a normal change in the cost level or circumstances does not entitle a business to change a contract during its period of validity. If an electricity contract is concluded for a period of 1-2 years, for example, the price and other contract terms cannot be changed during this period.

A fixed-duration contract can be changed only in two cases. First of all this is possible if it is based on a change in legislation or an official ruling which the business could not foresee when the contract was concluded. This can involve a change in tax, import duties or other public charges, for example.

Secondly a contract can be changed if the consumer does not comply with terms. An insurance company can change the terms of indemnity insurance if a consumer did not provide all the relevant information when the contract was concluded or if a substantial change has taken place in circumstances and this increases risk.

When a fixed-duration contract ends, the company can offer the customer a new contract with new terms. For example, the terms for continuing indemnity insurance and certain types of life insurance can be changed at the beginning of a new policy period.

ONE-TIME CONTRACTS

One-time contracts are what the name implies and can cover the supply of one or more goods or services. They include contracts in the building field, for example, such as prefabricated houses and log cottages, as well as carpentry products and special jobs including heating, plumbing and air-conditioning work, painting and electrical contracting. Contracts concerning package tours and country holidays and new car orders are also one-time contracts.

Change possible only if grounds are legitimate and specified in the contract

As in the case of fixed-duration contracts, terms in one-time contracts can only be changed in special cases. The grounds must be legitimate and must be specified in the contract terms. Legitimate grounds to change a one-time contract can include:

- a change in legislation or an official ruling which the business could not reasonably be expected to foresee when the contract was concluded
- a change in tax, import duties or other public charges as specified in the contract
- a change in exchange rates, for example when a car is ordered or a tour is booked
- force majeure, i.e. circumstances beyond the business's control which the business could not reasonably be expected to foresee when the contract was concluded and whose consequences the business could not reasonably be expected to avoid or overcome, as specified in the contract.

A special case is if a business must react when a consumer does not comply with terms. If the seller has to postpone delivery because of some reason for which the buyer is responsible, for example in connection with a building contract, the seller can raise the price because of the delay and the resulting increase in costs.

Change in price clause should work both ways

If a business reserves the right to raise the price on the basis of changes in taxes or other public charges or exchange rates, for example, it must also agree to lower the price on similar grounds.

The consumer must be notified immediately of any change in the price or other terms in a one-time contract, along with the grounds. If a change is substantial, for example if the price is increased by 5-10%, the consumer has the right to dissolve the contract. This right must be mentioned in the contract terms.

A product or service generally cannot be replaced

Restrictions concerning cash contracts and the content of a delivery must be taken into consideration in changing one-time contracts.

A cash contract is one in which a product or service is delivered and paid for at the same time. A business cannot change the price or other terms afterwards in a way that is detrimental to the consumer.

A business cannot generally change the content of a

delivery unless the customer agrees to this. For example, if a product ordered by the customer is no longer in production, the seller cannot reserve the right to choose a replacement unilaterally.

A business can, however, apply a term that entitles it to change unessential aspects of a product on legitimate grounds. A tour operator, for example, has the right to change accommodation and transport arrangements if he cannot follow the agreed itinerary for reasons beyond his control and if the change does not substantially alter the nature of the tour.

LEGISLATION

According to Chapter 3 section 1 of the Consumer Protection Act, a business offering consumer goods or services may not make use of a contract term which, considering the price of the good or service and other circumstances, is unfair from consumers' viewpoint.

The Annex to Council Directive 93/13/EEC on unfair terms in consumer contracts contains a non-exhaustive list of the types of terms that are unfair. Subparagraph (j) mentions terms "enabling the seller or supplier to alter the terms of the contract unilaterally without a valid reason which is specified in the contract".

According to paragraph 2 of the same Annex, "Subparagraph (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."

The commentary to the bill that was submitted to implement the Directive (Government Bill 218/1994) notes that, "In contracts that are valid until further notice or are otherwise of long duration, changes in circumstances may result in the need to revise contract terms. However, it is not acceptable for a business to have an unlimited right to change the content of a contract unilaterally in any way it wants. In long-duration contracts it is justifiable from consumers' viewpoint that the grounds for unilateral changes must be specified in contract terms and

that the content of a contract cannot change substantially without both parties' cooperation. In evaluating the fairness of terms that allow unilateral changes, consideration can be given to the nature of the contract, the grounds for changes, the effect on the other content of the contract and the consumer's possibilities to dissolve the contract and conclude a new contract, among other things. Even in these cases evaluation should be based on the deliberation of all the facts."

Many special Acts (such as Chapter 3 sections 18-20 in the Insurance Contracts Act, Chapter 6a section 26 in the Electricity Market Act, Chapter 7 section 71 in the Communications Market Act, Chapter 4 section 23 in the Water Services Act and Chapter 2 section 14 in the Package Travel Act) contain provisions on changing contract terms. According to Chapter 4 section 30 of the Housing Transactions Act, in transactions involving new housing any term that gives the seller the right to raise the price unilaterally is invalid. Furthermore, Chapter 9 section 24 of the Consumer Protection Act stipulates the conditions on which a housing contractor may raise the agreed price in the sale of building elements and construction contracts. These provisions are mandatory and no exceptions that are detrimental to the consumer may be made.

Case law

The Market Court in ruling 1991:12 took a position on the stipulations regarding changes in terms used by an insurance company. The Market Court prohibited the use of a stipulation in continuing voluntary consumer insurance policies that gave the insurance company the unspecified and unlimited right to change contract terms unilaterally in a way that is detrimental to the consumer.

The Market Court noted that if a change in insurance terms is substantial from consumers' viewpoint, what is involved is not the extension of a contract but rather the offering of a new contract. According to the principles of contract law it is not enough to give the customer the sole option of dissolving a contract in such cases. The customer's express consent to the offer of a new contract must be obtained.