



Exclusion Clauses **A Business Owner's Best Friend**

Where there is no express contractual term excluding liability, a defaulting party is generally responsible for loss and damage suffered by the other party as a result of their breach.

Types of Loss

The losses recoverable for breach of contract fall into two broad categories—general losses and consequential losses.

General losses are those losses which flow directly and naturally from the breach. For instance, with respect to a breach involving the supply of defective goods, this would include the difference between the actual value of the defective goods and their value if they were not defective.

Consequential loss, on the other hand, relates to specific losses which the contracting parties knew might arise as a result of a breach. Depending on the circumstances, this may include losses such as a loss of expected profits or loss of a commercial opportunity.

Exclusion Clauses

Exclusion clauses are clauses within a contract that exclude or limit the liability of one party in the event that there is a breach of contract resulting in loss to the other party.

Exclusion clauses are an important commercial consideration for all businesses, from SMEs to multinational corporations.

Types of Exclusion Clause

Exclusion clauses can operate to either exclude, limit or restrict a party's liability.

A complete exclusion of liability will generally relate to exclusion for specific types of loss only e.g. loss of profits. Exclusion clauses which purport to entirely exclude all types of loss will generally be unenforceable.

Limiting liability to a certain maximum amount is another common type of exclusion clause, as are restrictions on the time within which a claim for breach of contract must be commenced.

Many of these types of exclusions can be used in the same agreement.

Relevant Legislation

A comprehensive knowledge of State and Commonwealth laws, applicable common law principles and relevant industry rules is required in order to draft a valid and enforceable exclusion clause.

For example, both the *Trade Practices Act 1974* (Cth) and *Corporations Act 2001* (Cth) contain provisions which prevent parties from excluding their contractual liability in certain circumstances.

Consequential Loss

Many businesses are concerned about limiting their liability for 'consequential losses' such as loss of profits or damage to goodwill.

Drafting an exclusion clause

which accurately identifies and excludes the relevant types of consequential loss can be a complex exercise, and requires a solicitor well versed in this aspect of commercial contracting.

How we can assist you

Our team at Cornerstone Legal has the corporate experience and specialist knowledge required to draft an exclusion clause for your business which strikes the right balance between protecting your commercial interests and observing all relevant statutory and industry requirements.

Our commercial partner John Steenhof, ably assisted by a team of junior solicitors, has extensive experience in tailoring contracts to suit the needs of both large and small scale clients across a wide range of industries.

If you have any questions about your commercial agreements, or any other legal issues which may affect your business, please do not hesitate to call John or another member of his team on (08) 9456 0900.



Contact us today to make an appointment
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