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Commercial Contracts 2026

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Switzerland: Law and Practice & Trends and Developments

Michael Kissling and Andrea Haefeli
Walder Wyss Ltd



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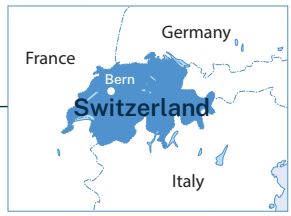

Law and Practice

Contributed by:
Michael Kissling and Andrea Haefeli
Walder Wyss Ltd

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Authors



Andrea Haefeli is a counsel at Walder Wyss. She advises clients across all aspects of contract, commercial and corporate law. Andrea brings specialised expertise in commercial contracts, including sales/works/mandate contracts, agency and distribution contracts, rental and leasing contracts, development and co-operation contracts (including joint ventures) as well as in general terms and conditions. Her practice further includes e-commerce and IT. She advises across various industries from the conceptual, drafting, and negotiation phase to dispute settlement. Andrea has (co-)authored various legal publications on contract law. She is a member of both the Zurich and Swiss Bar Associations.



Michael Kissling is a senior associate in the Corporate/M&A team at Walder Wyss, specialising in commercial contract law, corporate law, and ESG and sustainability. He advises clients in a wide range of industries, ranging from crypto start-ups to large international retail groups in all contract-related matters, from negotiations and drafting to dispute resolution. A top graduate of the University of Bern (MLaw), Michael conducted additional studies at the University of Helsinki and is a member of both the Zurich and Swiss Bar Associations.

Walder Wyss Ltd

Seefeldstrasse 123
8008
Zurich
Switzerland

Tel: +41 58 658 56 71
Fax: +41 58 658 59 59
Email: andrea.haefeli@walderwyss.com
Web: www.walderwyss.com

walderwyss

1. General Overview of Regulatory Field

1.1 Applicable Law

The choice of applicable law in commercial contracts in Switzerland is primarily governed by the Private International Law Act (PILA). This legislation provides a comprehensive framework that respects party autonomy while also establishing default rules for situations where the parties have not made an explicit choice.

There are only a few mandatory provisions regarding the choice of the applicable law of a commercial contract. Such mandatory provisions exist, for example, regarding consumer and real estate contracts.

For further details, see **2.1 Choice of Law** and **2.2 Overriding Local Laws**.

1.2 Form

Freedom of contract form is paramount under Swiss law and most commercial contracts are not subject to statutory form requirements.

There are few cases where the law prescribes a particular form. Further, the contracting parties may agree on a certain form requirement. There are three types of legal form requirements: simple written form, qualified written form, and public deed (for further details, see **3.1 Necessary Form**). In principle, contracts that do not adhere to form requirements are null and void.

Where the law requires adherence to a particular form, this requirement also applies to any amendment to the contract (but, according to the Swiss Federal Supreme Court, not to the cancellation of the entire contract). This contrasts with form requirements agreed upon by the parties themselves, which can, under certain circumstances, be changed or cancelled without adhering to any particular form.

1.3 Application of Local Legislation to Commercial Contracts

In Switzerland, the primary legislation governing commercial contracts is the Code of Obligations (CO). The CO is divided into a general part, which sets out rules applicable to all private law contracts, and a special part, which provides specific rules for certain types of contracts (eg, sales, lease, loan, works, agency, and sureties). Additionally, the Swiss Civil Code (CC) sets out some fundamental principles of Swiss law that also apply to commercial contracts, such as the principle of good faith.

In addition to the CO and CC, which provide the general framework for contracts, Swiss law also contains special statutes governing particular types of agreements (eg, the Consumer Credit Act and the Insurance Contract Act) as well as statutes of general application that establish overarching rules relevant to all types of contracts, irrespective of their classification (eg, Unfair Competition Act (UCA), Product Liability Act, and Data Protection Act).

The United Nations Convention on Contracts for the International Sale of Goods (CISG) forms part of the Swiss legal framework. As a consequence, where a choice of law clause in an international sales contract stipulates “Swiss law”, the CISG is presumptively included as part of that choice and therefore applies, unless validly excluded. This is because the CISG applies not only where both parties have their places of business in Contracting States, but also where the applicable rules of private international law lead to the law of a CISG Contracting State, such as Switzerland. If the parties wish to exclude the CISG, this must be expressly stated in the choice of law clause.

The most noteworthy differences between the CO and the CISG are the following.

- The CO distinguishes between defects, impossibility, delay, and other breaches of contract, each with different legal consequences. In contrast, the CISG only differentiates between a simple breach and a fundamental breach of contract.
- Unlike the CISG, the CO only exceptionally provides for a right to rectify/cure (for recent and future changes in this regard, see the Swiss Trends and Developments article, sections 1 and 2).
- The buyer’s claim for damages under the CISG is, in principle, independent of fault. By contrast, under the CO, the claim for damages generally depends on fault; only damage directly caused by a defect in the goods is recoverable irrespective of

fault, provided that the buyer rescinds the contract because of the defect.
- The duties to examine goods and give notice under the CO are generally stricter than under the CISG (for recent and future changes in this regard, see the Swiss Trends and Developments article, sections 1 and 2).
- Unlike the CISG, the CO does not contain any explicit force majeure or hardship provisions.
- The CISG relies more on international trade usages, whereas the CO focuses more on the (hypothetical) intention of the parties.

1.4 Mandatory Rules for Specific Contracts

Contractual freedom is a fundamental principle of Swiss contract law. Accordingly, Swiss contract law, and the CO, contain few mandatory provisions.

Mandatory provisions often have a social policy protection function intended to protect the contracting party that is typically regarded as the "weaker" one in the relationship in question.

Examples of mandatory rules for specific contracts include (non-exhaustive):

- Under consumer contracts (for consumer protection rights, see **4.2 Consumer Protection Rights**):
  (a) a consumer has a right to bring a legal action either before the court at the domicile or registered office of one of the parties;
  (b) a consumer has a right of withdrawal in door-to-door sales and consumer credits; and
  (c) a minimum prescriptive period applies for certain business-to-consumer sales contracts and contracts for works.
- Under sales contracts and contracts for works:
  (a) waivers of warranty are void if defects are fraudulently concealed by the seller or contractor;
  (b) the prescriptive period cannot be invoked if the seller wilfully misled the buyer; and
  (c) in relation to construction defects, a mandatory defect notice period of 60 days, a mandatory right to rectification and mandatory limitation periods of five years apply under certain conditions (see the Swiss Trends and Developments article, section 1).
- Mandate agreements (*Auftrag*) may be terminated at any time for any reason.
- Under lease contracts, clauses that go against the landlord's obligation to provide and maintain the lease object in a usable condition are null and void if they are included in general terms and conditions or in leases for residential or commercial premises. When it comes to leases for residential and commercial premises, there are also several mandatory termination provisions.
- Under agency contracts (*Agentur*), agents have various mandatory rights (if the respective requirements are met), such as the right to compensation for clientele (goodwill), compensation for loss of earnings in the event of a post-contractual non-compete clause, del credere commission, and compensation in case of inability to work. In addition, there are mandatory termination provisions.
- Under surety contracts (*Bürgschaft*), unless the CO provides otherwise, sureties may not waive in advance certain rights conferred on them.

Swiss contract law also provides for a few general mandatory provisions that apply to all types of contracts (eg, concerning limitation of liability (see **5.4 Contractual Limitation on Liability**), termination for cause, or certain limitation periods). In addition, other areas of law may also have a mandatory impact on contracts, such as competition law, criminal law, or tax law.

1.5 Significant Court Decisions or Legal Developments

In the past three years, the Swiss Federal Supreme Court has not issued any groundbreaking decisions of general validity for all commercial contracts. Nevertheless, a selection of noteworthy cases is briefly outlined below in chronological order.

- GTC and Unusual Clause Rule in B2B Relationships – in its decision 4A_372/2022 of 11 July 2023, the Federal Supreme Court examined the so-called unusual clause rule. According to this doctrine, where a party accepts general terms and conditions (GTC) globally – ie, without reading them – a clause is invalid if it is subjectively and objectively unusual (see **3.4 Application of Local Law on Standard Terms** for more details). The

case concerned a contract between an IT provider and a business customer regarding the development, provision and maintenance of a software solution. The court clarified that the unusual clause rule also applies in B2B relationships. Its application is not limited to cases where one party has significantly weaker bargaining power but is also applicable where the contracting partner of the GTC user is unfamiliar with the relevant industry. On that basis, the court invalidated two clauses: (i) a clause deeming invoices accepted unless the customer filed a substantiated complaint by registered letter within 30 days of receipt, and (ii) a clause obliging the customer to pay a contractual penalty if it terminated the agreement for any reason without fault on the part of the IT provider.

- Clausula Rebus Sic Stantibus and COVID-19 – under Swiss law, contracts may be adjusted by the courts where an unforeseeable and unavoidable fundamental change of circumstances causes a severe disruption of the balance between performance and counter-performance (clausula rebus sic stantibus, see **6.3 Concept of Hardship**). In its decision 4A_158/2024 of 5 November 2024, the Federal Supreme Court examined the application of this doctrine in the context of the COVID-19 pandemic. The case involved a hotel-operating company (the tenant) that ceased paying rent during the pandemic and whose lease was consequently terminated. The tenant challenged the termination, relying on the clausula rebus sic stantibus. The court found that no severe disruption of equivalence had been established. The pandemic was deemed an entrepreneurial risk that the tenant was required to bear.
- GTC and Unusual Clause Rule in B2B Relationships – in its decision 4A_287/2024 of 2 July 2025, the Federal Supreme Court examined the application of the unusual clause rule to GTC in a B2B relationship (see **3.4 Application of Local Law on Standard Terms** for more details regarding the unusual clause rule). A company trading in pharmaceutical products had instructed a forwarder to arrange two shipments; the carrier interchanged them, and the consignments had to be destroyed. The forwarder relied on GTC, which limit its liability for sub-contractors to their careful selection and instruction and cap liability at 8.33 special drawing rights per kilogram of gross weight. The court held that these clauses were subjectively unusual, as the customer was active in the pharmaceutical trade and not in the transport sector and four earlier shipments were insufficient to give it the relevant industry knowledge, and objectively unusual, as they depart significantly from the statutory liability regime for carriage under the CO.

2. Choice of Applicable Law and Jurisdiction

2.1 Choice of Law

The choice of applicable law of commercial contracts in international contexts is governed primarily by the PILA. Where a bilateral or multilateral treaty exists (eg, Hague Convention of 15 June 1955 on the Law Applicable to International Sales of Goods), such treaty prevails.

Under the PILA, the principle of party autonomy is paramount. Parties to a commercial contract are generally free to choose the law that will govern their contract. Exceptions to this principle are, for instance, consumer contracts and some contracts concerning immovable property.

The choice of law must be explicit or result with certainty from the terms of the contract or the circumstances. The parties may choose the national law of any jurisdiction. In an international context, two Swiss-based parties may choose foreign law; the situation is less clear with regard to a purely domestic case. However, Swiss courts may, under certain circumstances, apply overriding mandatory Swiss provisions and overriding mandatory provisions of a closely connected third state. In addition, on grounds of Swiss public policy (*ordre public*), Swiss courts may set aside otherwise applicable foreign law where its application would lead to a result incompatible with Swiss public policy (see **2.2 Overriding Local Laws**).

Absent a choice of law, the contract is governed by the law of the state with which it is most closely connected. For contracts concluded in the course of business, this is presumed to be the state where the party performing the characteristic obligation (eg, the seller

in a sales contract, the service provider in a service contract, etc) has its habitual residence or establishment.

Regarding the application of the CISG if the parties agree on substantive Swiss law as the applicable law, see **1.3 Application of Local Legislation to Commercial Contracts**.

2.2 Overriding Local Laws

In principle, Swiss courts will give effect to a valid choice of foreign law made by the contracting parties.

However, two mechanisms allow mandatory provisions of another law to apply exceptionally despite the contracting parties' choice of law.

- Where there is a sufficient domestic connection to Switzerland, Swiss courts will apply mandatory Swiss provisions whose special purpose makes them fundamental to the Swiss state and legal order. Examples include gender equality, the prohibition of abuse of rights, registration requirements for retention of title, and certain protective provisions of Swiss employment law.
- Swiss courts may apply a provision of another foreign law (other than the law chosen by the parties) that claims mandatory application if, under Swiss legal principles, the legitimate and manifestly overriding interests of a party so require and the case has a close connection with that law.

Separately, as a distinct control mechanism, Swiss courts will refuse to apply provisions of the otherwise applicable foreign law where their application would lead to a result incompatible with Swiss public policy (*ordre public*).

2.3 Choice of Jurisdiction

In Switzerland, the admissibility of a contractual jurisdiction clause is governed primarily by the PILA and international treaties, including the Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Lugano Convention) and the Hague Convention of 30 June 2005 on Choice of Court Agreements (Hague Convention). These instruments impose specific, and partly differing, requirements for the validity of such agreements.

They have two requirements in common: the agreement must be made in a form that permits a permanent record, and an "international element" must be present for an international choice of court agreement to be admissible. Such an element always exists if at least one party has its registered office abroad. If both parties are domiciled in Switzerland, a further foreign connection is required for a choice of foreign forum to be valid. This may arise, for example, if part of the contractual performance takes place abroad.

It is debated whether two Swiss parties to a contract with no other foreign connection may create the necessary international element solely by choosing a foreign forum or foreign law. Many legal scholars accept this possibility under both the Lugano Convention and the PILA. However, under the Hague Convention, the mere choice of a foreign forum does not establish internationality.

In summary, from a Swiss law perspective, parties may generally choose a foreign forum if at least one party is domiciled abroad or the contract otherwise has a sufficient foreign connection.

Even where the choice of jurisdiction of a third state would generally be valid, certain matters, such as employment contracts, consumer contracts and tenancies of immovable property, are subject to protective jurisdiction rules. In these cases, mandatory jurisdiction rules apply and the parties may not choose another jurisdiction.

2.4 Choice of Arbitration and Overriding Laws

Parties to international commercial contracts are generally free to agree that disputes shall be resolved by arbitration, provided that the agreement is made in text form and that the subject matter of the dispute is arbitrable.

Where the parties have entered into a valid arbitration agreement, Swiss courts will generally decline jurisdiction upon the defendant's objection and refer the parties to arbitration provided the subject matter of the dispute is arbitrable (*schiedsfähig*). In domestic

matters, this includes all claims over which the parties may freely dispose (typically claims of an economic nature but not questions of personal or family status). In international matters, any claim involving an economic interest is arbitrable.

However, despite a valid arbitration agreement, the parties may seek interim measures from Swiss state courts.

A Swiss-seated international arbitral tribunal will, in principle, apply only the law governing the merits (lex causae). Under what conditions it must also take into account overriding mandatory provisions of another law remains debated. Legal scholars argue that a Swiss-seated international arbitral tribunal shall only apply mandatory provisions of another law if the dispute has a close connection to the respective jurisdiction and such mandatory provision reflects an internationally recognised consensus. Accordingly, if the parties have chosen a law other than Swiss law to govern their contract, for example, a distribution or agency agreement, a Swiss-seated international arbitral tribunal is generally not required to apply mandatory Swiss provisions unless the case at hand has a close connection to Switzerland and those provisions are grounded in an internationally recognised consensus.

3. Negotiation and Conclusion

3.1 Necessary Form

There is no general mandatory form requirement for commercial contracts (freedom of form, see **1.2 Form**). Consequently, contracts can be concluded verbally or by implied conduct, unless mandatory law prescribes a certain form. However, as it is usually important to be able to prove the content of a contract, contracting parties often include formal requirements in their contracts even if the law does not require them.

Form requirements not only provide legal certainty through evidence but also aim to protect parties from making rushed or careless decisions. There are three types of form requirements.

- Simple Written Form – declarations (expressions of intent) must be in written form; ie, permanently recorded on a physical object such as paper or a data storage device. In addition, the contract must contain the parties' signatures. Such signatures need to be handwritten (wet ink) or a qualified electronic signature (QES) generated in accordance with the Act on Electronic Signatures (ESigA) (see **3.7 Signatures and Notarial Deeds**). The following contracts must be concluded in simple written form (among others): assignment of contractual rights or claims, grant of pre-emption rights over immovable property without fixing a price, surety (*Bürgschaft*) (however, sureties granted by individuals may require a public deed under certain conditions), or certain elements of agency agreements.
- Qualified Written Form – to comply with the qualified written form, specific characteristics required by law must be observed. For instance, a landlord must use a specific notice form approved by the respective canton to terminate a lease of residential premises, consumer credit agreements must include certain mandatory provisions, and holographic Wills must be written by the testator's own hand from start to finish, dated, and signed by the testator.
- Notarisation – notarial/public deeds represent the strictest form requirement. They are typically used in significant or high-risk transactions and when a legal act needs to be recorded in a public register, such as the land or commercial register. The notary's role is to verify that an individual has truthfully declared a legally significant fact or intention, following a specific form and procedure set by the respective canton. The following commercial contracts (among others) require a public deed: a contract for the sale of immovable property and a preliminary agreement conferring a right of pre-emption, purchase, or repurchase relating to immovable property. Outside commercial contracts, notarisation is required for, inter alia, certain inheritance or marriage contracts.

3.2 Concept of Culpa in Contrahendo

The concept of culpa in contrahendo is recognised under Swiss law. It is not expressly codified but is derived primarily from the principle of good faith and supported by case law and doctrine.

Even before a contract is concluded, parties are required to act in good faith during negotiations. This gives rise to a pre-contractual relationship that imposes certain duties, including duties to negotiate seriously, to provide essential information, if the other party is unable or cannot be expected to independently obtain that information, to show mutual consideration, and to ensure that the physical integrity or property of the other party is not violated during contract negotiations.

The conditions for liability for culpa in contrahendo are as follows, whereby the Swiss courts generally set a high threshold for damage claims:

- negotiation of a (future) contract by the obligor and obligee;
- the obligor establishing, through its conduct towards the obligee, trust worthy of protection;
- breach of a pre-contractual duty by the obligor;
- damage incurred by the obligee (for damages, see **5.1 Concept of Liability**);
- causality between the breach of a pre-contractual duty and the damage (for causality, see **5.1 Concept of Liability**); and
- fault of the obligor (subject to exceptions) (for fault, see **5.1 Concept of Liability**).

Liability for culpa in contrahendo results in the obligor's liability for damages, regardless of whether the primary contract is ultimately concluded. The obligee must be placed in the financial position they would have been if they had never entered into negotiations or had not relied on the obligor's conduct (so-called negative interest).

In addition, if a party fails to provide essential information and a contract is concluded, such contract may, under certain circumstances, be rescinded for fundamental error or fraud.

3.3 Standard Terms and Conditions

Under Swiss law, standard/general terms and conditions (GTC) become part of a contract only if validly incorporated under the general rules of consensus. In other words, the parties must have agreed to their application.

In principle, this requires that:

- the party relying on the GTC clearly refers to their applicability prior to or at the time of conclusion of the contract;
- the counterparty has a reasonable opportunity to access the GTC – ie, the GTC must be easily accessible to the counterparty, for example, through a clickable link in an electronic contract, or by providing the GTC in physical form in a physical contract (although, at least in B2B relationships, it may potentially be sufficient to provide GTC to a physical contract by electronic means such as a QR code); and
- the counterparty consents to the application of the GTC.

In general, the standard for valid incorporation of GTC is stricter in B2C than in B2B relationships. In B2B contracts, the requirements regarding the clarity of reference to the GTC, the reasonableness of access, and the manifestation of consent are less demanding. For example, in a B2C relationship, consent will usually need to be explicit, such as by signing the contract with the attached GTC or, in an e-commerce context, by clicking a box confirming acceptance of the GTC. In B2B relationships, tacit acceptance may be sufficient, particularly in the context of ongoing dealings or established trade practice.

3.4 Application of Local Law on Standard Terms

Swiss law does not provide a legal definition of standard terms and conditions.

Generally, the term GTC is understood to refer to contractual clauses pre-formulated unilaterally by one party, usually intended for use in the future conclusion of multiple contracts, and serving as a principally non-negotiable basis for entering into agreements with counterparties. In this context, some legal scholars argue that even contract templates presented to the counterparty for signature could qualify as GTC, if the contract text has not been negotiated between the parties. However, there is no Swiss Federal Supreme Court decision that explicitly addresses this question.

In order for pre-formulated contractual clauses to be considered "negotiated" and thus no longer regarded as GTC but as individual agreements, discussions must have taken place regarding their content. The pre-formulated contractual clauses may, however, remain unchanged as a result of these discussions (eg, due to concessions made by the other party on price or other clauses).

Swiss law does not have a dedicated statute regulating GTC. However, certain statutory provisions specifically apply to GTC, and Swiss case law and doctrine have developed additional rules based on general contract principles. These rules govern both the incorporation of GTC into a contract and the limits of their enforceability. It is important to note that, in B2B relationships, there is no general judicial review of the substantive content of GTC. Judicial control primarily concerns their incorporation and interpretation, subject to limited exceptions such as the unusual clause rule and mandatory legal provisions (see **3.5 Ineffectiveness of Standard Terms Due to Unreasonable Disadvantage**).

The most important rules and statutory provisions are the following.

- Primacy of Individually Negotiated Terms – clauses that have been individually negotiated prevail over conflicting provisions in GTC.
- Unusual Clause Rule – where a party accepts GTC globally – ie, without specifically considering their individual provisions – a clause may be excluded from the contract if it is objectively unusual and, from the perspective of the party accepting the GTC, subjectively unexpected, and the party was not specifically alerted to the clause (eg, through a separate notice or bold type). The counterparty's business experience and industry knowledge is relevant to the assessment of subjective unusualness. The more a clause departs from the statutory or contractual framework and adversely affects the counterparty's legal position, the more likely it is to be considered objectively unusual.
- Rule of Interpretation in Accordance With Dispositive Law – in the event of ambiguity in the interpretation of a clause, the interpretation that aligns with the applicable dispositive law is to be preferred.
- Rule of Interpretation Against the User – if the interpretation in accordance with dispositive law does not lead to a conclusive result, ambiguous clauses are to be interpreted against the party considered to be more knowledgeable in the relevant industry and responsible for the use of the pre-formulated contractual clauses.
- Invalidity of Abusive Clauses in B2C Contracts (Article 8 of the UCA) – see **3.5 Ineffectiveness of Standard Terms Due to Unreasonable Disadvantage**.

When assessing GTC under the above rules, it is important to take into account that GTC should be drafted in a transparent manner – ie, formally and linguistically comprehensible and readable. For example, GTC must be written in a language commonly used at the place of contract conclusion (unless the parties have agreed on another negotiation and contract language) and should – at least in B2C contracts – refrain from using technical terms, including "legalese" (or at least explain such terms), be clearly structured (eg, include headings to break up the text), not be excessively long, and be legible (eg, in sufficiently large font).

3.5 Ineffectiveness of Standard Terms Due to Unreasonable Disadvantage

In Switzerland, judicial control of GTC is generally limited, particularly in B2B relationships. There are, however, two main corrective mechanisms that can lead to the inapplicability of clauses in GTC because one party is disadvantaged.

- In B2B relationships, courts do not generally review the substantive content of GTC – except for compliance with mandatory legal provisions. Judicial control primarily concerns the valid incorporation and interpretation of GTC. However, the so-called unusual clause rule (see **3.4 Application of Local Law on Standard Terms**) partially functions as a means of substantive control. The rule does not specifically refer to disadvantages but applies to unusual clauses in general. Clauses that are strongly disadvantageous may be inapplicable under the unusual clause rule.
- In B2C relationships, the courts control both the proper incorporation of GTC (including the unusual

clause rule) and the content of GTC. In B2C contracts, Article 8 of the UCA applies, according to which a party acts unfairly if it uses GTC that, in a manner contrary to good faith, create a significant and unjustified imbalance between the contractual rights and obligations to the detriment of consumers.

According to prevailing doctrine, a clause in GTC is considered to be significantly imbalanced if it deviates substantially from the statutory rules to the detriment of the consumer. However, the clause in question should not be considered in isolation, but together with all other clauses in the GTC. Disadvantages of a particular clause may be offset by specific advantages for the consumer in other clauses of the GTC.

However, neither the application of the unusual clause rule nor Article 8 of the UCA leads to the inapplicability of the GTC themselves; rather, only the specific clause in question is not applicable.

3.6 Battle of Forms

In principle, a contract is formed despite a collision (battle of forms) of GTC, provided that the conflicting clauses do not concern essential contractual elements (such as the price). Clauses that are materially consistent (eg, if both GTC declare Swiss law as applicable) become part of the contract, whereas conflicting clauses are both ineffective as a result of partial disagreement, meaning that neither clause applies (so-called knock-out theory).

3.7 Signatures and Notarial Deeds

A handwritten signature (or a QES – see below) is only necessary if:

- the law requires adherence to the simple written form (which is rarely the case with commercial contracts) – for example, for the assignment of contractual rights or claims (for more information on the simple written form requirement, see **3.1 Necessary Form**); or
- contracting parties to a commercial contract agree on the "written form" without further defining such form (which is often the case).

There are very few commercial contracts that require a notarial deed. The most widespread examples concern certain types of contracts related to immovable property; see further information and examples in **3.1 Necessary Form**.

Simple or advanced electronic signatures (eg, standard DocuSign or Adobe Sign) can be used to execute commercial contracts that are not subject to any legal or agreed written form requirements to the contrary. For the few commercial contracts subject to written form requirements, only so-called qualified electronic signatures (QES) generated in accordance with the ESigA are legally equivalent to a handwritten signature and therefore satisfy the written form requirement (see **3.1 Necessary Form**).

There are currently no agreements on the mutual recognition of electronic signatures (in particular of QES) between Switzerland and any third country or the EU. However, Switzerland and the EU are currently pursuing negotiations for mutual recognition; see the Swiss Trends and Developments article, section 4.

3.8 Official Registration

Under Swiss law, very few commercial contracts must be entered into official registers. This applies, amongst others, to the reservation of title to movable property which needs to be registered with the register for reservation of title. In addition, transactions relating to ownership of immovable property, easements, and building rights must be entered into the land register.

3.9 Further Requirements

For a contract to be validly concluded, the parties must agree on the essential terms. Such parties must have the legal capacity and authority to act. Individuals have the capacity to act if they are 18 years of age and are capable of judgement. Individuals lacking the capacity to act must be represented by a legal representative. Companies (eg, Ltds and LLCs) must be represented by an authorised person.

Further, the content and terms of the contract must not be impossible (initial objective impossibility of the obligor to fulfil the obligation), unlawful (deviation from mandatory Swiss law) or immoral (violation of important social values). Typical examples of immoral con-

tracts include contracts that infringe core personality rights (eg, obliging someone to marry or not to marry) or contain excessive commitments (in particular with regard to duration, intensity, or degree of control).

Finally, the contract needs to comply with form requirements, if any (see **1.2 Form** and **3.1 Necessary Form**).

If a party has entered into a contract as a result of fraud, duress, or a fundamental error – for example, concerning circumstances that the affected party, in good faith, regarded as a necessary basis of the agreement – it can, under certain circumstances, declare the contract invalid.

4. B2B and B2C Contracts

4.1 Different Laws

Most provisions of Swiss contract law apply equally to both B2B and B2C relationships.

Swiss law contains very few rules that apply exclusively to B2B contracts. Examples include the rule that loans between commercial parties automatically bear interest even without an explicit agreement, or that if a specific delivery date is not met, it is assumed that the buyer has waived delivery and is claiming damages for non-performance. These rules are typically non-mandatory, and the parties may deviate therefrom by mutual agreement.

While Switzerland does not have a single overarching statute governing B2C contracts, there are both special laws exclusively applicable to consumers and individual provisions embedded in general statutes. Special consumer statutes include the Consumer Credit Act, the Package Travel Act, and the Price Disclosure Ordinance. Specific consumer provisions can be found across Swiss contract law, such as the statutory right of withdrawal in door-to-door sales, the mandatory two-year warranty period for sales contracts, protection against abusive terms and conditions (see **3.5 Ineffectiveness of Standard Terms Due to Unreasonable Disadvantage**), as well as conflict of law and jurisdictional protection rules. Most rules specifically addressing B2C contracts are mandatory, meaning a contractual agreement deviating from such rules is null and void.

4.2 Consumer Protection Rights

The most relevant mandatory consumer protection rights are as follows.

- Consumer Credit Protections – the Consumer Credit Act provides consumers with extensive rights, including information duties of the creditor, form requirements, a 14-day statutory withdrawal right, interest rate caps, and mandatory creditworthiness assessments by the lender.
- Package Travel Protections – the Package Travel Act grants consumers mandatory rights, such as cancellation and substitution rights, protection in case of organiser insolvency, and information duties.
- Mandatory Warranty Rights – in B2C sales contracts, the statutory warranty period of two years (one year for pre-used goods) may not be shortened. For future changes in this regard, see the Swiss Trends and Developments article, section 2.
- Unfair Contract Terms – Article 8 of the UCA protects consumers against abusive terms and conditions (see **3.5 Ineffectiveness of Standard Terms Due to Unreasonable Disadvantage**).
- Price Disclosure Obligations – the Price Disclosure Ordinance requires that prices be indicated clearly, including taxes, and in Swiss francs when offering goods and services to consumers.
- Jurisdiction and Choice of Law Protections – the Civil Procedure Code, the PILA and the Lugano Convention contain several rules protecting consumers. As a general rule, consumers may choose whether to file a claim at their domicile or at the counterparty's registered office; claims against consumers must be brought before the courts of their domicile; and B2C contracts are generally governed by the law of the state in which consumers are domiciled.

5. Liability

5.1 Concept of Liability

In principle, contractual liability is fault-based. Such liability requires, cumulatively, the following.

- Breach of Contract by the Obligor – this includes non-performance, bad performance and late performance.
- Damage Incurred by the Obligee – damage is an involuntary loss in the obligee's resources (reduction of assets, increase in liabilities or loss of profits; see **5.2 Punitive Damages and Liability Caps**).
- Causality Between the Breach of Contract and the Damage – causality describes the relationship between the cause and the effect. Firstly, the breach must be a necessary condition (conditio sine qua non) for the occurrence of the damage in question (natural causality). Secondly, the breach must also be adequate to cause such damage according to the ordinary course of events and general life experience (adequate causality). In other words, the breach must be reasonably connected to the damage.
- Fault of the Obligor – fault is presumed and the obligor must show that they were not at fault for the damage that occurred. The notion of fault includes both intention (wilful action) and negligence. For strict liability, see **5.3 Strict Liability**.

If the above conditions are met, the obligor is liable for damages and the obligee must, in general, be put in the financial position they would have been in if the contract had been properly performed (so-called positive interest).

5.2 Punitive Damages and Liability Caps

Unlike in some common law jurisdictions, Swiss law does not recognise punitive damages.

Recoverable damage is generally defined as an involuntary reduction in net worth – ie, the difference between the injured party's actual financial position as a result of the damaging event and the hypothetical financial position had the event not occurred. Such damage may consist of an increase in liabilities, a decrease in assets, or loss of profit. If recoverable damage exists, it must – provided that the other liability requirements are fulfilled (see **5.1 Concept of Liability**) – generally be compensated, regardless of the category into which it falls.

Liability is in principle unlimited (irrespective of the type of damage) under general Swiss contract law, unless a statute provides otherwise. For example, the liability of a freight carrier is limited to the value of the goods. However, in any case, compensation is limited by the principle of causality, meaning that only damage that is the natural and adequate consequence of the harmful event must be compensated (see **5.1 Concept of Liability**). In addition, the injured party bears the burden of sufficiently substantiating and proving the damage suffered.

Although liability is in principle unlimited, Swiss law provides for specific grounds under which a court may reduce or exclude compensation. Examples include breach of the injured party's duty to mitigate damages, contribution to the damage through its own fault, or aggravation of the damage by third-party intervention.

5.3 Strict Liability

Although contractual liability requires a fault of the obligor, there are cases of contractual liability without fault (strict liability regime) such as the following.

- Liability for Auxiliary Persons – an obligor is liable for the conduct of auxiliary persons engaged in the performance of the obligation as if it were its own, unless the obligor can establish that the damage would have occurred even without such involvement. The obligor cannot exonerate itself by showing due care in the selection or supervision of auxiliary persons.
- Seller's Liability for Direct Damages in Case of Breach of Warranty/Rescission of a Sales Contract – if a buyer rescinds a sales contract due to defects, the seller is liable for direct damages irrespective of any fault (liability for indirect damages requires fault).

Beyond general contract law, Swiss law provides for several instances of strict liability, particularly in tort law and special statutes.

- Employer's Liability – an employer is liable for damage caused by its employees or ancillary staff in the course of their work, unless the employer proves that all due care in the selection, instruction, and supervision of its employees or ancillary staff was exercised or that the damage would have occurred regardless. Although not absolute, the

reversal of the burden of proof often amounts to a quasi-strict liability.
- Product Liability Pursuant to the Product Liability Act – manufacturers are strictly liable for personal injury and property damage caused by defective products, subject to limited defences.
- Building Owners and Animal Owners – building owners and animal owners are held liable for risks associated with defective structures or animals, regardless of fault.
- Other Statutory Regimes – for instance, liability for motor vehicle owners, nuclear installations, or environmental damage is based on strict liability considerations.

5.4 Contractual Limitation on Liability

In line with the principle of freedom of contract, which carries significant weight under Swiss law, the parties to a commercial contract are generally free to limit or entirely exclude liability.

That being said, several restrictions apply, the most important ones being as follows.

- As a general rule, liability cannot be limited in advance in cases of gross negligence or wilful misconduct, although such limitations may be agreed after the occurrence of damage.
- According to prevailing legal doctrine, liability limitations are invalid in case of bodily injury or death.
- Liability limitations in connection with commercial activities that require official state licences (eg, banks, and railway operators), including those for slight negligence, may be declared null and void at the court's discretion.
- Various statutes provide for special liability regimes, for example, regarding product liability.

A deviation from the general liability limitation rules can be found in sales contract law. Some legal scholars argue that liability for defects in goods may be excluded even in cases of fault or gross negligence. In any case, defects that go entirely beyond what a buyer could reasonably expect, and which substantially undermine the contract's economic purpose, cannot be covered by a general waiver of warranty or liability. In addition, liability cannot be excluded where defects have been fraudulently concealed.

Further, legal scholars debate whether liability limitations should generally be invalid where the nature of the contractual relationship itself stands against them. The most frequently cited example concerns mandate (service) contracts, as a service provider is statutorily obliged to perform all services diligently and carefully, which also sets the standard of liability. To date, there is no Swiss Federal Supreme Court precedent on this question.

While liability limitations in GTC are not per se prohibited, they are subject to rules on GTC control (see **3.3 Standard Terms and Conditions** to **3.6 Battle of Forms**). In particular, liability limitation clauses may be deemed unusual (the so-called unusual clause rule; see **3.4 Application of Local Law on Standard Terms**) and therefore not applicable. In consumer contracts, liability limitations may also lead to a significant imbalance of rights and obligations and thus be invalid under Article 8 of the UCA (see **3.5 Ineffectiveness of Standard Terms Due to Unreasonable Disadvantage**). Accordingly, even if a liability exclusion is valid under the general rules, it must additionally pass the test of GTC control in the individual case.

6. Force Majeure and Hardship

6.1 Concept of Force Majeure

Under Swiss law, the lack of a specific force majeure clause does not preclude relief from performance in circumstances outside a party's control. Such cases are usually dealt with under the following rules.

- Impossibility – if performance subsequently becomes objectively and permanently impossible due to circumstances for which the obligor is not at fault (eg, natural disasters, government measures, and war), the obligor is released from its obligation to perform. Both parties are released from their respective obligations – ie, the obligor from performing and the obligee from paying, etc. Any consideration (eg, payment) already given must be returned. However, there are also special statutory rules which provide otherwise.
- Fundamental Change of Circumstances (Clausula Rebus Sic Stantibus) – judicial adaptation or – as a last resort – termination of a contract may be

sought under the concept of clausula rebus sic stantibus. However, Swiss courts tend to apply this doctrine very restrictively and the clausula thus serves as an exceptional remedy. Pursuant to established case law, the key elements are as follows.

(a) There must be a fundamental change of circumstances after the conclusion of the contract.
(b) The change must not have been reasonably foreseeable at the time of contract conclusion, even considering the inherent risk of long-term contracts.
(c) The change must result in a severe disturbance of the contractual balance, creating a "gross", "excessive" disproportionality between performance and counter-performance.
(d) The changed circumstances must causally affect the contractual relationship.
(e) There must be no contradictory party behaviour – for example, by unreserved performance or causing the change of circumstances.

Requirements on the affected party to avoid or mitigate the impact may arise from the principle of good faith, which is of fundamental importance in Swiss private law.

6.2 Force Majeure Clauses

Force majeure clauses are widespread in commercial contracts under Swiss law. In particular, since the COVID-19 pandemic, force majeure clauses have attracted increased attention from businesses, and many companies now routinely include such provisions in their contracts. From a legal perspective, these clauses serve a clear function: properly drafted, they allocate the risk of events beyond a party's reasonable control and provide legal certainty in respect of their consequences.

In practice, force majeure clauses generally provide for the suspension of contractual obligations in the event of unforeseeable circumstances outside a party's reasonable control. Often, they include specific notification duties as well as an obligation to mitigate damages. Frequently, they also grant a right of termination where the force majeure event persists for a specified duration. Most clauses are formulated in broad terms, comprising a general definition of force majeure accompanied by a non-exhaustive list of illustrative force majeure events.

The absence of a force majeure clause does not preclude a party from invoking statutory remedies (see **6.1 Concept of Force Majeure**).

6.3 Concept of Hardship

Whereas force majeure provisions typically apply only where contractual performance has become impossible, the concept of hardship addresses situations in which performance remains possible but has become excessively onerous due to unforeseeable circumstances.

While there is no explicit statutory provision governing hardship, Swiss case law recognises the principle of clausula rebus sic stantibus (see **6.1 Concept of Force Majeure**), allowing the competent court to adapt or (as a last resort) terminate the contract.

6.4 Hardship Clauses

While commercial contracts in Switzerland frequently include a force majeure clause, general hardship clauses are less commonly used. Hardship clauses may be found in long-term, high-value international agreements, often reflecting international drafting standards rather than domestic practice.

Instead of general hardship clauses, parties more frequently include specific price adjustment mechanisms tailored to foreseeable risks. Common examples are indexation clauses (eg, linking prices to inflation or commodity indices), currency adjustment provisions, or clauses allowing price adjustments in case of significant changes in raw material, energy, or transportation costs. These mechanisms are generally regarded as more predictable and easier to enforce than a broad hardship clause.

The absence of a hardship clause does not preclude a party from invoking hardship rules under Swiss law, such as the judicial doctrine of clausula rebus sic stantibus, provided that its conditions are met (see **6.1 Concept of Force Majeure**).

7. Warranties and Remedies

7.1 Warranties and Remedies Under Local Law

Swiss law distinguishes between impossibility, delay, defects, and other breaches of contract, each with different legal consequences.

Subsequent Impossibility

If the performance of obligations becomes objectively and permanently impossible after the conclusion of the contract due to circumstances for which the obligor is not at fault (eg, natural disasters, government measures, and war), the obligor is released from its obligation to perform (see **6.1 Concept of Force Majeure**).

Delay

If the obligor fails to perform when performance has become due, the obligor falls into default upon reminder by the obligee. Such a reminder is not required if the parties have agreed on a fixed date for performance or in case of a so-called anticipated breach of contract. From that moment, the obligor is liable for damages caused by the delay (see **5.1 Concept of Liability** for the concept of liability under Swiss law) and assumes the risk of accidental destruction or deterioration of the object owed. Where the delayed performance concerns a monetary payment, the debtor owes default interest at a rate of 5% p.a. The obligee may either continue to insist on performance or rescind/terminate the contract if the obligor still fails to perform within a reasonable grace period set by the obligee. In both cases, the obligee may also claim further damages.

Defects

Certain contract types are subject to special statutory warranties in case of defects. For example, goods sold or works delivered must possess not only all agreed qualities (eg, specifications), but also all qualities that can be expected in good faith – ie, they must be fit for their intended use.

In case of defective sales goods, the buyer may, under certain conditions, demand replacement with non-defective goods, a reduction of the purchase price, or rescind the contract. If the buyer rescinds the contract, the seller must compensate the buyer for the damage directly caused by the defective goods. Further damage must only be compensated if the seller is at fault (see **5.1 Concept of Liability**). For the future revision of sales warranty law, see the Swiss Trends and Developments article, section 2.

In case of defective works, the client may demand rectification or a price reduction in the event of minor defects or rescind the contract if the works are substantially defective. If the contractor does not rectify a defect within a reasonable grace period, the customer is entitled to arrange a substitute performance at the contractor's risk and expense without prior judicial approval. In addition, the client may claim damages if the contractor is at fault (see **5.1 Concept of Liability**).

Other Breaches of Contract

For any other breach of contract that does not fall under the aforementioned categories and for which no special statutory provisions apply, the breaching party may be liable under the general rules of liability (see **5.1 Concept of Liability**). The other party may also request specific performance.

7.2 Deviation From Warranty and Remedy Provisions by Contract

Under Swiss law, in line with the important principle of freedom of contract, statutory warranty and remedy provisions are largely of a dispositive nature and may be modified or excluded by agreement.

To what extent parties to a commercial contract may deviate from statutory warranty and remedy provisions must be examined separately for impossibility, delay, defects, and liability/other breaches of contract (see **7.1 Warranties and Remedies Under Local Law** for more information on these warranty and remedy categories). In addition, further mandatory provisions apply in B2C contracts.

Subsequent Impossibility

Contracting parties are generally free to foresee specific rules applying to cases of subsequent impossibility and related cases. This is most often done regarding force majeure or hardship situations. For more details, see **6.2 Force Majeure Clauses** and **6.4 Hardship Clauses**.

Delay

Contracting parties enjoy broad freedom in contractually regulating default. They may, on the one hand, deviate from statutory provisions in defining when default occurs (eg, immediately on the agreed performance date without the need for a reminder, or only after multiple reminders with a set grace period), and, on the other hand, they may largely determine the consequences of default at their discretion (eg, the right to have performance carried out by a third party at the cost of the defaulting party, or exclusion of the statutory right of termination). Mandatory statutory provisions are rare; examples include notice and termination periods in the event of a tenant's payment default and maximum interest rates vis-à-vis consumers.

Defects

Contracting parties enjoy broad discretion in deviating from statutory rules for defects. They may, for example, provide for a specific definition of defects, limit or exclude warranty rights, shorten or extend limitation periods, or stipulate specific contractual remedies (such as repair or replacement before rescission or price reduction).

Limited exceptions apply. For example, warranty limitations in sales contracts are null and void if the seller has fraudulently concealed defects from the buyer, or if the seller has given specific warranties as to certain characteristics of the goods. Further constraints to the deviation from statutory rules may apply for sales contracts and contracts for works in connection with immovable property, eg, mandatory minimum notice periods, mandatory right to rectification and a mandatory minimum five-year limitation period. For the future revision in sales law, introducing further mandatory provisions, see the Swiss Trends and Developments article, section 2.

Liability

Certain restrictions apply regarding contractual limitations or exclusions of liability; see **5.4 Contractual Limitation on Liability** for more information.

B2C Contracts

There are additional mandatory provisions for B2C contracts. For example, the warranty period in B2C sales contracts may not be shorter than two years (one year for pre-used goods). Further, most B2C sales will not be governed by an individually negotiated agreement but rather by GTC, in which case the specific rules on (consumer) GTC must be observed. Under these rules, warranty limitations may be deemed unusual (the so-called unusual clause rule; see **3.4 Application of Local Law on Standard Terms**) and therefore invalid, and warranty limitations may lead to a significant imbalance of rights and obligations and thus be invalid under Article 8 of the UCA (see **3.5 Ineffectiveness of Standard Terms Due to Unreasonable Disadvantage**).

Trends and Developments

Contributed by:
Andrea Haefeli and Michael Kissling
Walder Wyss Ltd

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Authors



Andrea Haefeli is a counsel at Walder Wyss. She advises clients across all aspects of contract, commercial and corporate law. Andrea brings specialised expertise in commercial contracts, including sales/works/mandate contracts, agency and distribution contracts, rental and leasing contracts, development and co-operation contracts (including joint ventures) as well as in general terms and conditions. Her practice further includes e-commerce and IT. She advises across various industries from the conceptual, drafting, and negotiation phase to dispute settlement. Andrea has (co-)authored various legal publications on contract law. She is a member of both the Zurich and Swiss Bar Associations.



Michael Kissling is a senior associate in the Corporate/M&A team at Walder Wyss, specialising in commercial contract law, corporate law, and ESG and sustainability. He advises clients in a wide range of industries, ranging from crypto start-ups to large international retail groups in all contract-related matters, from negotiations and drafting to dispute resolution. A top graduate of the University of Bern (MLaw), Michael conducted additional studies at the University of Helsinki and is a member of both the Zurich and Swiss Bar Associations.

Walder Wyss Ltd

Seefeldstrasse 123
8008
Zurich
Switzerland

Tel: +41 58 658 56 71
Fax: +41 58 658 59 59
Email: andrea.haefeli@walderwyss.com
Web: www.walderwyss.com

walderwyss

Modernising Swiss Commercial Contract Law

Introduction

Swiss commercial contract law remains remarkably stable. The Code of Obligations, whose structure with regard to contract law has remained widely unchanged for more than a century, continues to provide a principle-based and largely technology-neutral framework built on freedom of contract and good faith. Its abstract rules have proven capable of accommodating new business models without fundamental legislative intervention, and recent legislative changes were mostly focused on targeted and/or sector-specific adjustments rather than systemic reforms.

Swiss contract practice is, however, increasingly shaped by EU regulation, particularly in two ways: parties might incorporate EU standards into Swiss law-governed contracts, for example, through compliance or supply chain clauses; and Switzerland may autonomously adopt EU rules in its legislation, often with a "Swiss finish" that adapts the EU model to the Swiss legal environment.

This article outlines recent and forthcoming developments in Switzerland that are particularly relevant to commercial contracts. Key topics include recent, upcoming and potentially upcoming revisions to the Code of Obligations (CO) in the areas of sales contracts and contracts for works, with a focus on first experiences with the recently revised warranty provisions for construction defects (see section 1 below), efforts to modernise Swiss law on the sale of movable goods (see section 2), and evolving rules on product safety and product liability (see section 3). A further development of note is Switzerland's initiative towards mutual recognition of electronic signatures with the EU (see section 4), promoting digitalisation and the secure use of electronic signatures across borders. Finally, section 5 discusses the new legal basis for international commercial courts and its implementation by the cantons, reinforcing Switzerland's position as a forward-looking jurisdiction for international business.

1. First practical experience with the revised warranty provisions for construction defects

The Code of Obligations (CO), specifically the warranty of quality and fitness provisions in sales contracts and contracts for works law, has been revised with the aim of strengthening the rights of buyers and customers in relation to construction defects. The revision entered into force as of 1 January 2026 and applies to contracts concluded from this date onwards. Initial discussions in practice show that several key questions, especially regarding movable goods or works that have been integrated into an immovable work in a manner consistent with their nature and purpose and whose defects have caused the immovable works to be defective, remain open and require clarification by the courts.

The key changes to the CO are as follows.

- Mandatory minimum period of 60 days for defect notice (*Rügefrist*) – the previous requirement for an "immediate" defect notice (ie, within a few days) has been replaced with a clear minimum period of 60 days. The 60-day notice period applies to:
  (a) property purchases;
  (b) immovable works;
  (c) movable purchased items (eg, windows) and movable works (eg, the interior paintwork of a building) that have been integrated into an immovable work in a manner consistent with their nature and purpose and whose defects have caused the immovable works to be defective; and/or
  (d) movable works that have been created by an architect or engineer (eg, plans) and used in a manner consistent with their nature and purpose as the basis for the creation of an immovable work and whose defects have caused the immovable work to be defective.

This 60-day notice period is unilaterally mandatory – ie, it cannot be shortened, but may be extended by contract. In particular with regard to (c), several interpretative issues remain open, such as what "integration" requires, in which cases an immediate notification is nevertheless necessary, or how the rule applies across contractual chains – these questions will need clarification by future case law.

- Mandatory right to free rectification (*unentgeltliche Verbesserung*) – buyers and customers have a right to free rectification for construction defects affect-

ing a building. This applies to (i) property purchase contracts, when the building is still to be built or newly completed within the two years before the sale, and (ii) contracts for works relating to buildings. The right to free rectification is mandatory and cannot be excluded in advance. Buyers and customers can choose whether to exercise any existing rights of reduction and/or rescission (see also the Swiss Law and Practice section under **7.1 Warranties and Remedies Under Local Law**) or their right to rectification. For contracts for works relating to buildings, the prior right to rectification becomes mandatory; for property sales law, this right is newly introduced and also mandatory.

- Mandatory minimum five-year limitation period (*Verjährungsfrist*) – the five-year limitation period is now unilaterally mandatory and cannot be shortened (only extended). It applies to:
  (a) property purchases;
  (b) immovable works;
  (c) movable works that have been incorporated in an immovable work in a manner consistent with their nature and purpose and have caused the immovable work to be defective; and
  (d) to the assertion of rights for defects in an immovable work against the architect or engineer who provided services in connection with such work.
- Substitute performance (*Ersatzvornahme*) – if contractors do not rectify a defect within a reasonable grace period, customers are entitled to arrange a substitute performance at the contractors' risk and expense without prior judicial approval. This follows longstanding case law and is now codified for clarity.

With the aim of strengthening the rights of buyers and customers in relation to construction defects, the new provisions are almost all mandatory in nature. Until now, mandatory rules were rare in contracts for work and sales (as well as in contract law in general). This revision marks a shift towards greater buyer protection.

2. Modernising Swiss sales law – general revision of warranty provisions in sales law (movable property)

Swiss sales law regarding the sale of movable property has remained more or less unchanged for more than a century. It is still mainly shaped by the legal thinking of the late 19th and early 20th century, assuming spot transactions involving pre-existing goods, often between equally knowledgeable parties. In reality, today's commercial context is dominated by manufactured goods, complex digital elements, long distribution chains, and significant information asymmetries, especially in B2C transactions. However, a comprehensive revision and modernisation of its warranty provisions is underway.

The Federal Council's 2023 report on the need to modernise warranty law for sales of movable property identified significant reform needs and recommends alignment with the minimum standards of the EU/EEA (namely Directive (EU) 2019/770 on certain aspects concerning contracts for the supply of digital content and digital services and Directive (EU) 2019/771 on certain aspects concerning contracts for the sale of goods).

Areas identified by the report as requiring reform include:

- expanding the definition of defect to cover usual durability and advertised qualities (according to current law, these aspects are not covered by the definition of defect);
- introducing a presumption that defects appearing within one year already existed at the time of the purchase, subject to proof to the contrary (under current law, the buyer must prove that defects existed at the time of the transfer of risk);
- establishing a 60-day notice period for defects, at least for consumers (under current law, immediate notification is required);
- a right to rectification (repair) across sales law (under current law, it only exists in the law for contracts for works and in property sales law for construction defects in buildings – see also section 1 of this article);
- making consumer warranties mandatory (in principle, warranty rights are currently fully waivable,

including in consumer contracts, with the exception of limitations on reducing statutory prescription periods in certain cases);
- clarifying consequential damage rules; and
- introduction of minimum standards, including obligations for updates, for digital goods and products with digital components.

The impetus for reform arose not only from ongoing harmonisation in the EU, but also from the increasing divergence of Swiss law from internationally accepted best practices, as well as from policy concerns about sustainability (encouraging longer product life cycles and reparability) and digitalisation (addressing new types of goods and defects).

In autumn 2023, the Swiss Parliament instructed the Federal Council to prepare a respective consultation draft. In the meantime, Directive (EU) 2024/1799 on common rules promoting the repair of goods, which provided for an amendment to Directive (EU) 2019/771, has been adopted in the EU. On the one hand, repairability is an objective element for contractual compliance; on the other hand, the warranty period is extended by 12 months if a repair has been carried out. As the Federal Council is monitoring further developments in the EU, it is to be expected that these (and other) new developments in the EU as well as in Switzerland will be addressed in the Federal Council's consultation draft regarding the revision of warranty law in sales contracts. The draft is currently expected in the first half of 2027. The expert group has not yet finished working on the wide-ranging and complex issues that have arisen and it remains to be seen what the proposed changes will look like.

3. Product safety and product liability

The Product Liability Act is modelled on Council Directive 85/374/EEC, which has been replaced in the meantime by Directive (EU) 2024/2853 on liability for defective products. Amongst other things, Directive (EU) 2024/2853 modernises manufacturer liability in response to digitalisation. It is not yet clear whether Switzerland will adopt these changes.

On product safety, the situation is more advanced. The Product Safety Act is modelled on Directive 2001/95/EC, which was superseded on 13 December 2024 by the General Product Safety Regulation (EU) 2023/988 (GPSR). To ensure that the Product Safety Act continues to provide rules on product safety that are equivalent to the EU rules, a revision of the Product Safety Act was initiated. In June 2026, a draft revision of the Product Safety Act was submitted for public consultation. It aims to incorporate the core elements of the GPSR, facilitating access for Swiss exporters to the EU market. The proposed amendments address, in particular, market surveillance, international cooperation, access to European information and alert systems, and data protection.

4. Mutual recognition of electronic signatures between Switzerland and the EU

Currently, (qualified) electronic signatures under Swiss law are not recognised by the EU, and the same applies to (qualified) European signatures in Switzerland (see the Swiss Law and Practice section under **3.7 Signatures and Notarial Deeds**). In other words, a qualified electronic signature (QES) generated in accordance with the Federal Act on Electronic Signatures (ESigA) is not recognised as being equivalent to a qualified electronic signature under EU law, and vice versa. Consequently, there are many pitfalls and uncertainties when using electronic signatures cross-border. Mutual recognition would promote digitalisation and the secure use of electronic signatures across borders.

In January 2025, the Federal Council instructed the Federal Department of the Environment, Transport, Energy and Communications, along with the Federal Department of Foreign Affairs, to draw up a negotiation mandate with the EU, with a view to negotiations on the mutual recognition of electronic signatures.

Preparations for these negotiations will include assessing whether European evaluation rules and practices are sufficiently equivalent to those in Switzerland. Discussions with the European Commission are currently underway. However, due to existing interdependencies there is currently no detailed timeline and concluding an agreement before the end of 2026 appears unlikely.

For the time being, companies will have to continue to rely on alternative (sometimes burdensome) solutions

– eg, by signing cross-border contracts once with a Swiss signature and once with a signature recognised under the Regulation (EU) No 910/2014 on electronic identification and trust services for electronic transactions in the internal market (e-IDAS), or by going back to wet-ink signatures.

5. International commercial courts in Switzerland

5.1 New legal basis

The Swiss Civil Procedure Code (CPC) was revised with effect as of 1 January 2025. The revision addressed, among other things, procedural costs, evidence, conciliation proceedings and – following an international trend – the possibility of establishing Swiss international commercial courts.

Under the revised CPC, the cantons can establish so-called international commercial courts. These are commercial courts having jurisdiction over international commercial disputes and may conduct proceedings in English. The conditions are that:

- the dispute concerns the business activity of at least one party;
- the dispute value is at least CHF100,000;
- the parties expressly consent to the jurisdiction of the commercial court; and
- at the time of that consent, at least one party has its domicile, habitual residence or registered office abroad.

Notably, and in contrast to the ordinary jurisdiction of the commercial courts, the parties need not be registered in the Swiss commercial register or a comparable foreign register. International commercial courts are therefore also available for disputes involving individuals, for instance under a shareholders' agreement.

The cantons may provide that, at the request of all parties, proceedings in such disputes are conducted in English. Until now, the four existing commercial courts in Switzerland (Zurich, Berne, St. Gallen and Aargau) were required to conduct proceedings in their official languages (ie, in German or, in the case of Berne, alternatively in French), although they often allowed documents to be submitted in English without requiring translations.

The language option is not limited to commercial courts. The cantons may also allow English in international commercial disputes before the ordinary courts. In principle, the requirements are the same as for international commercial courts, except for the consent to the jurisdiction of the commercial court. This opens the door to English-language proceedings also in cantons that have no commercial court. It remains to be seen whether and to what extent the cantons will make use of this opportunity.

5.2 Implementation by the cantons

The canton of Berne has swiftly seized the opportunity. With effect as of 1 May 2026, the commercial court of the canton of Berne has been declared competent for international commercial disputes. At the request of all parties, the proceedings will be held in English.

The canton of Zurich also intends to establish an international commercial court. Under a bill submitted by the cantonal government, the jurisdiction of the Zurich Commercial Court will be extended to international commercial disputes and, where all parties so request, such proceedings will be conducted in English, with the court acting under the name "Zurich International Commercial Court" (ZICC). The bill is currently pending before the cantonal parliament, where it has been recommended for adoption by the competent committee. The ZICC is expected to become operational in 2027.

In both Berne and Zurich, no separate court or judicial body has been (or will be) created: the cases are heard by the existing commercial courts.

5.3 Key features for parties

Parties opting for an international commercial court benefit from the expertise of the existing commercial courts, which sit in a composition of one or more career judges familiar with all aspects of commercial law and specialist judges with extensive experience in the affected industries. The Berne and Zurich Commercial Courts and their judges are also known to be efficient and settlement-oriented.

Decisions of the international commercial courts (as with all decisions of Swiss commercial courts) can be appealed to the Swiss Federal Supreme Court.

Where the proceedings were conducted in English at the cantonal level, the parties may also file their briefs with the Federal Supreme Court in English, but proceedings are conducted in one of Switzerland's official languages (German, French, Italian or Romansh). If a party submits exhibits that are not written in an official language, the Swiss Federal Supreme Court may, with the consent of the other parties, waive the requirements for a translation. These developments further strengthen Switzerland's position as a premier international legal venue.

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