

Greece

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This article does not deal with B2C contracts. However, Greek consumer protection laws will apply where an entrepreneur or business is the final recipient of goods and services.

Contract formation

1 Is there an obligation to use good faith when negotiating a contract?

Good faith is the core principle of the Civil Code. In particular with reference to negotiations, article 197 of the Civil Code provides that during contract negotiations the parties must behave in good faith and according to common commercial practice. Furthermore, according to article 198 of the Civil Code, one party's conduct of bad faith will result in liability for that party and the right of the other party to compensation, even if the contract has not been concluded.

The obligation of good faith is interpreted, in principle, as an obligation of transparency and general care for the interests of the other party, combined with the probity that is customary during commercial transactions. In particular, the parties must provide each other with crucial and accurate information regarding the contract and negotiate by complying with business ethics and standard trade practices to reach a lawful agreement.

2 How are 'battle of the forms' disputes resolved in your jurisdiction?

'Battle of the forms' disputes will be resolved by the court, pursuant to the general principles of articles 173 and 200 of the Civil Code.

These provisions, by combining the true will of the parties and the objective interpretation (based on the circumstances) of the contractual wording, are the fundamental principles for settling disputes regarding the binding context of a contract. In particular, according to article 173 of the Civil Code, every type of declaration of will, offer and acceptance, is interpreted in accordance with the true intention of the parties, without undue attachment to the words used in the contracts, while article 200 of the Civil Code provides that contract terms are interpreted in accordance with the requirements of good faith and commercial practice.

3 Is there a legal requirement to draft the contract in the local language?

In principle, there is no legal requirement to draft a contract in Greek for it to be valid and binding on the parties, provided that the contracting parties fully understand the terms of the contract. However, a translation of the contract in Greek may be required to enforce the rights under the contract before the Greek courts.

4 Is it possible to agree a B2B contract online?

There is no Greek law specifically regulating online B2B agreements. EU Directive 31/2000 on electronic commerce is incorporated in the Greek legal system under Presidential Decree 131/2003, which provides for freedom to contract online. Furthermore, the Greek legal system, in general, does not require a contract to be subject to any formalities to be valid and binding, except for specific types of contracts where the law expressly requires a certain legal constitutive form (article 158, Civil Code). Therefore, a B2B contract can be agreed online, provided that the general contract law principles apply. In addition, taking into account the default legal principle that legal acts do not, in general, need a specific type of document to produce legal effects, a non-qualified electronic signature (as

defined in Presidential Decree 150/2001 on electronic signatures) should be enough for the valid 'signing' of the majority of legal transactions that take place over the internet, since these contracts do not require a specific type of written statement of will or document. Therefore, most contracts signed in the course of day-to-day operations of a company would not need to be made in writing (in this context, the document of the contract serves only as evidence of the agreement, but not as a legal prerequisite of its validity).

Statutory controls and implied terms

5 Are there any statutory or other controls on parties' freedom to agree terms in contracts between commercial parties in your jurisdiction?

In principle, commercial parties may agree any terms they wish within a commercial contract based on the freedom to contract (article 361 of the Civil Code and article 5 of the Constitution) provided that they do not violate any mandatory law provisions (ie, criminal, tax or competition law). The sole statutory control applied is through the general principles of civil law.

Contractual terms must be governed by good faith, while any juridical act that is contrary to moral ethics or unduly restricts the liberty of a counterparty or by which one party exploits the need, feebleness or inexperience of the other, to gain benefits that are obviously disproportionate to the party's own performance is null and void (articles 178 and 179, Civil Code).

Finally, specific statutory rules also apply in different kinds of commercial contracts (eg, agency agreements, contracts of sale, commercial lease).

6 Are standard form contracts treated differently?

In principle, there is no different treatment for standard form B2B commercial contracts. In any case, the contract should not contain abusive terms, but should contain fair terms in accordance with good faith and commercial practice.

In addition, in standard form contracts any clause purporting to limit liability for breach of contract for minor negligence is considered null and void, since such clauses are valid only if they have been individually negotiated (article 332, paragraph 2, Civil Code).

7 What terms are implied by law into the contract? Is it possible to exclude these in a commercial relationship?

As a general rule, the fulfilment of a supplier's obligations (both qualitative and quantitative) must take place appropriately and in a timely manner, as dictated by good faith and commercial practices (article 288, Civil Code), and also taking into account the parties' particular agreements. Furthermore, in the absence of agreement to the contrary, suppliers must fulfil their obligations in full (article 316, Civil Code). Suppliers who do not perform their obligations according to the specific agreements or good faith and moral ethics, are liable for breach of contract (articles 374-376, Civil Code).

In particular, with regard to supply contracts, according to articles 534-535 of the Civil Code, the seller must deliver the goods with the agreed qualities and without any material defects. A defect is considered everything that could reduce the value or the use of the product for the purpose that it is intended. An agreed quality is considered everything the parties, either explicitly or implicitly, agree the product shall have that is important for the buyer and is guaranteed to exist in the product by the seller. Breach

by the seller of this above-mentioned obligation is considered as either non-performance of a contractual obligation or defective performance and it incurs liability (articles 537–540 of the Civil Code), unless the buyer had knowledge about the lack of agreed qualities or the defects of the products.

Additionally, in the case of services provided, under a works contract, article 681 of the Civil Code provides that the supplier of services must deliver works with the qualities agreed on without minor or substantial defects that destroy its fitness for its ordinary or stipulated use. If the supplier breaches its obligation, the counterparty may request the removal of defects or the proportional reduction of the remuneration, or rescind the contract or request compensation for non-performance, depending on the circumstances (articles 688–690 of the Civil Code).

The warranties implied by law for the quality of the products or services provided arising from the principle of good faith are mandatory and cannot be contracted out of. However, the parties may deviate from or formulate the warranties provided by special provisions; for example, the parties may define the particular agreed qualities of the product or of the services to be provided. Finally, pursuant to article 332 of the Civil Code, the parties cannot agree any limitation of the supplier's liability caused by intent or gross negligence.

8 Is your jurisdiction a signatory to the United Nations Convention on Contracts for the International Sale of Goods (the Vienna Convention)?

Greece is a signatory to the Vienna Convention, as ratified by Law 2532/1997.

9 Is there an obligation to use good faith when entering and performing a contract?

According to the Civil Code there is an obligation to act in good faith when entering a contract, as provided by articles 197–198 of the Civil Code, and during the performance of a contract, as provided by article 288 of the Civil Code.

The contracting parties are bound to perform in accordance with the requirements of good faith, taking into account commercial practice. Good faith consists in the objective directness and honesty required in legal transactions, meaning that a party to the contract must fulfil its obligations taking into account the legitimate interests of the counterparty and must also abstain from any abusive exercise of rights in violation of the principles of good faith, good morals and the economic or social purpose of a right. The law provides, in the same context, that the interpretation of contracts shall be based on good faith.

Limiting liability

10 What liabilities cannot be excluded or limited by a supplier in a contract?

In principle, the parties may limit their contractual liabilities only for mere negligence. They may define the concept of fault that applies to the implementation of their contractual agreement.

In particular, articles 330–332 of the Civil Code forbid any limitation of liability caused by intention or gross negligence. In view of the above, clauses limiting liability for intent or gross negligence are null and void. In addition, the parties are responsible for the fault of the individuals they employ for the performance of their contractual obligation, as though it was their own fault (article 334 of the Civil Code). The fault of an employee regarding the performance of the contract cannot be limited in this respect.

11 Are there any statutory controls on using financial caps to limit liability for breach of contract?

Financial caps limiting liability for mere negligence are permitted by Greek law under the general principle of freedom to contract. In any case, financial caps agreed in a contract must be in accordance with good faith and commercial practice, otherwise they might be considered null and void.

However, financial caps limiting liability for intent or gross negligence are not permitted (articles 330–332 of the Civil Code).

12 Are there any statutory controls on indemnities used to cover liability risks in contracts?

To the extent that indemnities are a form of compensation, Greek law allows for guarantees in various forms that can be used as security against loss. The guarantees may be personal (ie, granted by the counterparty) or

by third parties and depend on the subject matter of the contract and the cause of damage. However, guarantees used to cover liability for intent or gross negligence are not permitted (see question 10).

13 Are liquidated damages clauses enforceable and commonly used in your jurisdiction?

In general, Greek law provides for the right to request compensation for breach of contract that may be subject to the parties' particular agreements (eg, financial caps, exclusion of liability for mere negligence), always subject to the principle of good faith and common commercial practice. Greek law does not recognise the concept of liquidated damages as applied in other jurisdictions.

However, Greek law provides for other types of compensation, which serve a similar purpose:

- Penalty clause: pursuant to articles 404–407 of the Civil Code, the parties may agree that in the case of a particular breach of the contract, the liable party must pay the other party a particular amount. Furthermore, the amount of the penalty must be reasonable and not excessive.
- Down payment: pursuant to articles 402–403 of the Civil Code, on entering a contract one of the parties (the party that undertakes the payment obligation in the contract) proceeds to the payment of a specific amount that will be forfeited if that party fails to perform the contract. The party that receives the down payment will have to pay back double the amount if it fails to perform the contract.

In any case, the payment of a penalty does not preclude a party's right to request additional damages.

Payment terms

14 Are there statutory time limits for paying invoices? Is it possible to agree a different payment period?

Subparagraph Z4 of Law 4152/2013 implementing Directive 2011/7/EU (on combating late payment in commercial transactions) provides that the payment period fixed in the contract shall not exceed 60 calendar days, unless otherwise expressly agreed in the contract and provided the term is not grossly unfair to the creditor. Furthermore, pursuant to article 323 of the Civil Code, in the absence of any particular agreement, the creditor may request performance and the debtor must fulfil its obligation immediately.

15 Is statutory interest charged on late payments? Is it possible to agree a different rate of interest?

Statutory interest for late payment in commercial transactions (in particular supply of goods or provision of services) is primarily governed by subparagraphs Z3 and Z4 of Law 4152/2013 implementing Directive 2011/7/EU (on combating late payment in commercial transactions) providing that the statutory interest for late payments is equal to the interest rate applied by the European Central Bank to its most recent main refinancing operations (reference rate) plus a margin of 8 per cent.

The parties are free to agree a different rate of interest; however, if such interest is grossly unfair for the creditor, the statutory interest is applicable.

Furthermore, pursuant to subparagraph Z12 of Law 4152/2013 in cases where other provisions are more favourable for the creditor than the provisions of Law 4152/2013, these provisions apply. For instance if the amount of the floating legal interest rate for late payments provided by the general provisions (ie, articles 293, 345, Civil Code; Act of the Council of Ministers 1/14.01.2000 and article 3, paragraph 2 of Law 2842/2000) is higher than the interest rate for late payments provided by subparagraph Z3 and Z4 of Law 4152/2013, the legal interest rate for late payments of the general provisions applies.

Finally, pursuant to article 294 of the Civil Code any agreement for interest rate exceeding the higher amount provided by law is null and void in relation to the excess amount of interest. In the case of commercial transactions for the supply of goods or provision of services, the upper limit of interest rate for late payments that may be agreed is the interest rate for late payments provided by Subparagraphs Z3 and Z4 of Law 4152/2013 or the interest rate for late payments provided by the general provisions, whichever is higher.

16 What are the civil penalties for failing to comply with the statutory interest rate or late payment of invoices?

Pursuant to subparagraph Z4 of Law 4152/2013, in the case of late payment of invoices, the creditor is entitled to interest, without needing to issue a reminder, from the day following the date or the payment period fixed in the contract, or if no date or payment period has been agreed:

- 30 calendar days following the date the debtor received the invoice,
- 30 calendar days following the date of the receipt of the goods or services (if the date of the receipt of the invoice is uncertain or if the debtor receives the invoice before the receipt of the goods or services), or
- 30 calendar days following the date of acceptance or verification procedure (if provided for by statute or by the relevant contract and the debtor receives the invoices before or on the date of the acceptance or verification procedure).

Furthermore, pursuant to the general provision of article 346 of the Civil Code, if the creditor brings a legal action (such as a civil lawsuit or payment order) before the competent court, the debtor must pay judicial interest. From the service of the civil lawsuit or of the payment order, the judicial interest is 2 per cent above the applicable interest for late payment. The additional 2 per cent tariff does not apply if the debtor recognises the debt in writing or extrajudicially settles the debt before the hearing or does not file an opposition against the payment order. Following a petition of the debtor, the court may award the statutory or contractual interest for late payment.

From the issuance of the court's decision on the lawsuit or rejecting the opposition filed against the payment order the judicial interest is 3 per cent above the applicable interest for late payment. The additional 3 per cent tariff is not applicable if the debtor does not file any appeal against the decision.

Termination

17 Do special rules apply to termination of a supply contract that will be implied by law into a contract? Can these terms be excluded or limited by including appropriate language in the contract?

Unlike the right to rescind, there is no general provision in Greek law relating to the termination of contracts, but the termination of a particular contract depends either on the parties' particular agreements (based on the freedom to contract) or on any special provision regulating this particular type of the contract.

In the case of the supply of goods, the general rule is that there is no statutory provision on termination. The parties may formulate the terms of termination, pursuant to the general freedom to contract. The particular agreements will only be subject to the principle of good faith and non-abuse of a right.

However, because supply contracts are not subject to a specific set of rules, they may be governed, by analogy, by rules applying in certain types of contracts (ie, agency agreements) depending on the way the specific supply contract is structured.

Additionally, in the case of the supply of services a statutory provision that may be applicable is article 700 of the Civil Code (on contracts for works) providing that until the completion of the relevant works or project, the employer may terminate at any time; however, the contractor is entitled to the agreed fees decreased by any cost saved by the contractor or any benefit incurred by the contractor owing to the termination. In any case, since article 700 of the Civil Code is not mandatory law, the parties may deviate from the above-mentioned provision and in general they may freely formulate the terms of termination, subject to the principles of good faith and non-abuse of a right.

18 If a contract does not include a notice period to terminate a contract, how is it calculated?

As mentioned above, as a general rule in the case of supply of goods or services the termination of a contract and its notice period are mainly subject to the parties' agreement, while there are no general statutory rules on termination of contracts. However, pursuant to the principle of good faith and article 281 of the Civil Code (which forbids the abusive exercise of a right) the notice period must be reasonable taking into account all the circumstances.

Furthermore, in certain types of commercial contracts, specific statutory rules apply. For example, in agency agreements, article 8, paragraph 4

of Presidential Decree 219/1991 provides for a notice period of one month applicable in the first year of the contract, which extends for one more month per year that follows. If the contract is maintained for more than six years, the law provides for a notice period of six months. Contracting parties in agency agreements may agree for a longer notice period but not for a shorter one. In agency agreements, termination is permitted at any time in the case of breach of contract or extraordinary circumstances.

19 Will a commercial contract terminate automatically on insolvency of the other party?

Pursuant to article 28 of Law 3588/2007, in principle the pending bilateral agreements, in which the bankrupt person/legal entity is a debtor remain in force, unless provided otherwise in Law 3588/2007.

In general, article 31 of Law 3588/2007 provides that in bankruptcy, ongoing contracts are not terminated. Pursuant to paragraph 2 of Law 3588/2007, the declaration of bankruptcy is grounds for the termination of contracts of a 'personal nature' (ie, of contracts creating a relationship of a personal and confidential character, *intuitu personae*) and of contracts whose termination is provided for specifically by the law. The above provisions do not affect any termination right provided by law or by the respective contract (article 32 of Law 3588/2007).

20 Are there restrictions on terminating a contract if the other party is in financial distress?

In principle, there are no restrictions on terminating a contract if the other party is in financial distress. However, pursuant to article 99 of Law 3588/2007 a business in financial distress may file an application to the court to undergo a rehabilitation procedure that takes place under the court's supervision. In this case, if the court accepts the application of the business to commence this procedure, it may order various temporary measures to protect the financial value of the business in financial distress and also to secure its survival (article 103 of Law 3588/2007). One temporary measure of this type may be the prohibition of a contract's termination.

21 Is force majeure recognised in your jurisdiction? What are the consequences of a force majeure event?

The concept of force majeure is recognised by Greek law. Everything that occurs out of the limits of intent (wilful conduct) or negligence is considered to be an event caused by luck or force majeure and does not incur liability. Force majeure is interpreted as any unforeseeable circumstances or events that could not be prevented by the contractual parties even after exercising extreme diligence, for example, earthquake, war, workers strike, sudden illness or death.

However, the contractual parties may agree to extend their liability for damage or loss by force majeure, under the principle of the freedom to contract and always subject to good faith, good morals and non-abusive exercise of right (articles 178, 179 and 281, Civil Code)

In view of the above, contractual parties cannot be held liable for breaches of contract that resulted from events of force majeure or luck (articles 336, 342 and 380, Civil Code). Particularly in bilateral agreements, in case of impossibility of performance by a contracting party not at fault, this party is released from the obligation to perform (article 380, Civil Code).

In sales contracts, unless otherwise agreed, the buyer bears the risk for the random destruction or deterioration of goods at the time of delivery (article 522, Civil Code) therefore, the buyer must pay if the goods are lost or damaged during delivery. Additionally, in the case where the place for the delivery of the goods, at the purchaser's request, is different from the place where the seller would usually or normally be obliged to deliver them, the buyer bears the risk for shipment of goods from the moment of the delivery (article 524, Civil Code). If the goods were delivered under a condition precedent, the risk for any loss or damage of the goods is borne by the seller if the damage occurred prior to the fulfilment of the condition, while the buyer bears the same risk in the case of a condition subsequent.

Finally, Greek law also recognises the general concept of unexpected changes in circumstances (article 388, Civil Code). In particular, if the contracting parties proceed to an agreement based on certain circumstances that changed greatly following unforeseeable and unpredictable events, rendering the fulfilment by a party of its obligations overly and unduly burdensome, that party may request the court to adjust the obligations accordingly or to terminate the contract in whole or in part.

Subcontracting, assignment and third-party rights**22 May a supplier subcontract its obligations under the contract without seeking consent from the other party?**

In principle, the performance of a contract may be fulfilled by a third party, without the consent of the other party (article 317 Civil Code). However, the recipient of the goods or services may block the subcontracting if the recipient has a legitimate interest in the supplier performing the contract. Such interest is to be judged in view of the scope and purpose of the contract, as well as the genuine will of the contracting parties. In any case, given that the provisions of the Civil Code regulating subcontracting are non-mandatory, the genuine will of the contracting parties will be the determining factor.

23 Are there any statutory rules that apply to subcontracting in your jurisdiction?

There are no rules under Greek law to specifically regulate subcontracting. The concept of subcontracting is mostly found in articles 681-702 of the Civil Code, on contracts for work, where a contractor undertakes the obligation to perform a specific work and the other party (employer) undertakes to pay the agreed fee. Under article 684 of the Civil Code, the contractor may not hire a subcontractor unless the parties have agreed otherwise. Even if subcontracting is permitted under the contract, it is a common contractual term that liability for proper performance remains with the prime contractor. However, the parties may agree otherwise.

24 May a party assign its rights and obligations under the contract without seeking the other party's consent?

A party may assign the rights and claims arising from a contract to a third party through the procedure of assignment of claims, without the consent of the other party (ie, the debtor), unless the parties have agreed otherwise (articles 455-470, Civil Code). However, the assignment becomes effective for the debtor only after receiving notification from the assignor (article 460, Civil Code). Moreover, any objection against the assigned claim based on grounds that already existed before the notification of the assignment can be raised by the debtor towards the assignee.

Assignment to or assumption of contractual obligations by a third party requires consent of the other contracting party, however, (articles 471-479, Civil Code).

25 What statutory controls apply to the assignment of rights or obligations under a supply contract?

No specific statutory controls apply. In any case, assignment of rights has effect against the debtor only after notice has been given (article 460, Civil Code). The assignment results in the original debtor being alienated from the assigned claim, while the assignee becomes the sole owner of the claim in the form and under the limitations applicable prior to assignment.

Assumption of debt requires consent of the creditor (article 471, Civil Code). The original debtor is jointly and severally liable unless the parties agree otherwise (article 477, Civil Code).

Update and trends

On 1 January 2016 an amended Greek Code of Civil Procedure to speed up and simplify court proceedings came into force. However, the Greek Lawyers' Associations and related professional associations have been abstaining from their duties for many months, resulting in a massive accumulation of old cases and postponement of actual implementation of the amendments.

Arbitration and mediation are being promoted as alternative dispute resolution procedures.

26 How may a third party enforce a term of the contract?

The general rule is that contractual terms are binding only on the contracting parties, and they alone may seek its enforcement. However, where the parties have agreed on rights in favour of a third party, the latter may seek enforcement directly, if this was the will of the contracting parties or follows from the purpose and nature of the contract (articles 410-414, Civil Code).

Furthermore, a third party may seek enforcement of a contract that its debtor has concluded if the debtor fails to do so, with a view to enforcing the rights arising from the contract in favour of the debtor (article 72 of the Greek Code of Civil Procedure).

Disputes**27 What are the limitation periods for breach of contract claims? Is it possible to agree a shorter limitation period?**

The limitation period for claims arising from the breach of contract mainly depends to the nature of the claim.

In principle, the general limitation period for contractual obligations is 20 years (article 249, Civil Code). However, special provisions may provide shorter limitation periods for certain types of claim arising from particular commercial contracts (eg, sales contracts, contracts for works or services, agency agreements). Thus, the limitation period for claims regarding the payment of goods or services is five years (article 250, Civil Code) and for claims referring to real defects or absence of agreed qualities in sales contract is two years and in a works contract is six months (articles 554 and 693, Civil Code).

Finally, the provision on limitation periods are mandatory law and the contracting parties cannot agree a shorter or longer limitation period (article 275, Civil Code).

28 Do your courts recognise and respect choice-of-law clauses stipulating a foreign law?

Greek courts recognise choice-of-law clauses, according to the provisions of Regulation (EC) No. 593/2008 on the law applicable to contractual obligations (Rome I) and of the Civil Code permitting the contracting parties to choose the law applicable to the contract. Greek courts have recognised and respected licit choice-of-law clauses stipulating a foreign law as applicable to contractual obligations.



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29 Do your courts recognise and respect choice-of-jurisdiction clauses stipulating a foreign jurisdiction?

Greek courts recognise choice-of-jurisdiction clauses subject to the special rules provided by Regulation (EU) No. 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters and the Civil Procedure Code. The Greek courts examine only the legal validity and proper incorporation of the choice-of-jurisdiction clauses. Choice-of-jurisdiction agreements, to be deemed valid by Greek courts, must be either written or oral with evidence in writing, or formed in any other way in accordance with international trade practices that the parties know or ought to know. Additionally, the clause may not be contrary to Greek public policy and Greek mandatory rules.

30 How efficient and cost-effective is the local legal system in dealing with commercial disputes?

Despite a recent procedural law overhaul aiming at efficient dispensation of civil and commercial disputes, the reality is very different owing to fiscal cutbacks, court overload and chronically inadequate investment in people, technology and facilities. The average duration of unproblematic commercial litigation is approximately two years at the first instance and two years at appellate proceedings.

The various judicial costs and fees are considered to be reasonable in comparison with costs in other EU member states. Furthermore, the legal fees awarded by Greek courts are low in comparison with those awarded in other jurisdictions.

31 Is your jurisdiction a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards? Which arbitration rules are commonly used in your jurisdiction?

Greece is a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards as ratified by Law 4220/1961.

In general domestic arbitration is regulated by articles 867–903 of the Greek Civil Procedure Code, while international commercial arbitration is regulated by Law 2735/1999 (based on the UNCITRAL Model Law on International Commercial Arbitration). Furthermore, parties frequently choose to settle their disputes according to the arbitration rules of the International Chamber Of Commerce and the London Court of International Arbitration or the permanent arbitration of the Greek Technical Chambers (for particular disputes in contracts for works or services).

Remedies

32 What remedies may a court or other adjudicator grant? Are punitive damages awarded for a breach of contract claim in your jurisdiction?

Depending on the type of claim brought, a court or other adjudicator may award different remedies. In particular, in case of breach of contract the remedy depends on the subject matter of the contract and the nature of the breach (delay of performance, defective performance, non-performance), while more than one remedies may be awarded.

In commercial disputes, the most common remedies are compensation for positive damages, loss of profit and moral damages. A court may issue declaratory judgments, judgments for specific performance or cease-and-desist orders.

In general, damages are compensatory only. Greek law does not recognise the concept of punitive damages.