



Global Legal Solutions®

Liability Clause Checklist

GLS Checklists – Knowledge Leverage Tools



PART A: INTRODUCTION

1. INTRODUCTION

Liability clauses in commercial contracts regulate the extent to which a party assumes liability under the Agreement in the form of limits and exclusions of defined liability scenarios. They can often work in conjunction with applicable laws that can (i) impute mandatory assumption of liability and (ii) determine the validity of what the parties agree (e.g. unfair contract provisions).

Liability clauses are important as the assumption of unlimited liability for loss that arises out of or in connection with contract performance could tip the cost-benefit analysis of whether to transact in favour of not contracting. Each party needs commercial certainty regarding the risks they assume in commercial dealing.

This checklist will serve as a guide to help the draft person/lawyer systematically step through the points that should be considered when reviewing these clauses, regardless of the jurisdiction.

2. FURTHER SUPPORT

If you would like to clarify any point arising out of your use of this checklist, you may book a free 30-minute call with a GLS legal expert: [Free Consultation](#).

3. RELATED ASSUMPTIONS

In preparing this checklist, we have made the following assumptions:

- The default structure for each question is “Yes” or “No”;
- We are reviewing the clause from the customer’s perspective;
- Provisions are considered as though arising in a “Supply Contract” scenario, and the principles they invoke will be applicable to most commercial transactions;
- This checklist is based on English law principles; and
- Contracting parties are assumed to be legal entities.

Please remember that this checklist does NOT replace the need for independent legal advice.

PART B: LIABILITY CLAUSE CHECKLIST

4. ISSUES DASHBOARD

You should look at:

Unlimited Liability Items	Supplier “Get Out of Jail Free” Cards
Nature of Loss and Remoteness of Damage	Bars (Procedural) on Bringing Claims
Liability Caps	Physical Loss
Liability Cap Adequacy Tests	Liquidated Damages
Indirect Loss	

5. UNLIMITED LIABILITY ITEMS

Primary Query	Y/N/C	Secondary Query / Comment / Action
Info: certain liability scenarios should be unlimited in nature – either by customer or law.	C	
5.1 Does the Agreement seek to exclude or restrict the liability of the Supplier for:		