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## Can I get out of the contract? And how?

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File number «KMU\_today\_011»: The column by André Brunschweiler, lawyer and partner at the LALIVE law firm in Zurich, provides answers to legal questions that can and should concern Swiss SMEs.



(PD)

Which company hasn't experienced this: Suddenly, an invoice for several thousand francs arrives in the mail - for a service that you no longer need or have never needed at all, for example an entry in a business directory.

The service provider argues that the contract, which was signed five years ago when the company was founded and long forgotten, has been extended for another five years due to lack of notice – hence the bill. Can you get out of it? And how?

### **Pacta sunt servanda – contracts must be kept**

The basic rule is: Contracts must be adhered to – even when they become inconvenient. This principle creates legal certainty and predictability in business transactions. Contracts typically contain provisions regarding the term, automatic renewals, and termination modalities, such as notice periods and dates. Such agreements are generally binding – including automatic renewals.

But there are exceptions to every principle. Swiss law provides mandatory termination options for certain contracts, regardless of the contractual agreements. This particularly applies to contracts that qualify as mandates.

### **Right to terminate the contract at any time**

The Code of Obligations provides for a right of termination of contracts at any time: “The contract may be revoked or terminated by either party at any time.”

A contract can therefore be terminated by either party at any time – without observing a notice period or a termination date. However, termination must not occur at an inopportune time. For example, a contract should not be terminated just a few days before an important date or deadline. Even in such a case, the termination remains effective, but the terminating party must pay damages.

Even if “contracts must be complied with,” Swiss law allows for exceptions – particularly with orders.

Whether a contract falls under contract law depends on the circumstances. In principle, a contract is always a contract when a contracted person undertakes to diligently carry out a transaction or provide a service in the interest of the client. This situation occurs very frequently in practice. A contract is particularly distinguishable from a work contract, in which a specific work result – a result – is owed, rather than merely diligent work. A contract differs from an employment contract in that the service provider is not subordinate to or integrated into the client's business.

There are many examples of contractual relationships, even if they are not always so recognizable and often not titled as such: the mandate contract with the lawyer, medical treatment, tax advice, trust agreements, asset management, IT and other consulting contracts, to name a few.

In practice, mixed forms of contracts are also common. The Federal Supreme Court has confirmed that the principle of termination at any time also applies to mixed contracts – provided the contract-specific part predominates or the application of the right of termination at any time appears appropriate.

## Conclusion

Even though “contracts must be complied with,” Swiss law allows for exceptions – particularly for orders. Therefore, before paying an invoice for future unnecessary services, it's worth checking whether the service contract in question qualifies as an order and can therefore be terminated at any time – even if it provides for automatic renewal or a long contract term.

However, a careful review of the termination and extension clauses in the contract as well as the legal requirements before signing is essential.

**About the author**



Attorney André Brunschweiler specializes in advising and representing clients in (usually contentious) commercial law matters, with a focus on contract and corporate law, debt collection and bankruptcy law, and employment law. He is Deputy Managing Partner at the commercial law firm **Lalive**, which advises companies, public authorities, and private individuals on complex, predominantly international matters and, above all, disputes from its offices in Zurich, Geneva, and London.

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