

Guide to Going Global

Payment Terms



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Introduction

Navigating the intricate web of contractual obligations across diverse jurisdictions is a challenge for any lawyer crafting a commercial agreement. Beyond the legal terms expressly set out in a contract, a broad range of implied terms may also apply to the document, impacting how the contract operates.

In this guide, curated by DLA Piper's contract law specialists across key jurisdictions, we shine a spotlight on the 'payment term' clause that sets out the number of days and conditions for payment - a clause of vital importance and one that requires careful consideration in the drafting, regardless of which jurisdiction applies to the terms of the contract.

This guide isn't your typical legal roadmap; it's designed to steer you through the labyrinth of international legal intricacies. DLA Piper's experts have distilled insights into payment term clauses, late payment penalties and the potential sanctions within each jurisdiction. Consider this your introduction that lays the groundwork for more thorough legal advice.

As the legal landscape regarding payment terms evolves, for instance with EU law changes on the horizon that will impact how payment terms in contracts relating to EU Member States must be drafted, this guide provides a helpful snapshot and overview of the law at this current time.

For those seeking a deeper dive, connect directly with the team behind this guide or reach out to your regular DLA Piper contact.



Belgium

Belgium

Which laws regulate payment terms in business-to-business (B2B) transactions?

- (a) The act of 2 August 2002 on combating late payment in commercial transactions (**Late Payment Act**).
- (b) Book VI of the Belgian Code on Economic Law (**BCEL**).

Is a standard payment term implied by law if a contract does not specify a payment term?

If neither a date for payment nor a payment term is set out in the agreement then art. 4, §1 Late Payment Act states that any payment to reimburse a commercial transaction between undertakings must be made within 30 days, with such period starting from the day following:

- (a) the day after the date of receipt of the invoice or equivalent request for payment; or
- (b) if the date of receipt of the invoice or equivalent request for payment is not certain, or if the debtor receives the invoice or equivalent request for payment earlier than the goods or services, the day after the date of the receipt of the goods or services.

Is there a statutory maximum payment term that applies to B2B contracts?

- (a) General statutory maximum payment term
 - (i) In deviation from the statutory payment term of 30 days that is implied if the contract is silent, parties can agree on a payment term of a maximum of 60 days (art. 4, §1 Late Payment Act). A term in a contract providing for a longer payment period will be considered null and void.
 - (ii) However, even if a payment term of 60 days or less is specified, a judge may hold such clause null and void if it is manifestly unfair, taking into account good commercial practice, the nature of the product or service or the absence of any objective reasons to deviate from the default regime (art. 7 Late Payment Act).
- (b) Specific statutory maximum payment term for certain products or services
 - (i) Following the implementation into Belgian law of Directive 2019/633/EU, art. VI.109/4 BCEL requires a maximum payment term of 30 days with regard to the supply of agricultural and food products between a purchaser and a supplier whose annual consolidated turnover does not exceed EUR350 million.
 - (ii) Unlike Directive 2019/633/EU, which makes a distinction between perishable goods (30 days) and non-perishable goods (60 days), a term of 30 days for all agricultural and food products is required. The 30-day term starts on:
 - (A) the day following the end of the contractually agreed delivery period (in case of delivery on a regular basis);
 - (B) the day following the delivery date; or
 - (C) the day following the date on which the amount to be paid is determined by the supplier.

These provisions take precedence over the Late Payment Act.

In the diamond industry, parties can agree on a payment term of up to 180 days (art. 1 Royal Decree of 23 May 2023).

Are there any exceptions to the applicable statutory maximum payment term?

(a) Can the invoice date or the date of receipt of the invoice be contractually agreed upon to extend the statutory maximum payment term?

No, the date of receipt of the invoice cannot be fixed by contractual agreement between debtor and creditor, as this could result in an artificial prolongation of the statutory maximum payment term (art. 4, §1 Late Payment Act). The creditor must provide all information necessary to issue the invoice at the time of receipt of the goods or performance of the services at the latest.

(b) Can the payment term be extended by the time needed to accommodate acceptance or verification procedures relating to the delivered goods?

No. The time needed for an acceptance or verification procedure forms an integral part of the payment term (art. 4, §1 Late Payment Act).

(c) Are there other exceptions?

Yes, the parties can deviate from the maximum statutory payment term by agreeing on payment arrangements that can include payment by instalments. In such cases, if any of the instalments are not paid on the agreed date, interest and compensation will be calculated only on the overdue amounts (art. 4, §3 Late Payment Act). It is currently unclear if the separate instalments must each abide by the provisions regarding the statutory payment term (i.e., not exceeding 60 days).

Is there any special statutory framework relating to payment terms that applies to commercial transactions between businesses and public institutions?

(a) Yes. If neither a date for payment nor a payment term is set out in the agreement between an undertaking and a public authority, and if the public authority is the debtor, the payment term will be 30 days, starting from the date following (art. 4, §2 Late Payment Act):

(i) the day after the date of receipt of the invoice or equivalent request for payment; or

(ii) if the date of receipt of the invoice or equivalent request for payment is not certain or if the debtor receives the invoice or equivalent request for payment earlier than the goods or services, the day after the date of the receipt of the goods or services.

(b) The parties can agree on a longer payment term if this is objectively justified by either the special nature of or certain circumstances relating to the contract, but a longer payment term agreed between the parties cannot exceed 60 calendar days (art. 4, §2 Late Payment Act).

(c) In the case of a commercial transaction between an undertaking and an accredited health institution, the statutory payment term will be 60 days, and this cannot be deviated from (art. 4, §2 Late Payment Act).

What are the possible sanctions if a contract does not comply with the statutory maximum payment term?

(a) Any clause that does not comply with the Late Payment Act and the Royal Decree of 23 May 2023 will be regarded as null and void, meaning that the default statutory payment term will apply. This could result in the payment period already being expired and interest and a lump-sum compensation already being due.

- (b) Non-compliance with articles VI.109/4 and VI.109/5 BCEL (with regard to the agricultural and food products sector) will be regarded as an unfair market practice, which can result in a fine of up to EUR80,000 or 4% of offending business's total annual turnover, whichever is higher, or an administrative fine of the same amount.

Is it possible to designate another governing law to avoid an implied maximum payment term under your local laws?

- (a) It is possible to exclude the applicability of the Late Payment Act by appointing another governing law, unless all other circumstances relevant to the situation at the time of the choice are connected to Belgium, in which case the Late Payment Act (which is mandatory) would apply (art. 3(3) Rome I Regulation).
- (b) In contrast it is not possible to exclude articles VI.109/4 and VI.109/5 BCEL regarding payment terms in the food and agricultural sector. These provisions apply as soon as the supplier or the buyer, or both, are established in Belgium. Unlike the Late Payment Act it is not possible to exclude the application of this article by appointing another governing law. As soon as the contract falls within the scope of this provision, articles VI.109/4 and VI.109/5 BCEL will apply.

Late payment penalties

- (a) **Is it mandatory to have to specify certain minimum late payment penalties?**

No, if no late payment penalties are provided for by contract, the default late payment penalties will apply.

- (b) **Is there a default late payment penalty rate?**

- (i) If the creditor has fulfilled their contractual and legal obligations and has not received the amount due on time, the outstanding amount will automatically be increased with interest from the following day, except if the debtor proves they are not responsible for the delay (art. 5 Late Payment Act). The interest will be the interest at the reference rate plus 8% (which is currently 12%). The parties can agree on another interest rate in their contract. A judge may hold such clause null and void if it is manifestly unfair, taking into account good commercial practice, the nature of the product or service or the absence of any objective reasons to deviate from the default regime (art. 7 Late Payment Act).
- (ii) In commercial transactions between undertakings and public authorities where the debtor is a public authority, the interest will be the interest at the reference rate plus 8% notwithstanding any agreement to the contrary between the parties.
- (iii) If interest is due, the outstanding amount will automatically be increased by a lump sum of EUR40 for the creditor's recovery costs. In addition to this fixed amount, the creditor will be entitled to reasonable compensation for all other recovery costs exceeding that fixed amount and incurred due to the late payment, including litigation costs, in accordance with the provisions of the Judicial Code (art. 6 Late Payment Act).



Denmark

Denmark

Which laws regulate payment terms in commercial/business-to-business (B2B) transactions?

- (a) The Interest Act (2014-05-13 nr- 459), *Renteloven* (**Interest Act**), the main regulation in relation to commercial payment terms that incorporates the principal provisions of the directive (2011/7/EU) on combating late payment in commercial transactions.
- (b) The Contracts Act (2016-03-02, nr. 193), *Aftaleloven* (**Contracts Act**), which contains general rules in relation to unfair contract provisions in chapter three, in particular section 36.
- (c) The Promissory Note Act (2014-03-31 nr. 333), *Gældsbrevsloven* – terms regarding the time and place for payment in absence of an agreement.
- (d) The Purchase Act (2021-09-24 nr. 1853), *Købeloven* – contains rules regarding payment in absence of an agreement.

Is a standard payment term implied by law if a contract does not specify a payment term?

- (a) If neither a date for payment nor a payment term is set in the agreement then any payment to reimburse a commercial transaction between B2B undertakings must be made on demand (the Purchase Act, Art. 5).
- (b) Payment must take place at the seller's place of business (the Promissory Note Act, Art 3).
- (c) According to the Interest Act, Art. 3a, if neither a date for payment nor a payment term is set in the agreement then any payment to reimburse a commercial transaction between undertakings must be made within a period of 30 days, with such period starting from the day following:
 - (i) the day of dispatch by the creditor of an invoice; or
 - (ii) the day of request for payment of a specified sum, meaning the payment claim must have reached the debtor. The creditor cannot make a request before they have fulfilled their contractual obligations.

Is there a statutory maximum payment term that applies to B2B contracts?

- (a) General statutory maximum payment term
 - (i) A claim for payment for any goods or service in a relationship between B2B undertakings as part of professional activities is due and payable not later than 30 days after the creditor has made a demand for payment of the claim (Section 3a of the Interest Act). Note that this is a shorter maximum payment period than the 60-day period laid down in the EU Directive (2011/7/EU).
 - (ii) The statutory maximum payment term can be extended by contractual agreement (see answer to question 1.1(a) above).

- (b) Specific statutory maximum payment term for certain products or services

The statutory maximum payment term that generally applies between traders of 30 days is applicable. This term starts on:

- (i) whichever day is the later of either the day following the end of the contractually agreed delivery period or the day following the date on which the amount to be paid for the delivery period is determined by the supplier (in cases of delivery on a regular basis);
- (ii) the day following the delivery date; or
- (iii) the day following the date on which the amount to be paid is determined by the supplier.

Are there any exceptions to the applicable statutory maximum payment term?

- (a) **Can the invoice date or the date of receipt of the invoice be contractually agreed upon to extend the statutory maximum payment term?**

- (i) Yes, in a contract between B2B undertakings the payment may be made at a later time if this is expressly accepted by the creditor and the new invoice date is not unfair from the perspective of the claimant (Section 3a, p. 2, Interest Act).
- (ii) The expression "expressly accepted by the creditor" is to be interpreted as meaning that the creditor should actively consider the extended due date in a specific contract situation in order for it to be binding. A longer period motivated from commercial practice, custom or standard contracts will not normally meet this requirement. A creditor's inaction or implied action cannot be considered to constitute acceptance. Note that this exception is not available when the debtor is a public institution unless the ministry of justice has made specific rules to extend the period to 60 days (Interest Act 3b).

- (b) **Can the payment term be extended by the time needed to accommodate acceptance or verification procedures relating to the delivered goods?**

Yes. In contractual relations where the debtor is entitled to defer payment due to an investigation of whether the goods or service conform to the agreement payment may be deferred for no more than 30 days starting on the date of receipt of the goods or performance of the service, provided the creditor has not expressly accepted a longer period of investigation (Section 3d, Interest Act).

- (c) **Are there other exceptions?**

- (i) Yes, the parties may deviate from the maximum statutory payment term by agreeing on payment arrangements with payment by instalments (Section 3 c, Interest Act).
- (ii) If it is clear that an instalment plan is attempted to circumvent the rules on maximum payment terms, the contract can be considered null on the basis of Section 36 of the Contracts Act or other rules on unfair contractual terms.

Is there any special statutory framework relating to payment terms that applies to commercial transactions between businesses and public institutions?

- (a) The same statutory maximum payment term that generally applies between traders (30 days) is applicable when the debtor is a public institution. However, the exception set out in the answer to question 1.1(a) is not available in commercial transactions between businesses

and public institutions. In summary, a public institution cannot agree on a payment period longer than 30 days for a purchase of goods or services from a business.

(b) Regarding default late payment penalties, see the answer to question 1.1(b) below.

What are the possible sanctions if a contract does not comply with the statutory maximum payment term?

- (a) A payment term that is not compliant with the statutory maximum payment term does not have effect against the creditor (provided that none of the above stated exceptions apply). The Interest Act does not regulate non-compliance, therefore the Contracts Act shall apply. Terms that do not comply with the statutory maximum payment term may be adjusted or disregarded under Section 36 of the Contracts Act.
- (b) Non-compliance with regard to the agricultural and food products sector will be regarded as an unfair market practice, which may be sanctioned with an administrative fine.

Is it possible to designate another governing law to avoid an implied maximum payment term under your local laws?

- (a) It is possible to exclude the applicability of the Interest Act by appointing another governing law, unless all other elements relevant to the situation at the time of the choice are connect to Denmark, in which case the Interest Act (which is mandatory in relevant parts), would apply (art. 3(3) Rome I Regulation).
- (b) It is not possible to exclude the Act (2021:579) prohibiting unfair commercial practices in the purchase of agricultural and food products. The Act applies as soon as the supplier or the buyer, or both, are established in Sweden.

Late payment penalties

(a) Is it mandatory to have to specify certain minimum late payment penalties?

No, but if no late payment penalties are provided for by contract then the default late payment interest rate will apply. Accordingly, a contractual term in a commercial relation stating that the debtor is not obligated to pay interest at all will not have effect against the creditor (Section 5, Interest Act).

(b) Is there a default late payment penalty rate?

- (i) Yes. Late payment penalty (interest) accrues on any debt which is due and payable and for which payment has not been made during the period for payment, commencing on the due date, or the day which occurs 30 days following dispatch by the creditor of an invoice or some other form of demand for payment of a specified sum (Section 5, p. 1 Interest Act).
- (ii) The default late payment interest is calculated annually according to a rate of interest equivalent to the reference rate of interest plus 8% (Section 5, Interest Act). The reference rate of interest is determined each calendar half year by the Central Bank of Denmark (Section 5. p. 1, Interest Act).



United Kingdom

United Kingdom

1.1 Which laws regulate payment terms in business-to-business (B2B) transactions?

- (a) Different laws govern payment terms and the seller's/supplier's entitlement to claim interest for late payment.
- (b) The key statutory provisions are set out in:
 - (i) the Sale of Goods Act 1979 and the Supply of Goods and Services Act 1982 which set out certain implied terms in contracts for the sale of goods/provision of services in the UK, including (where a contract is silent) implied terms relating to the price to be paid, and (in the case of goods) the timing of payment; and
 - (ii) the Late Payment of Commercial Debts (Interest) Act 1998 (as amended by the Late Payment of Commercial Debts Regulations 2013 and the Late Payment of Commercial Debts (No. 2) Regulations 2013) (**Late Payment Act**) sets out the primary legislation governing a supplier's entitlement to interest for late payment.
- (c) In Scotland, the Late Payment Act is as amended by the Late Payment of Commercial Debts (Scotland) Regulations 2002, The Late Payment of Commercial Debts (Scotland) Regulations 2013 and The Late Payment of Commercial Debts (Scotland) Regulations 2015.
- (d) Case law is also relevant to certain considerations and questions of statutory interpretation.

1.2 Is a standard payment term implied by law if a contract does not specify a payment term?

- (a) In contracts for the sale of goods, where the parties to a contract have not agreed specific payment terms, there is an implied term that the buyer must pay cash on delivery (s.28 of the Sale of Goods Act 1979).
- (b) In contracts for the supply of services, the Supply of Goods and Services Act 1982 does not include an equivalent implied term. In practice the courts would likely determine what is reasonable with regard to the facts of the case. One of the leading practitioner texts (Chitty on Contracts) suggests that the buyer must pay as soon as the supplier has completed the work and given the buyer a reasonable opportunity to see the work has been properly performed.
- (c) For contracts made after 14 May 2013, the Late Payment Act provides that, where there is no agreed date for payment, statutory interest for late payment starts to run 30 days after the later of the following:
 - (i) the date the purchaser receives the goods or services;
 - (ii) the date the purchaser receives the supplier's invoice; or
 - (iii) (where applicable) any agreed acceptance procedure is complete.

1.3 Is there a statutory maximum payment term that applies to B2B contracts?

- (a) General statutory maximum payment term
 - (i) No. The UK government elected not to legislate to introduce maximum payment periods.
 - (ii) During contract negotiation a purchaser will often attempt to extend the payment term through specifying either a lengthy acceptance procedure in the contract and/or agreeing a later payment date. However, the Late Payment Act imposes limitations on

these methods. Firstly, if the customer's acceptance procedure lasts more than 30 days after delivery of the services and/or goods (giving rise to a credit period of more than 60 days), and that is deemed to be "grossly unfair" to the supplier (see below), interest is calculated as if acceptance had taken place on the 30th day after delivery.

- (iii) Secondly, if the transaction is B2B and the parties have agreed on a payment date, the parties can extend the interest start date by up to 30 days after the payment date (i.e. 60 days in total). If the parties have not agreed a payment date, they can extend the interest free period by more than 30 days after delivery, provided that the extension would not be "grossly unfair" (see below).
 - (iv) In respect of extending the total credit period beyond 60 days, the courts will determine what is "grossly unfair" on a case-by-case basis, taking the circumstances of the case into account. As set out under s.4(7A) of the Late Payment Act, this would include consideration of:
 - (A) anything that is a gross deviation from good commercial practice and contrary to good faith and fair dealing;
 - (B) the nature of the goods or services in question; and
 - (C) whether the purchaser has any objective reason to deviate from the standard 60-day provision.
 - (v) The UK government has elected not to define "grossly unfair" and to allow case law to develop instead (and we are not aware of any such cases yet). In this respect, the purchaser would not be prevented by the Late Payment Act from introducing a total credit term longer than 60 days, but it would need to establish and document a clear rationale for doing so.
 - (vi) In assessing what may be deemed fair and reasonable in extending payment terms, the reasonableness test set out in Unfair Contracts Terms Act 1977 (**UCTA**) should also be considered.
 - (vii) In respect of UCTA, the courts would consider the following non-exhaustive list of guidelines in determining whether the term was fair and reasonable:
 - (A) strength of the bargaining positions of the parties relative to each other;
 - (B) whether any inducement was given to the supplier to agree the term;
 - (C) whether the supplier knew or ought reasonably to have known of the existence of the term (considering factors such as any custom of the trade and any previous course of dealing between the parties); and
 - (D) whether any goods were manufactured, processed or adapted to a special order by the customer.
- (b) Specific statutory maximum payment term for certain products or services
- (i) There are no specific statutory maximum payment terms for certain products or services. The applicable payment terms for specific products or services are generally determined through negotiation and agreement between the parties involved.
 - (ii) Choosing an appropriate payment term involves the assessment of good commercial practice for the nature of the goods or services in question. Certain industries/sectors may have industry-specific common practices, or trade associations that provide guidance or recommend standard payment terms, but these are not mandatory.

1.4 Are there any exceptions to the applicable statutory maximum payment term?

(a) Can the invoice date or the date of receipt of the invoice be contractually agreed upon to extend the statutory maximum payment term?

As there is no statutory maximum payment term, any invoice date and date of receipt of the invoice can be agreed between the parties provided that it is not "grossly unfair" to the supplier (as detailed above). By extending the invoice date or date of receipt of the invoice, the purchaser may be exposed to a potential challenge of the payment term by the courts and, in turn, should ensure the terms of any agreement between the parties are documented clearly and can be justified.

(b) Can the payment term be extended by the time needed to accommodate acceptance or verification procedures relating to the delivered goods?

In calculating the start date for late payment interest, where a verification or acceptance procedure is provided for in a contract, the period of time to complete the acceptance or verification procedure is deemed to be the expiry of 30 days after delivery. The parties can agree to a longer acceptance procedure in the contract provided this period is not grossly unfair to the supplier (as detailed above). If a longer acceptance procedure is agreed upon, interest will run from the end of that longer acceptance procedure.

(c) Are there other exceptions?

No.

1.5 Is there any special statutory framework relating to payment terms that applies to commercial transactions between businesses and public institutions?

(a) Contracting authorities must ensure that their contracts contain provisions requiring them to:

- (i)** pay undisputed invoices within 30 days (subject to any contractual or statutory obligation to pay earlier); and
 - (ii)** consider and verify all invoices in a timely fashion and that undue delay in doing so is not sufficient justification for failing to regard an invoice as valid and undisputed.
- (b)** The Late Payment Act equally applies to public institutions as they are included in the definition of a "business" (section 2(7)). However, public authorities cannot defer the start date for calculating interest by agreeing a later payment date. If they purport to do so, the start date for calculating interest is the same as if no extended payment date had been agreed, i.e. the statutory default 30-day period set out in the answer to question 1.2 above would apply.

1.6 What are the possible sanctions if a contract does not comply with the statutory maximum payment term?

If a payment term is determined to be grossly unfair by the courts, the payment term would be unenforceable and replaced by the statutory default 30-day period (see the answer to question 1.2 above).

1.7 Is it possible to designate another governing law to avoid an implied maximum payment term under your local laws?

(a) There is no case law on whether designating another governing law excludes the national laws regarding maximum payment terms, because there is no rule relating to maximum payment terms in English or Scots law (see the answer to question 1.3 above).

- (b) However, it is possible to disapply the Late Payments Act if the parties expressly choose a non-UK jurisdiction for the governing law clause and the agreement has a significant connection with a country outside of the UK. This point was considered by the English High Court in *Martrade Shipping v United Enterprises* [2014] EWHC 1884 (Comm), which held that the Late Payment Act only applies where there is a substantial connection between the parties/their transaction and England and where the contract would be governed by English law in any event, regardless of the English choice of law clause.
- (c) Whether there is a substantial connection between the parties/transaction and the UK, is determined by considering:
 - (i) if the place of performance of obligations under the contract (or other obligations) is in the UK;
 - (ii) if the nationality of the parties or one of them is from the UK
 - (iii) if the parties are carrying on some relevant part of their business in the UK; and
 - (iv) if the economic consequences of the delay in payment of debts may be felt in the UK.
- (d) To determine whether the contract would be governed by English or Scots law in any event, the court adopted the "but for" test by considering Art 4(2) of the Contracts (Applicable Law) Act 1990, which states "...if the contract is entered into in the course of that party's trade or profession (the party performing the contract i.e. supplying a ship), that country shall be the country in which the principal place of business is situated." This means that the location of the supplier would determine whether the contract would be governed by English or Scots law (as applicable) in any event, and as such determine if the Late Payment Act would apply.
- (e) It is unclear whether providing for an alternative governing law would prevent the Late Payment Act from applying. However, on the basis of *Martrade Shipping*, where an English governing law clause was not sufficient to make the Late Payment Act apply, it could be argued that choice of an alternative governing law would prevent the Act from applying.
- (f) An analysis of the companies' businesses, their connection to the UK and which governing law would be assigned to the contract as under Contracts (Applicable Law) Act 1990 should therefore be undertaken to assess the risk of the Late Payment Act applying to the agreement.

1.8 Late Payment Penalties

(a) Is it mandatory to have to specify certain minimum late payment penalties?

No. If no late payment penalties are provided for by contract, the default late payment terms will apply.

(b) Is there a default late payment penalty rate?

- (i) The default late payment penalty rate is the statutory interest rate, currently set at 8% per annum above the Official Bank Rate of the Bank of England for B2B transactions unless an interest rate is specified in the agreement between the parties.
- (ii) The supplier would also be able to claim a fixed sum relating to the size of the debt and also recover its reasonable costs less the fixed sum once interest begins to run under the Late Payment Act:
 - (A) debt below GBP1,000: fixed sum GBP40;
 - (B) debt at least GBP1,000 but less than GBP10,000: fixed sum GBP70; or

- (C) debt GBP10,000 or more: fixed sum GBP100.
- (iii) As an alternative approach, the customer can agree with the supplier to exclude the right to interest under the Late Payment Act provided that it agreed to an alternative "substantial contractual remedy" (i.e. one that would be sufficient to compensate the supplier and deter late payment and that was also fair and reasonable) in respect of late payments (s.8(1)). The reasonableness test under UCTA would also be relevant in determining the fairness of such a substantial remedy.



France

France

Which laws regulate payment terms in business-to-business (B2B) transactions?

The relevant laws are as follows:

- (a) French Commercial Code, Legislative part, Book IV, Title IV (Articles L. 441-10 to L. 441-16);
- (b) French Commercial Code, Regulatory part, Book IV, Title IV, Chapter I (Articles D. 441-5 to R. 441-10);
- (c) French Public Procurement Code, Legislative Part, Second Part, Book I, Title IX, Chapter II (Articles L. 2192-10 to L. 2192-15) and Legislative Part, Second Part, Book III, Title IX, Chapter II of the French Public Procurement Code (Article L. 2392-10), and Legislative Part, Third Part, Book I, Title III, Chapter III (Articles L. 3133-10 to L. 3133-14); and
- (d) French Public Procurement Code, Regulatory Part, Second Part, Book I, Title IX, Chapter II (Articles R. 2192-10 to R. 2192-36) and Regulatory Part, Book III, Title IX, Chapter II (Articles R. 2392-10 to R. 2392-12-1), and Regulatory Part, Third Part, Book I, Title III, Chapter III (Articles R. 3133-10 to R. 3133-28).

Is a standard payment term implied by law if a contract does not specify a payment term?

In B2B transactions, by default, the maximum payment term is 30 days from the date of receipt of the products or performance of the services (Article L. 441-10 I of the French Commercial Code).

Is there a statutory maximum payment term that applies to B2B contracts?

- (a) General statutory maximum payment term
 - (i) The parties may contractually agree to a payment term other than the 30-day payment term mentioned above, which may not exceed 60 days after the date of issuance of the invoice. By way of derogation, a maximum period of 45 days end of the month following the date of issue of the invoice may be agreed between the parties, provided that this period is expressly set forth in the contract and does not constitute a manifest abuse of the creditor's rights. Parties to a contract may agree that this means that:
 - (A) the five-day payment term runs from the end of the month following the date of issuance of the invoice; or
 - (B) the 45-day payment terms runs from the date of issuance of the invoice, and, depending on when this period ends, the payment must be made by the end of the month during which the period ends.
 - (ii) In the case of periodic invoices (i.e. invoices issued at the end of the month for several separate supplies of goods or performance of services made to the same purchaser or customer, for which tax becomes chargeable during the same calendar month), the period agreed between the parties may not exceed 45 days from the date of issuance of the invoice (Article L. 441-10 I of the French Commercial Code).
- (b) Specific statutory maximum payment term for certain products or services
 - (i) Professionals of a sector, customers and suppliers, may jointly decide to reduce the maximum payment terms set out above. They may also propose to use the date of receipt of goods or performance of the requested services as a starting point for this

period. Agreements to this effect may be entered into by their professional organisations. A decree may extend the new maximum payment period to all operators in the sector or, where appropriate, validate the new calculation method and extend it to the same operators.

- (ii) Given their nature, certain activities are subject to payment terms that depart from the abovementioned provisions (Article L. 441-11 of the French Commercial Code):
 - (A) for purchases of perishable agricultural and food products, frozen or deep-frozen meat, deep-frozen fish, ready-made meals and preserves made from perishable food products:
 - (1) 30 days after the delivery date; or
 - (2) in the case of periodic invoices, 30 days after the end of the monthly 10-day period of delivery period (meaning the 10th, 20th or 30th day of the month depending on the date of delivery. e.g. for a delivery on the 5th day of the month, the 30 days period will start as from the 10th of the month). This time limit applies unless otherwise stipulated in specific cases (standard multi-year contracts between grape or must suppliers and their direct purchasers); or
 - (3) for purchases of seasonal products made under integration contracts (Articles L. 326-1 et seq. of the French Rural and Maritime Fishing Code), in the fruit and vegetable sector: 30 days from the end of the month in which delivery is made;
 - (B) for purchases of live cattle intended for consumption and fresh meat derived therefrom: 20 days after the delivery date;
 - (C) for purchases of alcoholic beverages subject to consumption duties: 30 days after the end of the month of delivery;
 - (D) for purchases of non-perishable agricultural and food products: 60 days after the date of issuance of the invoice. When the invoice is issued by the purchaser, this period begins to run from the date of delivery;
 - (E) for road transport of goods, for the hiring of vehicles with or without a driver, for freight forwarding as well as for the activities of forwarding agents, shipping and air freight agents, freight brokers and customs agents: 30 days after the date of issuance of the invoice;
 - (F) for sales between, on the one hand, agricultural equipment manufacturers and importers and, on the other hand, specialized distribution and repair companies in the agricultural equipment sector:
 - (1) 55 days end of month after the invoice date for green space maintenance equipment; or
 - (2) 110 days end of month after the date of issuance of the invoice for agricultural equipment, with the exception of tractors, transport and breeding equipment;
 - (G) for deliveries made before the start of the season in the sporting goods sector, for sales of equipment required for snow sports between suppliers and companies whose business is exclusively or almost exclusively seasonal: 90 days after the date of issuance of the invoice for payment of the balance of invoices;

- (H) for sales between suppliers and specialized distributors in the leather industry: 54 days end of month after the date of issuance of the invoice;
- (I) as regards the watch, jewellery and goldsmiths industry, for sales between suppliers, manufacturers, importers or wholesalers, on the one hand, and specialist distributors, on the other, specialized distributors, as part of their point-of-sale or distance-selling activities, or central purchasing bodies whose main activity is to resell watch, jewellery and goldsmiths' products to specialized distributors: 59 days end of month or 74 days net after the date of issuance of the invoice;
- (J) for sales between manufacturers and specialised distributors in the toy trade sector:
 - (1) 95 days net after the date of issuance of the invoice for the "permanent" period from January to September inclusive; or
 - (2) 75 days net after the date of issuance of the invoice for the year-end period, extending from October to December inclusive.
- (iii) The maximum period mentioned in (vi) to (x) above must be expressly provided for in the agreement and must not constitute a manifest abuse by the creditor. If not expressly provided for, the default period of 30 days from the date of receipt of the products or performance of the services applies.
- (iv) Specific provisions apply for:
 - (A) VAT-exempt purchases (Article L. 441-12 of the French Commercial Code); and
 - (B) Guadeloupe, Martinique, Guyane, La Réunion, Mayotte and Saint-Barthélemy, Saint-Martin, the islands Wallis and Futuna and Saint-Pierre et Miquelon. (Article L. 441-13 of the French Commercial Code).

Are there any exceptions to the applicable statutory maximum payment term?

- (a) **Can the invoice date or the date of receipt of the invoice be contractually agreed upon to extend the statutory maximum payment term?**

No.
- (b) **Can the payment term be extended by the time needed for acceptance or verification procedures of the delivered goods?**
 - (i) In principle, the seller must issue the invoice as soon as the delivery took place or the service was performed. The buyer must request the invoice. (Article L. 441-9 of the French Commercial Code and Article 289, paragraph 3 of the French General Tax Code.).
 - (ii) By derogation:
 - (A) for suppliers of goods exempted from the VAT (under Article 262 Chapter I and Article 298 II), and for supplies of services for which tax is payable by the customer (under Article 196 of the Council Directive 2006/112/EC of 28 November 2006 on the common system of VAT), the invoice must be issued no later than the 15th of the month following the month in which the chargeable event occurred;

- (B) invoices may be issued periodically for several separate supplies of goods or services made to the same purchaser or customer for which tax becomes chargeable during the same calendar month. This invoice must be issued by the end of the same month at the latest (Article 289, paragraph 3 of the French General Tax Code).
- (iii) Subject to specific provisions more favourable to the creditor, where an acceptance or verification procedure is agreed upon, to certify the conformity of the goods or services with the contract, the duration of this procedure must be determined in accordance with commercial practices, and, in any event, may not exceed 30 days from the date of receipt of the goods or performance of the services, unless expressly set forth in the contract, and provided that this does not constitute an unfair term or practice (within the meaning of Articles L. 441-6 (penultimate paragraph) or L. 442-1 of the French Commercial Code). The duration of the acceptance or verification procedure may not have the effect of either increasing the duration or shifting the starting point of the maximum payment period, unless the contract otherwise sets forth and provided that this does not constitute an abusive clause or practice, within the meaning of the penultimate paragraph of Article L. 441-16 or Article L. 442-1 of the French Commercial Code.
- (c) **Are there other exceptions?**

No other exceptions are set forth by law.

Is there any special statutory framework relating to payment terms that applies for commercial transactions between businesses and public institutions?

- (a) Yes. For entities subject to procurement contracts, the maximum payment term is up to 30 days (Articles R. 2192-10 and R. 3133-10 of the French Public Procurement Code).
- (b) By way of exception, the maximum payment term is (i) 50 days for public health establishments and armed forces health service establishments, or (ii) 60 days for public companies within the meaning of Article 1, II of Order No. 2004-503 of June 7, 2004, transposing Directive 80/723/EEC on the transparency of financial relations between Member States and public undertakings, with the exception of local public establishments (Articles R. 2192-11 and Articles R. 3133-11 of the French Public Procurement Code).
- (c) The payment period runs from the date of receipt of the payment request by the contracting authority or, if the contract so provides, by the project manager or any other person authorized for this purpose (Articles R. 2192-12 and R. 3133-12 of the French Public Procurement Code). Where the date of receipt of the request for payment is uncertain or prior to the date of performance of the services, the payment period runs from the date of performance of the services (Articles R. 2192-13 and R. 3133-13 of the French Public Procurement Code). The date of receipt of the request for payment and the date of performance of the services are established by the contracting authority or, where applicable, by the project manager or the person authorized for this purpose. Failing this, the date of the request for payment plus two days prevails. In the event of a dispute, it is up to the creditor to provide proof of this date. The date of receipt of the request for payment cannot be the subject matter of a contractual agreement between the contracting authority and its creditor (Article R. 2192-14 and R. 3133-14 of the French Public Procurement Code). Where the payment request is transmitted electronically, there are specific definitions of what may be considered as the date of receipt of the payment request by the contracting authority.
- (d) There are other French law provisions applicable as regards certain specific public procurements.

What are the possible sanctions if a contract does not comply with the statutory maximum payment term?

Non-compliance with the statutory maximum payment term may be sanctioned by a fine up to EUR75,000 for a natural person and EUR2 million for a legal person. The maximum fine is increased to a maximum of EUR150,000 for a natural person and EUR4 million for a legal person if the violation is repeated within two years of the date on which the first penalty decision became final (Article L. 441-16 of the French Commercial Code).

Is it possible to designate another governing law to avoid an implied maximum payment term under your local laws?

It is possible to designate another governing law but, depending on the context, the designation of another governing law will not exclude the application of French laws regarding maximum payment terms. French provisions on maximum payment terms apply to any contract between a supplier and a purchaser regarding products or services commercialized in the French territory and are characterized as public policy (Article L. 444-1 A of the French Commercial Code). This does not automatically mean that this provision is an "overriding mandatory provision" applicable in international situations, as it is up to the judges/courts and not to the legislator to characterize a law as "overriding mandatory provision," but it is very likely that the French provisions on maximum payment terms will be considered as such in a number of cases. To be assessed on a case-by-case basis.

Late payment penalties

(a) Is it mandatory to have to specify certain minimum late payment penalties?

Yes. The minimum is three times the French statutory B2B interest rate.

(b) Is there a default late payment penalty rate?

- (i) Yes. By default, the late payment penalty rate is equal to the interest rate applied by the European Central Bank to its most recent refinancing operation, plus ten percentage points. The applicable rate during the first calendar semester is the rate as at 1 January and, during the second semester, the rate as at 1 July. The parties may agree on another late payment penalty rate, but the rate may not be lower than three times the French statutory B2B rate. The late payment penalty rate applies from the day following the payment date displayed on the invoice. (Article L. 441-10 of the French Commercial Code).
- (ii) In addition, a lump-sum indemnity for payment recovery costs of EUR40 must be paid by the debtor to the creditor. If the creditor bears higher payment recovery costs, the creditor may claim a higher amount. (Articles R. 441-10 and D. 441-5 of the French Commercial Code).



Germany

Germany

Which laws regulate payment terms in business-to-business (B2B) transactions?

- (a) Payment terms are mainly governed by the German Civil Code (**BGB**), in particular (but not exclusively) in Sec. 271, 271a, 280, 286, 287, 288 BGB.
- (b) If part of general terms and conditions, payment terms are also subject to the strict German law on general terms and conditions, i.e. Sec. 305 et seqq. BGB.
- (c) Additional and modifying provisions in the German Commercial Code (HGB) may apply, for example Sec. 352, 353, 355 HGB.

Is a standard payment term implied by law if a contract does not specify a payment term?

- (a) Unless agreed otherwise, a payment is due immediately (Sec. 271 para. 1 BGB). The debtor of a payment claim may usually withhold payment until it received the consideration (Sec. 320 BGB).
- (b) A debtor of a due payment claim is in default at the latest if it does not pay within 30 days of the due date and receipt of an invoice or equivalent statement of payment. If the time of reception of the invoice or equivalent statement of payment is unclear, the debtor will be in default at the latest 30 days after the due date and the reception of the consideration (Sec. 286 para. 3 BGB).

Is there a statutory maximum payment term that applies to B2B contracts?

- (a) General statutory maximum payment term
 - (i) In standard terms and conditions, payment terms of up to 30 days after receipt of delivery/service and invoice are generally acceptable in B2B transactions. However, even shorter payment terms may be considered "unreasonably long" and, therefore, invalid in certain (albeit rare) circumstances (Sec. 308 lit 1a BGB). Payment terms of more than 30 days are generally not possible, unless the user of the general terms and conditions can prove that the longer period does not unreasonably disadvantage the other party (and due to the German case law relating to this, periods beyond 30 days will rarely be accepted), Sec. 308 lit 1a BGB.
 - (ii) In individually negotiated clauses, payment terms may generally last up to 60 days after receipt of delivery/service or after receipt of an invoice (if later and proven). Payment terms of more than 60 days are only valid if explicitly agreed and not grossly unfair with regard to the interests of the creditor (Sec. 271 a BGB).
 - (iii) What is meant by "grossly unfair" depends on the individual circumstances in each case. Such considerations include whether or not the deviation is contrary to good faith/good commercial practice, the nature of the goods or services and whether the debtor has an objective reason for exceeding the maximum limit. A term will not be viewed as grossly unfair the creditor grants a longer payment period to promote the sale of goods and services (see recital 13 of Directive 2011/7/EU: granting of trade credits) so that the debtor can finance the purchase price by reselling the goods in the meantime. On the other hand, under recital 28, an indicator of abuse of contractual freedom would be if the payment period had the primary purpose of providing the debtor with additional liquidity at the creditor's expense. Due to different factors that need to be taken into account when assessing whether or not a term is grossly unfair, the law is not clear cut. Not even complex construction deals justify longer payment periods.

- (iv) The prevailing opinion in Germany (as there is no definitive relevant case law specific to this) is that the exception (i.e. more than 60 days) can be specified in rare and extraordinary cases only, and that this position must be strictly adhered to.
- (v) It follows that exceeding the payment term of 60 days is considered as grossly unfair for the creditor in all 'commonplace' transactions (such as sales and products of standard products). In case of doubt, payment terms of more than 60 days are deemed to be grossly unfair and should therefore be avoided.
- (b) Specific statutory maximum payment term for certain products or services

The German Agricultural Organizations and Supply Chains Act (**AgrarOLkG**) which transposed Directive 2019/633/EU contains certain provisions on payment terms for agricultural and food products.

Are there any exceptions to the applicable statutory maximum payment term?

- (a) **Can the invoice date or date of receipt of the invoice be contractually agreed upon to extend the statutory maximum payment term?**

No, the invoice date or date of receipt of the invoice may not be fixed by contractual agreement between debtor and creditor, as this could result in an artificial prolongation of the statutory maximum payment term.

- (b) **Can the payment term be extended by the time needed to accommodate acceptance or verification procedures relating to the delivered goods?**

Payment terms are not automatically extended by the time needed to accommodate inspection, acceptance or verification procedures relating to the delivered goods. The parties to a contract could generally agree on such extension, but an agreement stating that the time for inspection or acceptance of the delivered goods is more than 30 days after receipt of the delivered goods can only be effective if it is made expressly and if it is not grossly unfair with regard to the interests of the creditor (s.271a para. 3 BGB).

- (c) **Are there any other exceptions?**

Yes, the parties can deviate from the maximum statutory payment term by agreeing on payment arrangements with instalments.

Is there a special statutory framework relating to payment terms that applies to commercial transactions between businesses and public institutions?

Yes, according to s.271a para. 2 BGB, if the debtor is a public contracting authority (as defined in Sec. 99 no. 1 to 3 of the German Act against Restraints of Competition (**GWB**)), the following applies:

- (a) an agreement under which the creditor may demand payment only after more than 30 days after receipt of the consideration is effective only if the agreement is made expressly and is objectively justified on the basis of the particular nature or characteristics of the contractual relationship; and
- (b) an agreement under which the creditor may demand payment only after more than 60 days after receipt of the consideration is invalid.

What are the possible sanctions if a contract does not comply with the statutory maximum payment term?

- (a) A clause stipulating an invalid payment term is invalid. In such case, statutory law applies, and the payment is due immediately (Sec. 271 para. 1 BGB). The debtor of a payment claim

may usually withhold payment until it received the consideration (Sec. 320 BGB) unless agreed otherwise.

- (b) Using invalid terms in standard terms and conditions may constitute a breach of unfair competition law and lead to warning letters by competitors.

Is it possible to designate another governing law to avoid an implied maximum payment term under your local laws?

It is generally possible to choose a different national law so that German law on late payment does not apply. However, where all other elements relevant to the situation at the time of the choice are connected to a particular country (e.g. Germany) that is not the same as the governing law that has been chosen, the choice of the parties will not prejudice the application of provisions of the law of that other country which cannot be derogated from by agreement, Article 3 para. 3 Regulation (EU) 593/2008. This means that, amongst other things, that the German law on standard terms and conditions would apply.

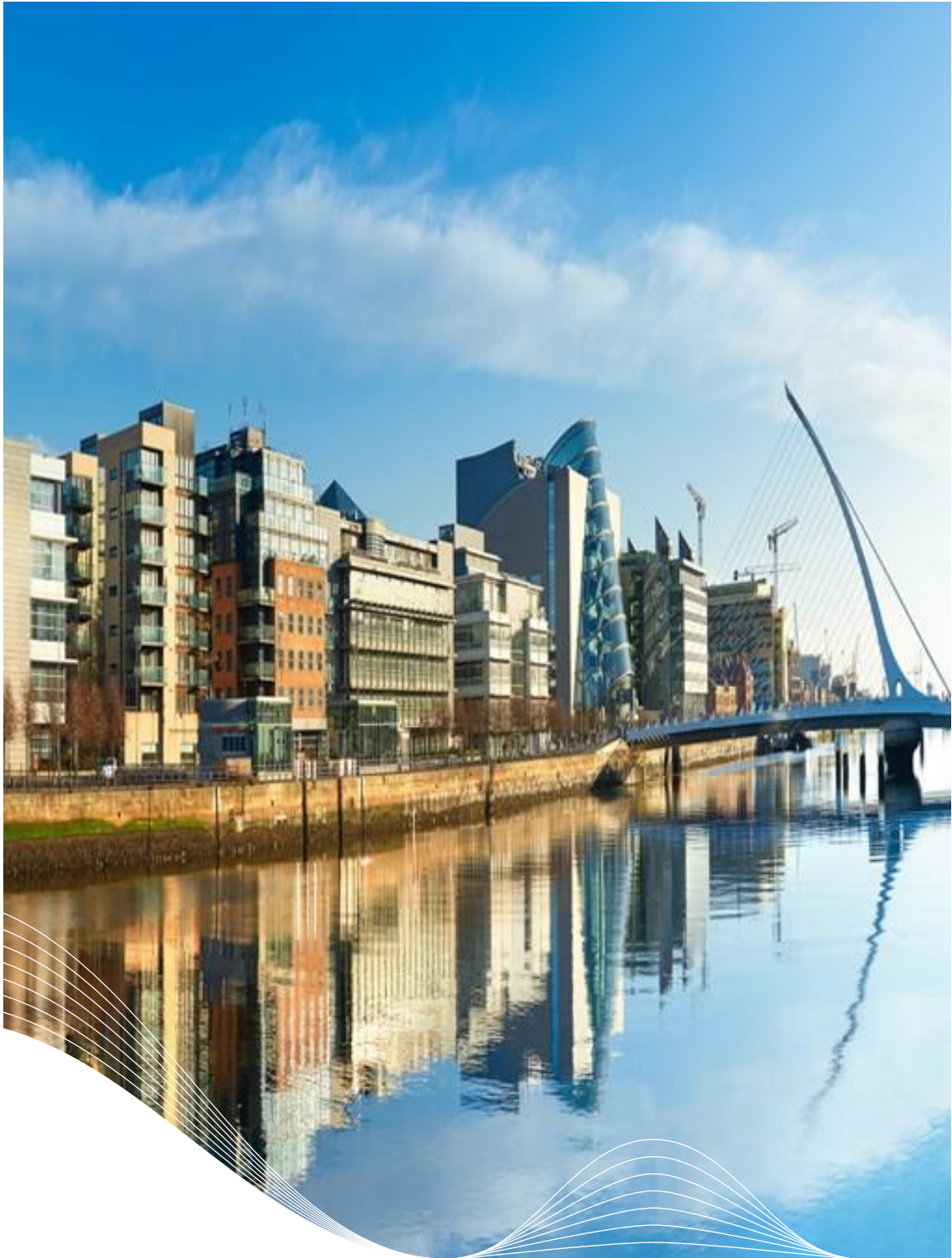
Late payment penalties

- (a) **Is it mandatory to have to specify certain minimum late payment penalties?**

No, if a contract does not provide for any late payment penalties then the default late payment penalties apply.

- (b) **Is there a default late payment penalty rate?**

- (i) In case of default (as defined in Sec. 286 BGB), the debtor is obliged to pay interest. The statutory interest rate in B2B transactions is nine percentage points above the base interest rate (Sec. 288 para. 2 BGB), which is currently (as of 1 July 2023) 3.12% per year. The current total interest rate in case of default is 12.12% per year.
- (ii) Additionally, the debtor is obliged to pay a lump sum of EUR40 in case of default (Sec. 288 para. 5 BGB).
- (iii) In transactions involving only businesspeople (*Kaufleute* as defined in Sec. 1 HGB), the debtor is obliged to pay interest of 5% per year from the time the claim is due (Sec. 352, 353 HGB) – which is usually significantly earlier than the time of default. Interest due to default and interest due to the claim being due are not cumulative if time periods overlap.
- (iv) Apart from interest and the lump sum, the creditor may in certain cases also assert damage claims based on a specific damage caused by the late payment (e.g. costs of lawyers or the costs of a credit used by the creditor exceeding the statutory interest rate).



Ireland

Ireland

Which laws regulate payment terms in business (B2B) transactions?

The European Communities (Late Payment in Commercial Transactions) Regulations 2012 - SI 580 of 2012 (as amended) regulate payment terms in commercial transactions in the B2B context.

Is a standard payment term implied by law if a contract does not specify a payment term?

For contracts made after 16 March 2013 and in the absence of contractual agreement, late payment interest is payable in the later of):

- (a) 30 calendar days after the invoice is received by the purchaser; or
- (b) 30 calendar days after the goods and / or services are delivered if the date of receipt of the invoice is uncertain or the invoice was received before the goods and/or services were delivered, whichever is later.

(Regulations 2(1) and 4(1) of the Late Payment Regulations).

Is there a statutory maximum payment term that applies to B2B contracts?

- (a) General statutory maximum payment term
 - (i) Yes, in the case of contracting with a public authority. For a commercial transaction between an undertaking and a public authority, the statutory maximum payment term is 30 calendar days (Regulation 2(1) of the Late Payment Regulations).
 - (ii) For a commercial transaction between undertakings (without involving a public authority), there is no statutory maximum payment term. That said, for any payment term exceeding 60 calendar days, such term must be expressly agreed in the contract and shall not be grossly unfair to the supplier (Regulation 2(1) of the Late Payment Regulations).
- (b) Specific statutory maximum payment term for certain products or services

There are specific statutory maximum payment terms for construction contracts and agricultural and food products.

Are there any exceptions to the applicable statutory maximum payment term?

- (a) **Can the invoice date or the date of receipt of the invoice be contractually agreed upon to extend the statutory maximum payment term?**

Yes.

- (b) **Can the payment term be extended by the time needed to accommodate acceptance or verification procedures relating to the delivered goods?**

Yes. In a case where:

- (i) there is a procedure of acceptance or verification for ascertaining the conformity of the goods or services with the contract (whether provided for by statute or in the contract); and
- (ii) the purchaser receives the invoice earlier than or on the date on which the acceptance or verification takes place,

the payment term is 30 calendar days after the date on which such acceptance or verification takes place (Regulation 2(1) of the Late Payment Regulations).

The duration of such procedure shall not exceed 30 calendar days from the date of the delivery of the goods or the provision of the services, unless otherwise expressly agreed in the contract and any tender documents and provided it is not grossly unfair to the creditor. (Regulation 4(4) of the Late Payment Regulations).

(c) **Are there other exceptions?**

Yes, the parties may deviate from the maximum statutory payment term by agreeing on payment arrangements with payment by instalments. Where payment is made by instalments, the late payment of an instalment will attract interest and compensation but only in respect of that instalment and not the whole contract price (Regulation 2(1) and Regulation 4(2) of the Late Payment Regulations).

Is there any special statutory framework relating to payment terms that applies to commercial transactions between businesses and public institutions?

- (a) The Late Payment Regulations applies to commercial transactions between an undertaking and a public authority (defined in Regulation 2(1) of the Late Payment Regulations).
- (b) While the standard deadline for public authorities to business payments is 30 days, payment can be extended up to 60 days only if it is “expressly agreed” and justified in light of the nature or feature of the contract.

What are the possible sanctions if a contract does not comply with the statutory maximum payment term?

- (a) If a payment term is determined to be grossly unfair by the Circuit Court or an arbitrator, the payment terms would be unenforceable or give a rise to a claim to damages.
- (b) The Circuit Court may make an order, or an arbitrator may make an award (as the case may be) varying the term or directing the purchaser to pay to the supplier compensation as appears to the Circuit Court or the arbitrator to be appropriate.

Is it possible to designate another governing law to avoid an implied maximum payment term under your local laws?

It is possible to designate another governing law to exclude the application of the Late Payment Regulations

Late payment penalties

(a) **Is it mandatory to have to specify certain minimum late payment penalties?**

No, if no late payment penalties are provided for by contract, the default late payment penalties will apply.

(b) **Is there a default late payment penalty rate?**

The default late payment penalty rate is the European Central Bank main refinancing rate plus 8%.



Italy

Italy

Which laws regulate payment terms in business (B2B) transactions?

- (a) The Legislative Decree 231/2002 (as subsequently amended and integrated).
- (b) Section IV of the Italian Civil Code.

Is a standard payment term implied by law if a contract does not specify a payment term?

If neither a date for payment nor a payment term is set in the agreement then any payment relating to a commercial transaction between undertakings must be made within 30 days, with such period starting from the day following (art. 4, §2 Legislative Decree 231/2002):

- (c) the day of receipt of the invoice or equivalent request for payment;
- (d) if the date of receipt of the invoice or equivalent request for payment is not certain or if the debtor receives the invoice or equivalent request for payment earlier than the goods or services, the day of the receipt of the goods or services; or
- (e) if required by law or by the contract to accept or check the goods or services for the purpose of ascertaining their conformity with the contractual provisions, and if the debtor receives the invoice or the equivalent request for payment at a time not later than that date, the day of acceptance or verification.

Is there a statutory maximum payment term that applies to B2B contracts?

- (f) General statutory maximum payment term
 - (i) In deviation from the statutory payment term of 30 days that is implied if the contract is silent, parties can agree on a longer payment term. If the payment term exceeds 60 days, it should be expressly agreed between parties (art. 4, §3 Legislative Decree 231/2002).
 - (ii) However, a judge may hold such clause null and void if it is manifestly unfair from the perspective of the creditor, taking into account good commercial practice, the nature of the product or service or the absence of any objective reasons to deviate from the default regime (art. 7 Legislative Decree 231/2002).
- (g) Specific statutory maximum payment term for certain products or services
 - (i) Following the implementation into Italian law of Directive 2019/633/EU, art. 4 Legislative Decree 198/2021 introduced special provisions regarding the supply of agricultural and food products.
 - (ii) For perishable products, the payment term is 30 days, starting from the later of the date following:
 - (A) the end of the contractually agreed delivery period; or
 - (B) the date on which the amount to be paid is determined by the supplier.
 - (iii) For non-perishable products, the payment term is 60 days, starting from the later of the date following:
 - (A) the end of the contractually agreed delivery period; or

(B) the date on which the amount to be paid is determined by the supplier.

These provisions take precedence over the Legislative Decree 231/2002.

Are there any exceptions to the applicable statutory maximum payment term?

(h) **Can the invoice date or the date of receipt of the invoice be contractually agreed upon to extend the statutory maximum payment term?**

No. The date of receipt of the invoice forms an integral part of the payment term.

(i) **Can the payment term be extended by the time needed to accommodate acceptance or verification procedures relating to the delivered goods?**

Yes, but only if the acceptance or verification procedure is required by law or by the contract, and only if expressly agreed between parties or specified in the related tender notice (art. 4, §6 Legislative Decree 231/2002).

(j) **Are there other exceptions?**

Yes, the parties can deviate from the maximum statutory payment term by agreeing on payment arrangements that can include payment by instalments. In such cases, if any of the instalments are not paid on the agreed date, interest and compensation will be calculated only on the overdue amounts (art. 4, §7 Legislative Decree 231/2002).

Is there any special statutory framework relating to payment terms that applies to commercial transactions between businesses and public institutions?

(k) Yes. If neither a date for payment nor a payment term is set in the agreement between an undertaking and a public authority, the payment term will be 30 days, starting from the date following (art. 4, §2 Legislative Decree):

(i) the day of receipt of the invoice or equivalent request for payment;

(ii) if the date of receipt of the invoice or equivalent request for payment is not certain or if the debtor receives the invoice or equivalent request for payment earlier than the goods or services, the day of the receipt of the goods or services; or

(iii) if required by law or by the contract to accept or check the goods or services for the purpose of ascertaining their conformity with the contractual provisions, and if the debtor receives the invoice or the equivalent request for payment at a time not later than that date, the day of acceptance or verification.

(l) Where the public authority is the debtor, the parties can expressly agree on a longer payment term if this is objectively justified by the special nature of or certain circumstances relating to of the contract. This payment term agreed between the parties cannot exceed 60 calendar days (art. 4, §4 Legislative Decree 231/2002).

(m) In the case of a commercial transaction between an undertaking and an accredited health institution, or a public enterprise required to comply with the transparency obligations set forth in Legislative Decree 333/2003, the statutory payment term is 60 days (art. 4, §5 Legislative Decree 231/2002).

What are the possible sanctions if a contract does not comply with the statutory maximum payment term?

- (n) Any clause that does not comply with the Legislative Decree 231/2002 and the Italian Civil Code will be regarded as null and void, meaning that the default statutory payment term will apply.
- (o) Non-compliance with article 4 of the Legislative Decree 198/2021 (with regard to the agricultural and food products sector) will be regarded as an unfair market practice, which can be sanctioned with an administrative fine of up to 3.5% of the annual turnover for the previous fiscal year. The fine cannot be lower than EUR 1,000.

Is it possible to designate another governing law to avoid an implied maximum payment term under your local laws?

- (a) It is possible to exclude the applicability of the Legislative Decree 231/2002 by specifying another governing law, unless all other circumstances relevant to the situation at the time of the choice are connected to Italy, in which case the Legislative Decree 231/2002 (which is mandatory) would apply (art. 3(3) Rome I Regulation).
- (b) In contrast it is not possible to exclude article 4 Legislative Decree 198/2021 regarding payment terms in the food and agricultural sector. These provisions apply as soon as the supplier or the buyer, or both, are established in Italy. Unlike the Legislative Decree 231/2002 it is not possible to exclude the application of this article by appointing another governing law. As soon as the contract falls within the scope of this provision, art. 4 Legislative Decree 198/2021 will apply.

Late payment penalties

(c) Is it mandatory to have to specify certain minimum late payment penalties?

No, if no late payment penalties are provided for by contract, the default late payment penalties will apply.

(d) Is there a default late payment penalty rate?

- (i) If the creditor has fulfilled their contractual and legal obligations and has not received the amount due on time, the outstanding amount will automatically increase with interest from the following day, except if the debtor proves they are not responsible for the delay (art. 3 Legislative Decree 231/2002). The interest will be the interest at the reference rate plus 8% (which is currently is 12%). The parties can agree on another interest rate in their contract. A judge may hold such clause null and void if it is manifestly unfair, taking into account good commercial practice, the nature of the product or service or the absence of any objective reasons to deviate from the default regime (art. 7 Legislative Decree 231/2002).
- (ii) In commercial transactions concerning the supply of agricultural and food products, the interest is increased by an additional four points notwithstanding any agreement to the contrary between the parties (art. 4, §2 Legislative Decree 198/2021).
- (iii) If the interest is due, the outstanding amount will automatically increase by a lump sum of EUR40 for the creditor's recovery costs. In addition to this fixed amount, the creditor will be entitled to reasonable compensation for all other recovery costs exceeding that fixed amount and incurred due to the late payment if it can prove the greater damage (art. 6 Legislative Decree 231/2002).



Portugal

Portugal

Which laws regulate payment terms in business-to-business (B2B) transactions?

- (a) Decree-Law 62/2013, of 10 May, which sets out measures against late payment in commercial transactions, and transposes Directive 2011/7/EU, of the European Parliament and of the Council, of 16 February 2011.
- (b) Decree-Law 118/2010, of 25 October, which defines maximum payment deadlines for the payments related to contracts for the purchase and sale or supply of food products intended for human consumption.

Is a standard payment term implied by law if a contract does not specify a payment term?

If no date for payment or payment term is set out by parties, payments in commercial transactions must be made within 30 days from:

- (a) the date of receipt of the invoice; or, if the date of invoice is not clear or the invoice is received before the goods or services;
- (b) the day following the date of actual receipt of the goods or services; or, if, by law or contract, it is set out a process for verification and acceptance of the goods or services, and the invoice is received prior to such verification; or
- (c) the day following the date of acceptance or verification of the goods or services.

Is there a statutory maximum payment term that applies to B2B contracts?

- (a) General statutory maximum payment term
 - (i) The parties can agree on a payment term up to a maximum of 60 days.
 - (ii) An agreement providing for a longer payment term may be considered null and void if the commercial transaction is not subject to any special circumstances that justify a payment term exceeding 60 days, taking into account good commercial practice, the nature of the product or service or objective reasons.
- (b) Specific statutory maximum payment term for certain products or services
 - (i) When agricultural or food products of a perishable nature intended exclusively for human consumption are transacted between undertakings, payment must take place within 30 days in the following cases:
 - (A) suppliers whose annual turnover does not exceed EUR2 million to buyers whose annual turnover exceeds EUR2 million;
 - (B) suppliers whose annual turnover is between EUR2 million and EUR10 million to buyers whose annual turnover exceeds EUR10 million;
 - (C) suppliers whose annual turnover is between EUR10 million and EUR50 million to buyers whose annual turnover exceeds EUR50 million;
 - (D) suppliers whose annual turnover is between EUR50 million and EUR150 million to buyers whose annual turnover exceeds EUR15 million; or
 - (E) suppliers whose annual turnover is between EUR150 million and EUR350 million to buyers whose annual turnover exceeds EUR350 million.

- (ii) When agricultural products or non-perishable food products intended exclusively for human consumption are transacted between undertakings, payment must take place within 30 or 60 days, depending on the following situations:
 - (A) within 30 days:
 - (1) suppliers whose annual turnover does not exceed EUR2 million to buyers whose annual turnover exceeds EUR2 million; or
 - (2) suppliers whose annual turnover is between EUR2 million and EUR10 million to buyers whose annual turnover exceeds EUR10 million;
 - (B) within 60 days:
 - (1) suppliers whose annual turnover does not exceed EUR2 million to buyers in the catering and beverage sector whose annual turnover exceeds EUR2 million;
 - (2) suppliers whose annual turnover is between EUR2 million and EUR10 million to buyers in the catering and beverage sector whose annual turnover exceeds EUR10 million;
 - (3) suppliers whose annual turnover is between EUR10 million and EUR50 million to buyers whose annual turnover exceeds EUR50 million;
 - (4) suppliers whose annual turnover is between EUR50 million and EUR150 million to buyers whose annual turnover exceeds EUR150 million; or
 - (5) suppliers with an annual turnover of between EUR150 million and EUR350 million to buyers with an annual turnover of more than EUR350 million.

Are there any exceptions to the applicable statutory maximum payment term?

- (a) **Can the invoice date or the date of receipt of the invoice be contractually agreed upon to extend the statutory maximum payment term?**

Clauses related to payment terms and date are null and void if manifestly detrimental to the interests of the creditor.

- (b) **Can the payment term be extended by the time needed to accommodate acceptance or verification procedures relating to the delivered goods?**

If an acceptance or verification procedure is contractually agreed, the duration of the procedure may not exceed 30 days from the date of receipt of the goods or provision of the services, unless expressly provided otherwise in the contract, but provided this is not manifestly detrimental to the interests of the creditor.

- (c) **Are there other exceptions?**

When payment is due in instalments and the debtor fails to make one of the instalments on the agreed date, interest and indemnification are calculated on the basis of the amounts due at the relevant time.

Is there any special statutory framework relating to payment terms that applies to commercial transactions between businesses and public institutions?

Yes. In commercial transactions between companies and a public entity, where the latter is the debtor of the payment obligation, special rules apply. In such cases, the payment term may not exceed the terms referred in 2) above, except for public entities that provide healthcare and are duly recognised as such, or if an extended payment term is specifically provided in the agreement and the circumstances justify, which should not, in any case, exceed 60 days.

What are the possible sanctions if a contract does not comply with the statutory maximum payment term?

Any clause that does not comply with applicable rules on maximum payment terms is null and void, pursuant to which the default statutory payment term will apply.

Is it possible to designate another governing law to avoid an implied maximum payment term under your local laws?

It is possible to exclude Portuguese law as governing law, unless the elements relevant to the situation at the time of the choice of law are connected to Portugal, in which case Portuguese law would apply (Rome I Regulation).

Late payment penalties

(a) Is it mandatory to have to specify certain minimum late payment penalties?

No, if no late payment penalties are provided for by contract then the default late payment penalties will apply.

(b) Is there a default late payment penalty rate?

- (i) If the creditor has fulfilled their contractual and legal obligations and has not received the amount due on time, interest at the reference rate plus 8% (which is currently 12%) is due.
- (ii) If this interest is due, the outstanding amount will automatically increase by a lump sum of EUR40 as compensation for the creditor's recovery costs. In addition to this fixed amount, the creditor is entitled to a reasonable compensation for all other recovery costs exceeding that fixed amount and incurred due to the late payment.



Spain

Spain

Which laws regulate payment terms in business-to-business (B2B) transactions?

- (a) In Spain, payment terms in B2B transactions are regulated by the Spanish Federal Late Payments Act 3/2004 (**LMO**), which implemented the EU Late Payment Directive 2000/35/CE. The LMO applies to all payments related to commercial transactions between companies, or between a company and public institutions.
- (b) There are also certain (sometimes overlapping, sometimes conflicting) provisions on late payments in the Spanish Retail Act 7/1996 (**OCM**), which would apply only in a retail trade scenario, i.e. whenever an activity is carried out professionally for profit offering for sale any kind of goods to final recipients. Under certain circumstances, these provisions can be extended to other scenarios, however.

Is a standard payment term implied by law if a contract does not specify a payment term?

- (a) In a B2B scenario, the LMO states that in the absence of contractual agreement the payment term is 30 calendar days after the date of receipt of the goods or the provision of services.
- (b) If a procedure of acceptance or verification of the goods or services has been established by the law or by the contractual agreement of the parties, the time limit for completing this procedure is no more than 30 days after the date on which acceptance of the goods or services takes place. Counting payment delays would start after the acceptance/verification period had expired. Further delays of up to one week could apply in the case of grouping of payments into a single invoice.

Is there a statutory maximum payment term that applies to a B2B contract?

- (a) General statutory maximum payment term
 - (i) The LMO states a maximum term of 60 days will apply if the parties agree to extend the standard term of 30 days. Nevertheless, in special scenarios in which an acceptance procedure is implemented, the 60 days would start after the acceptance/verification period had been completed. So, in such cases, the total count could reach 90 days. Similarly, a fortnightly grouping of payments (with a single invoice for all of them) can lead to a further week of delay.
 - (ii) Even if the parties agree a lawful delay, a judge may still hold such a clause null and void if it is manifestly unfair, taking into account good commercial practice, the nature of the product or service or the absence of any objective reasons to deviate from the default regime.
- (b) Specific statutory maximum payment term for certain products or services
 - (i) Special terms apply for certain products when the debtor is a retailer and/or the OCM applies:
 - (A) fresh food and perishable products (i.e. those that are fit for consumption within 30 days or require special temperature conditions to be transported and marketed): a 30-calendar day limit is strictly enforced;
 - (B) other types of food and products in high demand (regularly bought by consumers and with high rotation):
 - (1) a term of 60 calendar days from the date of delivery of the goods can be agreed; and

- (2) a term of 90 calendar days from the date of delivery of the goods can be agreed if the parties agree to financial compensation equal to the impact of that delay;
- (C) other products:
 - (1) any payment delay exceeding 60 calendar days from the date of delivery of the goods would require the payment to be associated with a bill of exchange, or a promissory note with special enforcement privileges and including the agreed date of payment (as stamped on the invoice);
 - (2) if the delay exceeds 90 calendar days from the date of delivery of the goods, that bill will be freely assignable, with special acceptance and issuance terms; and
 - (3) for delays of more than 120 calendar days from the date of delivery of the goods, the supplier can request that payment be guaranteed by means of a bank guarantee or an equivalent guarantee.
- (ii) There are additional requirements which relate to what the customer needs to reflect on its annual financial statements (regarding payment delays) and the interests chargeable in case of late payment, etc. There are also fines payable by the customer if it is a retailer and has infringed on the mandatory delays.

Are there any exceptions to the applicable statutory maximum payment term?

- (a) **Can the invoice date or date of receipt of the invoice be contractually agreed upon to extend the statutory maximum payment term?**

According to the LMO, suppliers should send an invoice to their customers within 15 calendar days from the date of the actual receipt of the goods or services. The date of the invoice plays a role under the LMO in some cases, but it is generally the date of delivery of goods and services that triggers the start of the applicable term.

- (b) **Can the payment term be extended by the time needed to accommodate acceptance or verification procedures relating to the delivered goods?**

Yes, within certain limits. The LMO sets forth that if an acceptance or verification procedure has been established by the law or by the contractual agreement of the parties, the duration of that extra period of acceptance/verification may not exceed 30 calendar days from the date of receipt of the goods or performance of the services. In this case, the time limit for payment will be by default 30 days after the date on which acceptance or verification of the goods or services takes place, even if the invoice or request for payment was received before acceptance or verification.

- (c) **Are there other exceptions?**

Yes, the parties can deviate from the maximum statutory payment term by agreeing on payment arrangements with payment by instalments. In such cases, if any of the instalments is not paid on the agreed date, interest and compensation will be calculated only on the overdue amounts (art. 6 LMO). But it is currently unclear whether the separate deadlines must each comply with the provisions relating to the statutory payment deadline (and so not each exceed 60 days).

(d) **Is there any special statutory framework relating to payment terms that applies to commercial transactions between businesses and public institutions?**

According to the LMO, this Act also applies to commercial transactions between businesses and public institutions. Following the Spanish Act on Public Sector Contracts 9/2017, public institutions are also subject to the legal framework established in the LMO.

(e) **What are the possible sanctions if a contract does not comply with the statutory maximum payment term?**

- (i) The LMO has no fines regime in place and therefore no financial sanctions beyond the late payment interests and expenses compensation. Restrictions in access to public aids and to filing annual financial statements could nevertheless apply.
- (ii) If the parties agree (and/or apply as a matter of fact) a longer payment delay, that extension would be unlawful, void and non-enforceable. According to the LMO, in the event of non-compliance with the deadlines mentioned above the party obliged to pay the monetary debt related to a commercial transaction will be in default and must pay, on top of the debt, late payment interest and certain recovery costs. These amounts could be established in the contractual agreement or otherwise conform to those set by the LMO in the absence of contractual regulation.
- (iii) Unlike the LMO, the OCM establishes a disciplinary regime with fines up to EUR30,000 per infringement.

(f) **Is it possible to designate another governing law to avoid an implied maximum payment term under your local laws?**

This depends on whether the relevant LMO and/or OCM provisions are considered public order/strictly mandatory. There has not been conclusive case law to date on this point, with some legal authors advocating in favour of not considering LMO provisions public order/strictly mandatory provisions.

(g) Late payment penalties

(i) **Is it mandatory to have to specify certain minimum late payment penalties?**

No, but if no late payment penalties are provided for by contract, the default late payment penalties established by the LMO will apply.

(ii) **Is there a default late payment penalty rate?**

Yes. In fact, there are different scenarios. According to the LMO, the following remedies may be ordered:

- (A) the immediate payment of the amount owed;
- (B) late payment interests. By default, the applicable legal rate for late payments would be calculated under the LMO by "*adding eight percentage points to the interest rate applicable by the European Central Bank to its most recent main financing operation before the first day of the relevant calendar semester*". The parties can negotiate a different rate if it is at least a 70% of the legal rate applicable by default. In the case of the OCM, the creditor would qualify to seek the same late payment interest established by the LMO, but the parties would be allowed to negotiate a rate which is at least a 50% of the legal rate applicable by default;

- (C) a lump sum of EUR40 (for each bill paid late) as minimum indemnity for recovery costs; and
- (D) all other recovery costs that are duly demonstrated in front of the court (e.g. litigation costs).



Sweden

Sweden

Which laws regulate payment terms in business-to-business (B2B) transactions?

- (a) The Interest Act (1975:635) (**Interest Act**) is the main law in relation to commercial payment terms, which incorporates the principal provisions of the directive (2011/7/EU) on combating late payment in commercial transactions.
- (b) Contracts Act (1915:218) (**Contracts Act**) contains general rules in relation to unfair contract provisions in chapter three, in particular section 36.
- (c) Act (1984:292) on contractual terms between traders, which sets out market legislation that targets unfair contractual terms when they are harmful to weaker contracting parties, such as small companies.

Is a standard payment term implied by law if a contract does not specify a payment term?

If neither a date for payment nor a payment term is set in the agreement then any payment to reimburse a commercial transaction between undertakings must be made within 30 days (section 4, Interest Act), starting from the day following:

- (a) the day of dispatch by the creditor of an invoice; or
- (b) the day of request for payment of a specified sum, meaning the payment claim must have reached the debtor. The burden of proof for the circumstance that the debtor has received the claim is on the creditor.

Is there a statutory maximum payment term that applies to B2B contracts?

- (a) General statutory maximum payment term
 - (i) A claim for payment for any goods or service in a relationship between traders in their professional activities is due and payable not later than 30 days after the creditor has made a demand for payment of the claim (section 2 a, p. 1 Interest Act). Note that this is a shorter maximum payment period than the 60-day period laid down in the EU Directive (2011/7/EU).
 - (ii) The statutory maximum payment term can be extended by contractual agreement, as explained in the answer to question 1.8(a) below.
- (b) Specific statutory maximum payment term for certain products or services
 - (i) In relation to the purchase of agricultural and food products, under sections 5, 6 and 7 of Act (2021:579) prohibiting unfair commercial practices in the purchase of agricultural and food products the same statutory maximum payment term that applies generally between traders (i.e. 30 days) is applicable.
 - (ii) This term starts on the later of:
 - (A) the day following the end of the contractually agreed delivery period;
 - (B) the day following the date on which the amount to be paid for the delivery period is determined by the supplier (in cases of delivery on a regular basis);
 - (C) the day following the delivery date; or

- (D) the day following the date on which the amount to be paid is determined by the supplier.

Are there any exceptions to the applicable statutory maximum payment term?

- (a) **Can the invoice date or the date of receipt of the invoice be contractually agreed upon to extend the statutory maximum payment term?**
- (i) Yes, in a contract between traders, the payment may be made at a later time if this is expressly accepted by the creditor (section 2 a, p. 2 Interest Act). There is no maximum payment term under law. But even if expressly accepted, an unreasonably long payment term could be challenged in court if considered unfair (e.g. due to significant imbalance between the parties) taking (good) market practices into consideration. An extension of 120 days would not be considered unfair.
- (ii) The expression "*expressly accepted by the creditor*" (section 2 a, p. 2 Interest Act) means that the creditor should actively consider the extended due date in a specific contract situation for it to be binding. A longer period stemming from commercial practice, custom or standard contractual terms does not normally meet this requirement. A creditor's inaction or implied action cannot be considered to constitute acceptance. Note that this exception is not available when the debtor is a public institution.
- (b) **Can the payment term be extended by the time needed to accommodate acceptance or verification procedures relating to the delivered goods?**

Yes. In contractual relations where the debtor is entitled to defer payment due to an investigation of whether or not the goods or service conform to the agreement, payment may be deferred for not more than 30 days starting from the date of receipt of the goods or performance of the service, provided the creditor has not expressly accepted a longer period of investigation (section 2 b, Interest Act).

- (c) **Are there other exceptions?**
- (i) Yes. The parties may deviate from the maximum statutory payment term by agreeing on payment arrangements with payment by instalments (section 2 c, Interest Act).
- (ii) Note that if it is clear that an instalment plan is attempted to circumvent the rules on maximum payment terms, the contract can be considered null on the basis of section 36 of the Contracts Act or other rules regarding unfair contractual terms.

Is there any special statutory framework relating to payment terms that applies to commercial transactions between businesses and public institutions?

- (a) The same statutory maximum payment term that applies generally between traders (30 days) is applicable when the debtor is a public institution. However, the exception set out in the answer to question 1.8(a) above is not available in commercial transactions between businesses and public institutions. A public institution cannot agree on a payment period longer than 30 days for a purchase of goods or services from a business.
- (b) Regarding default late payment penalties, refer to the answer to question 1.8(b) set out below.

What are the possible sanctions if a contract does not comply with the statutory maximum payment term?

- (a) A payment term that is not compliant with the statutory maximum payment term will have no effect against the creditor, provided that none of the above stated exceptions apply (section 2

a, p. 2 Interest Act). Terms that are non-compliant with the statutory maximum payment term can be adjusted or disregarded under section 36 of the Contracts Act.

- (b) In addition, the Swedish Patent and Market Court may prohibit the trader from using the same or substantially the same conditions in similar cases under the Act (1984:292) on contractual terms between traders if necessary in the public interest (i.e. if it is likely that the particular contract or term will be used against other traders as well) (sections 1, 2 and 7 of the Act on contractual terms between traders). The prohibition is usually combined with a fine (section 5). But the Patent and Market Court rarely applies this provision.
- (c) Non-compliance with regard to the agricultural and food products sector will be regarded as an unfair market practice and the buyer can be sanctioned with an administrative fine. The buyer is defined as a natural or legal person, a group of natural or legal persons or an authority that purchases agricultural and food products. The fine may be determined separately for each of the members of the group. Each administrative fine must not exceed 1% of the turnover of the preceding financial year.

Is it possible to designate another governing law to avoid an implied maximum payment term under your local laws?

- (a) It is possible to exclude the applicability of the Interest Act by appointing another governing law, unless all other circumstances relevant to the situation at the time of the choice are connected to Sweden, in which case the Interest Act (which is mandatory in relevant parts) would apply (art. 3(3) Rome I Regulation).
- (b) It is not possible to exclude the Act (2021:579) prohibiting unfair commercial practices in the purchase of agricultural and food products. The Act applies if the supplier, or the buyer, or both, are established in Sweden.

Late payment penalties

(a) Is it mandatory to have to specify certain minimum late payment penalties?

No, if no late payment penalties are provided for by contract, the default late payment interest rate will apply. Accordingly, a contractual term in a commercial relation entailing that the debtor is not obligated to pay interest at all will be without effect against the creditor (section 4 a, Interest Act).

(b) Is there a default late payment penalty rate?

- (i) Yes. A late payment penalty (interest) will accrue on any debt which is due and payable and for which payment has not been made during the period for payment, starting on the due date or the day which occurs 30 days following dispatch by the creditor of an invoice or some other form of demand for payment of a specified sum (section 4, p. 1 Interest Act).
- (ii) The default late payment interest is calculated per annum according to a rate of interest equivalent to the reference rate of interest plus 8% (Section 6, Interest Act). The reference rate of interest is determined each calendar half year by the Central Bank of Sweden (Section 9, Interest Act).
- (iii) The default late payment interest rate is conclusive in a claim. Parties can agree on an interest rate both higher and lower than the default reference rate plus eight percentage points. These terms are however subject to other law relating to unfair contractual terms.

- (iv) When the debtor is a public institution, the late payment interest may not be calculated at a lower rate than the default late payment interest (section 6, p. 2 Interest Act).



Switzerland

Switzerland

Which laws regulate payment terms in business-to-business (B2B) transactions?

The Federal Act on the Amendment of the Swiss Civil Code (Part Five: The Code of Obligations) of 30 March 1911 (**CO**).

Is a standard payment term implied by law if a contract does not specify a payment term?

- (a) In the absence of contractual agreement, the general principles of Swiss contract law apply, in particular the principle of contractual freedom. Based on that principle, Swiss law does not provide for any standard payment term.
- (b) Even though the principle of contractual freedom applies, a contract may not contain illegal provisions, violate the public order, surrender a person's freedom or restrict the use of it to a degree violating the law or public morals (**Contractual Limitations**). A contract containing Contractual Limitations will be declared either partially (where the defect pertains only to certain terms, unless there is cause to assume that the contract would not have been concluded without them) or totally void.

Is there a statutory maximum payment term that applies to B2B contracts?

- (a) No, Swiss law does not provide for statutory minimum or maximum payment terms.
- (b) Where a payment term is neither included in the contract nor evident from the nature of the legal relationship, the immediate performance of the party's obligations may be required (art. 75 CO).

Are there any exceptions to the applicable statutory maximum payment term?

- (a) **Can the invoice date or the date of receipt of the invoice be contractually agreed upon to extend the statutory maximum payment term?**

The contractual parties are free to agree on extended payment terms within the Contractual Limitations (see the answer to question 0 above).

- (b) **Can the payment term be extended by the time needed to accommodate acceptance or verification procedures relating to the delivered goods?**
 - (i) The contractual parties are free to agree on a payment subject to a preliminary verification procedure of the delivered goods within the Contractual Limitations (see the answer to question 0 above).
 - (ii) In practice, this situation does not occur frequently as Swiss law provides for a warranty of quality and fitness. Provided that certain conditions are met (e.g. notice of defects, defects not known by the buyer, etc.), the seller is liable to the buyer for any breach of warranty of quality and for any defects that would materially or legally negate or substantially reduce the value of the object or its fitness for the designated purpose (art. 197 CO).
- (c) **Are there other exceptions?**

No.

Is there any special statutory framework relating to payment terms that applies to commercial transactions between businesses and public institutions?

The same general principles of Swiss contract law apply if a transaction is with a public institution.

What are the possible sanctions if a contract does not comply with the statutory maximum payment term?

- (a) Swiss law does not provide for statutory minimum or maximum payment terms so no sanction is applicable.
- (b) However, as mentioned in the answer to question 0 above, if a contract contains illegal provisions, violates the public order, surrenders a person's freedom or restricts the use of it to a degree violating the law or public morals, the contract will, in principle, be declared either partially (if the defect pertains only to certain terms, unless there is cause to assume that the contract would not have been concluded without them) or totally void.

Is it possible to designate another governing law to avoid an implied maximum payment term under your local laws?

- (a) The contractual parties may designate another governing law and exclude the application of Swiss law.
- (b) However, the Swiss Federal Act on Private International Law (**PILA**) stipulates that, to be valid, the choice of law must be express or clearly apparent from the provisions of the contract or the circumstances (art. 116 par. 2 PILA). In the absence of a choice of law, the contract is governed by the law of the state with which it is most closely connected (art. 117 par. 1 PILA).
- (c) Specific rules may apply in case of an international chattel sale, contracts pertaining to goods or services of ordinary consumption, employment agreements and contracts pertaining to intellectual property.

Late payment penalties

(a) Is it mandatory to have to specify certain minimum late payment penalties?

If the contract does not provide for any late payment penalties, the default rate of interest applies (art. 104 CO).

(b) Is there a default late payment penalty rate?

- (i) If the creditor has fulfilled their contractual and legal obligations (i.e. formal reminder and deadline of performance (if applicable)), then Swiss law provides that a debtor in default on payment of a pecuniary debt must pay default interest of 5% per year, even where a lower rate of interest was stipulated by contract (art. 104 par. 1 CO).
- (ii) The parties are free to determine a higher interest rate in the contract, but a judge may reduce an excessive interest rate. The CO does not define the threshold at which the interest rate becomes excessive, but part of the doctrine considers that the maximum interest rate of 15% applies by analogy to the Federal Law on Consumer Credit.
- (iii) In business dealings, where the normal bank discount rate at the place of payment is higher than 5% then default interest may be calculated at the higher rate (art. 104 para. 3 CO).



The Netherlands

The Netherlands

Which laws regulate payment terms in business-to-business (B2B) transactions?

Article 6:119a of the Dutch Civil Code (**DCC**) is applicable to "*all payments for reimbursement of commercial transactions*".

Is a standard payment term implied by law if a contract does not specify a payment term?

If neither a date for payment nor a payment term is set in the agreement then any payment to reimburse a commercial transaction between undertakings must be made within 30 days, with such period starting from the day following (art. 6:119a(2) DCC):

- (a) the date of receipt of the invoice; or
- (b) if the date of receipt of the invoice or equivalent request for payment is not certain or if the debtor receives the invoice or equivalent request for payment earlier than the goods or services, the date of the receipt of the goods or services;
- (c) if the debtor has negotiated a timeframe within they may accept the performance received or assess whether it conforms to the contract, and if they receive the invoice before they have accepted or assessed the performance: the day on which the debtor has accepted or assessed the performance, or, if they don't accept or assess, 30 days after the day following the day on which the time limit expires.

Is there a statutory maximum payment term applies to B2B contracts?

- (a) General statutory maximum payment term
 - (i) In deviation from the statutory payment term of 30 days that is implied the contract is silent, parties can agree on a payment term of a maximum of 60 days. A payment term that exceeds 60 days must be expressly agreed by the parties and this payment term cannot be manifestly unfair to the creditor considering good commercial practice, the nature of the product or service or the absence of any objective reasons to deviate from the default regime (art. 6:119a(5) DCC).
 - (ii) Deviations from the statutory payment term of 30 days are not possible for agreements in which the debtor is a major business. A business is considered major if at least two of the following requirements are fulfilled (art. 6:119a(6) DCC and art. 2:397(1) DCC):
 - (A) assets exceed EUR20 million;
 - (B) net turnover exceeds EUR40 million; and/or
 - (C) the average number of employees for the financial year is more than 250.
- (b) Specific statutory maximum payment term for certain products or services
 - (i) Following the implementation into Dutch law of Directive 2019/633/EU, the Agricultural and Food Supply Chain Unfair Commercial Practices Act introduces maximum payment terms regarding the supply of agricultural and food products.

- (ii) A buyer acts unlawfully towards a supplier if they engage in any of the following commercial practices:
 - (A) the delivery agreement stipulates that the products are delivered on a regular basis as follows:
 - (1) for perishable agricultural and food products: later than 30 days after the end of an agreed delivery period within which deliveries have been made; or later than 30 days after the date on which the amount payable for that delivery period has been determined, whichever date is later;
 - (2) for other agricultural and food products: later than 60 days after the end of an agreed delivery period within which deliveries have been made; or later than 60 days after the date on which the amount payable for that delivery period has been determined, whichever date is later;
 - (3) for the application of the payment terms referred to in this section, the agreed delivery terms are in any case not deemed to be longer than one month;
 - (B) the delivery agreement does not stipulate that the products will be delivered on a regular basis as follows:
 - (1) for perishable agricultural and food products: later than 30 days from the date of delivery; or later than 30 days from the date on which the amount payable is determined, whichever date is later;
 - (2) for other agricultural and food products: later than 60 days from the date of delivery; or later than 60 days from the date on which the amount to be paid is determined, whichever date is later.

Notwithstanding the above, if the customer determines the amount to be paid, the payment terms referred to in paragraph 1 above will apply from the end of an agreed delivery period within which deliveries have been made, and the payment periods referred to in paragraph 2 above will apply from the delivery date.

Are there any exceptions to the applicable statutory maximum payment term?

- (a) **Can the invoice date or date of receipt of the invoice be contractually agreed upon to extend the statutory maximum payment term?**

The invoice date or receipt of the invoice can be contractually agreed to extend the statutory maximum payment term. However, the creditor adversely affected may seek a ruling from the court that this practice is unfair. Contractual clauses regarding the date or the maximum payment term may be deemed unfair to the creditor considering good commercial practice, the nature of product or service and the payment term that is agreed (art. 6:248(2) DCC).

- (b) **Can the payment term be extended by the time needed for acceptance or verification procedures of the delivered goods?**

As stated in the answer to question 1.8(a) above, in deviation from the statutory payment term of 30 days, parties can agree on a payment term of maximum 60 days. A payment term that exceeds 60 days must be expressly agreed upon by the parties and this payment term cannot be manifestly unfair to the creditor considering good commercial practice, the nature of the product or service or the absence of any objective reasons to deviate from the default regime (art. 6:119a(5) DCC). Deviation from the statutory payment term of 30 days is not possible for

agreements in which the debtor is a major business (art. 6:119a(6) DCC and art. 2:397(1) DCC).

(c) **Are there other exceptions?**

There are no other exceptions.

Is there any special statutory framework that applies to commercial transactions between businesses and public institutions?

- (a) Yes; if no date for payment or payment term is set in the agreement between a business and a public authority, and where the public authority is the debtor, the payment term is 30 days, starting from the date following (art. 6:119b(2) DCC):
- (i) the date of receipt of the invoice or equivalent request for payment;
 - (ii) if the date of receipt of the invoice or equivalent request for payment is not certain or if the debtor receives the invoice or equivalent request for payment earlier than the goods or services, the date of the receipt of the goods or services; or
 - (iii) if the debtor has negotiated a timeframe within they may accept the performance received or assess whether it conforms to the contract, and if they receive the invoice before they have accepted or assessed the performance, the day on which the debtor has accepted or assessed the performance, or, if they don't accept or assess, 30 days after the day following the day on which the time limit expires.
- (b) The parties can agree a longer payment term if this is objectively justified by the special nature of or by certain circumstances relating to the contract. This payment term agreed between the parties may not exceed 60 calendar days (art. 6:119b(5) DCC).

What are the possible sanctions if a contract does not comply with the statutory maximum payment term?

- (a) Any clause that does not comply with the statutory payment terms will be regarded as null and void and the default payment term of 30 days will apply. This could entail the risk that the payment period has already expired and that interests, and a lump-sum compensation may already be due.
- (b) Non-compliance with the provisions of the Dutch Agricultural and Food Supply Chain Unfair Commercial Practices Act will be regarded as an unfair market practice, which can be sanctioned with an administrative fine of up to EUR900,000.

Is it possible to designate another governing law to avoid an implied maximum payment term under your local laws?

- (a) It is possible to exclude the applicability of article 6:119a DCC by appointing another governing law, unless the contract would be purely Dutch, meaning that all elements of the contract are connected to the Netherlands, in which case article 6:119a DCC, which is of mandatory nature, would apply (art. 3(3) Rome I Regulation).
- (b) In contrast is not possible to exclude the Agricultural and Food Supply Chain Unfair Commercial Practices Act regarding payment terms in the food and agricultural sector. These provisions apply as soon as the supplier or the buyer, or both, are established in the Netherlands.

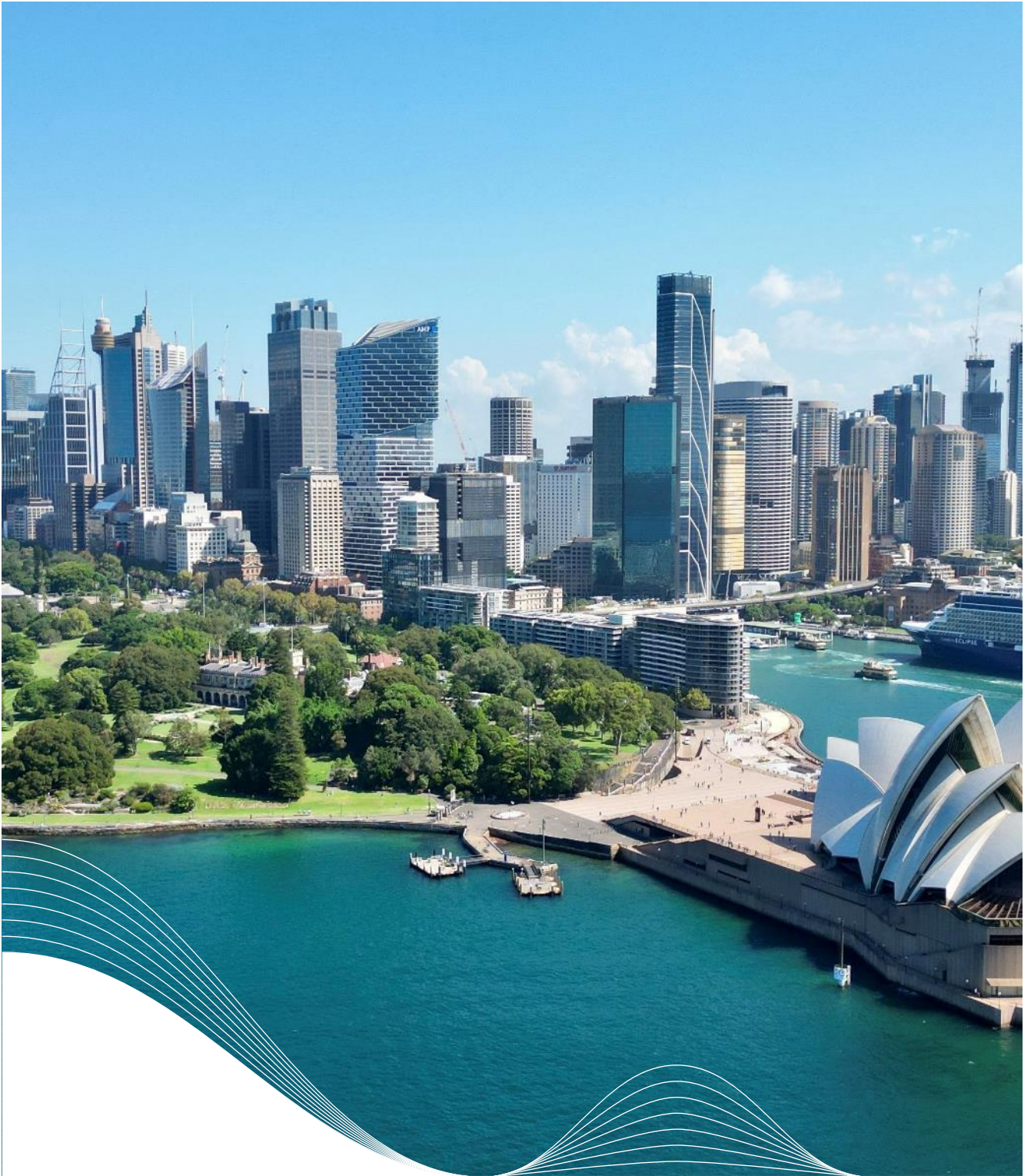
Late payment penalties

(a) Is it mandatory to have to specify certain minimum late payment penalties?

No, if no late payment penalties are provided for by contract, the default late payment penalties of legal interest and collection costs at a minimum of EUR40 will apply.

(b) Is there a default late payment penalty rate?

- (i) If the creditor has fulfilled their contractual and legal obligations and has not received the amount due on time, the outstanding amount will automatically increase with interest from the following day, except if the creditor themselves is in default (art. 6:119a(7) DCC) or the debtor proves they are not responsible for the delay (art. 6:119a(8) DCC). The statutory interest for commercial transactions is currently 12%. Parties can in principle agree on another interest rate in their contract (art. 6:119a(9) DCC).
- (ii) If the interest is due, the outstanding amount will automatically increase by a lump-sum of at least EUR40 for the creditor's recovery costs (art. 6:96(4) DCC).



Australia

Australia

Which laws regulate payment terms in business-to-business (B2B) transactions?

- (a) **Goods and services other than construction work:** Outside of construction work and construction contracts, there are currently limited laws regulating payment terms in B2B transactions.

The unfair contract terms regime under the Australian Consumer Law applies to 'standard form contracts' with small businesses, which are defined to include businesses that employ 100 people or less, or any business with an annual turnover of less than AUD10 million. Provisions specifying payment terms could be 'unfair' depending on the duration of the payment term and any particularly onerous conditions that must be satisfied before payment is required to be made.

Otherwise, parties to B2B transactions are free to set payment terms as they agree them.

- (b) **Construction work:** There are specific 'security of payment' laws which describe and regulate the entitlement of contractors, sub-contractors, consultants and suppliers in the supply chain for construction work and related services to receive progress payments due to them under construction contracts. There are laws in place in each Australian State and Territory, and the approach differs in each State and Territory.

Is a standard payment term implied by law if a contract does not specify a payment term?

There is no legislative instrument setting a standard or default payment term in the absence of an express contractual agreement. If a contract does not expressly specify a payment term, it may be an implied term (and then other considerations apply around the implication of terms, and previous dealings between the parties and customary practices / terms in the same market, trade or situation may be relevant).

Is there a statutory maximum payment term that applies to B2B contracts?

- (a) General statutory maximum payment term

In Australia there is no statutory maximum payment term applicable generally to supply arrangements for goods and services.

Under the voluntary Australian supplier payment code, which was developed and is promoted by the Business Council of Australia (a leading industry body for all types of businesses in Australia) signatories to the code commit to pay small business suppliers within 30 days of receipt of a correct invoice.

Also, the Payment Times Reporting Act 2020 (**PTR Act**) and the supporting Payment Times Reporting Rules 2020 set out a regime which requires large businesses, certain government entities and other entities which volunteer to comply with the to report information on their payment terms and practices in relation to their small-business suppliers. Under the PTR Act, failure to report the require information can result in a fine of AUD16,500 for an individual or AUD82,500 for a body corporate per day of non-compliance.

Under the PTR Act, an entity is a "large business" subject to the report requirements under the regime if it carries on an enterprise in Australia and its total income for the most recent income year was more than AUD100 million. Controlling corporations are also captured where the combined total income of all members of the controlling corporation's group was more than AUD100 million, and each member of a controlling corporation's group with total income of at least AUD10 million must also report individually (this is called "entity-level reporting").

- (b) Specific statutory maximum payment term for certain products or services

Construction work: There are specific maximum payment terms for progress payments due to contractors, sub-contractors, consultants and suppliers in the supply chain for construction work and related services.

Are there any exceptions to the applicable statutory maximum payment term?

- (a) **Can the invoice date or the date of receipt of the invoice be contractually agreed upon to extend the statutory maximum payment term?**

The invoice date can't be contractually agreed upon to extend the statutory maximum payment term.

- (b) **Can the payment term be extended by the time needed to accommodate acceptance or verification procedures relating to the delivered goods?**

This is not applicable in Australia as there is no statutory maximum payment term.

- (c) **Are there other exceptions?**

There are no other exceptions for the statutory payment term.

Is there any special statutory framework relating to payment terms that applies to commercial transactions between businesses and public institutions?

The federal government has a "Supplier Pay on Time or Pay Interest Policy" which applies to all non-corporate government entities. The policy requires that those entities must make all payments to suppliers within the "maximum payment terms" (specified below), once there is satisfactory delivery of goods or services and a correctly rendered invoice is received. Where a federal government entity has not made payment in full within the maximum payment terms, it must calculate and apply daily (from the day after payment was due up to and including the day that payment was made) the "general interest charge" rate published by from the Australian Taxation Office.

The "maximum payment terms" are:

- (a) 5 calendar days for electronic invoicing (eInvoicing), where the parties can deliver and receive eInvoices through the Pan-European Public Procurement On-Line (**PEPPOL**) framework and have agreed to use this method of invoicing; or
- (b) 20 calendar days for all other invoices, unless shorter maximum payment terms are agreed between the parties.

Other rules may apply at State or Territory level where an organisation is contracting with a State or Territory public body or statutory corporation.

What are the possible sanctions if a contract does not comply with the statutory maximum payment term?

If a payment term in a contract with a small business is found to be unfair under the unfair contract terms regime, the provision is void and unenforceable and significant penalties can be imposed by the courts for including unfair contract terms. From 9 November 2023, the maximum penalty for including unfair contract terms is the greater of: (a) AUD50 million; (b) three times the value of the benefit obtained from the conduct (if this can be determined); or (c) where the court cannot determine this, 30% of the entity's annual turnover during the 12-month period ending at the end of the month in which the contravention happened or began.

Is it possible to designate another governing law to avoid an implied maximum payment term under your local laws?

While it is possible to specify a different governing law to the laws of Australia and a specific State or Territory to apply to a contractual arrangement where there is a nexus between the arrangement and another jurisdiction, doing so does not necessarily exclude the operation of Australian statutes, including the Competition and Consumer Act (which implements the Unfair Contracts Term regime). Many statutes include provisions that give the laws extraterritorial effect provided that there is a sufficient connection to Australia, which depends on the particular facts in question. Acknowledging that there are a number of decisions of Australian courts that give effect competition and consumer protection laws despite certain elements of the conduct occurring outside of Australia, these outcomes may have been different depending on particular factual circumstances. It is possible to exclude the applicability of the Late Payment Act by appointing another governing law, unless all other circumstances relevant to the situation at the time of the choice are connected to Belgium, in which case the Late Payment Act (which is mandatory) would apply (art. 3(3) Rome I Regulation).

Late payment penalties

(a) Is it mandatory to have to specify certain minimum late payment penalties?

No, it is not mandatory to impose any minimum late payment penalties – it is open to parties to contractual arrangements not to impose any specific penalty regime for late payment (whether that be the imposition of interest on late payments or otherwise).

(b) Is there a default late payment penalty rate?

No, there is no statutory default interest rate applicable to late payments and imposed into commercial contracts.



China

China (People's Republic of China)

Which laws regulate payment terms in business-to-business (B2B) transactions?

- (a) There is no specific law regulating payment terms in B2B transactions in the PRC. However, there are some legal provisions which regulate payment terms in specific B2B transaction scenarios. (Please find the details in answers to question 1.8(b) and question 0) below).
- (b) That said, the main provisions that apply to contracts are in the Civil Code of the People's Republic of China (**Civil Code**).

Is a standard payment term implied by law if a contract does not specify a payment term?

- (a) There is no standard payment term under PRC laws. In the absence of contractual agreement (including any supplementary agreement) by the parties, the payment terms are determined according to the relevant clauses of the contract (if any) or the course of dealing (Article 510 of the Civil Code).
- (b) Where the payment term is not clearly stipulated in the contract or cannot be determined by the relevant clauses of the contract or the course of dealing, the debtor may pay at any time; while the creditor may request payment at any time after giving necessary time to debtor to prepare (Paragraph 4 of Article 511 of the Civil Code).
- (c) In case of a sales contract, the buyer should make payment at the same time as it receives the goods or the document for taking delivery (Article 628 of the Civil Code).

Is there a statutory maximum payment term that applies to B2B contracts?

- (a) General statutory maximum payment term

No, there is no generally applicable statutory maximum payment term under PRC laws. The content of the contract, including payment term, is agreed by the parties (Article 470 of the Civil Code). Where the parties have not agreed on the payment term, the parties can make a supplementary agreement to specify the payment term after the original agreement become effective (Article 510 of the Civil Code).

- (b) Specific statutory maximum payment term for certain products or services

Yes. There are some specific statutory maximum payment terms for certain products or services under PRC laws:

- (i) Contracts between retailers and suppliers

the payment term should be explicitly agreed between a retailer and a supplier in their contract according to the characteristics of the goods. The agreed payment term should not be longer than 60 days from the receipt of the goods (Article 14 of the Administrative Measures for Fair Transactions Between Retailers and Suppliers). Under the Measures, a retailer refers to an enterprise and its branches that are registered with the industrial and commercial administration department in accordance with the law, sells goods directly to consumers, and has an annual sale (for an enterprise engaging in franchising operations, including the annual sales of franchised stores) of more than RMB10 million. A supplier refers to an enterprise and its branches or a privately owned business operator that directly provides goods and corresponding services to retailers (including manufacturers, distributors and other intermediaries);

- (ii) Acceptance of Commercial Bills of Exchange

the term of payment of a commercial bill should match the term of performance of the real transaction. The maximum period from the drawing date to the maturity date must not exceed six months (Article 25 of the Administrative Measures for the Acceptance, Discounting and Rediscounting of Commercial Bills of Exchange);

- (iii) Settlement of domestic letters of credit (**L/C**)
 - (A) for L/C at sight, the issuing bank should make the payment within five business days from the next day after receipt of conforming documents;
 - (B) for usance L/C, the issuing bank should confirm within five business days from the next day after the receipt of the complying documents that it will make payment upon maturity. The payment term (i.e. from the date when receiving conforming documents to maturity date) of a usance L/C should not exceed one year (Paragraph 4 of Article 10 of the Measures for the Settlement of Domestic Letters of Credit).

Are there any exceptions to the applicable statutory maximum payment term?

- (a) **Can the invoice date or the date of receipt of the invoice be contractually agreed upon to extend the statutory maximum payment term?**

Parties can freely negotiate and agree on the payment term, except for in contracts described in the answer to questions 1.8(b) and question 0).

- (b) **Can the payment term be extended by the time needed to accommodate acceptance or verification procedures relating to the delivered goods?**

Parties can freely negotiate and agree on the payment term, except for in contracts in the answer to questions 1.8(b) and question 0).

- (c) **Are there other exceptions?**

See the answers to questions 1.8(a) and 1.8(b) above.

Is there any special statutory framework relating to payment terms that applies to commercial transactions between businesses and public institutions?

- (a) Yes. It is stipulated that government agencies and public institutions that purchase goods, engineering works or services from small and medium size enterprises (**SMEs**) should make payments within 30 days from the date of delivery; where it is otherwise agreed upon in the contract, the maximum payment term should not exceed 60 days (Paragraph 1 of Article 8 of the Regulations on Ensuring the Payments to SMEs). There are different criteria for SMEs in different industries. The Statistical Classification of Large, Small, Medium and Micro Enterprises (2017) and the Provisions on the Criteria for the Classification of Enterprises in the Financial Sector are the two main regulations to refer to.
- (b) Also, the Government Procurement Law of the PRC (**GPL**) governs purchasing activities conducted with fiscal funds by Chinese government departments, institutions, and public organisations. It has been explicitly set out in the GPL that contract law is applicable to government procurement (Article 43 of the GPL). The procuring entity and the supplier should agree on the respective rights and obligations in the contract on the principle of equality and voluntariness.

What are the possible sanctions if a contract does not with the statutory maximum payment term?

There is no generally applicable statutory maximum payment term in the PRC. However, non-compliance with the following statutory maximum payment terms will trigger administrative penalties:

(a) Contracts between retailers and suppliers

where a retailer or a supplier fails to make payment within the maximum payment term, they may be subject to administrative orders to make correction; if there is illegal income, they may be subject to an administrative fine of no more than three times the illegal income, but in no case exceeding RMB30,000; if there is no illegal income, a fine of no more than RMB10,000. In addition, the violation may be published to the general public. (Article 23 of the Administrative Measures for Fair Transactions Between Retailers and Suppliers);

(b) Acceptance of Commercial Bills of Exchange

if the drawer of a commercial bill has continuously violated the mandatory payment terms during the past two years, financial institutions should not handle bill acceptance, discounting, guarantee, pledge, etc. business for it. (Article 36 of the Administrative Measures for the Acceptance, Discounting and Rediscounting of Commercial Bills of Exchange).

Is it possible to designate another governing law to avoid an implied maximum payment term under your local laws?

(a) As a general note, where a contract has a foreign element, parties are free to choose a governing law other than the PRC in most circumstances (Articles 3 and 41 of Law on the Application of Laws to Foreign-related Civil Relations 2010).

(b) For a contract to be foreign-related, it must have at least one of the following elements:

- (i) at least one party is a foreign national/corporation;
- (ii) at least one party has its habitual residence outside PRC;
- (iii) the subject matter of the contract is located outside PRC;
- (iv) the occurrence, modification or termination of the contractual relationship takes place outside PRC; or
- (v) other circumstances which may be construed as foreign related.

(c) (Article 520 of Interpretations of the SPC on the Application of the Civil Procedure Law 2022; Article 1 of 2020 Foreign-Related Civil Relations Interpretation)

(d) However, there are certain types of foreign-related contracts that must be governed by Chinese law if they are to be performed in the PRC, including:

- (i) contracts involving the joint venture (equity or contractual) of a Chinese company and a foreign company; and
- (ii) contracts of the cooperation between a Chinese company and a foreign company in the exploration and exploitation of natural resources.

(Article 467 of the Civil Code)

- (e) Selecting a foreign law as the governing law of a contract that includes one Chinese party cannot exclude the application of the mandatory payment term requirements under the PRC laws as discussed in in the answer to questions 1.8(b) and question 0) above.

Late payment penalties

(a) Is it mandatory to have to specify certain minimum late payment penalties?

- (i) No, it is not mandatory to have to set forth minimum late payment penalties in the PRC.
- (ii) Parties may agree on the amount of liquidated damages to be paid by the buyer to the seller in case of default by the buyer according to the circumstance of the breach. Alternatively, the parties may agree on the method of calculating the compensation for losses arising from the breach.
- (iii) Where the agreed liquidated damages are lower than the loss caused (actual loss plus foreseeable loss of profit), the people's court or an arbitration institution can increase them upon request of a party to match the loss caused. Where the agreed liquidated damages are excessively higher than the loss caused, the people's court or an arbitration institution can make appropriate reduction upon request of a party (Article 585 of the Civil Code).
- (iv) Where the amount of liquidated damages agreed upon by the parties exceeds 30% of the loss caused, it will likely be considered as "*excessively higher than the loss caused.*" (Paragraph 2 of Article 29 of the Interpretation of the Supreme People's Court of Several Issues Concerning the Application of the Contract Law of the People's Republic of China (II) – this Interpretation has been abolished after the issuance of the Civil Code, but local courts will likely refer to the 30% standard).

(b) Is there a default late payment penalty rate?

- (i) Yes.
- (ii) In general, parties can freely agree on how to calculate the liquidated damages for late payment. Where there is no such agreement, the court may calculate the damages by taking reference to the benchmark interest rate as follows:
 - (A) where the default occurs before 19 August 2019, damages will be calculated based on the benchmark interest rate of the People's Bank of China for RMB loans of the same type and in the same period and by reference to the standards for calculation of penalty interest rate for overdue payment; and
 - (B) where the default occurs after 20 August 2019, damages will be calculated at an additional rate of 30% to 50% based on the one-year Loan Prime Rate/LPR published by the National Interbank Funding Center upon authorization of the People's Bank of China upon occurrence of the default.



Hong Kong

Hong Kong

Which laws regulate payment terms in business-to-business (B2B) transactions?

- (a) There is no specific law regulating payment terms in B2B transactions in Hong Kong.
- (b) Note that the main legislation that applies to contracts for the sale of goods is the Sale of Goods Ordinance (Cap. 26) (**SOGO**). In the context of supply of services, the Supply of Services (Implied Terms) Ordinance (Cap. 457) applies.

Is a standard payment term implied by law if a contract does not specify a payment term?

- (a) In the context of sale of goods, and in the absence of a contractual agreement between the parties, payment is due upon the delivery of the goods (section 30 of SOGO). Delivery takes place when the seller has given possession of the goods to the buyer.
- (b) There is no standard payment term in the context of supply of services.

Is there a statutory maximum payment term that applies to B2B contracts?

- (a) General statutory maximum payment term

No, there is no general statutory maximum payment term under Hong Kong laws. Parties can contractually agree upon any payment term. Parties are free to vary the payment terms of their original contract by way of amendment to the agreement.

- (b) Specific statutory maximum payment term for certain products or services

No, there is no specific statutory maximum payment term for certain products or services under Hong Kong laws.

Are there any exceptions to the applicable statutory maximum payment term?

- (a) **Can the invoice date or the date of receipt of the invoice be contractually agreed upon to extend the statutory maximum payment term?**

- (i) There is no statutory maximum payment term in Hong Kong. Parties can freely negotiate and agree on the payment terms in the contract.
- (ii) That said, as a general rule invoices should include both the date of issue and the date of transaction. Businesses are under the obligations to keep proper records under the Inland Revenue Ordinance (Cap. 112), to enable the Inland Revenue Department to ascertain the assessable profits of the company in that year of assessment.

- (b) **Can the payment term be extended by the time needed to accommodate acceptance or verification procedures relating to the delivered goods?**

There is no statutory maximum payment term in Hong Kong. Parties can freely negotiate and agree on the payment terms in the contract.

- (c) **Are there other exceptions?**

No, as there is no statutory maximum payment term in Hong Kong. Parties can freely negotiate and agree on the payment terms in the contract.

Is there any special statutory framework for commercial transactions between businesses and public institutions?

- (a) No, there is no special statutory framework for commercial transactions between businesses and public institutions.
- (b) That said, the Treasury Branch of the Financial Services and the Treasury Bureau has issued a Guide to Procurement (**Guide**), which sets out the underlying principles of the Hong Kong government's procurement practices.
- (c) Under the Guide, it is the government's practice to specify payment terms in tender documents. In supplies contracts, payment is generally made upon acceptance of goods. For service contracts, milestone payments related to performance targets or services provided should generally apply. Payment should generally be made within 30 calendar days upon acceptance of deliverables.
- (d) Tender documents usually include standard contract forms. Typically, when contracting with public institutions, public institutions will insist that their standard template procurement contract is used, as a condition in the tender.

What are the possible sanctions if a contract does not comply with the statutory maximum payment term?

There is no statutory maximum payment term in Hong Kong.

Is it possible to designate another governing law to avoid an implied maximum payment term under your local laws?

- (a) There is no statutory maximum payment term in Hong Kong.
- (b) As a general note, choice of law clauses are generally recognised by Hong Kong courts, with certain exceptions. For example, where the purpose of the choice of law clause in a contract appears to the court or arbitrator to have been evading the operation of the Unconscionable Contracts Ordinance (Cap. 458) or the Control of Exemption Clauses Ordinance (Cap. 71), the respective ordinance would have effect notwithstanding the choice of law clause. However, there are no express provisions related to payment terms in the statutes.

Late payment penalties

(a) Is it mandatory to have to specify certain minimum late payment penalties?

No, it is not mandatory to have to set forth minimum late payment penalties in Hong Kong.

(b) Is there a default late payment penalty rate?

- (i) No, there is no default late payment penalty rate. Parties are free to negotiate any late payment penalty rate in the contract, provided that the penalty rate does not amount to a penalty which imposes a detriment on the buyer out of all proportion to any legitimate interest of the seller in the enforcement of the payment. The penalty is unenforceable based on Hong Kong case law.
- (ii) Also, where the seller has brought a claim to recover debt or damages to court or arbitration, interest on the sums awarded may be awarded under the High Court Ordinance (Cap. 4) (**HCO**) or the Arbitration Ordinance (Cap. 609) (**AO**).
 - (A) In the case of court proceedings before the Court of First Instance, the calculation of interest starts from the date on which the cause of action arose

(i.e. the date of delivery of the goods or the date of completion of work)
(section 48 of HCO).

(B) In the case of arbitration, the calculation of interest starts from the date of the award at the judgment rate, except when the award otherwise provides (section 80 of AO).

(c) The judgment rate is determined by order of the court or from time to time by order of the Chief Justice (section 49(1) of HCO).



Japan

Japan

Which laws regulate payment terms in business-to-business (B2B) transactions?

- (a) the Civil Code (applies to both commercial and non-commercial transactions); and
- (b) the act against delay in payment of subcontract proceeds to subcontractors (**Subcontract Act**)

Is a standard payment term implied by law if a contract does not specify a payment term?

- (a) If no date or payment term is set in the agreement, any payment is due upon receiving request for payment (art. 412, §3 Civil Code).
 - (b) However, a debtor may refuse to make payment until the other party tenders the performance of the other party's obligation if the other party's obligation is due (art. 533 Civil Code).
 - (c) In addition, there are certain transactions for which, unless the agreement provides otherwise, payment cannot be claimed until the time prescribed by statute, such as:
 - (i) in the case of sale of goods, at the time of delivery of the goods (art. 573 Civil Code);
 - (ii) in the case of lease of building or residential land, at the end of each covered month (art. 614 Civil Code);
 - (iii) in the case of a work contract, at the time of delivery of the work (art. 633 Civil Code); and
 - (iv) in the case of entrustment, upon completion of the services (art. 646, §2 Civil Code).

Is there a statutory maximum payment term that applies to B2B contracts?

- (a) General statutory maximum payment term

In general, parties can agree on any payment term in B2B transactions.

- (b) Specific statutory maximum payment term for certain products or services
 - (i) Where the Subcontract Act applies, the maximum payment term that parties can contractually agree upon is 60 days from the contracting party's receipt of the deliverables or the services provided by the contractor (art. 2-2 §1 of the Subcontract Act).
 - (ii) The Subcontract Act shall apply when:
 - (A) the transaction between a contracting party and a supplier/vendor (as a contractor) falls under certain categories as specified thereunder; and
 - (B) the stated capital of the assigner and supplier exceed certain thresholds as specified thereunder, as summarised below.

(a)	Transaction Categories	(1) manufacturing contracts; or (2) repair contracts	(3) information product creation contracts*; or
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			(4) service provision contracts**
(b)	Stated Capital Thresholds	<p>The contracting party's stated capital exceeds JPY 300 million while the contractor's stated capital is JPY 300 million or less; or</p> <p>The contracting party's stated capital is between JPY 10 million and JPY 300 million while the contractor's stated capital is JPY 10 million or less.</p>	<p>The contracting party's stated capital exceeds JPY 50 million while the contractor's stated capital is JPY 50 million or less; or</p> <p>The contracting party's stated capital is between JPY 10 million and JPY 50 million while the contractor's stated capital is JPY 10 million or less.</p>

* Examples of an "information product" include software programs, movies, other media and graphics.

** A "service provisions contract" mean contracts that assign/subcontract the performance of all or part of the services which the contracting party is supposed to provide to a third party. Service provision contracts do not include any construction work contract where the subcontracting party is a licensed construction business operator which is subject to the Construction Business Act (under which the subcontracting party must pay a subcontracting fee to the subcontractor as soon as possible by the earlier of (i) 50 days from the date on which the subcontractor tenders the handover of the construction work completed and (ii) one month after the subcontracting party receives the payment from the owner who ordered the construction work).

Are there any exceptions to the applicable statutory maximum payment term?

(a) **Can the invoice date or the date of receipt of the invoice be contractually agreed upon to extend the statutory maximum payment term?**

No, when the Subcontract Act applies, the parties can not extend the statutory maximum payment term by agreement.

(b) **Can the payment term be extended by the time needed to accommodate acceptance or verification procedures relating to the delivered goods?**

No, when the Subcontract Act applies, the statutory maximum payment term cannot be extended by the time needed for acceptance or verification procedures of the delivered goods.

(c) **Are there other exceptions?**

No.

Is there any special statutory framework for commercial transactions between businesses and public institutions?

Yes. The act on prevention of delay in payment under government contracts (**Government Contracts Act**) applies commercial transactions where the Japanese government or a municipality government is a contracting party. Where the public institution (i.e., the Japanese government or a municipality

government) is the debtor, the maximum payment term shall be 30 days (in case of construction work contract, 40 days) from the public institution's receipt of request for payment, provided that such request for payment can be provided only after the public institution confirms the delivery of goods/services (in case of construction work contract, the completion of construction work) or verifies the goods/services/construction work (art. 6, §1 Government Contracts Act). If there are special circumstances which make it extremely difficult for the parties to follow the above maximum payment term, the parties may agree on a longer payment term up to 1.5 times of the above maximum payment term (art. 7 Government Contracts Act).

What are the possible sanctions if a contract does not comply with the statutory maximum payment term?

- (a) Where the Subcontract Act applies, if parties agree on a payment term longer than the statutory maximum payment term described the answer to question 1.8(b) above, it is deemed that the payment becomes due one day prior to the 60th day from the contracting party's receipt of the deliverables or the services provided by the contractor (art. 2-2, §2 Subcontract Act). No sanction is provided under the Subcontract Act specifically for the non-compliance with the statutory maximum payment term, but if the contracting party fails to provide to the contractor a statutorily required document (which must address, among other things, a payment term), the contracting party is subject to a penalty up to JPY 500,000.
- (b) Where the Government Contracts Act applies, if parties agree on a payment term longer than the statutory maximum payment term described in the answer to question 0 above, it is deemed that the payment becomes due on the 15th day from the date on which the contractor requests the payment.

Is it possible to designate another governing law to avoid an implied maximum payment term under your local laws?

It is not possible to exclude the applicability of the Subcontract Act by appointing another governing law, so long as the supplier/vendor is based in Japan.

Late payment penalties

- (a) Is it mandatory to have to specify certain minimum late payment penalties?

No, if no late payment penalties are provided for by agreement, the default late payment penalties will apply.

- (b) **Is there a default late payment penalty rate?**

- (i) Yes. The default late payment penalty rate is the interest rate provided for in the Civil Code (art. 419, §1 Civil Code), which is currently 3% per annum (art. 404, §2 Civil Code).
- (ii) The parties can agree on another interest rate in their contract. There is no statutory maximum late payment penalty rate applicable to commercial/B2B transactions, but practically 14.6% is widely used as a maximum late payment penalty rate.
- (iii) Where the Subcontract Act applies, the default late payment penalty rate is the rate provided for in the Rules of the Fair Trade Commission (art. 4-2 Subcontract Act), which is currently 14.6% per annum. This is notwithstanding any agreement to the contrary between the parties.
- (iv) Where the Government Contracts Act applies and the debtor is a public institution, the default late payment penalty rate is the rate determined by Minister of Finance (art. 8, §1 Government Contracts Act), which is currently 2.5% per annum. This rate cannot be reduced by agreement between the parties.



United Arab Emirates

United Arab Emirates (UAE)

Which laws regulate payment terms in business-to-business (B2B) transactions?

- (a) The law that regulates payment terms in a B2B contract in the UAE depends on the governing law of the contract. In addition to the Federal laws of the UAE and the laws of the seven Emirates, the Dubai International Financial Centre (**DIFC**) and the Abu Dhabi Global Market (**ADGM**) – the two Financial Free Zones in the UAE – have their own civil and commercial laws.
 - (b) The following may regulate payment terms in B2B transactions:
 - (i) the UAE's Civil Code (Federal Law No. 5/1985) and Commercial Code (Federal Law 50/2022) (**UAE Law**);
 - (ii) the DIFC Contract Law (Contract Law DIFC Law No. 6 of 2004) (**DIFC Law**); or
 - (iii) the UK's Sale of Goods Act 1979 and Supply of Goods and Services Act 1982 (**ADGM Law**).

Is a standard payment term implied by law if a contract does not specify a payment term?

- (a) UAE Law: If the time for payment is not agreed between the parties, payment must be made at the time the contract is made, unless it is customary for payment to be deferred or made in instalments over a definite period of time.
 - (b) DIFC Law: If the time for payment is not fixed by or determinable from the contract, payment must be made within a reasonable time after conclusion of the contract.
 - (c) ADGM Law: In relation to contracts for the sale of goods, unless otherwise agreed between the parties, payment must be made on delivery. In relation to contracts for the supply of services, if the time for payment is not fixed or determinable from the contract, payment must be made within a reasonable time.

Is there a statutory maximum payment term that a B2B contract cannot exceed?

No, there is no statutory maximum payment term under either UAE Law, DIFC Law or ADGM Law.

Are there any exceptions to the applicable statutory maximum payment term?

No, there is no statutory maximum payment term under either UAE Law, DIFC Law or ADGM Law.

Is there any special statutory framework relating to payment terms for commercial transactions between businesses and public institutions?

Not generally, no. But the government of Abu Dhabi issued a circular in 2019 requiring all public sector and state-owned entities to pay their contractors and suppliers with 30 days of the date of receiving an invoice (Abu Dhabi Circular No. 1/2019).

What are the possible sanctions if a contract does not comply with the statutory maximum payment term?

There are none under either UAE Law, DIFC Law or ADGM Law.

Is it possible to designate another governing law to avoid an implied maximum payment term under your local laws?

Not applicable as there are no laws on maximum payment terms.

Late payment penalties

(a) Is it mandatory to have to specify certain minimum late payment penalties?

No, under each of UAE law, DIFC law and ADGM law there is no mandatory requirement to include minimum late payment penalties in the contract, although these are often included. If late payment penalties are not provided for in the contract, the default late payment penalties will apply (where applicable).

(b) Is there a default late payment penalty rate?

- (i) UAE Law: The default late payment penalty rate under UAE law, where the parties have not agreed a rate in their contract, is the interest rate prevailing in the market at the time of the transaction. The rate is capped at 9% per year.
- (ii) DIFC Law: The default late payment penalty rate under DIFC law, where the parties have not agreed a rate in their contract, is the average bank short-term lending rate to prime borrowers prevailing for the currency of payment at the place for payment.
- (iii) ADGM Law: There is no set default late payment penalty that applies under ADGM law if the parties have not agreed a rate in their B2B contract.



USA – Californian Law

United States of America – Californian law

Which laws regulate payment terms in business-to-business (B2B) transactions?

- (a) California regulates payment terms of B2B transactions within specific industries/sectors/transactions. Examples include:
 - (i) Prompt Payment Act (private and public works/construction)
 - (A) Private
 - (1) Contractor to Lower-tier Contractor/Supplier for private and public works, unless § 10262 applies.
 - (2) Owner to contractor for private, applicable if owner is a business: Cal. Civ. Code § 8800 (West).
 - (3) Retention payment from owner to contractor for private, applicable if owner is a business: Cal. Civ. Code § 8812 (West).
 - (B) Public
 - (1) Contractor to lower-tier contractor/supplier for public works: Cal. Pub. Cont. Code § 10262 (West).
 - (2) Progress payments to subcontractors for public works: Cal. Pub. Cont. Code § 10262.5(a) (West).
 - (3) local agency to contractor for public projects: Cal. Pub. Cont. Code § 20104.50(b) (West).
 - (4) State agency to contractor for public projects: Cal. Pub. Cont. Code § 10261.5(a) (West).
 - (ii) Related to food and agriculture
 - (A) Payment from dealer to producer: Cal. Food & Agric. Code § 56302 (West).
 - (B) California Federal Milk Marketing Order; Payments from handlers/distributors to producers/cooperative associations: 7 Code of Federal Regulations (CFR) § 1051.73(a).
 - (iii) California's Usury Law, limits to loans and forbearances
Interest rates: Cal. Const. art. XV, § 1.
 - (iv) Insurance
Standard for Prompt Settlements: Cal. Code Regs. tit. 10, § 2695.7.
- (b) California's Automatic Renewal Law (ARL), Code § 17600, likely does not apply to B2B due to the statute's definition of consumer.

- (i) Cal. Bus. & Prof. Code § 17601(d) (West):
 - "(d) "Consumer" means any individual who seeks or acquires, by purchase or lease, any goods, services, money, or credit for personal, family, or household purposes."
- (ii) However, it is possible that this definition could be interpreted broadly by the California courts. As of 18 July 2023, there is no case law addressing this matter. Some states expressly address whether their ARL applies to B2B. California does not expressly address this.

Is a standard payment term implied by law if a contract does not specify a payment term?

- (a) Prompt Payment Act (private)
 - (i) Contractor to Lower-tier Contractor/Supplier
 - "(a) A prime contractor or subcontractor shall pay to any subcontractor, not later than seven days after receipt of each progress payment, unless otherwise agreed to in writing." (Cal. Bus. & Prof. Code § 7108.5(a) (West)).
 - (ii) Owner to contractor:
 - "(a) Except as otherwise agreed in writing by the owner and direct contractor, the owner shall pay the direct contractor, within 30 days after notice demanding payment pursuant to the contract is given, any progress payment due as to which there is no good faith dispute between them. The notice given shall comply with the requirements of Chapter 2 (commencing with Section 8100) of Title 1." (Cal. Civ. Code § 8800(a)).
 - "(b) If there is a good faith dispute between the owner and direct contractor as to a progress payment due, the owner may withhold from the progress payment an amount not in excess of 150% of the disputed amount." (Cal. Civ. Code § 8800(b)).
 - (iii) Retention payment from Owner to contractor
 - "(a) If an owner withholds a retention from a direct contractor, the owner shall, within 45 days after completion of the work of improvement, pay the retention to the contractor." (Cal. Civ. Code § 8812(a)).
 - (iv) Retention from Direct Contractor to subcontractor
 - "(a) If a direct contractor has withheld a retention from one or more subcontractors, the direct contractor shall, within 10 days after receiving all or part of a retention payment, pay to each subcontractor from whom retention has been withheld that subcontractor's share of the payment." (Cal. Civ. Code § 8814(a)).
- (b) Prompt Payment Act (public)
 - (i) Contractor to Lower-tier Contractor/Supplier for public works:
 - "The contractor shall pay to his or her subcontractors, within seven days of receipt of each progress payment." (Cal. Pub. Cont. Code § 10262).
 - (ii) Progress payments to subcontractors for public works

"(a) Notwithstanding any other law, a prime contractor or subcontractor shall pay [progress payments] to any subcontractor, not later than seven days after receipt of each progress payment In the event that there is a good faith dispute ... then the prime contractor or subcontractor may withhold no more than 150% of the disputed amount." (Cal. Pub. Cont. Code § 10262.5(a)).

(iii) See question 0 for regulations for state and local agencies.

(c) Food and agriculture

(i) Payment from dealer to producer

"If no time for payment is set by such contract or made at the time of the delivery, the dealer shall pay for the farm product within 30 days from the delivery or taking possession of such farm product." (Cal. Food & Agric. Code § 56302).

(ii) California Federal Milk Marketing Order; Payments to producers.

"(1) Partial payment. For each producer who has not discontinued shipments as of the date of this partial payment, payment shall be made so that it is received by each producer on or before the last day of the month for milk received during the first 15 days of the month from the producer."

"(2) Final payment. For milk received during the month, payment shall be made so that it is received by each producer no later than the 19th day after the end of the month." (7 CFR § 1051.73(a)(1)-(2)).

This also regulates payments from handlers to producer cooperative associations in section (b) using similar language.

(d) California Usury Law

(i) Interest rates on loans and forbearances of any money, goods, or things in action, or on accounts after demand

(A) Default rate is 7% per annum.

(B) Parties can contract in writing for a rate of interest not exceeding the higher of:

(1) 10% per annum; or

(2) 5% per annum plus the [Federal Reserve Discount Rate]. (Cal. Const. art. XV, § 1).

(e) Insurance Standards for Prompt Settlement:

"Upon receiving proof of claim ... every insurer ... shall immediately, but in no event more than forty (40) calendar days later, accept or deny the claim, in whole or in part." (Cal. Code Regs. tit. 10, § 2695.7(b)).

"Upon acceptance of the claim in whole or in part ... every insurer ... shall immediately, but in no event more than thirty (30) calendar days later, tender payment or otherwise take action to perform its claim obligation." (Cal. Code Regs. tit. 10, § 2695.7(h)).

(i) "Any insurer issuing a title insurance policy shall either tender payment ... or take action to resolve the problem which gave rise to the claim immediately upon, but in no

event more than thirty (30) calendar days after, acceptance of the claim." (Cal. Code Regs. tit. 10, § 2695.7(h)(2)).

Is there a statutory maximum payment term that applies to B2B contracts?

(a) General statutory maximum payment term

(i) California's Usury law is framed as a maximum payment term:

"(2) For any loan or forbearance of any money, goods, or things in action for any use other than specified in paragraph (1), at a rate not exceeding the higher of (a) 10% per annum or (b) 5% per annum plus the [Federal Reserve Discount Rate]." (Cal. Const. art. XV, § 1).

(ii) The remaining regulations are not framed as maximum payment term. However, the following do not reference the ability to alter terms through written contract:

(A) Retention payment from Owner to contractor, private

"If an owner withholds a retention from a direct contractor, the owner shall, within 45 days after completion of the work of improvement, pay the retention to the contractor." (Cal. Civ. Code § 8812(a)).

(B) Retention payment from contractor to subcontractor, private

"If a direct contractor has withheld a retention from one or more subcontractors, the direct contractor shall, within 10 days after receiving all or part of a retention payment, pay to each subcontractor from whom retention has been withheld that subcontractor's share of the payment." (Cal. Civ. Code § 8814(a)).

(C) Contractor to Lower-tier Contractor/Supplier, public

"The contractor shall pay to his or her subcontractors, within seven days of receipt of each progress payment." (Cal. Pub. Cont. Code § 10262).

(D) Progress payments to subcontractors, public

"Notwithstanding any other law, a prime contractor or subcontractor shall pay [progress payments] to any subcontractor, not later than seven days after receipt of each progress payment In the event that there is a good faith dispute ... then the prime contractor or subcontractor may withhold no more than 150% of the disputed amount." (Cal. Pub. Cont. Code § 10262.5(a)).

(b) Specific statutory maximum payment term for certain products or services

California Federal Milk Marketing Order; Payments to producers. This also regulates payments from handlers to producer cooperative associations in (b) using similar language.

"(1) Partial payment. For each producer who has not discontinued shipments as of the date of this partial payment, payment shall be made so that it is received by each producer on or before the last day of the month for milk received during the first 15 days of the month from the producer.

(2) Final payment. For milk received during the month, payment shall be made so that it is received by each producer no later than the 19th day after the end of the month." (7 CFR § 1051.73(a)).

Are there any exceptions to the applicable statutory maximum payment term?

(a) Can the invoice date or date of receipt of the invoice be contractually agreed upon to extend the statutory maximum payment term?

- (i) Contractor to Lower-tier Contractor/Supplier for private works

Different terms can be agreed to in writing (Cal. Bus. & Prof. Code § 7108.5(a)).

- (ii) Progress payments to subcontractors for public works

"(b) This section shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to a contractor or a subcontractor in the event of a dispute involving late payment or nonpayment by a contractor or deficient subcontract performance or nonperformance by a subcontractor." (Cal. Pub. Cont. Code § 10262.5(b)).

- (iii) Owner to contractor for private

Different terms can be agreed to in writing: Cal. Civ. Code § 8800(a).

- (iv) Food and agriculture, payment from dealer to producer

"Every dealer shall pay for any farm product purchased by him at the time and in the manner specified in the contract with the producer or licensee." (Cal. Food & Agric. Code § 56302).

- (v) Insurance, standards for prompt settlements

"Time frames specified in this subsection (no more than 30 days) shall not apply where the policy provides for a waiting period after acceptance of claim and before payment of benefits." (Cal. Code Regs. tit. 10, § 2695.7(h)).

(b) Can the payment term be extended by the time needed to accommodate acceptance or verification procedures relating to the delivered goods?

- (i) Insurance standards for prompt settlement:

"If more time is required than [forty calendar days] to determine whether a claim should be accepted and/or denied in whole or in part, every insurer shall provide the claimant, within [forty calendar days] with written notice of the need for additional time.... Thereafter, the written notice shall be provided every thirty (30) calendar days until a determination is made or notice of legal action is served." (Cal. Code Regs. tit. 10, § 2695.7(c)(1)).

"Where there is a reasonable basis, supported by specific information available for review... for the belief that the claimant has submitted ... a suspected false or fraudulent claim ... the number of calendar days specified in subsection 2695.7(b) shall be:

- (1) increased to eighty (80) calendar days; or,

- (2) suspended until otherwise ordered by the Commissioner." (Cal. Code Regs. tit. 10, § 2695.7(k)(1)-(2)).

- (ii) While not framed as extending the payment term, the Prompt Payment Act regulates retainage practices:
 - (A) Retainage rules for private projects

"The owner shall, within 45 days after completion of the work of improvement, pay the retention to the [direct] contractor." (Cal. Civ. Code § 8812(a)).
 - (B) Retainage rules for public projects

"The department shall withhold not more than 5% of the contract price until final completion and acceptance of the project." (Cal. Pub. Cont. Code § 10261).

"Within 60 days after the date of completion of the work of improvement, the retention withheld by the public entity shall be released." (Cal. Pub. Cont. Code § 7107(c)).
- (c) **Are there any exceptions?**
 - (i) Exceptions to California's Usury laws include, but are not limited to:
 - (A) Most commercial sales and commercial service agreements do not fall under California's Usury Law.
 - (1) Most commercial sales/service agreements do not concern a loan or forbearance.
 - (2) Practical note: Late payment interest rate clauses for service and sales contracts are frequently written to be compliant with usury law to minimise conflict.
 - (3) The California Supreme Court held that a 1.5% per month late payment charge (after sale of goods) was not usurious because it was neither a loan nor a forbearance. (Sw. Concrete Prod. v. Gosh Constr. Corp., 51 Cal. 3d 701, 798 P.2d 1247 (1990)).
 - (4) Time-price doctrine for property sold on credit – A bona fide credit sale is neither a loan nor a forbearance.
 - (5) A transaction that is not usurious at its creation cannot become usurious due to a debtor's voluntary act of default.
 - (B) Institutional lenders

"A broker-dealer acting pursuant to a certificate which is then in effect, and which is issued pursuant to Section 25211, shall be exempt from the usury provisions of the State Constitution." (Cal. Corp. Code § 25211.5 (West)).
 - (C) Real estate brokers

"The restrictions upon rates of interest ... shall not apply to any loan or forbearance made or arranged by any person licensed as a real estate broker by the State of California, and secured ... by liens on real property." (Cal. Civ. Code § 1916.1 (West)).

- (D) Late fee/charge in loan agreements
 - (1) Late fee/charge in loan agreements are considered liquidated damages and regulated by Cal. Civ. Code § 1671(b)).
 - (2) They are generally enforceable if deemed compensatory rather than punitive, determined by what was reasonable "*under the circumstances existing at the time the contract was made*".
 - (3) This late charge can be collected in addition to a default interest rate (which is subject to the usury law).
- (E) Pension funds or retirement systems
 - (1) Obligation or forbearance of pension funds or retirement systems are exempt. (Article XV, § 1).
 - (2) Loan made by it Pension funds or retirement systems are exempt. (Article XV, § 1).
- (d) Exceptions to Standards for Prompt Settlements
 - (i) The time frames specified in 2695.7(b) (40 days to accept or deny the claim) and 2695.7(h) (30 days to tender payment or otherwise take action)
 - (A) shall not apply to claims arising from policies of:
 - (1) disability insurance (Cal. Ins. Code 10123.13);
 - (2) disability income insurance (Cal. Ins. Code 10111.2); or
 - (3) mortgage guaranty insurance (Cal. Ins. Code 12640.09(a));
 - (B) and shall not apply to automobile repair bills arising from policies of automobile collision and comprehensive insurance (Cal. Ins. Code § 560). (Cal. Code Regs. tit. 10, § 2695.7(b)(4), (h)(1).)
 - (ii) Good faith dispute exceptions to California's Prompt Payment Act
 - (A) Progress payment

Amount withheld may not exceed 150% of the disputed amount:

 - (1) from prime contractor or subcontractor to a subcontractor, public works (Cal. Pub. Cont. Code § 10262.5(a));
 - (2) from prime contractor or subcontractor to a subcontractor, private works (Cal. Bus. & Prof. Code § 7108.5(a));
 - (3) from owner to original contractor, private works (Cal. Civ. Code § 8800(b)).
 - (B) Retention

The amount withheld may not exceed 150% of the disputed amount:

 - (1) from owner to the original contractor, private works (Cal. Civ. Code § 8812(c));

- (2) from original contractor to a subcontractor, private works (Cal. Civ. Code § 8814(c));
- (3) from public entity to original contractor, public works (Cal. Pub. Cont. Code § 7107(c));
- (4) from the original contractor to a subcontractor, public works (Cal. Pub. Cont. Code § 7107(e)).

Is there any special statutory framework relating to payment terms for commercial transactions between businesses and public institutions?

(a) Local agency to contractor for public projects (Cal. Pub. Cont. Code § 20104.50(b)):

"(b) Any local agency which fails to make any progress payment within 30 days after receipt of an undisputed and properly submitted payment request from a contractor on a construction contract shall pay interest to the contractor equivalent to the legal rate set forth in subdivision (a) of Section 685.010 of the Code of Civil Procedure."

Interest rate for 2023 = 10%, or 5% for listed exceptions.

(b) State agency to contractor for public projects. (Cal. Pub. Cont. Code § 10261.5(a)):

"(a) Any state agency which fails to make any progress payment within 30 days after receipt of [an undisputed] payment request from a contractor on a construction contract ... shall pay interest to the contractor equivalent to the legal rate set forth in subdivision (a) of Section 685.010 of the Code of Civil Procedure."

"Any state agency which independently calculates the amount due on a progress payment and which fails to make a progress payment within 30 days of the first submittal of the estimate for each contract by the engineer, shall pay interest to the contractor equivalent to the legal rate set forth in subdivision (a) of Section 685.010 of the Code of Civil Procedure."

"In the event that the payment is not made within 30 days of receipt of the contractor's request or the first submittal by the engineer, and the Controller has processed the payment within 14 days of receipt of the request or submittal, the contracting state agency shall pay interest to the contractor equivalent to the legal rate set forth in subdivision (a) of Section 685.010 of the Code of Civil Procedure."

"In the event that the payment is not made within 30 days of receipt of the contractor's request or the first submittal by the engineer, and the contracting state agency has processed the payment within 16 days after receipt of the request or submittal, the Controller shall pay interest as provided in Section 685.010 of the Code of Civil Procedure."

Interest rate for 2023 = 10%, or 5% for listed exceptions.

(c) Retainage rules for public projects:

"The department shall withhold not more than 5% of the contract price until final completion and acceptance of the project." (Cal. Pub. Cont. Code § 10261).

"Within 60 days after the date of completion of the work of improvement, the retention withheld by the public entity shall be released." (Cal. Pub. Cont. Code § 7107(c)).

"In the event that retention payments are not made within the time periods required by this section, the public entity or original contractor withholding the unpaid amounts shall be subject to a charge of 2% per month on the improperly withheld amount, in lieu of any interest otherwise due. Additionally, in any action for the collection of funds wrongfully withheld, the

prevailing party shall be entitled to attorney's fees and costs." (Cal. Pub. Cont. Code § 7107(f)).

- (d) Progress payments from California state universities to Contractors (Cal. Pub. Cont. Code § 10853):

"If the trustees fail to make a progress payment on a contract within 39 days after receipt of an undisputed and properly submitted payment request from a contractor on a construction contract, the trustees shall pay interest to the contractor equivalent to the legal rate [of 10% per annum, as of July 2023]."

What are the possible sanctions if a contract does not comply with the statutory maximum payment term?

- (a) Prompt Payment Act

- (i) Retainage payments, public projects

"In the event that retention payments are not made within the time periods required by this section, the public entity or original contractor withholding the unpaid amounts shall be subject to a charge of 2% per month on the improperly withheld amount, in lieu of any interest otherwise due. Additionally, in any action for the collection of funds wrongfully withheld, the prevailing party shall be entitled to attorney's fees and costs." (Cal. Pub. Cont. Code § 7107(f)).

- (ii) Contractor to Lower-tier Contractor/Supplier for private works

"Any violation of this section shall constitute a cause for disciplinary action and shall subject the licensee to a penalty, payable to the subcontractor, of 2% of the amount due per month for every month that payment is not made." (Cal. Bus. & Prof. Code § 7108.5(b)).

"In any action for the collection of funds wrongfully withheld, the prevailing party shall be entitled to his or her attorney's fees and costs." (Cal. Bus. & Prof. Code § 7108.5(c)).

- (iii) Owner to contractor for private

"An owner that violates this section is liable to the direct contractor for a penalty of 2% per month on the amount wrongfully withheld, in place of any interest otherwise due. In an action for collection of the amount wrongfully withheld, the prevailing party is entitled to costs and a reasonable attorney's fee." (Cal. Civ. Code § 8800(c)).

- (iv) Progress payments to subcontractors for public works

"(a) Any contractor who violates this section shall pay to the subcontractor a penalty of 2% of the amount due per month for every month that payment is not made. In any action for the collection of funds wrongfully withheld, the prevailing party shall be entitled to his or her attorney's fees and costs." (Cal. Pub. Cont. Code § 10262.5(a)).

- (v) State agency to contractor for public projects

(A) State agency shall pay interest. See Q5 above for full text. (Cal. Pub. Cont. Code § 10261.5(a).)

(B) Interest rate for 2023 = 10%, or 5% for listed exceptions.

- (vi) Local agency to contractor for public projects

"Any local agency which fails to make any progress payment within 30 days after receipt of an undisputed and properly submitted payment request from a contractor on a construction contract shall pay interest to the contractor equivalent to the legal rate set forth in subdivision (a) of Section 685.010 of the Code of Civil Procedure." (Cal. Pub. Cont. Code § 20104.50(b)).

- (vii) California Federal Milk Marketing Order, Charges on overdue accounts

"Any unpaid obligation due the market administrator, producers, or cooperative associations from a handler pursuant to the provisions of the order shall be increased 1% each month beginning with the day following the date such obligation was due under the order" (7 CFR § 1000.78).

- (viii) Violation of Usury Laws results in Lender's inability to collect interest on the principal:

"Any agreement or contract of any nature in conflict with the provisions of this section shall be null and void as to any agreement or stipulation therein contained to pay interest and no action at law to recover interest in any sum shall be maintained." (Cal. Civ. Code § 1916-2).

Is it possible to designate another governing law to avoid an implied maximum payment term under your local laws?

- (a) California has adopted the Second Restatement of Conflict of Laws. Generally, California courts will recognize a foreign choice of law clause in a contract provided:

- (i) the choice of law does not violate public policy; and

- (ii) either the chosen jurisdiction has:

- (A) a "substantial relationship" with the transaction/parties; or

- (B) an alternative "reasonable basis" for the choice of law.

- (b) See Restat 2d of Conflict of Laws, § 187(2):

"(2) The law of the state chosen by the parties to govern their contractual rights and duties will be applied... unless either:

- (a) *the chosen state has no substantial relationship to the parties or the transaction and there is no other reasonable basis for the parties' choice, or*

- (b) *application of the law of the chosen state would be contrary to a fundamental policy of a state which has a materially greater interest than the chosen state in the determination of the particular issue."*

Late payment penalties

- (a) **Is it mandatory to have to specify certain minimum late payment penalties?**

Framed as "shall pay"/"shall be increased":

- (i) Retention by public entity

- (f) *In the event that retention payments are not made within the time periods required by this section, the public entity or original contractor withholding the*

unpaid amounts shall be subject to a charge of 2% per month on the improperly withheld amount, in lieu of any interest otherwise due." (Cal. Pub. Cont. Code § 7107 (West)).

- (ii) Progress payments to subcontractors for public works
 - "(a) *Any contractor who violates this section shall pay to the subcontractor a penalty of 2% of the amount due per month for every month that payment is not made." (Cal. Pub. Cont. Code § 10262.5(a) (West)).*
- (iii) State agency to contractor for public projects

State agency shall pay interest. See the answer to question 0 above for the full relevant text (Interest rate for 2023 = 10%, or 5% for listed exceptions). (Cal. Pub. Cont. Code § 10261.5(a) (West)).
- (iv) Local agency to contractor for public projects
 - "(b) *Any local agency which fails to make any progress payment within 30 days after receipt of an undisputed and properly submitted payment request from a contractor on a construction contract shall pay interest to the contractor equivalent to the legal rate set forth in subdivision (a) of Section 685.010 of the Code of Civil Procedure." (Cal. Pub. Cont. Code § 20104.50(b) (West)).*
- (v) California Federal Milk Marketing Order, Charges on overdue accounts

"Any unpaid obligation due the market administrator, producers, or cooperative associations from a handler pursuant to the provisions of the order shall be increased 1% each month beginning with the day following the date such obligation was due under the order" (7 CFR § 1000.78).

The other late payment regulations are framed in terms of liability or cause for action, rather than mandatory late payments.

- (b) **Is there a default late payment penalty rate?**
 - (i) Retention by public entity

"2% per month on the improperly withheld amount." (Cal. Pub. Cont. Code § 7107(f) (West)).
 - (ii) Contractor to Lower-tier Contractor/Supplier for private work

"2% of the amount due per month for every month that payment is not made." (Cal. Bus. & Prof. Code § 7108.5(b) (West)).
 - (iii) Owner to contractor for private

"2% per month on the amount wrongfully withheld, in place of any interest otherwise due." (Cal. Civ. Code § 8800(c) (West)).
 - (iv) Progress payments to subcontractors for public work

"2% of the amount due per month for every month that payment is not made." (Cal. Pub. Cont. Code § 10262.5(a) (West)).

- (v) Local agency to contractor for public projects

Local agency shall pay interest. See the answer to question 0 above for full text. Interest rate for 2023 = 10%, or 5% for listed exceptions (Cal. Pub. Cont. Code § 20104.50(b) (West)).

- (vi) State agency to contractor for public projects

State agency shall pay interest. See the answer to question 0 above for full text. Interest rate for 2023 = 10%, or 5% for listed exceptions (Cal. Pub. Cont. Code § 10261.5(a) (West)).

- (vii) California Federal Milk Marketing Order, charges on overdue accounts

"Any unpaid obligation ... shall be increased 1% each month beginning with the day following the date such obligation was due under the order." (7 CFR § 1000.78).



USA – Federal Law

United States of America – Federal law

Which laws regulate payment terms in business-to-business (B2B) transactions?

- (a) The US does not have federal laws that regulate payment terms. Instead, each of the 50 states in the US has independently passed a set of rules and procedures known as the Uniform Commercial Code (**UCC**).
- (b) However, each jurisdiction can modify or elect not to pass parts of the UCC. For example, Louisiana has never adopted Article 2A of the UCC, which deals with leases. And New York has not adopted Article 3, which governs checks and other negotiable instruments.
- (c) In addition, parties are free to contract around the UCC.
- (d) Much of the federal regulation of payment terms occurs in the agriculture industry. For example, livestock is governed by Section 409 of the Packers and Stockyards Act. See 7 U.S.C. § 181-229b.
- (e) Perishable agricultural commodities including fresh and frozen fruits and vegetables are regulated by the Perishable Agricultural Commodities Act (**PACA**). 7 U.S.C § 499 has specific prompt payment laws enforced by the Department of Agriculture. Buyers have 10 days from the date of receipt of produce to make a payment and up to 30 days to make a delayed payment.
- (f) The US also has laws and regulations for payment terms when the Federal Government of the US, including agencies and departments, buy goods and services from contractors. The Prompt Payment Act is Codified as 31 U.S.C. § 3101 – 3907. However, the Act only governs payments from the Federal Government and not general commercial payments in the US.
- (g) There are also numerous regulations on contracting including the Federal Acquisition Regulations (**FAR**). However, these regulations also only apply to federal contractors and subcontractors.

Is a standard payment term implied by law if a contract does not specify a payment term?

The standard payment terms set out in applicable federal law or regulation will apply.

- (a) Federal contracts
 - (i) Federal government to contractor
 - (A) The standard terms for payment are set in the Prompt Payment Act and also appear in the FAR. Generally, the due date for making invoice payments by the designated payment office is 30 days after the later of the following two events: when the government receives a proper invoice from the contractor or when the government accepts the supplies or services performed.
 - (1) There are limited situations when the prompt payment act does not apply. These include payments directed by a military authority during a conflict and payments related to declared states of emergency.
 - (2) In addition, the Prompt Payment Act does may not apply if the contractor is a small business 31 U.S.C. 3903(a).

- (3) Lastly the government and a contractor can agree for accelerated payments. See 5 CFR 1315.
 - (ii) Contractor to subcontractor when the Prompt Payment Act applies

The contractor must pay the subcontractor for satisfactory performance under its subcontract not later than seven days from receipt of payment to the Contractor. FAR 52.232-27(c)(1)
 - (b) Food and agriculture
 - (i) Packers and Stockyards Act

The Packers and Stockyards Act requires payment before the close of business the next business day following the purchase and transfer of possession of the livestock. 7 U.S.C. 228b.
 - (ii) Perishable Agricultural Commodities Act

PACA requires prompt payment terms of 10 days after acceptance. 7 U.S.C. § 499a.

Is there a statutory maximum payment term that applies to B2B contracts?

- (a) General statutory maximum payment term

There is no general statutory payment term in federal law. In addition, there is no federal usury law for business-to-business transactions.
- (b) Specific statutory maximum payment term for certain products or services
 - (i) Federal contracts
 - (A) Federal government to contractor

The Federal Prompt Payment Act and Federal Acquisition Regulation provide a 30 period for payment from invoice.
 - (B) Contractor to subcontractor

For construction contracts, the FAR requires that the contractor pays the subcontractor under its subcontract not later than seven days from receipt of payment from the government.
 - (ii) Food and agriculture
 - (A) Packers and Stockyards Act

The Packers and Stockyards Act requires payment before the close of business the next business day following the purchase and transfer of possession of the livestock. 7 U.S.C. 228b
 - (B) Perishable Agricultural Commodities Act

PACA regulations are set out in 7 CFR § 46.46. The maximum payment term is 30 days. Payment terms other than PACA prompt payment terms (usually 10 days) must be agreed upon by the parties to the transaction in writing before entering into the transaction.

Are there any exceptions to the applicable statutory maximum payment term?

(a) Can the invoice date or the date of receipt of the invoice be contractually agreed upon to extend the statutory maximum payment term?

No. Invoice dates are based on the arrival of the invoice or the product.

(i) Federal contracts

FAR 52.232-25 sets out two definitions of when an invoice arrives. The first is when the designated billing office receives an invoice. The second is when the government accepts the supplies delivered or services performed.

(ii) Food and agriculture

(A) PACA does not use invoice dates when setting requirements on payment for produce. Instead, PACA tolls the invoice date with the acceptance of a product. 7 CFR §46.2(aa)(5). 7 CFR §46.2(dd).

(B) The Packers and Stockyards act sets the invoice date as the date of notification of purchase price. 9 CFR § 201.43.

(b) Can the payment term be extended by the time needed for acceptance or verification procedures of the delivered goods?

Extending time for acceptance depends on the area of federal law because inspection time is codified under federal law.

(i) Federal contracts

The FAR note that government acceptance occurs constructively on the seventh day after the delivery or performance of services unless the government states a disagreement over quantity, quality, or contractor compliance with a contract requirement. See FAR 32.904.

(ii) Food and agriculture

Under PACA there is a set timeline to inspect and reject shipments. For truck shipments of fresh product, eight hours from arrival; for rail, 24 hours. If it is frozen product, the time is increased to 12 hours for truck shipments and 48 hours for rail shipments. See 7 U.S.C. 499a–499t, 7 C.F.R. 46.39.

(c) Are there other exceptions?

There are additional exceptions to maximum payment terms for federal contracts. However, there are no inspection exceptions for food and agriculture in the US due to the fast pace of spoilage.

(i) Federal contracts

FAR 32.904(4) allows a contracting officer to specify a longer period for acceptance, if it is required to give the government a reasonable opportunity to inspect and test the supplies furnished or to evaluate the services performed. The contracting officer must document in the contract file the justification for extending the constructive acceptance period.

Is there any special statutory framework relating to payment terms for commercial transactions between businesses and public institutions?

Yes. There is a special statutory framework for contracting with the federal government.

(a) Federal contracts

- (i) Contracting with the federal government is generally under the framework of the Federal Acquisitions Regulation (FAR) which is codified in 48 CFR 1. In addition, specific government agencies will often have additional supplemental rules and regulations. The best-known example of agency supplemental rule documents is the Department of Defense Federal Acquisition Supplement (DFARS). See 48 C.F.R. Ch. 2.
- (ii) Payment terms with the federal government are covered by the Prompt Payment Act, codified as 31 U.S.C. §§ 3101 – 3907. The prompt payment generally requires that government agencies pay 30 days after receiving an invoice. However, a contract with the government can also specify a date for payment. In addition, an agency has more flexibility and can pay before the 30 period if the payment is for less than USD2,500 or the payment is made to a small business.

What are the possible sanctions if a contract does not comply with the statutory maximum payment term?

In federal contracting there is only an interest penalty for non-compliance. However, in food and agriculture both civil and criminal penalties are possible.

(a) Federal contracts

- (i) A clause that conveys a deeply ingrained strand of public procurement policy is considered to be included even if the government fails to include it in the contract. *G.L. Christian & Assocs. v. United States*, 312 F.2d 418 (Ct. Cl. 1963). There is no definitive list of clauses that the *Christian* doctrine applies to. However, courts have constantly held that payments clauses are covered by the *Christian* doctrine. This could create a risk that the payment period has already expired and that interests, and a lump-sum compensation may already be due.
- (ii) There are no additional civil or criminal penalties for late payment by the government. See question 0 for information on interest penalties surrounding the statutory maximum payment term.

(b) Food and agriculture

- (i) Non-compliance with either the Packers and Stockyards Act or the Perishable Agricultural Commodities Act may result in the loss of a license. Since licenses are required to trade in these agricultural products, significant business disruption may occur.
- (ii) Violations of the Packers and Stockyards Act and Perishable Agricultural Commodities Act may result in enforcement actions. See generally *Hawkins v. Agric. Marketing Service* 10 F.3d 1125 (5th Cir. 1993) relating to PACA; *Capital Produce Co., Inc. v. U.S.* 930 F.2d 1077 (4th Cir. 1991) discussing suspension procedures of the Packers and Stockyards Act.

Severe violations of the Packers and Stockyards act may result in imprisonment. See *US v. Young*, 413 F. 3d (8th Cir. 2005).

Is it possible to designate another governing law to avoid an implied maximum payment term under your local laws?

No. Federal law applies in both contracting and covered transactions surrounding agriculture.

(a) Federal contracts

Federal law is clearly controlling over state statutory and decisional law. U.S. Const. Art. VI, cl. 2. Even if the applicable law is decisional rather than statutory government contracts and negotiable instruments are to be determined by federal rather than state law. *See Clearfield Trust Co. v. United States*, supra; *United States v. Allegheny County*, 322 U.S. 174 (1944). This is because federal contracts often occur in multiple states and therefore need uniform construction and application.

(b) Food and agriculture

(i) PACA applies to both interstate and foreign commerce. *See* 7 U.S.C. 499(b)

(ii) The Packers and Stockyards Act also applies to interstate and foreign commerce. *See* 7 U.S.C. 183.

Late payment penalties

(a) **Is it mandatory to have to specify certain minimum late payment penalties?**

It is not mandatory to have to place late payment penalties in contractual language. However, the late payment penalties may still apply.

(i) Federal contracts

In federal contracting, the Prompt Payment Act limitations of a 30-day payment period applies regardless of any other payment clause in the contract. *See* FAR 52.232-25.

(ii) Food and agriculture

(A) PACA

(1) To receive legal protection as a seller under PACA the seller must include the following language on the invoice.

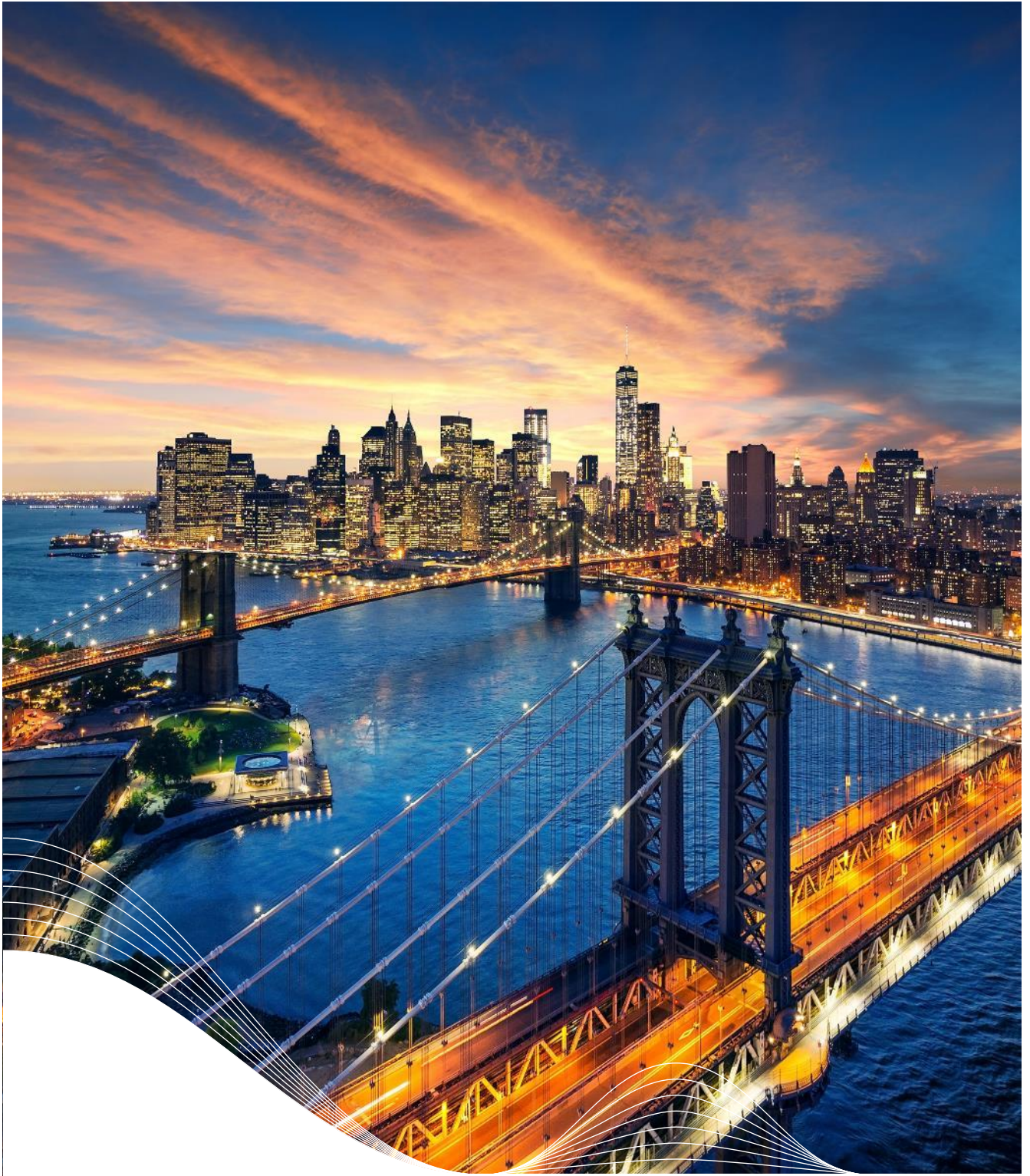
"The perishable agricultural commodities listed on this invoice are sold subject to the statutory trust authorized by Section 5(c) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499e(c)). The seller of these commodities retains a trust claim over these commodities, all inventories of food or other products derived from these commodities, and any receivables or proceeds from the sale of these commodities until full payment is received." USDA Agricultural Marketing Service Regulations.

(b) **Is there a default late payment penalty rate?**

Yes. there are late payment penalties defined in federal law. However, the types of penalties and the default penalty late payment penalty rate vary based on the type of contract and the applicable federal law.

- (i) Federal contracting
 - (A) Late payment penalties are generally mandatory per the Federal Prompt Payment Act. *"The interest penalty shall be paid for the period beginning on the day after the required payment date and ending on the date on which payment is made."* 31 U.S.C. § 3902.
 - (B) The default penalty rate for late payment is set by federal law. *"Interest shall accrue and be paid at a rate which the Secretary of the Treasury shall specify as applicable for each successive 6-month period. The rate shall be determined by the Secretary of the Treasury taking into consideration current private commercial rates of interest for new loans maturing in approximately 5 years."* 41 U.S.C. § 7109.
- (ii) Perishable Agricultural Commodities Act/PACA

PACA does not define late payment interest or penalty rates. However, courts often use the federal statutory interest rate. See *Endico Potatoes, Inc. v. CIT Group/Factoring, Inc.*, 67 F.3d 1063, 1071-72 (2nd Cir. 1995).
- (iii) Packers and Stockyards Act
 - (A) Late payment of transactions covered under the Packers and Stockyards can result in both civil and criminal penalties. 7 U.S.C. § 209.
 - (1) The maximum Civil Violations are USD85,150 per violation of the poultry trust provisions, and USD29,270 per violation of the other provisions in the act.
 - (a) In addition, violations can lead to suspension from conducting business which is related to the Packers and Stockyards Act. See 9 CFR §201.11



USA – New York Law

United States of America – New York law

Which laws regulate payment terms in business-to-business (B2B) transactions?

- (a) In New York, commercial contracts are regulated by the New York Uniform Commercial Code for goods transactions and common law for service transaction. However, the parties are free to contract around these rules.
- (b) New York does have a variety of industry specific prompt payment laws for the construction, agricultural, and milk industry.
- (c) New York's Prompt Payment Act governs payment provisions for the construction industry contractors and subcontractors, for private and public projects.

For private contracts, the law "*applies to all contracts exceeding USD150,000 to construct, reconstruct, alter, maintain, move or demolish any building, structure or improvement, or otherwise excavate, develop or improve land within New York.*" (N.Y. Gen. Bus. Law Section 756). There is an exception to the payment term for private contracts that engage in residential projects of three or less units, residential tract development of 100 or less 1-2 family dwellings, or any residential project where the aggregate size is 4,500 sq. ft. or less.

- (d) Agriculture and Markets Law governs payment provisions for agriculture products and milk between dealers and producers.
- (e) In the insurance context, New York's Unfair Claim Settlement Practices; Other Misconduct; Discrimination provides laws for timelines for accepting or denying claims. "*After receiving a properly executed proof of loss, the insurer shall advise the claimant of acceptance or denial of the claim within thirty working days.*" (N.Y. Ins. Law § 2601(a)(4)).
- (f) For contracts for "*service, maintenance or repair to or for any real or personal property*" that have an automatic renewal payment clause, there is a required minimum 15 days, but not more than 30 days, notice period in which the service, maintenance, or repair provider to gives notice to the person receiving such service of the renewal and right to terminate (N.Y. Gen. Oblig. Law § 5-903).
- (g) New York has usury laws, but most commercial agreements are not subject to them. To avoid conflict with usury laws, the interest rate for late payments is generally set at the lesser of a 16% interest annually (N.Y. Gen. Oblig. Law Section 5-501).

Is a standard payment term implied by law if a contract does not specify a payment term?

- (a) For service transactions, in the absence of an agreed upon payment term, payment for services is due when the services are complete. (General Contract Clauses: Payment Terms (NY), Practical Law Standard Clauses w-000-3156).
- (b) For good transactions, in the absence of an agreed upon payment term, payment is due at the time and place buyer receives the goods. (New York Consolidated Laws, Uniform Commercial Code- UCC Section 2-310).
- (c) Under NY's Prompt Pay Act for construction projects
 - (i) Private construction contracts
 - (A) The payment term starts once the prime contractor has submitted a pay request/ invoice to the owner. The owner will have 42 days to make progress

payment. The 42 days includes 12 days to approve the request, and then 30 days to release payments (N.Y. Gen. Bus. Law §756-a(2)).

- (B) Final payment must be made within 30 days of final approval of the project (N.Y. Gen. Bus. Law §756-a(3)(ii)).
 - (C) Once prime contractor has received payment from the owner, they must release payment to all payments down the chain, such as their subcontractors and suppliers within 7 days (N.Y. Gen. Bus. Law §756-a(3)(b)(ii)).
- (ii) Public construction contracts
- (A) For construction contracts with a state agency, the general rule is the payment term for the public is 30 days of receiving a requisition or final invoice. Payment terms exclude legal holidays (N.Y. State Fin. Law § 179(f)(2)). If it a contract with a small business, the payment term for the deadline is 15 days excluding legal holidays (N.Y. State Fin. Law § 179(f)(2)). The payment term for highway construction contracts is 75 calendar days (N.Y. State Fin. Law § 179(f)(2)). Once prime contractor receives payment from state agency, they must pass payments along to their subcontractors and suppliers within seven calendar days. (N.Y. Gen. Bus. Law §756 (a)(3)(b)(ii)).
 - (B) For construction contracts with municipal agencies (excluding NYC), the payment term is 30 calendar days of a request for payment (N.Y. Gen. Mun. Law § 106-b(1)(a)). If project requires approval by an elected official, deadline extended to 45 days (N.Y. Gen. Mun. Law § 106-b(1)(a)). All payments to subcontractors and suppliers must be made within seven calendar days of the higher-tiered party's receipt of payment (N.Y. Gen. Mun. Law § 106-b (2)).
 - (C) For construction contracts with New York City, the payment term begins from the "Invoice received or Acceptance Date" (IRA Date) (Rules of New York City (RCNY), tit. 9, § 4-06(b)). Once invoice approved, NYC must make payment within 30 days of IRA date (IRA Date) (Rules of New York City (RCNY), tit. 9, § 4-06(c)). All payments downstream, to subcontractors and suppliers, must be made within seven calendar days of the higher-tiered party's receipt of payment (Rules of New York City (RCNY), tit. 9, § 4-06(e)(2)(i)).
- (d) Under Article 20 of the Agriculture and Markets Law (Licensing & Sale of Farm Products), dealers are required to pay New York producers *"within 30 days of the date farm products sold by a producer to a dealer are delivered to such dealer, or other person as the purchaser may designate, or such other period of time as otherwise agreed upon in a writing signed by the dealer and accepted by the producer on or before delivery of said farm products, provided that in no event shall such period exceed 120 days from said date of delivery"* (NY Agric & Mkts L § 245 (2020)).
- (e) Under Agriculture and Markets Article 21, Milk Control, 258-B (a), "Every milk dealer shall: on or before the last day of each month, or such date of payment as established by a federal milk marketing order regulating the marketing of milk in the state or a state milk marketing order promulgated pursuant to section two hundred fifty-eight-m of this article, whichever is earlier, pay for all milk received from producers during the first fifteen days of such month based upon a price or formula as determined by the commissioner and every such milk dealer shall, on or before the twentieth day of each month, or such date of payment as established by a federal

milk marketing order regulating the marketing of milk in the state or a state milk marketing order promulgated pursuant to section two hundred fifty-eight-m of this article, whichever is earlier, pay the balance owed producers for milk received during the preceding month." (NY Agric & Mkts L § 258-B (2022)).

Is there a statutory maximum payment term that applies to B2B contracts?

- (a) General statutory maximum payment term

No.

- (b) Specific statutory maximum payment term for certain products or services

- (i) Prompt Payment Acts

- (A) Private Construction Contracts (N.Y. Gen. Bus. Law §757)

42 days (12 days to approve the invoice and 30 days after that to release the final payment).

- (B) Construction Contracts with State Agency (N.Y. State Fin. Law § 179(d))

30 calendar days, 15 calendar days for small business, and 75 calendar days for high construction contracts, excluding legal holidays.

- (C) Construction Contracts with Municipal Agency (N.Y. Gen Mun. Law §106(b))

30 calendar days; if project requires approval by an elected official, deadline extended to 45 days.

- (D) Construction Contracts with New York City.

- (ii) Under the Agricultural Producers Security Program under Article 20 of the Agriculture and Markets Law (Licensing & Sale of Farm Products), the statutory maximum payment is 120 days from date of delivery. (NY Agric & Mkts L § 245).

- (iii) Under Agriculture and Markets Article 21, Milk Control, 258-B (a), milk dealers must pay milk producers first the first 15 days of the month and by the 20th of the month for the balance of the preceding month.

Are there any exceptions to the applicable statutory maximum payment term?

- (a) For private construction contracts, the following is an exception to the payment term:

"Owner may withhold from an interim payment only an amount that is sufficient to pay the costs and expenses the owner reasonably expects to incur in order to cure the defect or correct" (N.Y. Gen. Bus. Law §756 (a)(3)(iv)) the following items:

"(1) Unsatisfactory or disputed job progress;

(2) Defective construction work or material not remedied;

(3) Disputed work materials;

(4) Failure to comply with other material provisions of the construction contract;

(5) Failure of the contractor to make timely payments for labour including collectively bargained fringe benefit contributions, payroll taxes and

insurance, equipment and materials, damage to the owner, or reasonable evidence that the construction contract cannot be completed for the unpaid balance of the construction contract sum; or

- (6) *Failure of the owner's architect to certify payment for any or all of the reasons set forth in this section so long as the reasons are included in the owner's written statement of disapproval." (N.Y. Gen. Bus. Law §756 (a)(2)(i))."*
- (b) For state agency construction contracts, the following is an exception to the payment term:
- "(a) *the state comptroller in the course of his or her audit determines that there is reasonable cause to believe that payment may not properly be due, in whole or in part;*
- (b) *in accordance with specific statutory or contractual provisions, payment must be preceded by an inspection period or by an audit to determine the resources applied or used by a contractor in fulfilling the terms of the contract;*
- (c) *the necessary state government appropriation required to authorize payment has yet to be enacted;*
- (d) *a proper invoice must be examined by the federal government prior to payment;*
- (e) *the goods or property have not been delivered or the services have not been rendered by the contractor in compliance with the terms or conditions of the contract;*
- (f) *the required payment date is modified in accordance with subdivision three of this section; or*
- (g) *in the case of final payments on highway construction contracts the commissioner of transportation determines that the contractor has failed to properly submit the necessary documents and other submissions prescribed by the contract specifications and requirements, by the provisions of subdivision eight of section thirty-eight of the highway law, and by all other applicable state and federal laws in order to enable the department of transportation to process the final payment properly and expeditiously.*

Any time taken to satisfy or rectify any of the types of conditions described in paragraphs (a) through (e) or (g) of this subdivision shall extend the required payment date by an equal period of time, provided, however, that for small businesses, the required payment date shall be fifteen calendar days, excluding legal holidays, after such conditions have been satisfied or rectified, and provided further that all reasonable and practicable efforts shall be taken to satisfy or rectify such conditions as soon as possible." (N.Y. State Fin. Law § 179(f)(2)).

- (c) For New York City construction contracts, the following is an exception to the payment term:
- "(i) *the Comptroller, in the course of an audit, determines that there is reasonable cause to believe that payment may not be properly due, in whole or in part, due to fault of the vendor;*
- (ii) *the necessary City, State, or federal government appropriation required to authorize payment has not been made;*
- (iii) *a proper invoice must be examined by the State or federal government prior to payment;*

- (iv) *the goods have not been delivered or the construction or services have not been performed in compliance with the terms and conditions of the contract;*
- (v) *in the case of substantial or final payments on construction contracts, the ACCO determines that the vendor has failed to properly submit the necessary documents and other submissions prescribed by the contract specifications and requirements or by law in order to enable the agency to process the final payment properly and expeditiously; and*
- (vi) *when the required payment date falls on a weekend or City holiday, the required payment date shall be extended to the next following business day.* (Rules of New York City (RCNY), tit. 9, § 4-06 (c)(3)).
- (d) For agricultural products: "The commissioner may institute such action at law or in equity as may be necessary to enforce compliance with any provisions of this article or of any rule or regulation promulgated hereunder. In addition to any other remedy prescribed in article three of this chapter, or otherwise, if necessary to protect the producers or dealers of this state, the commissioner may apply for relief by injunction without alleging or proving that an adequate remedy at law does not exist. Such application may be made to the supreme court in any district or county, as provided by the civil practice law and rules, or to the supreme court in the third department." (NY Agric & Mkts L § 250-K).
- (e) For milk products, "the commissioner may extend the time for payment from dealers with respect to purchases from producers of non-grade A milk for up to one hundred twenty days after the last day of the month in which the milk was received, provided such producers have requested the extension in writing in such manner as may be acceptable to the commissioner." (N.Y. Agriculture & Markets Law § 258-B).
- (f) **Can the invoice date or date of receipt of the invoice be contractually agreed upon to extend the statutory maximum payment term?**
 - (i) No, for private construction contracts under the prompt payment act (N.Y. Gen. Bus. Law §757).
 - (ii) No, for public construction contracts under the prompt payment act ((N.Y. State Fin. Law § 179(d)); (NY Gen Mun. Law §106(b)).
 - (iii) No, for agricultural products it is unlawful conduct to extend past the maximum 120 days from date of delivery. (NY Agric & Mkts L § 245(3)).
 - (iv) For milk products there is no clause in the statute that allows for contract terms to govern. (N.Y. Agriculture & Markets Law § 258-B).
- (g) **Can the payment term be extended by the time needed to accommodate acceptance or verification procedures relating to the delivered goods?**

No.
- (h) **Are there other exceptions?**

No.

Is there any special statutory framework relating to payment terms for commercial transactions between businesses and public institutions?

Under the Prompt Payment Act, construction contracts with New York's government agencies are governed by their own set of statutes (see answer to question 0).

What are the possible sanctions if a contract does not comply with the statutory maximum payment term?

See answer to question 0 for details of penalties for non-compliance with the statutory maximum payment term.

Is it possible to designate another governing law to avoid an implied maximum payment term under your local laws?

- (a) In New York, the court will apply the law selected in the contract. The New York courts will override the parties' choice if (i):

"the chosen state has no substantial relationship to the parties or the transaction, and there is no other reasonable basis for the parties' choice, or (ii) application of the law of the chosen state would be contrary to a fundamental policy of a state with a materially greater interest in determining the particular issue and whose law would be the applicable law in the absence of an effective choice of law clause."

Late payment penalties

- (a) **Is it mandatory to have to specify certain minimum late payment penalties?**

No.

- (b) **Is there a default late payment penalty rate?**

- (i) Applicable to projects under Prompt Payment Act

- (A) Private projects

Wrongfully withheld payments, paying party will be penalized with interest rate against unpaid amount at 1% per month, or interest rate respecified in contract (whichever is higher) (N.Y. Gen. Bus. Law §756-b(1)(a)).

- (B) Public Projects

(1) Wrongfully withheld payments, paying party will be penalized with interest rate against unpaid amount at rate equal to the overpayment rate set by the Commissioner of Taxation and Finance.

(2) State (N.Y. State Fin. Law §§ 179-f(1)).

(3) Municipal (N.Y. Gen. Mun. Law § 106-b(1)(b)).

(4) New York City ((Rules of New York City (RCNY), tit. 9, § 4-06 (d)).

- (ii) Applicable to agricultural dealers

Violation of prompt payment results in dealer being "*liable to the person injured thereby for the full amount of damages resulting from such violation.*" (N.Y. Agric & Mkts L § 247-A).

- (iii) Applicable to milk dealers

Milk dealers are subject "*to a penalty in the sum of one hundred dollars for each day that he is late in making payment*" (N.Y. Agriculture & Markets Law § 258-B).

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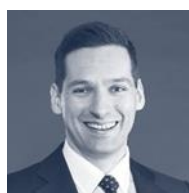
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