

Interpretation under Swiss law

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Swiss contract law starts from Article 18 paragraph 1 of the Code of Obligations, according to which the true and common intention of the parties must be ascertained when assessing the form and terms of a contract, without regard to any incorrect expressions or designations they may have used, either in error or to disguise the true nature of the agreement. The provision expresses a principle that is particularly useful in multilingual settings. If both parties understood a term in the same way, that common understanding governs, even if the wording in one or both language versions points elsewhere. The rule of *falsa demonstratio non nocet* protects parties against translation errors that neither of them noticed or intended to exploit.¹

Where the real common intention cannot be established, the Federal Supreme Court applies the principle of reliance, known as the *Vertrauensprinzip*. Under this principle, a declaration is given the meaning that its recipient could and should reasonably have understood in good faith, taking into account the wording, the context and all circumstances known to the parties at the time of conclusion. The court considers the purpose of the contract, the interests of the parties, the negotiations and the conduct of the parties before conclusion. Subsequent conduct may serve as an indication of the real intention. The Swiss approach is therefore contextual from the outset and does not recognise a strict plain meaning rule that would prevent a court from looking beyond a clear wording.²

Article 2 of the Civil Code, which requires every person to act in good faith in the exercise of rights and the performance of duties, provides the background against which Swiss courts read contracts. Swiss lawyers translate *Treu und Glauben* as good faith, yet the concept is far more pervasive in Swiss law than good faith is in English law. It governs interpretation, supplements contracts where they contain gaps, limits the exercise of rights through the prohibition of abuse of rights and underlies

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pre-contractual liability under the doctrine of *culpa in contrahendo*. A contract governed by Swiss law and drafted in English therefore imports Swiss good faith, whatever the English words may suggest to a reader trained in the common law.³

Swiss law also knows the rule of interpretation against the drafter, the *Unklarheitenregel* or *contra proferentem* rule. The Federal Supreme Court applies it subsidiarily, which means that it comes into play only where the other methods of interpretation leave a genuine ambiguity. The rule is of particular importance for general terms and conditions, which the courts subject to two further controls. Under the rule on unusual clauses, a party that accepts general terms globally is not bound by clauses that are unusual and that it had no reason to expect, unless its attention was specifically drawn to them. Article 8 of the Federal Act against Unfair Competition adds a content control for consumer contracts, which declares unfair those general terms that, contrary to good faith, cause a significant and unjustified imbalance between contractual rights and obligations to the detriment of consumers.⁴

For multilingual contracts, Swiss law offers a further point of reference. Federal legislation is published in German, French and Italian, with the three versions carrying equal authority. The Federal Supreme Court therefore routinely compares language versions when it interprets a statute. Over time it has developed a practice of looking for the meaning that best reflects the purpose of the norm when the versions diverge. Swiss lawyers are thus trained to read legal texts in more than one language. Courts in Basel are accordingly accustomed to the idea that a text may say slightly different things in different languages. This background makes Swiss courts receptive to arguments drawn from a comparison of contract versions.⁵

Swiss law does not prescribe a language for private contracts. Parties may write their contract in English, Chinese or any other language, which a Swiss court will interpret with the help of translations where necessary. Procedural law, however, imposes the official language of the canton on court proceedings, which in Basel-Stadt and Basel-Landschaft is German. The revised Civil Procedure Code, in force since 1 January 2025, allows cantons to permit the use of English in certain commercial disputes, especially before commercial courts. Several cantons have taken or considered steps in this direction. Whether and to what extent the Basel cantons will open their courts to English remains to be seen. Parties who want proceedings in English or French therefore frequently choose arbitration.⁶

1 Notes

1. Art. 18 para. 1 of the Swiss Code of Obligations (CO, SR 220). To be verified. ↩
2. On the two-stage method of interpretation (subjective interpretation, then objective interpretation under the principle of reliance), see the settled case law of the Federal Supreme Court and the commentaries on Art. 18 CO. Specific BGE references to be verified. ↩
3. Art. 2 of the Swiss Civil Code (ZGB, SR 210). On culpa in contrahendo in Swiss law, see the case law of the Federal Supreme Court and the commentaries. To be verified. ↩
4. On the Unklarheitenregel and the Ungewöhnlichkeitsregel, see the case law of the Federal Supreme Court on general terms and conditions. Art. 8 of the Federal Act against Unfair Competition (UCA, SR 241), in force in its current wording since 1 July 2012. To be verified. ↩
5. On the equal authority of the three official language versions of federal legislation, see Art. 14 of the Publications Act (PublA, SR 170.512) and Art. 70 of the Federal Constitution. On the comparison of language versions in statutory interpretation, see the case law of the Federal Supreme Court. To be verified. ↩
6. On the language of proceedings, see Art. 129 of the Swiss Civil Procedure Code (CPC, SR 272) as revised with effect from 1 January 2025, and the cantonal legislation implementing it. Status to be verified. ↩

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