

DISTANCE SELLING AND ON-LINE TRADING

General

There are EU wide regulations which deal with consumer protection in the area of distant selling. The Distance Selling Regulations are designed to protect consumers who are not physically present with the seller at any time during the sale or transaction. They cover purchases which make exclusive use of one or more means of distance communications. This would include internet sales, unaddressed printed matter, addressed printed matter, standard letters, press advertising catalogues, telephone with human intervention, telephone without human intervention, video text, email, fax and teleshopping.

The Distance Selling Regulations apply to distance contracts for the supply of goods and services concluded between a supplier and a consumer. A consumer is an individual acting in a private capacity outside of his trade or business. A supplier is any business acting in a commercial or professional capacity. They only apply to transactions between businesses and consumers. Accordingly business to business transactions are not included.

Business Details Required

Businesses who undertake distances sales to consumers must give clear and comprehensive prior information to consumers. The information, must be easily, directly and permanently accessible to the recipient of the service. The required Information includes:

- name of service provider together with physical and electronic address
- where the service provider is registered, details of the public register in which it is registered

- registration numbers or equivalent means of identification
- where the service provide is subject to an authorisation scheme, the particulars of the relevant scheme
- where the services are provided by a member of a regulated profession, details of any professional body or other institution
- relevant codes of conduct to which the business is subject and information on how they can be consulted electronically;
- VAT number;
- whether the contract will be filed and whether it is accessible;
- languages for conclusion of contract;

Under the new Companies Act, all companies in the UK must identify their company registration number, place of business, registered office and address on all of their websites. This would be commonly placed in the part "About Us" or "Legal info". It does not need to be placed on every page;

Where a service provider sets out prices they must clearly and unambiguously state whether they are inclusive of tax and delivery costs.

Concluding a Contract

Where a contract is to be with a consumer, the service provide must comprehensively, unambiguously and prior to the receipt of the service indicate:

- the different technical steps to follow to conclude a contract
- whether or not the contract will be final and whether it will be accessible
- the technical means for identifying and correcting input errors
- the language offered for the conclusion of the contract
- whether it is bound by any codes of conduct

Contract Information

Prior to conclusion of a distance contract a consumer must be provided with the following information in a clear and comprehensible manner:

- identity of the supplier and in the case of contracts requiring payment in advance, his address
- the main characteristics of the goods or services
- price of the goods including all taxes
- delivery costs
- arrangements for payment, delivery and performance
- the existence of the right of withdrawal
- the cost of using distance communication where it is calculated other than at the basic rate
- the period for which the offer or price remains valid
- the minimum duration of the contract in the case of the supply of products or services to be performed recurrently or permanently
- details in writing about the terms and conditions of the transaction
- information on after sale service and guarantees

The required information and the terms of the contract must be capable of being permanently stored by the consumer. Where a consumer orders goods on line, the service provider has to acknowledge receipt of the recipient's order without delay and by electronic means. The order and acknowledgement of receipt are deemed to be received when the party to whom they are addressed is able to access them.

Websites must allow customers to go back and correct any mistakes in their order before the order is placed. Once an order is placed electronically receipt must be acknowledged without delay.

In the case of telephone communication, the identity of the supplier and the commercial purpose of the call must be made clear at the beginning of the conversation.

The consumer is entitled to written confirmation by email or confirmation in an available and accessible and durable medium of the information set out above, in good time. The information should be provided at the latest at the time of delivery, unless it has already been given to the consumer prior to conclusion of the contract in writing or in another durable medium.

Unless the parties otherwise agree, the supplier must execute the order within a maximum of 30 days from the date following which the consumer forwarded his order to the supplier. Where the supplier fails to perform within this time limit on the grounds that goods or services are unavailable the consumer must be informed and must be able to obtain a refund of any sums he has paid as soon as possible and in any case within 30 days. A supplier may provide the consumer with goods or services of equivalent quality or price provided that this possibility was provided for prior to conclusion of the contract. The cost of returning goods should be borne by the supplier and the consumer must be informed of this.

The above rights to prior information, written confirmation withdrawal and requirements regarding performance do not apply to the contracts for the sale of foods, beers and goods intended for everyday consumption supplied to the home of the consumer, to his residence or workplace. The requirements do not apply to contracts for accommodation, transport leisure services where the supplier undertakes and the contract is concluded to provide the service at a specific date or within a specific time.

A consumer has a right to cancel payment if a fraudulent use has been made of his payment card in connection with a distance contract or where a fraudulent use has been made to re-credit the sums concerned.

Inertia selling is prohibited. Inertia selling is the supply of goods and services to consumers beforehand where such supply involves the demand for payment. The absence of response does not constitute consent.

There are separate EU laws on distance selling of financial services. The rules are broadly speaking similar to those apply to goods and services but are more detailed. There are more specific requirements in relation to rights of redress.

Cooling Off

Consumers have a right to withdraw from a contract where they buy on line or from a catalogue. This the so called "cooling off" period may be exercised within seven working days without penalty or without any reason. The only charge that may be made to the consumer is the direct cost of returning the goods.

The cooling off period begins in the case of goods, on the date of receipt by the consumer and after the above obligations have been fulfilled. In the case of services the seven days run from the date of conclusion of the contract. If no details of the cooling off period are supplied, then the 7 day period is extended to three months.

Where the consumer exercises the above rights the supplier is obliged to reimburse the sums paid by the consumer free of charge other than the direct cost of returning the goods. Reimbursement must be carried out as soon as possible and in any event within 30 days. Consumers must inform the business in writing, either by fax, email or letter of the decision to cancel. The contract with the consumer must specify who pays the costs of any postage etc.

Unless the parties have agreed otherwise, the consumer may not exercise the right to withdrawal in the following circumstances:

- in the case of provision of services, where performance has begun with the consumer's agreement before the seven day period expires
- in the case of goods or services where the price is dependent on fluctuations in a financial market which cannot be controlled by the supplier

- in the case of supply of goods made to the consumer's specification or clearly personalised which by the reason of their nature cannot be returned or are liable to deteriorate
- for the supply of audio or video recordings or computer software which are unsealed by the consumer
- for the supply of newspaper, periodicals or magazines for gaming and lottery services
- contracts for the provision of accommodation, transport, catering and leisure services where services are provided on a specific date or a specific period
- sales by auction

This Guide is intended as an overview and broad outline of the matters covered in it. Its purpose is to inform and raise awareness. We are happy to offer specific legal advice on particular circumstances.

This Guide should not be relied on as a substitute for comprehensive legal advice with reference to the particular circumstances.

While we have taken due care in the preparation of this publication, we do not accept legal liability as a result of any reliance placed on anything in this Guide. The reader should rely only on specific legal or taxation advice.