

STEP-BY-STEP: HOW TO RECOGNISE UNFAIR CONTRACT TERMS

The table below summarises the Federal Court's approach in the JJ Richards decision and can be used when reviewing your business's standard form contracts to make sure they do not include any unfair terms:

Automatic renewal of the contract	<ul style="list-style-type: none"> ▪ It bound customers to subsequent contracts, unless the supplier cancelled the contract within 30 days before the end of the contract term. ▪ It created a situation where small businesses could inadvertently miss the window for termination or, if the supplier terminated, they had little opportunity to find an alternative waste services supplier.
Price variation	<ul style="list-style-type: none"> ▪ It permitted the supplier to unilaterally increase prices for any reason and without the consent of the customer or a corresponding right for the customer to terminate.
Agreed times	<ul style="list-style-type: none"> ▪ It removed the supplier's liability where performance was prevented or hindered in any way even where the customer was not responsible and the supplier was better placed to manage or mitigate the risk.
No credit without notification	<ul style="list-style-type: none"> ▪ It allowed the supplier to charge for services it had not provided and for reasons that were beyond the customer's control.
Exclusivity	<ul style="list-style-type: none"> ▪ It restricted customers from contracting with other parties for additional waste management services.
Credit terms	<ul style="list-style-type: none"> ▪ It allowed for the suspension of services, but also continued to charge customers if payment was not made after 7 days.
Indemnity	<ul style="list-style-type: none"> ▪ It created an unlimited indemnity in the supplier's favour and even where the loss was not the customer's fault or could have been avoided or mitigated by the supplier. ▪ The customer was not given a corresponding right.
Termination	<ul style="list-style-type: none"> ▪ It prevented customers from terminating their contracts if they had payments outstanding. ▪ It entitled the supplier to continue charging customers after the termination of the contract despite no services being provided.