

Unfair Contract Terms in Thailand: The B.E. 2540 Act, Standard Form Contracts, Exclusion Clauses, and Non-Compete Clauses

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This article is general legal information, not a legal opinion on any specific matter. Each matter must be assessed on its own facts and evidence. The latest online version is at <https://eksiamcorporatelaw.com/en/articles/unfair-contract-terms-act-thailand.html>

An unfair contract term is a term that gives a business operator, the party prescribing a standard form contract, or the buyer under a sale with right of redemption an unreasonable advantage over the other party, under Section 4 of the Unfair Contract Terms Act B.E. 2540 (1997). Such a term is not void in its entirety; the court enforces it only to the extent that it is fair and reasonable in the circumstances. The Act applies to consumer contracts, standard form contracts, and contracts of sale with right of redemption, including standard form contracts that one company enters into with another.

Laws and cases referred to in this article

1. Unfair Contract Terms Act B.E. 2540 (1997), Sections 3, 4, 5, 6, 7, 8, 10, 11, and 12
2. Unfair Contract Terms Act 1977 (England), BGB Sections 305, 307, and 310 (Germany), Uniform Commercial Code Section 2-302 (United States)

Precedents: Supreme Court Judgments No. 3010/2565 and No. 8374/2559



The meaning of an unfair contract term under Section 4

Section 4, paragraph one identifies three types of contract that fall within the Act: contracts between a consumer and a business, trade, or professional operator; standard form contracts; and contracts of sale with right of redemption. A term in any of these contracts that gives one party an unreasonable advantage over the other is an unfair contract term and is enforceable only to the extent that it is fair and reasonable in the circumstances.

Section 4, paragraph one provides:

"The terms in a contract between the consumer and the business, trading or professional operator or in a standard form contract or in a contract of sale with right of redemption which render the business, trading or professional operator or the party prescribing the standard form contract or the buyer an unreasonable advantage over the other party shall be regarded as unfair contract terms, and shall only be enforceable to the extent that they are fair and reasonable according to the circumstances." (English text of the translation by Judge Sarawut Benjakul as published at samuiforsale.com; unofficial translation)

Thai original: "ข้อตกลงในสัญญา ระหว่าง ผู้บริโภค กับ ผู้ประกอบธุรกิจ การค้า หรือ วิชาชีพ หรือในสัญญาสำเร็จรูป หรือในสัญญาขายฝากที่ทำให้ผู้ประกอบธุรกิจการค้า หรือวิชาชีพ หรือผู้กำหนดสัญญาสำเร็จรูป หรือผู้ซื้อฝากได้เปรียบคู่สัญญาอีกฝ่ายหนึ่งเกินสมควร เป็นข้อสัญญาที่ไม่เป็นธรรม และให้มีผลบังคับได้เพียงเท่าที่เป็นธรรมและพอสมควรแก่กรณีเท่านั้น"

, Unfair Contract Terms Act B.E. 2540 (1997), Section 4, paragraph one^[1]

The legal effect of this section differs from the rule on void juristic acts in the Civil and Commercial Code. An unfair term remains in force; the court merely cuts it back to what is fair, for example by shortening a non-compete period or by preventing an exclusion clause from applying to certain kinds of loss. A party that has drafted a term too broadly therefore does not lose the term altogether, but neither does it get the full benefit of the wording.

The Act was published in the Royal Gazette on 16 November 1997 (B.E. 2540) and came into force one hundred and eighty days after publication. Under Section 12, it does not apply to juristic acts or contracts made before the date it came into force.^[2] The explanatory note



appended to the Act explains that the principle of the autonomy of the will left room for a party with superior economic bargaining power to take advantage of the other, so the State laid down guidelines for the courts to use in deciding which contract terms are unfair.^[3]

Standard form contracts between companies

A standard form contract is a written contract whose essential terms have been prescribed in advance and which one party uses in its business. The definition in Section 3 does not require the other party to be a consumer. A purchasing template, a lease template, or terms of service that a company uses with all of its counterparties can therefore be a standard form contract under the Act.

"“Standard form contract” means a written contract in which essential terms have been prescribed in advance, regardless whether being executed in any form, and is used by either contracting party in his business operation." (English text of the translation by Judge Sarawut Benjakul as published at samuiforsale.com; unofficial translation)

Thai original: “สัญญาสำเร็จรูป” หมายความว่า สัญญาที่ทำเป็นลายลักษณ์อักษรโดยมีการกำหนดข้อสัญญาที่เป็นสาระสำคัญไว้ล่วงหน้า ไม่ว่าจะทำในรูปแบบใด ซึ่งคู่สัญญาฝ่ายหนึ่งฝ่ายใดนำมาใช้ในการประกอบกิจการของตน"

, Unfair Contract Terms Act B.E. 2540 (1997), Section 3^[4]

The wording of Section 4, paragraph one separates a "standard form contract" from a "contract between a consumer and a business operator" with the word "or." The result is that a company which presents its own template to another company for signature, without allowing the essential terms to be negotiated, can be "the party prescribing the standard form contract" under Section 4. The issues to be proved in litigation are whether the essential terms were in fact prescribed in advance and whether the other party negotiated and amended them.

Section 4, paragraph two lays down a rule of interpretation: in case of doubt, a standard form contract is interpreted in favor of the party that did not prescribe it.^[5] This rule makes ambiguous wording in a company's template the company's own risk. The drafting party should use clear



language and define the key terms in the contract. The general rules on the formation of contracts and the interpretation of intention are covered in our article on what to check before signing a contract

Terms that confer an unreasonable advantage under Section 4, paragraph three

Section 4, paragraph three uses the test of whether a term requires the other party to perform or bear a burden beyond what a reasonable person would normally expect; such a term may be regarded as giving an advantage over the other party. The paragraph gives nine examples in sub-sections. The first five apply to business contracts generally, while sub-sections (6) to (9) concern sales with right of redemption, hire-purchase, credit cards, and compound interest.

The first five examples^[6] are:

- a term excluding or limiting liability arising from breach of contract (1);
- a term making the other party liable or bear a greater burden than the law prescribes (2);
- a term that ends the contract without reasonable cause, or that grants a right to terminate although the other party has not breached an essential term (3);
- a term granting a right not to perform any clause of the contract, or to perform late, without reasonable cause (4);
- a term allowing one party to require the other to bear a greater burden than existed when the contract was made (5).

The words "such as" in paragraph three show that the list is illustrative, not exhaustive. A term that matches one of the sub-sections is not automatically an unfair contract term: paragraph four directs the court to apply the criteria in Section 10 to decide whether the advantage is unreasonable. A limitation of liability that was negotiated and is reflected in the price may therefore be enforced in full according to its wording.



Supreme Court Judgment No. 3010/2565: an exclusion of liability in a vehicle lease

In this case the lessee took delivery of a vehicle under a lease and later found a loud noise from the braking system when reversing. The lessor attempted repairs several times without success. The lease contained a term that the lessor was not liable for defects in the vehicle. The Supreme Court held that the term was a standard form contract prescribed by the lessor, who had the greater bargaining power, and that it gave the lessor an unreasonable advantage over the lessee. It was therefore an unfair contract term and unenforceable under Section 4, paragraph three (1). The lessor was liable for the defect, and the lessee was entitled to terminate the lease.^[7]

The court gave weight to three facts. First, the term was in a template prescribed by the lessor. Second, the parties' bargaining power was unequal. Third, the defect was in a safety-related system and affected the ordinary intended use of the vehicle. A company that uses a broad exclusion of liability in its own template should assess the clause against these three facts before relying on it.

Non-compete clauses and restrictions on the pursuit of an occupation under Section 5

Section 5 applies to terms that restrict a person's right or freedom to pursue an occupation or to enter into juristic acts connected with a business. A term that is not void but places a greater burden on the restricted person than could normally be expected is enforceable only to the extent that it is fair and reasonable in the circumstances. This section applies to every contract; it is not limited to consumer contracts or standard form contracts.



"The terms restricting the right or freedom in professing an occupation or an execution of a juristic act related to the business, trading or professional operation which are not void, but being the terms that cause the person whose right or freedom has been restricted to bear more burden than that could have been anticipated under normal circumstances, shall only be enforceable to the extent that they are fair and reasonable according to such circumstances." (English text of the translation by Judge Sarawut Benjakul as published at samuiforsale.com; unofficial translation)

Thai original: "ข้อตกลงจำกัดสิทธิหรือเสรีภาพในการประกอบอาชีพการงาน หรือการทำนิติกรรมที่เกี่ยวข้องกับการประกอบธุรกิจการค้าหรือวิชาชีพซึ่งไม่เป็นโมฆะ แต่เป็นข้อตกลงที่ทำให้ผู้ถูกจำกัดสิทธิ หรือเสรีภาพต้องรับภาระมากกว่าที่จะพึงคาดหมายได้ตามปกติ ให้มีผลบังคับได้เพียงเท่าที่เป็นธรรมและพอสมควรแก่กรณีเท่านั้น"

, Unfair Contract Terms Act B.E. 2540 (1997), Section 5, paragraph one^[8]

Section 5, paragraph two directs the court to consider four matters: the geographic scope of the restriction, its duration, the ability and opportunity of the restricted person to pursue an occupation in another form or with other persons, and all of the parties' legitimate interests. In business, terms of this kind appear in executive employment contracts, business sale agreements in which the seller undertakes not to open a competing business, franchise agreements, and exclusive distributorship agreements.

Supreme Court Judgment No. 8374/2559: a two-year ban on working for a competitor

The employment contract in this case prohibited an employee holding the position of senior sales executive from working, for two years after the contract ended, for another employer engaged in the same business as, or in competition with, the employer. The Supreme Court held that the term lawfully protected the rights and interests of the parties, was not unreasonable, and did not take advantage of the other party so as to amount to an unfair contract term; it was therefore enforceable against the employee. An employee who resigned and, within two years, went to work for a company in the same business was liable to pay damages under the contract.

[9]

The court gave weight to the employee's position, whose duties directly affected the employer's trade. A non-compete clause tied to the position and to the information the employee actually had access to is therefore more likely to be enforceable than the same clause imposed on every



employee. The details of drafting a non-compete clause in an employment contract are in our article on employment contracts, while severance pay and advance notice on termination are covered in our article on employers' rights and duties on termination

Exclusions and limitations of liability under Sections 6 to 8

Section 8 divides exclusions of liability into two groups. For loss of life or injury to body or health caused intentionally or negligently, an exclusion cannot be relied on at all. For other loss, an exclusion that is not void is enforceable only to the extent that it is fair and reasonable in the circumstances. The rule applies to contract terms, announcements, and notices made in advance.

Section 8, paragraph one covers liability in tort as well as liability for breach of contract.^[10] A sign or website term stating that "the company accepts no liability for injury of any kind" therefore does not protect the company where the injury results from the negligence of the company or of a person for whom the company is responsible. For damage to property or loss of commercial benefit, a limitation of liability still operates within fair limits.

Section 6 deals with consumer contracts under which property is delivered. The business operator may not exclude or limit its liability for defects or for disturbance of the consumer's right, unless the consumer already knew of the defect or the cause of the disturbance when the contract was made; in that case the term is enforceable only to the extent that it is fair and reasonable in the circumstances.^[11] Section 7 allows the court to reduce a disproportionately high earnest so that only the amount of the actual damage may be forfeited.^[12] A company that sells goods to both consumers and business customers should keep the warranty terms for the two groups separate.



The criteria the courts apply under Section 10 and the prohibition in Section 11

Section 10 directs the court to consider all the circumstances in deciding how far a term should be enforced, including good faith, bargaining power, economic status, knowledge and understanding, expertise, expectations, past practice, other alternatives, the ordinary usages of that type of contract, the time and place of contracting, and whether one party bears a much heavier burden. Section 11 makes void any term that excludes the application of the Act.

The criteria in Section 10^[2] mean that the outcome of a case between two companies differs from that of a consumer case. A large company with an in-house legal department that has used the same type of contract before has a level of expertise and expectations different from those of a small retailer, so the court may enforce the same term differently against two different counterparties. Evidence of negotiation, drafts exchanged and revised, and a price that reflects the allocation of risk are therefore key evidence for the party that wants the term enforced in full.

Unfair contract terms in comparative law: England, Germany, and the United States

England, Germany, and the United States control unfair contract terms with different tests. England applies a requirement of reasonableness to exclusion clauses; Germany renders ineffective standard terms that unreasonably disadvantage the other party; and the United States lets the courts refuse to enforce unconscionable terms. Thai law differs from all three in that the court adjusts the term so that it is enforceable to the extent that it is fair.

England Section 2(1) of the Unfair Contract Terms Act 1977 prohibits excluding or restricting liability for death or personal injury resulting from negligence, and section 2(2) allows an exclusion of liability for other loss only in so far as it satisfies the requirement of reasonableness.

^[13] Section 11(1) defines that test: the term must be a fair and reasonable one, having regard to the circumstances that the parties knew or ought to have known when the contract was made.^[14]



This structure is close to Section 8 of the Thai Act. Consumer contracts in England are now governed by separate legislation, as section 2(4) provides that section 2 does not apply to a term in a consumer contract.

Germany Section 305(1) of the BGB defines general terms and conditions (Allgemeine Geschäftsbedingungen) as terms pre-formulated for a large number of contracts which one party presents to the other when the contract is concluded. Section 307(1) renders ineffective a term that unreasonably disadvantages the other party contrary to the requirement of good faith.^[15] Section 310(1) disapplies part of the list of prohibited terms when the other party is a business, but Section 307 continues to apply, and due regard must be given to commercial custom and usage.^[16] Germany therefore controls standard terms between businesses, as Thailand does.

United States Section 2-302(1) of the Uniform Commercial Code applies to contracts for the sale of goods. If the court finds that the contract or any clause was unconscionable when it was made, the court may refuse to enforce the contract, enforce the remainder without the unconscionable clause, or limit the application of the clause so as to avoid an unconscionable result.^[17] The last option is close to the Thai approach, which lets the court adjust the scope of the term.



Issue	Thailand (B.E. 2540 Act)	England (UCTA 1977)	Germany (BGB)	United States (UCC)
Main test	Unreasonable advantage (s. 4)	Reasonableness (s. 11)	Unreasonable disadvantage contrary to good faith (s. 307)	Unconscionability (2-302)
Effect of a term that fails the test	Enforceable to the extent that it is fair	Ineffective	Ineffective	Not enforced, severed, or limited
Applies to business-to-business contracts	Yes, where it is a standard form contract	Yes	Yes, Section 307 (s. 310)	Applies to contracts for the sale of goods
Death or personal injury caused by negligence	Cannot be excluded (s. 8)	Cannot be excluded (s. 2(1))	Not examined in this article	Not examined in this article

Standard form contracts from a law-and-economics perspective

Law and economics sees two sides to standard form contracts. On one side, templates lower the cost of production and distribution and bring prices down. On the other, the party that did not draft the contract often has no way to find better terms. The scholarship on this question helps explain why Thai law chose to let the courts adjust terms rather than prohibit standard form contracts altogether.

Friedrich Kessler wrote in the Columbia Law Review in 1943 that mass production and distribution make standardized contracts inevitable. Uniform terms allow businesses to calculate risk precisely, and if the cost savings are reflected in prices, society as a whole benefits. But Kessler went on to observe that standard contracts are typically used by businesses with strong



bargaining power, and the weaker party is frequently unable to choose other terms, either because the drafter has a monopoly or because every competitor uses the same clauses.^[18] This observation matches the explanatory note to the Thai Act, which refers to unequal economic bargaining power.

Lucian Bebchuk and Richard Posner offered the other side of the explanation in the Michigan Law Review in 2006: contracts drafted in the seller's favor can arise even in competitive markets. The seller is restrained by its reputation, whereas an individual consumer has no reputation to lose. A one-sided term therefore gives the seller discretion in how it treats customers and protects the seller against opportunistic buyers.^[19] This work explains why Section 10 of the Thai Act directs the court to look at all the circumstances, including past practice, rather than treating every one-sided term as unfair. One caution: the two authors' argument is built on consumer markets. When it is applied to contracts between businesses, the reputational factor exists on both sides.

Guidance for companies that use their own contract templates

A company that uses the same template with many counterparties can reduce its exposure under the Act by giving its limitation of liability a clear scope, carving out loss of life and personal injury, allowing counterparties to negotiate the key terms, and keeping a record of the negotiation. A term that was actually negotiated has a better chance of being enforced in full than one presented for signature on a take-it-or-leave-it basis.

- **Limitation of liability** Set a cap as a fixed amount or a proportion of the fees rather than excluding all liability, and state clearly that the cap does not apply to loss of life or injury to body or health caused intentionally or negligently.
- **Right of termination** Tie it to specified grounds, or give both parties the same right, so that the clause does not fall within Section 4, paragraph three (3).
- **Price or burden adjustments** Specify the formula or the grounds for adjustment instead of a unilateral right to adjust.



- **Non-compete clauses** Limit the type of business, the territory, and the duration so that they correspond to the interest that actually needs protecting.
- **Definitions** Define the key terms in the contract, because ambiguous wording will be interpreted in favor of the party that did not draft it.
- **Negotiation records** Keep the revised drafts and negotiation emails as evidence of bargaining power and expectations under Section 10.
- **Personal data** Terms of service that collect the personal data of a counterparty's customers or employees must also be checked against the personal data protection law; see our article on the PDPA for businesses (Thai)

Good faith in the making of contracts and the exercise of contractual rights, from the perspective of theory and comparative law, is discussed in our article on good faith in contract law on Eksiam Legal (Thai)

Frequently asked questions about unfair contract terms

What is an unfair contract term?

An unfair contract term is a term in a consumer contract, a standard form contract, or a contract of sale with right of redemption that gives the business operator, the party prescribing the standard form contract, or the buyer an unreasonable advantage over the other party, under Section 4 of the Unfair Contract Terms Act B.E. 2540 (1997). Such a term is enforceable only to the extent that it is fair and reasonable in the circumstances.

Does the Unfair Contract Terms Act apply to contracts between companies?

Yes, where the contract is a standard form contract, that is, a written contract whose essential terms one party prescribed in advance and uses in its business. Section 4 treats standard form contracts separately from consumer contracts. Restrictions on the pursuit of an occupation under Section 5 and exclusions of liability under Section 8 apply to every type of contract.



Is a term prohibiting an employee from working for a competitor enforceable?

It is enforceable only to the extent that it is fair and reasonable in the circumstances under Section 5. The court considers the territory, the duration, the employee's opportunity to pursue other occupations, and the employer's legitimate interests. In Supreme Court Judgment No. 8374/2559, a two-year ban on a senior sales executive working for a competitor was held enforceable.

Can a contract state that the company is not liable in any case?

Not with full effect according to its wording. Section 8, paragraph one prohibits relying on an exclusion for loss of life or injury to body or health caused intentionally or negligently. For other loss, the exclusion operates only to the extent that it is fair, and in Supreme Court Judgment No. 3010/2565 an exclusion of liability for defects in a leased vehicle contained in a standard form contract was held unenforceable.

Can the parties agree that the Unfair Contract Terms Act will not apply?

No. Section 11 provides that a contract term excluding the application of the Act, in whole or in part, is void. The parties therefore cannot waive the protection of the Act in advance.

When to seek advice

The time to review a contract is before a template is rolled out to a large number of counterparties, and when a counterparty or customer invokes the Act to challenge a limitation of liability, a non-compete clause, or the forfeiture of an earnest. A review before use allows the wording to be corrected once for every contract that follows.

Eksiam Chaisorn, legal consultant at Eksiam & Partners Co., Ltd., reviews and drafts templates for sale, service, executive employment, and business sale agreements, considering the effect of the Act on each term. Related topics are covered in our article on what to check before signing a contract, our article on employment contracts, and our article on shareholders' agreements before a joint investment (Thai)



Footnotes

1. Unfair Contract Terms Act B.E. 2540 (1997), Section 4, paragraph one: "The terms in a contract between the consumer and the business, trading or professional operator or in a standard form contract or in a contract of sale with right of redemption which render the business, trading or professional operator or the party prescribing the standard form contract or the buyer an unreasonable advantage over the other party shall be regarded as unfair contract terms, and shall only be enforceable to the extent that they are fair and reasonable according to the circumstances." (English text of the translation by Judge Sarawut Benjakul as published at samuiforsale.com; unofficial translation) Thai original: "ข้อตกลงในสัญญาระหว่างผู้บริโภคกับผู้ประกอบธุรกิจการค้า หรือวิชาชีพ หรือในสัญญาสำเร็จรูป หรือในสัญญาขายฝากที่ทำให้ผู้ประกอบธุรกิจการค้า หรือวิชาชีพ หรือผู้กำหนดสัญญาสำเร็จรูป หรือผู้ซื้อฝากได้เปรียบคู่สัญญาอีกฝ่ายหนึ่งเกินสมควร เป็นข้อสัญญาที่ไม่เป็นธรรม และให้มีผลบังคับได้เพียงเท่าที่เป็นธรรมและพอสมควรแก่กรณีเท่านั้น"
2. Unfair Contract Terms Act B.E. 2540 (1997), Section 10: "In determining to what extent the terms be enforceable as fair and reasonable it shall be taken into consideration all circumstances of the case, including: (1) good faith, bargaining power, economic status, knowledge and understanding, adeptness, anticipation, guidelines previously observed, other alternatives, and all advantages and disadvantages of the contracting parties according to actual condition; (2) ordinary usages applicable to such kind of contract; (3) time and place of making the contract or performing of the contract; (4) the much heavier burden borne by one contracting party when compared to that of the other party." Section 11: "Contract terms which prohibit the applicability of this Act, either partly or wholly, shall be void." Section 12: "This Act shall not be applied to the juristic acts or contracts made prior to the date of entry into force of this Act." (English text of the translation by Judge Sarawut Benjakul as published at samuiforsale.com; unofficial translation); Royal Gazette, Volume 114, Part 72 Kor, page 32, 16 November 1997 (B.E. 2540); under Section 2 the Act came into force one hundred and eighty days after its publication in the Royal Gazette. Thai original: มาตรา 10 "ในการวินิจฉัยว่าข้อสัญญาจะมีผลบังคับเพียงใดจึงจะเป็นธรรมและพอสมควรแก่กรณีให้พิจารณาถึงพฤติการณ์ทั้งปวง รวมทั้ง (1) ความสุจริต อำนาจต่อรอง ฐานะทางเศรษฐกิจ ความรู้ความเข้าใจ ความสันติจิตเจตนา ความคาดหวัง แนวทางที่เคยปฏิบัติ ทางเลือกอย่างอื่น และทางได้เสียทุกอย่างของคู่สัญญาตามสภาพที่เป็นจริง (2) ปกติประเพณีของสัญญานั้น (3) เวลาและสถานที่ในการทำสัญญาหรือในการปฏิบัติตามสัญญา (4) การรับภาระที่หนักกว่ามากของคู่สัญญาฝ่ายหนึ่งเมื่อเปรียบเทียบกับคู่สัญญาอีกฝ่ายหนึ่ง" มาตรา 11 "ข้อสัญญาใดที่มีให้นำบทบัญญัติแห่งพระราชบัญญัตินี้ไปใช้บังคับไม่ว่าทั้งหมดหรือบางส่วน ข้อสัญญานั้นเป็นโมฆะ" มาตรา 12 "พระราชบัญญัตินี้ไม่ใช้บังคับแก่นิติกรรมหรือสัญญาที่ทำขึ้นก่อนวันที่พระราชบัญญัตินี้ใช้บังคับ"
3. Unfair Contract Terms Act B.E. 2540 (1997), explanatory note appended to the Act: "The reason for the promulgation of this Act is that the law on juristic acts and contracts currently in force rests on the freedom of the individual under the principle of the autonomy of the will ... which allows a party with superior economic bargaining power to take advantage of that principle to exploit the other contracting party ... by laying down guidelines for the courts to use in determining which contract terms or agreements are unfair." (unofficial translation). Thai text as published by the Office of the Council of State, file available at <https://www.opsmoac.go.th/law-files-391991791832> (checked 28 September 2026). Thai original: "เหตุผลในการประกาศใช้พระราชบัญญัติฉบับนี้ คือ เนื่องจากหลักกฎหมายเกี่ยวกับนิติกรรมหรือสัญญาที่ใช้บังคับอยู่มีพื้นฐานมาจากเสรีภาพของบุคคล ตามหลักของความคิดดีศรีของการแสดงเจตนา ... ทำให้ผู้ซึ่งมีอำนาจต่อรองทางเศรษฐกิจเหนือกว่าถือโอกาสอาศัยหลักดังกล่าวเอาเปรียบคู่สัญญาอีกฝ่ายหนึ่ง ... โดยกำหนดแนวทางให้แก่ศาลเพื่อใช้ในการพิจารณาว่าข้อสัญญาหรือข้อตกลงใดที่ไม่เป็นธรรม"
4. Unfair Contract Terms Act B.E. 2540 (1997), Section 3: "'Standard form contract' means a written contract in which essential terms have been prescribed in advance, regardless whether being executed in any form, and is used by either contracting party in his business operation." (English text of the translation by Judge Sarawut Benjakul as published at



samuiforsale.com; unofficial translation) Thai original: "สัญญาสำเร็จรูป" หมายความว่า สัญญาที่ทำเป็นลายลักษณ์อักษร โดยมีการกำหนดข้อสัญญาที่เป็นสาระสำคัญไว้ล่วงหน้า ไม่ว่าจะทำในรูปแบบใด ซึ่งคู่สัญญาฝ่ายหนึ่งฝ่ายใดนำมาใช้ในการ ประกอบกิจการของตน"

5. Unfair Contract Terms Act B.E. 2540 (1997), Section 4, paragraph two: "In case of doubt, the standard form contract shall be interpreted in favour of the party that does not prescribe the said standard form contract." (English text of the translation by Judge Sarawut Benjakul as published at samuiforsale.com; unofficial translation) Thai original: "ในกรณีที่ มีข้อสงสัย ให้ตีความสัญญาสำเร็จรูปไปในทางที่เป็นคุณแก่ฝ่ายซึ่งมิได้เป็นผู้กำหนดสัญญาสำเร็จรูปนั้น"
6. Unfair Contract Terms Act B.E. 2540 (1997), Section 4, paragraph three: "The terms with characters or effects in a way that the other party is obliged to comply or bear more burden than that could have been anticipated by a reasonable person in normal circumstance may be regarded as terms that render an advantage over the other party, such as: (1) terms excluding or restricting liability arising from breach of contract; (2) terms rendering the other party to be liable or to bear more burden than that prescribed by law; (3) terms rendering the contract to be terminated without justifiable ground or granting the right to terminate the contract despite the other party is not in breach of the contract in the essential part; (4) terms granting the right not to comply with any clause of the contract or to comply with the contract within a delayed period without reasonable ground; (5) terms granting the right to a party to the contract to claim or compel the other party to bear more burden than that existed at the time of making the contract." and paragraph four: "In considering whether the advantage rendered by the terms under paragraph three be unreasonable, section 10 shall apply mutatis mutandis." (English text of the translation by Judge Sarawut Benjakul as published at samuiforsale.com; unofficial translation) Thai original: บรรดาสมา "ข้อตกลงที่มีลักษณะหรือมีผลให้คู่สัญญาอีก ฝ่ายหนึ่งปฏิบัติหรือรับภาระเกินกว่าที่วิญญูชนจะพึงคาดหมายได้ตามปกติ เป็นข้อตกลงที่อาจถือได้ว่าทำให้ได้เปรียบคู่สัญญาอีก ฝ่ายหนึ่ง เช่น (1) ข้อตกลงยกเว้นหรือจำกัดความรับผิดชอบที่เกิดจากการผิดสัญญา (2) ข้อตกลงให้ต้องรับผิดชอบหรือรับภาระมากกว่าที่ กฎหมายกำหนด (3) ข้อตกลงให้สัญญาสิ้นสุดลงโดยไม่มีเหตุผลอันสมควร หรือให้สิทธิบอกเลิกสัญญาได้โดยอีกฝ่ายหนึ่งมิได้ผิด สัญญาในข้อสาระสำคัญ (4) ข้อตกลงให้สิทธิที่จะไม่ปฏิบัติตามสัญญาข้อหนึ่งข้อใด หรือปฏิบัติตามสัญญาในระยะเวลาที่ล่าช้าได้ โดยไม่มีเหตุผลอันสมควร (5) ข้อตกลงให้สิทธิคู่สัญญาฝ่ายหนึ่งเรียกร้องหรือกำหนดให้อีกฝ่ายหนึ่งต้องรับภาระเพิ่มขึ้นมากกว่า ภาระที่เป็นอยู่ในเวลาทำสัญญา" บรรดาสมา "ในการพิจารณาข้อตกลงที่ทำให้ได้เปรียบคู่สัญญาอีกฝ่ายหนึ่งตามวรรคสาม จะเป็น การได้เปรียบเกินสมควรหรือไม่ให้นำมาตรา 10 มาใช้โดยอนุโลม"
7. Supreme Court Judgment No. 3010/2565 (Supreme Court judgment search system, <https://deka.supremecourt.or.th/>, checked 28 September 2026; provisions cited: Civil and Commercial Code Sections 193/30, 472, 474, and 549, and Unfair Contract Terms Act B.E. 2540 (1997), Section 4, paragraph three (1)), stating in part: "Although the lease contained a term relieving the second defendant of liability for defects in the leased vehicle, being an exclusion of liability under Section 549 read with Section 472 of the Civil and Commercial Code, that term was a standard form contract prescribed by the second defendant, who had the greater bargaining power, and gave the second defendant an unreasonable advantage over the plaintiff; it was therefore an unfair contract term and unenforceable under Section 4, paragraph three (1) of the Unfair Contract Terms Act B.E. 2540." (unofficial translation) Thai original: "แม้ สัญญาเช่ามีข้อตกลงให้จำเลยที่ 2 ไม่ต้องรับผิดชอบในความชำรุดบกพร่องของรถยนต์ที่เช่าอันเป็นการยกเว้นความผิดตาม ป.พ.พ. มาตรา 549 ประกอบมาตรา 472 ก็ตาม ข้อตกลงดังกล่าวเป็นสัญญาสำเร็จรูปที่จำเลยที่ 2 ซึ่งมีอำนาจต่อรองมากกว่าเป็นผู้กำหนด ทำให้จำเลยที่ 2 ได้เปรียบโจทก์เกินสมควร จึงเป็นข้อสัญญาที่ไม่เป็นธรรม ไม่มีผลใช้บังคับตาม พ.ร.บ.ว่าด้วยข้อสัญญาที่ไม่เป็น ธรรม พ.ศ. 2540 มาตรา 4 วรรคสาม (1)"
8. Unfair Contract Terms Act B.E. 2540 (1997), Section 5, paragraph two: "In determining whether the terms under paragraph one cause the person, whose right or freedom has been restricted, to bear more burden than that could have been anticipated, consideration shall be taken to the scope of the area and the period of restriction of right or freedom, including whose ability and opportunity to profess occupation or to execute juristic act in other form or with other person, as well as all legitimate advantages and disadvantages of the contracting parties." (English text of the



translation by Judge Sarawut Benjakul as published at samuiforsale.com; unofficial translation) Thai original: "ในการวินิจฉัยว่าข้อตกลงตามวรรคหนึ่งทำให้ผู้ถูกจำกัดสิทธิหรือเสรีภาพต้องรับภาระมากกว่าที่จะพึงคาดหมายได้หรือไม่ ให้พิจารณาถึงขอบเขตในด้านพื้นที่และระยะเวลาของการจำกัดสิทธิหรือเสรีภาพ รวมทั้งความสามารถและโอกาสในการประกอบอาชีพการงานหรือการทำนิติกรรมในรูปแบบอื่นหรือกับบุคคลอื่นของผู้ถูกจำกัดสิทธิหรือเสรีภาพ ประกอบกับทางได้เสียทุกอย่างอันชอบด้วยกฎหมายของคู่สัญญาด้วย"

9. Supreme Court Judgment No. 8374/2559 (Supreme Court judgment search system, <https://deka.supremecourt.or.th/>, checked 28 September 2026; provision cited: Labor Protection Act B.E. 2541 (1998), Section 14/1), stating in part that the prohibition on working for another employer engaged in the same kind of business as, or in competition with, the plaintiff within 2 years after the end of the employment contract "is a reciprocal contract that lawfully protects the rights and interests of the parties, is not unreasonable, and does not take advantage of the other party in the making of the contract so as to amount to an unfair contract term; it is therefore enforceable against the first defendant." (unofficial translation) Thai original: "เป็นสัญญาต่างตอบแทนที่รักษาสิทธิและประโยชน์ของคู่กรณีที่เป็นไปโดยชอบ ไม่เป็นการเกินสมควรหรือเอาเปรียบกันในการทำสัญญาอันจะเข้าลักษณะข้อสัญญาที่ไม่เป็นธรรม จึงมีผลใช้บังคับกับจำเลยที่ 1"
10. Unfair Contract Terms Act B.E. 2540 (1997), Section 8, paragraph one: "The terms, announcement or notice made in advance to exclude or restrict liability for tort or breach of contract respecting loss of life, body or health of another person as a result of an action deliberately or negligently committed by the person making the terms, announcement or notice or by other person for which the person making the terms, announcement or notice shall also be liable, shall not be raised as an exclusion or restriction of the liability." and paragraph two: "The terms, announcement or notice made in advance to exclude or restrict the liability in any case other than that mentioned in paragraph one which are not void shall only be enforceable to the extent that they are fair and reasonable according to the circumstances." (English text of the translation by Judge Sarawut Benjakul as published at samuiforsale.com; unofficial translation) Thai original: วรรคหนึ่ง "ข้อตกลง ประกาศ หรือคำแจ้งความที่ได้ทำไว้ล่วงหน้า เพื่อยกเว้นหรือจำกัดความรับผิดเพื่อละเมิดหรือผิดสัญญาในความเสียหายต่อชีวิต ร่างกาย หรืออนามัยของผู้อื่น อันเกิดจากการกระทำโดยจงใจหรือประมาทเลินเล่อของผู้ตกลง ผู้ประกาศ ผู้แจ้งความ หรือของบุคคลอื่นซึ่งผู้ตกลง ผู้ประกาศ หรือผู้แจ้งความต้องรับผิดด้วย จะนำมาอ้างเป็นข้อยกเว้นหรือจำกัดความรับผิดไม่ได้" วรรคสอง "ข้อตกลง ประกาศ หรือคำแจ้งความที่ได้ทำไว้ล่วงหน้าเพื่อยกเว้นหรือจำกัดความรับผิดในกรณีอื่นนอกจากที่กล่าวในวรรคหนึ่ง ซึ่งไม่เป็นโมฆะ ให้มีผลบังคับได้เพียงเท่าที่เป็นธรรมและพอสมควรแก่กรณีเท่านั้น"
11. Unfair Contract Terms Act B.E. 2540 (1997), Section 6: "A contract between the consumer and the business, trading or professional operator involving payment of debts by delivery of property to the consumer shall not contain the terms excluding or restricting the liability of the business, trading or professional operator for a defect or disturbance of right, except where the consumer knew of the defect or the cause of such disturbance of right at the time of making the contract. In such a case, the terms excluding or restricting the liability shall only be enforceable to the extent that they are fair and reasonable according to such circumstances." (English text of the translation by Judge Sarawut Benjakul as published at samuiforsale.com; unofficial translation) Thai original: "สัญญาระหว่างผู้บริโภคกับผู้ประกอบธุรกิจการค้าหรือวิชาชีพที่มีการชำระหนี้ด้วยการส่งมอบทรัพย์สินให้แก่ผู้บริโภค จะมีข้อตกลงยกเว้นหรือจำกัดความรับผิดของผู้ประกอบธุรกิจการค้าหรือวิชาชีพเพื่อความชำรุดบกพร่องหรือเพื่อการรอนสิทธิไม่ได้ เว้นแต่ผู้บริโภคได้รู้ถึงความชำรุดบกพร่องหรือเหตุแห่งการรอนสิทธิอยู่แล้วในขณะทำสัญญา ในกรณีนี้ให้ข้อตกลงยกเว้นหรือจำกัดความรับผิดนั้นมีผลบังคับได้เพียงเท่าที่เป็นธรรมและพอสมควรแก่กรณีเท่านั้น"



12. Unfair Contract Terms Act B.E. 2540 (1997), Section 7: "In a contract which prescribes that something is given as earnest, if there occurs a case that such earnest is to be forfeited and the earnest is disproportionately high, the court may order that the forfeiture be reduced to the actual damage so occurred." (English text of the translation by Judge Sarawut Benjakul as published at samuiforsale.com; unofficial translation) Thai original: "ในสัญญาที่มีการให้สิ่งใดไว้เป็นมัดจำ หากมีกรณีที่จะต้องรับมัดจำถ้ามัดจำนั้นสูงเกินส่วน ศาลจะลดลงให้รับได้เพียงเท่าความเสียหายที่แท้จริงก็ได้"
13. Unfair Contract Terms Act 1977 (UK) s.2(1) "A person cannot by reference to any contract term or to a notice given to persons generally or to particular persons exclude or restrict his liability for death or personal injury resulting from negligence." s.2(2) "In the case of other loss or damage, a person cannot so exclude or restrict his liability for negligence except in so far as the term or notice satisfies the requirement of reasonableness." s.2(4) "This section does not apply to (a) a term in a consumer contract ..." <https://www.legislation.gov.uk/ukpga/1977/50/section/2>
14. Unfair Contract Terms Act 1977 (UK) s.11(1) "... the term shall have been a fair and reasonable one to be included having regard to the circumstances which were, or ought reasonably to have been, known to or in the contemplation of the parties when the contract was made." <https://www.legislation.gov.uk/ukpga/1977/50/section/11>
15. BGB §305 Abs. 1 Satz 1 "Allgemeine Geschäftsbedingungen sind alle für eine Vielzahl von Verträgen vorformulierten Vertragsbedingungen, die eine Vertragspartei (Verwender) der anderen Vertragspartei bei Abschluss eines Vertrags stellt." §307 Abs. 1 Satz 1 "Bestimmungen in Allgemeinen Geschäftsbedingungen sind unwirksam, wenn sie den Vertragspartner des Verwenders entgegen den Geboten von Treu und Glauben unangemessen benachteiligen." https://www.gesetze-im-internet.de/bgb/_307.html
16. BGB §310 Abs. 1 Satz 2 "§ 307 Abs. 1 und 2 findet in den Fällen des Satzes 1 auch insoweit Anwendung, als dies zur Unwirksamkeit von in § 308 Nummer 1, 2 bis 9 und § 309 genannten Vertragsbestimmungen führt; auf die im Handelsverkehr geltenden Gewohnheiten und Gebräuche ist angemessen Rücksicht zu nehmen." https://www.gesetze-im-internet.de/bgb/_310.html
17. Uniform Commercial Code §2-302(1) "If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result." <https://www.law.cornell.edu/ucc/2/2-302>
18. Friedrich Kessler, "Contracts of Adhesion: Some Thoughts about Freedom of Contract," 43 Columbia Law Review 629 (1943), pp. 631-632: "Standard contracts are typically used by enterprises with strong bargaining power. The weaker party, in need of the goods or services, is frequently not in a position to shop around for better terms, either because the author of the standard contract has a monopoly (natural or artificial) or because all competitors use the same clauses." (full text read on HeinOnline, 28 September 2026)
19. Lucian A. Bebchuk and Richard A. Posner, "One-Sided Contracts in Competitive Consumer Markets," 104 Michigan Law Review 827 (2006), pp. 827-828: "The existence of a one-sided contract does not imply that the transaction will be one-sided, but only that the seller will have discretion with respect to how to treat the consumer." (full text read on HeinOnline, 28 September 2026)

