

Penalties and Damages in Vietnamese Commercial Contracts: Getting the Clause Right

Law reviewed as at 24 October 2026.

A contract may promise a substantial payment for delay, defective goods or non-performance. That promise is not necessarily recoverable as drafted. Under Vietnamese law, contractual penalties and compensation for loss perform different functions. Their interaction also differs between the Commercial Law and the Civil Code. For procurement and management teams, the drafting question is therefore more precise than simply choosing a percentage: what remedy is intended, which legal regime applies, and how will the claim be demonstrated?

This article focuses on ordinary business-to-business contracts governed by Vietnamese law. It does not provide a complete treatment of construction, banking, consumer transactions, specialised services or international sales potentially governed by the CISG. Those transactions require separate analysis before a standard clause is reused.

1. Identify the applicable regime before drafting

The Commercial Law No. 36/2005/QH11 of 14 June 2005 governs commercial activities within its scope. Its relationship with specialised legislation and the Civil Code is addressed in Article 4. The current consolidated text reviewed for this article is No. 113/VBHN-VPQH of 27 August 2025. A contract's heading alone does not establish which rules govern its remedies. [1]

For a contract review, begin with the parties, the nature of the transaction, any sector-specific rules and the governing-law provision. A supplier agreement and an arrangement involving an individual may require different reasoning even if both contain a section labelled “commercial terms”. Avoid copying the penalty mechanism from an unrelated project without checking its legal setting.

2. A commercial penalty normally requires an agreement

Article 300 of the Commercial Law makes an agreed contractual penalty the starting point, subject to the statutory exemptions from liability. A business should not assume that every breach automatically generates a penalty merely because the breach is serious. [1, Articles 294 and 300]

The agreement should identify the obligation, the trigger and the calculation method. “A penalty applies for breach” leaves unanswered whether the amount is fixed, percentage-based or time-based. A delay mechanism should explain when delay begins, which delivery milestone matters and how any agreed cure period interacts with the trigger. These are drafting recommendations; the appropriate structure depends on the commercial bargain.

3. Apply the eight per cent ceiling to the correct value

Article 301 generally caps the agreed penalty, or aggregate penalties for multiple breaches, at eight per cent of the value of the contractual obligation breached, subject to its express exception for Article 266. The reference point is not automatically the total contract price. Nor is this a universal ceiling for every transaction governed by Vietnamese law. [1]

Illustrative example. A domestic supply contract has a total price of VND 5 billion. A separately priced delivery worth VND 1 billion is late. Assuming that this delivery represents the relevant breached obligation and no special rule applies, eight per cent of that value is VND 80 million. Applying eight per cent to the full VND 5 billion simply because it appears on the contract cover would require a different and defensible basis.

The example demonstrates a calculation issue, not a prediction of a court's award. In an integrated project, the parties may dispute how an affected obligation should be valued. A clear schedule of prices, deliverables and milestones can reduce that uncertainty. It cannot conclusively dictate the legal characterisation of a dispute.

Daily percentages also need an aggregate ceiling. Repeatedly applying a daily rate does not remove the statutory limit where Article 301 governs. A clause should explain the running calculation and its maximum, rather than leaving the accounts team to discover the issue after several months of delay.

4. Damages require a separate evidential case

Under Articles 302–304, compensation concerns actual, direct loss and the direct profit the injured party would have earned, with breach, actual damage and direct causation forming the statutory basis of liability. The claimant must substantiate the loss and its amount. A penalty calculation does not itself establish those matters. [1]

Translate that distinction into record-keeping. Preserve the purchase order, agreed specification, acceptance records, defect reports, replacement quotations, invoices and communications explaining why additional expenditure became necessary. If lost profit is claimed, identify the transaction and the expected margin rather than relying only on an unsupported revenue forecast.

Consider alternative causes as well. An urgent replacement purchase may have been driven partly by an internal planning error. Distinguishing that cost from the consequences of the supplier's breach makes the claim more credible. For the same reason, record offsets, credits and avoided expenditure when preparing the loss schedule.

Article 305 also requires reasonable measures to limit loss and allows a reduction corresponding to loss that could reasonably have been avoided. An internal escalation process can help the business respond promptly while preserving evidence of the options available. [1]

5. State whether penalties and damages are cumulative

Under Article 307 of the Commercial Law, an agreed penalty can operate alongside damages, subject to the Law's qualifications. Article 418(3) of the Civil Code takes a different approach: where the parties agree a penalty but do not agree that both penalty and damages apply, the default stated there is penalty only. [1; 2]

That difference makes explicit drafting worthwhile. If the intention is cumulative recovery to the extent permitted, say so. Then check that the clause aligns with exclusions, liability caps, exclusive-remedy provisions and settlement language elsewhere in the agreement. A general reservation of rights may be undermined by a schedule saying a delay payment is the “sole remedy”.

Do not assume that describing an amount in English as “liquidated damages” resolves its treatment under Vietnamese law. The intended function and the applicable rules still need analysis. Renaming a penalty does not provide a reliable route around a mandatory cap; equally, not every payment connected with non-performance should be classified without examining its substance.

6. Separate payment interest from the penalty mechanism

Article 306 addresses interest for late payment of goods, service remuneration and other reasonable expenses, subject to agreement or other applicable law. This is a separate issue from a contractual penalty. It should be reviewed alongside the payment terms rather than assumed to be covered by the same percentage. [1]

For practical administration, the contract should distinguish principal, any interest claim, an agreed penalty and substantiated loss. A demand letter can then show each amount and its basis. Combining everything into a single unexplained “breach charge” makes reconciliation and negotiation more difficult.

7. Exemptions and procedural requirements still matter

Article 294 provides exemptions from liability, and Article 295 addresses notification and proof. A remedies clause should therefore be read together with force majeure, notice, delivery and change-control provisions. A delay should not be assessed without checking extensions or a relevant exemption. [1]

Illustrative example. A buyer changes the specification after production begins, while the supplier separately misses a later agreed milestone. The review should establish the revised timetable, which delay belongs to which event, and what notices were exchanged. It should not simply count days from the superseded original delivery date.

Practical steps for businesses

Before signature, prepare a one-page remedies map identifying the applicable regime, each protected obligation, its value, the trigger, the rate and the aggregate cap. State clearly whether damages are intended to remain available and check inconsistent language elsewhere. This map is an internal management tool, not an additional statutory filing.

During performance, assign responsibility for acceptance records and breach notices. When a problem occurs, preserve the contractual baseline before discussing a revised solution. Record mitigation decisions and their commercial reasons. Before issuing a demand, separate the calculations and review exemptions, evidence and the chosen dispute mechanism. A well-drafted clause works best when the business can also demonstrate what happened.

Legal sources and references

Sources accessed on **24 October 2026**. English descriptions of Vietnamese legislation are used for explanation and are not represented as official translations.

1. **Commercial Law No. 36/2005/QH11, as consolidated in No. 113/VBHN-VPQH of 27 August 2025**, particularly Articles 4, 266 and 294–307. The consolidated text is a reading aid; the underlying law and amendments determine legal effect. The Commercial Law originally took effect on 1 January 2006.
2. **Civil Code No. 91/2015/QH13 of 24 November 2015**, effective 1 January 2017, particularly Articles 418–419; **Vietnamese text available through WIPO Lex**.

This publication provides general information based on sources reviewed as at 24 October 2026. It does not constitute legal advice on any specific matter. The application of Vietnamese law depends on the relevant facts and circumstances.