

# Standard contract and the adjustment of prices in the course of DH upgrading projects.

## Price amendment clauses

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  - » **Price amendment clauses**

## No specific regulation of DHC (unlike electricity and gas)



- » Traditionally market-oriented approach
- » Free competition between different heating technologies in the heating market
- » No regulation of DHC networks
  - » No TPA
  - » No unbundling
- » DH companies are subject to general legislation, e.g. competition law and consumer protection law
- » Competition legislation prohibits the misuse of a dominant market position
- » No licensing, concessions etc.



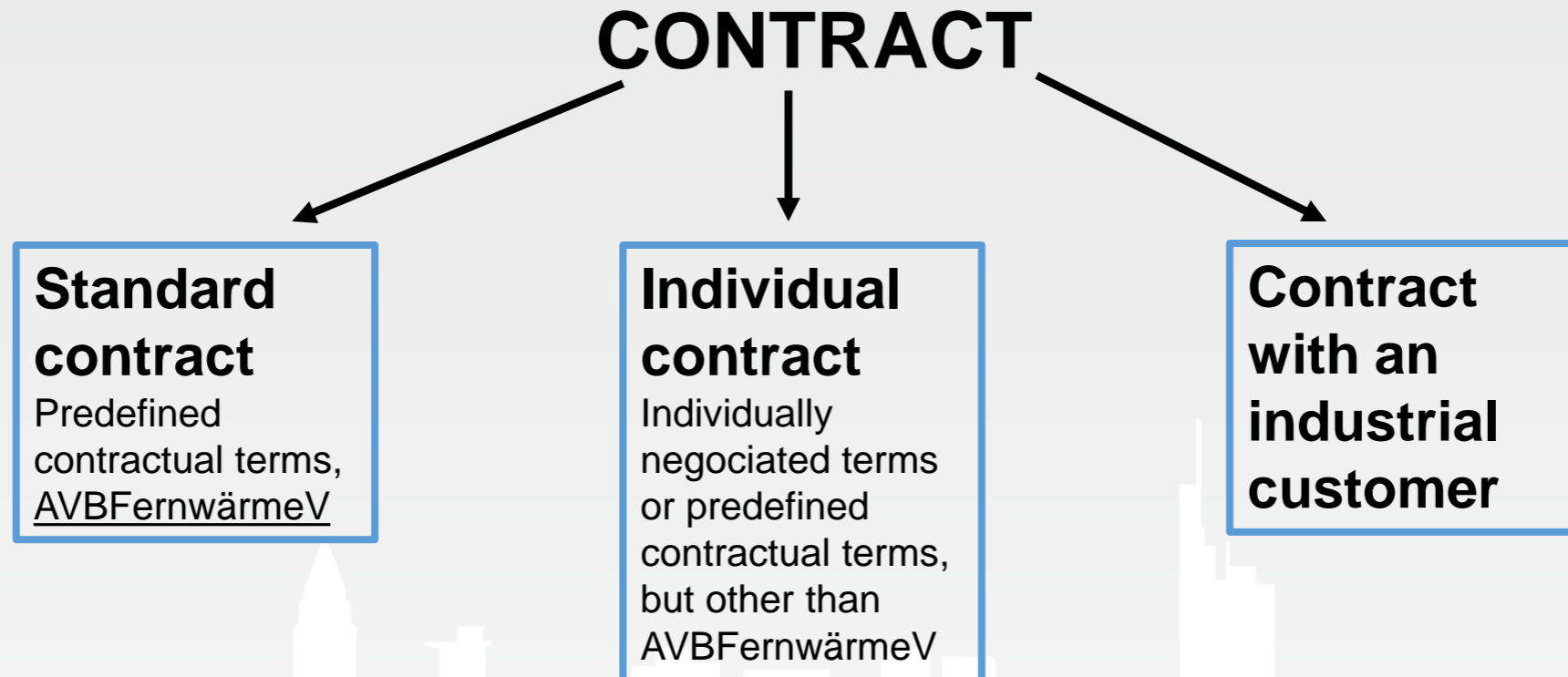
- » No price regulation, only a framework for price amendment clauses
- » The DH companies operate on a business basis – profit-making is allowed
- » Each company calculates its prices on its own
- » The prices vary a lot between different companies, depending on the operating costs, the local circumstances such as geology, system setup, local by-laws etc.

Price control by the competition authority possible

## Legal basis

- » Framework for DH contract clauses is the Ordinance on general conditions of heat delivery (AVBFernwärmeV)
- » Special framework for standard terms and conditions for the supply of DH
- » **RESULT:** a balance is struck between technical and economical features of DH and customer interests
  
- » DH customers are supplied accordingly to the general rules laid out in the ordinance if standard terms and conditions are being used
  - » Standard terms and conditions are model contracts / contract terms that are predefined for a large number of contracts
  
- » DH utilities can deviate from these conditions with the explicit consent of the customer
  - » **EXCEPTION:** Rules on heat metering are mandatory
  
- » **EXCEPTION:** Not applicable towards industrial customers

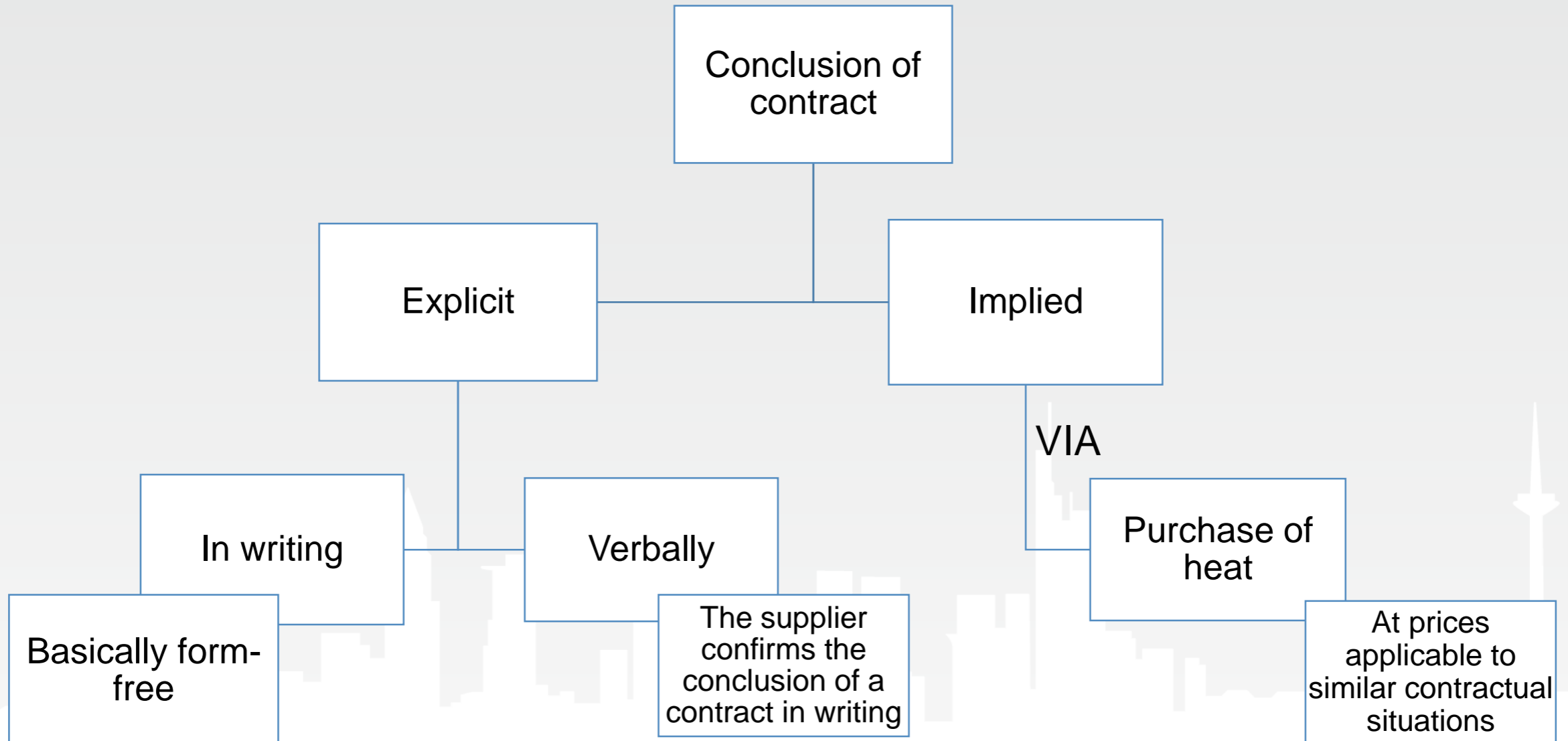
## Legal basis



## General overview

- » Covers entire contractual relationship, e.g.:
  - » Conclusion of contract
  - » Disconnection & Termination of contract
  - » Liability
  - » Technical connection conditions
  - » Metering
  - » Billing
  - » Price amendment clauses

Conclusion of a contract, § 2 AVBFernwärmeV

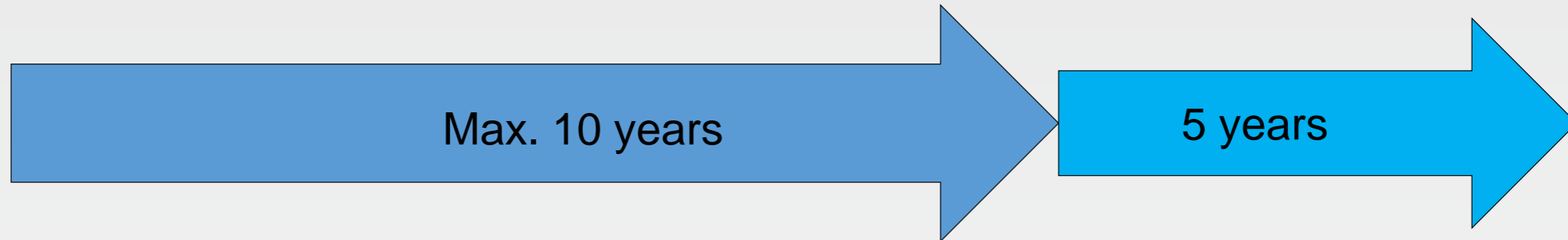


## Supply and adjustment of the contract

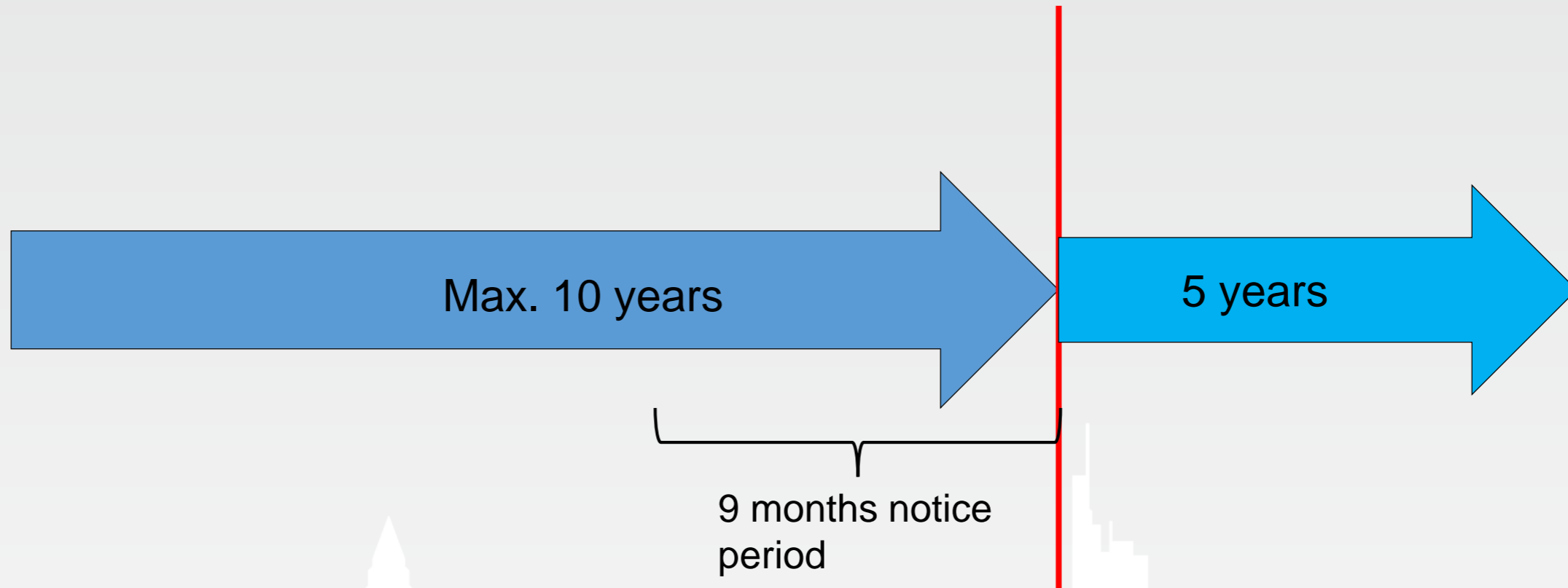
- » The DH supplier is obliged to provide heat to the extent agreed at any time (§ 5)
  - » Agreement on a max. capacity (connected load)
  - » Connected load is ordered by the customer
  - » Liability of the supplier in case of interruption or irregularity of supply – damages
- » The customer is obliged to cover his heat requirements to the extent agreed from the network of the DH supplier (§ 3)
- » The customer has right to **contract adjustment** if she wants to cover her heat demand by using renewable energy sources (§ 3)
  - » Duration of contract remains unaffected
  - » No right of termination!



## Duration of the contract, § 32 AVBFernwärmeV

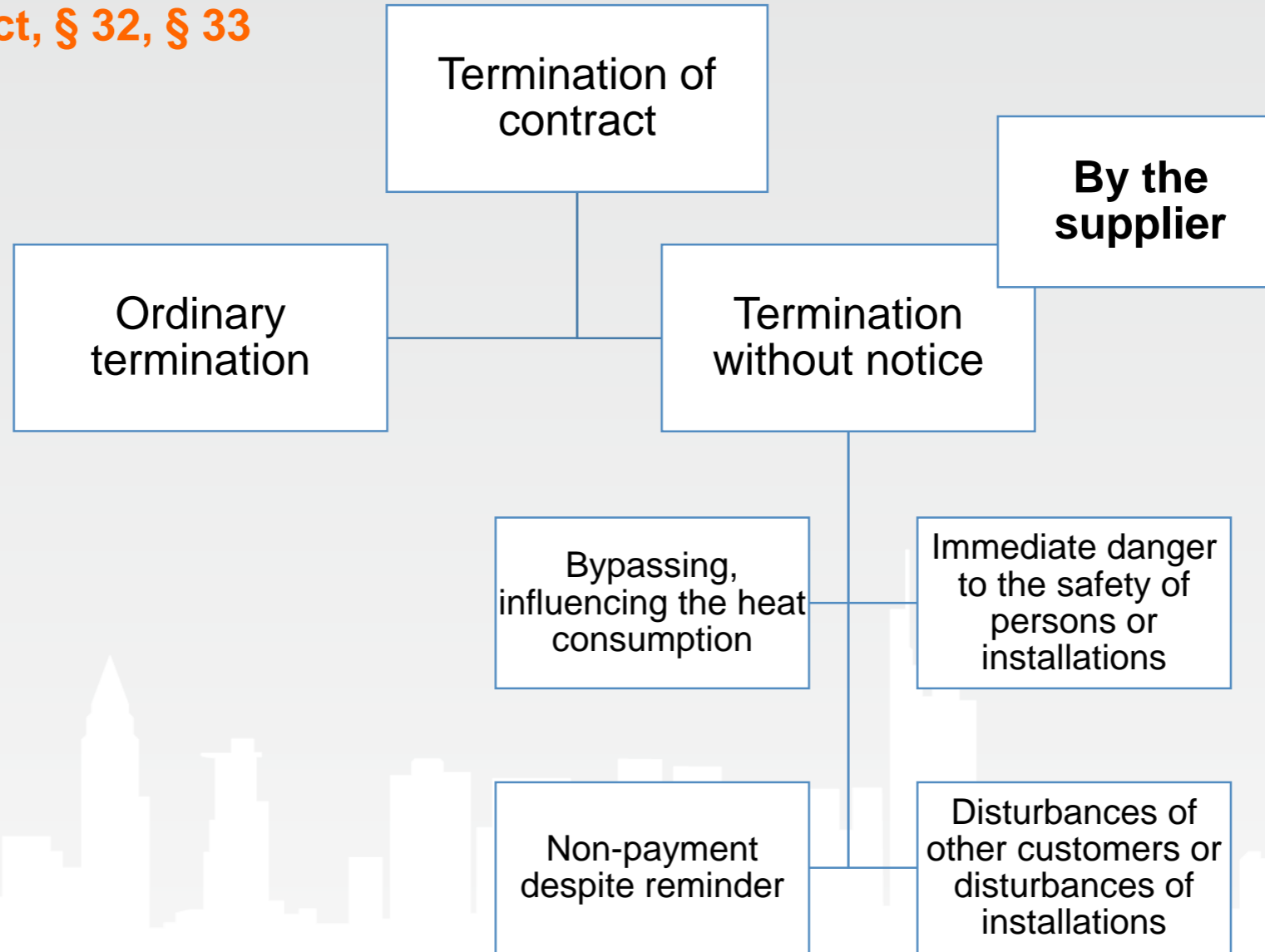


## Duration of the contract, § 32 AVBFernwärmeV



2 months notice period, if tenant is the contracting party, in case of removal

Termination of a contract, § 32, § 33  
AVBFernwärmeV



## Price amendment clauses, § 24 AVBFernwärmeV

- » By the conclusion of the contract:
  - » Regulation of initial prices
  - » Regulation of subsequent prices: **price amendment clauses**
- » Possibility to take the current / changed generation structure into account
- » Automatic cushioning effect on the price by taking into account the development of the heating market (market element) – incentive to be better than the competition on the market

## Price amendment clauses, § 24 AVBFernwärmeV

- » Price amendment clauses designed take **adequately** into account both the development of **costs** for the **production and supply** of DH and the respective **conditions in the heating market**
  - » Generation and market factors shall be adequately considered – the supplier has a certain room for maneuver
- » The relevant factors shall be shown in full and in a generally understandable form
  - » Use of official / stock exchange listings
- » The percentage share of the price factor covering the fuel costs shall be shown separately
- » The contract should include a precise definition of the price adjustment dates
- » Automatic price adjustment – mandatory passing-on of price reductions

<https://www.fernwaerme-info.com/service/preisanpassung/>



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Startseite Was ist Fernwärme Vorteile Förderung & Kosten **Service** Technik

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## Preisanpassungen

- > **Preisanpassung**
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- > Energieeffizienz
- > Kontakt
- > Presse

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[EEX-Preise CO<sub>2</sub>-Zertifikate](#)

## Price amendment clauses, § 24 AVBFernwärmeV

- » No standard formula for the clauses possible, as subject to individual circumstances
- » Example of a typical price amendment clause:

- »  $BP_1 = BP_0 * (x * I_1 / I_0 + y * W_1 / W_0)$

- »  $EP_1 = EP_0 * (x * F_1 / F_0 + y * HM_1 / HM_0)$

Whereas:

„1“ = Year under report

„0“ = Base year

BP = Base price

I = Investment

W = Wages

EP = Energy price

F = Fuel

HM = Heating market

## Introduction of a new price amendment clause

- » General civil law methods of amending the content of contracts
  - » Amendment agreement
  - » Notice of termination pending a change of contract
  
- » Change by public announcement (§ 4 para. 1 and 2 AVBFernwärmeV)
  - » Change of the general supply conditions by public announcement
  - » Price amendment clause is to be considered as part of general supply conditions
  - » However: disputable by customer protection organizations and more recently by courts



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In case of questions, please  
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