

WALLESS ADVICES

on conclusion, execution and termination of the contracts

In the context of the Russian-initiated war against Ukraine and the values of the democratic world, entrepreneurs face important questions about the legal risks involved in concluding, enforcing and terminating contracts. In response to these market needs WALLESS lawyers advise on what not to miss consider when entering into, executing and terminating contracts.



Conclusion of new contracts – let's continue to grow your business!

Baltic states continue to be safe. Baltic states, as part of NATO, are safe. There are no obstacles to successful investment, business development and the conclusion of new contracts. Let's continue to grow your business!

Make sure that contracts help to minimize the risk of current and future situations. Assess the risk factors: possible price changes, supply chain disruptions, deadlines for performance and settlement, communication mechanism etc. Managing risks is always essential.

Speak to your employees. Often employees responsible for the actual performance of the contracts know valuable information on contractual provisions that give rise to difficulties. This way you can effectively learn from the past mistakes and make employees even more engaged in the due performance of the contracts.

Do not underestimate the importance of applicable law and the place of dispute resolution. You have the right to agree that a contractual dispute will be settled in a particular country's (specific) courts under chosen law. You should assess which country's jurisdiction and applicable law are more favourable to you. However, litigation at home is usually cheaper.

Negotiate even when having less bargaining power. The parties' ability to influence contractual provisions depends on their bargaining power. Always avoid taking unreasonable risks. Negotiate the inclusion of the key provisions in the text of the contract in all cases. If that is not possible, consider even refusing the conclusion of a contract.



(Non) performance of contracts in general cases – not related to sanctions

Focus on effective communication. In difficult periods, the likelihood of tense contractual relationships increases. Thus, the parties' cooperation becomes particularly important to preserve the contract. Discuss with your

employees how they should react to the contract performance problems in both scenarios – if the other party does not perform the contract or if you are unable to perform the contract.

If the other party fails to perform the contract, communicate and take steps to document the situation. Keep records of your performance and other party's default. This way, you will have evidence to support your position once necessary.

If you cannot perform the contract due to a material change of circumstances, notify the other party immediately. Such notification does not in itself entitle you to immediate suspension of the contract. However, it creates an opportunity to reach an agreement. You should also assess whether the contract and applicable law allow requesting an amendment in the court if you are unable to reach an agreement with the other party.

Do not think that all dramatic circumstances lead to the application of *force majeure*. There was a lot of speculation on the subject during the Covid-19 pandemic. Remember that a party is released from liability for non-performance of a contract due to force majeure only in limited circumstances. Even if the force majeure applies, certain legal remedies may be available for the non-breaching party. For example, the non-breaching party may have a right to terminate the agreement.

Communicate respectfully and professionally even in the event of a dispute. Keep in mind that all communication between the parties can be used as proof in court. Respectful communication saves business reputation and increases the likelihood of a more favourable court decision.



Termination of the contracts in general cases – not related to sanctions

Assess the legal consequences of contract termination. Unreasonable or improper termination of the contract may result in an obligation to pay damages. Remember the duty to minimize the losses for yourself and the other party.

The moment of the contract termination is important. Late termination of the contract may lead to increased losses. Premature termination may be void or lead to a lack of evidence regarding the right to terminate.

Once you decide to terminate the contract, do so correctly. Follow the termination procedures provided in the contract itself and the rules of the applicable law. Notify the other party about the termination in the manner and within the time limits agreed in the contract or prescribed by laws. Make sure that the substance of the termination notice complies with any specific requirement agreed in the contract or set forth in the applicable law.

The text of the termination notice is important. First, the notice should comply with the requirements agreed in the contract. Second, it should set out clear grounds for terminating the contract and, where possible, the legal consequences of such termination. This notice is one of the essential documents in resolving a case in court.

Assess whether the termination of one contract could affect the performance of other contracts and begin to manage those risks before the termination of the contract.

Store documents orderly. Keep draft contracts, signed texts, amendments and all notices sent under the contract in order. Proper storage of documents and data facilitates the due performance of the contract and helps in gathering written evidence in the event of a dispute.