

INTERNET CONTRACTS AND BUSINESS

General

Contracts made over the internet are legally binding in the same way as contracts made in writing or face to face. The normal laws of contract apply to the making of the “on-line” contract, subject to certain additional requirements on the part of the supplier.

There must be an offer, acceptance and "consideration". An offer is where one party proposes certain terms and conditions and makes a particular proposal e.g. offers to buy goods. Acceptance is where the other person accepts the offer either verbally or by actions. Consideration is where something of value is passed and exchanged. That is there is a bargain – anything is given in exchange for another at the request of the other.

Under general contract law, an advertisement, including one on a website, would not generally be an offer to enter a contract. However, it is possible by careless wording to create a legally binding offer. Care should be taken to ensure that it is not worded as such. The contract is usually formed once a customer makes an offer by placing an order and then the supplier either by action or by automated response accepts.

Contracts for goods and services should describe the goods or service, set out the price and payment structure, set out delivery provisions, provide for right of termination, deals with limitation of liability, provides for confidentiality and provides which countries laws apply.

Consumer Protection legislation covers goods and services sold over the internet. The legislation makes it an offence to give misleading information. See our separate guide on English consumer protection legislation. Consumer protection legislation provides that a supplier must sell goods that comply with description are of satisfactory quality, match the quality of samples and are fit for this purpose

Clauses limiting liability can be contentious but can be helpful to businesses in managing risks. There are restrictions on business's ability to limit liability. Generally, clauses which are reasonable are enforceable. There are stricter rules in the case of businesses dealing with consumers.

E-Commerce Directive

The European Union E-Commerce Directive is designed to support and facilitate contracts made on-line. The Directive confirms that contracts can be made as freely over the internet, email and other electronic means as they can by personal or written communication. These uniform rules assist and underpin e-commerce in the EU. The Directive does not apply to property contracts, wills, trusts, family law, certain guarantees

The E-Commerce Directive provides that documents are not invalid simply because they are stored electronically. Where any legal requirement requires information to be given in writing, an electronic form is deemed to suffice. Where by law information is required to be retained it may be retained in the electronic form. All electronic contracts are subject to existing consumer law which applies equally to consumer transactions whether conducted electronically or non electronically

An electronic signature is data in an electronic form which is attached to or associated with other electronic data and is intended to serve as a method of authentication. Where a name is specifically typed into the body of an email it can potentially act as equivalent to a signature. The key matter is whether it is intended to authenticate the communication as that of the sender. In most circumstances, this will satisfy legal requirements for signature or authentication. An automatically generated signature may not be sufficient to authenticate a document.

The EU Directive on Electronic Signatures in 1999 contemplated a system of advanced signatures would be put in place to act as advanced authentication. However, this has only occurred to a limited extent. The Directive contemplated certification service providers who would issue certificates to confirm the identity of a person or public body. In practice, advanced electronic signatures have been slow to

take off. Various sectors such as the banking sector have found other means of authentication, such as passwords etc.

Distance Selling

See our separate note of the EU-wide Distance Selling Regulations.

The European wide Distant Selling Regulations require that the following information be provided to consumers:- Details of supplier name and address, description of the main characteristic of the goods and / or services, price including all tax, delivery costs, arrangements for payment, delivery and performance, right to cancel, how long offer remains open, minimum duration of contract (where it is to be performed recurrently) and whether the supplier will provide substitute goods and services if the ordered goods are unavailable.

The information must be provided to the customer either before the conclusion of contract or in good time afterwards and in any event during the performance of the contract or at the latest, at the time of delivery. The customers must be provided with information about the procedures for cancelling, the address of supplier, information about after sale service and guarantees and conditions for exercising contractual right to cancel when the contract is of indefinite duration.

There are special provisions applicable to financial services. Financial services refer to banking, insurance and investments. A "cooling off" period of 30 days usually applies (but with certain necessary exceptions).

Choice of Applicable Law

In the European Economic Area (the EU and certain other European countries) the "Rome Convention" governs the law that will apply to contract disputes. Between businesses, the parties can usually chose the governing law for dispute resolution and insert it their contract.

There are certain mandatory rules which cannot be overridden by the terms of a contract. A key mandatory rule is that consumers can generally only be sued in their

home country. Consumers may avail of all consumer protection laws, either in their home state or in the supplier's state.

Information Society Services

The E-Commerce Directive is designed to contribute to the proper functioning of the internal EU market by ensuring free movement of "information society services" between member states. The purpose is to harmonise EU laws in relation to the establishment (set up) of providers of information society services, commercial, communications, electronic contracts, liability of intermediaries, codes of conduct, out of Court dispute procedures and Court actions.

The Directive covers on-line activity such as on-line information, advertising, on-line shopping and on-line contracting. It does not affect legal requirements in member states such as safety standards, labelling, liability for goods and requirements relating to delivery of transport of goods. The Directive does not apply to the activities of notaries, lawyers, gamblers or bookies.

"Information society services" are economic activities which take place on-line. The sale of goods on-line is covered by the Directive but delivery of the goods and provision of off-line services will not be covered. The use of email by itself would not constitute an "information society service".

"Information society services" are services normally provided for remuneration at a distance by electronic means at the individual request of the recipient of the services. "At a distance" implies that the services provider and the customer are not simultaneously present at any stage. "Electronic" means that the service is sent initially and received at its destination by electronic equipment for the processing and storage of data. This does not cover radio or broadcasting services.

Services such as ATM, car parking networks, off-line services, distribution of cds, voice telephony services, telephone conversations with a service provider (e.g. a lawyer) are deemed not to be by electronic means. Television and radio

broadcasting (e.g. t.v. marketing) will not generally be "information society services" because they are not provided at individual requests. By contrast, services which are transmitted point to point such as video on demand and provision of commercial communications by email are information society services.

Each member state of the European Union must ensure that information society services provided by a service provider within its state, complies with its own internal laws relating to the services. This covers requirements laid down in the member state applicable to information society services. These are the requirements that a service provider has to comply with in respect of the taking up of the activity of an information society service.

These requirements include such things as qualifications, authorisation, notification, requirements concerning behaviour, requirements regarding quality and contents of the service including those applicable to advertising and contracts and requirements concerning the liability of the service provider. They do not cover requirements applicable to the standards of the goods, requirements applicable to the delivery of goods or requirements applicable to services not provided by electronic means.

Member states cannot impose an obligation on a service provider to apply for authorisation in the recipient state before commencing to provide services. Member states may only regulate information society services based in another member state in limited circumstances only. The regulation must be necessary for limited public policy reasons only such as prevention, investigation, detention of criminal offences, protection of public health, security or protection of consumers including investors.

Any such measures or restrictions must be strictly limited to what is necessary to protect the above objectives and the EU Commission must also be notified in order to ensure the provision is not abused. The EU is entitled to examine the compatibility of the restriction within a short time frame with a view to ascertaining whether it is justified.

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.

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