

## CONTRACTS OF ADHESION

An adhesion contract is a contract prepared by a party in a stronger position and signed by a weaker party who has no option to change the contract terms before signing. Adhesion contracts do not allow for negotiation and are offered on a “take-it-or-leave-it” basis. Such contracts are commonly used in today’s economy as a way for large companies to form binding agreements with large numbers of individual consumers.

Adhesion contracts are arguably more efficient than other contracts because “boilerplate” language is used and the period of negotiations is eliminated. This reduces transaction costs and frees large companies from the difficult proposition of adhering to contracts that were uniquely tailored to each consumer. However, because negotiations are not an option when dealing with an adhesion contract, there exists a potential for companies to use unfair or “one-sided” terms to which the other party would not agree if given the chance. Examples would be attempts to limit liability or to reserve the right to unilaterally change the contract.

Despite the potential for unfair terms, there are practical reasons supporting the use of adhesion contracts. For starters, contract terms are often standardized within particular industries. Negotiation on an individual basis of commonly used terms would not be efficient. To many consumers, the price and the product are arguably more important than the standardized language in the contract.

Certain products may also be purchased before a complete contract is seen by the consumer. An example of a situation where an adhesion contract is used in this manner includes an agreement that is found in the shrink-wrap of a box containing a product, such as a computer. Another scenario in which contracts of adhesion appear involves circumstances where a document is signed and the full list of contract terms is presented at a later time, such as with software end user license agreements.

The law generally treats an adhesion contract like any other legal agreement and assumes that a signature or use of the product or service establishes the intent to be legally bound. Whether or not the consumer actually read the terms of the adhesion contract is not legally relevant. Nevertheless, certain consumer protection rules apply to adhesion contracts when the terms do not fall within the reasonable expectations of the consumer. For example, if an adhesion contract term were so unfair that no reasonable or informed person would agree to the term, the court may invoke the legal doctrine of unconscionability and not enforce the agreement. However, in an effort to balance the competing interests of the parties, courts have set the standard as to what terms are unconscionable quite high. Thus, the adhesion contract clause in question must have been unfair at the time the contract was created and “shock the conscience” of the court.