

- 1 **LIABILITY**
- 1.1 Nothing in this Agreement excludes or limits Supplier's liability for:
- (a) death or personal injury caused by Supplier's negligence;
 - (b) fraud or fraudulent misrepresentation; or
 - (c) any liability which cannot legally be excluded or limited.
- 1.2 *[Subject to Clause 1.1 Supplier is not liable, whether in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise in connection with this Agreement for any :*
- (a) loss of profit;
 - (b) loss of revenue;
 - (c) wasted expenditure;
 - (d) loss of business; or
 - (e) loss of anticipated savings;
- in each case whether direct or indirect]*
- 1.3 Subject to Clause 1.1 the Supplier is not liable, whether in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise in connection with this Agreement for any indirect, special or consequential loss or damage, howsoever arising.
- 1.4 Subject to Clause 1.1 Supplier's total [aggregate] liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise in connection with this Agreement shall not exceed £[AMOUNT][NUMBER]% of the Charges paid or payable (had this Agreement not been breached) under this Agreement].

Commented [GWL1G1]: Drafting generally with an eye to allowing severance of any offending part

Commented [GWL1G2]: One way or mutual?

Commented [GWL1G3]: To deal with UCTA requirement. Not clear what happens if this is not stated. Better to expressly state this then to worry that maybe failing to say it brings the whole clause down

Commented [GWL1G4]: You cannot exclude liability for your own fraud (might be able to control liability for fraud of employees and others).

The contract does not expressly need to say no exclusion for fraud but common practice

Commented [GWL1G5]: Normal practice to include. May not be needed but most people do not want to take the risk of not saying it

Commented [GWL1G6]: I tend not to include this sweeper but no harm to do so

Commented [GWL1G7]: These heads of loss are separate to indirect loss so that it is clear that any type of these losses whether direct or indirect are excluded.

Consider whether appropriate to exclude these losses – profit/revenue and wasted expenditure are often the key losses. Is it better to cap liability, as opposed to exclude these heads?

Remember the court will only exclude what you expressly state, and therefore good chance you will not specifically exclude the loss that comes up!

Commented [GWL1G8]: This is to deal with Canada Steamship – ie to exclude negligence you need to be clear

Commented [GWL1G9]: "Consequential loss" means indirect loss. "Special loss" meaning is unclear, not normal to mention!

Commented [GWL1G10]: Is the cap in the aggregate, or per claim or per year or some other formula?

Make sure that it is absolutely clear how calculated as it will be read against you.

Commented [GWL1G11]: Canada Steamship

Commented [GWL1G12]: You need to make sure that the clause will not operate to limit liability to zero. If a clause could have the effect of creating no liability for any breach then that invites a court to find a way to work round it.