

Establishing and managing direct on-line sales to consumer

Dealing with website requirements and drafting the
general conditions of sale to consumers



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WEBSITE REQUIREMENTS

Consumer information – consumer rights issues

- Promotion/advertisement of the products
- Ordering procedure
- General conditions of sale

Privacy issues

- Data protection by design and by default
- Cookies
- Privacy policy

THE LEGAL FRAMEWORK

Directive 2000/31/EC (Directive on electronic commerce)

EU NATIONAL IMPLEMENTING LAW

Italy	Denmark	Portugal	Spain
D.Lgs. 09/04/2003 n. 70	E-handelslov nr. 227 of 22 April 2002	Decree-Law 7/2004 of 7 January 2004, amended by Decree-Law 62/2009 of 10 March 2009 and Law 46/2012 of 29 August 2012	Law 34/2002, of 11th July, on information society services and e-commerce

Directive 2011/83/EU on consumers rights

EU NATIONAL IMPLEMENTING LAW

Italy	Denmark	Portugal	Spain
D.lgs 6.9.2005 n. 206 (Consumer Code) artt. art. 49 and ff.	(Købelov) Amendments to Sale of Goods Act no. 102 of 6 April 1906, cf. Consolidated Act no. 140 of 17 February 2014, Sect. 1, 1a, 17 and 73-75	Decree-Law 24/2014 of 14 February 2014, amended by Law 47/2014 of 28 July 2014	Law 3/2014, of 27th March, updating Spanish Consumer protection Act (Real Decreto Legislativo 1/2007, of 16 th November)

THE LEGAL FRAMEWORK

NON-EU COUNTRIES' NATIONAL REGULATIONS

Brazil

Law n. 12,965/14 (Civil Framework for the Internet, on consumer protection, liabilities of ISPs), Sections 7 and 18 to 21; Federal Decree n. 7,962/13 (on sales via e-commerce), Sections 2 to 4 (on duty of information); Bill of Federal Law n. 281/2012 (on duty of information, rules for contracting, right of repent, spam, penalties)

NON-EU COUNTRIES' NATIONAL REGULATIONS

China

People 's Republic of China e - commerce law (2018)

Brazil

Law n. 8,078/90 (Consumer Protection Code), Section 49; Federal Decree n. 7,962/13 (on sales via e-commerce), Section 5

Differences in implementing EU directives

Member States may provide that, in order to benefit from the legal guarantee of conformity, the consumer must inform the seller of the lack of conformity within a period of 2 months from its discovery and that the consumer's action is time-barred within a period of 2 years from the delivery of the goods. Member States may however adopt longer time limits to protect consumers. (Consumer sales and Guarantee Directive 1999/44/EC)

Consequently, the seller should check whether certain countries have stricter provisions.

For example with regard to the statute of limitation:

Denmark: 3 years

Finland: 3 years

Spain: 2 years

Germany: 2 years

Italy: 26 months

Differences in implementing EU directives

In case of withdrawal and responsibility of the consumer for mishandling of goods during the withdrawal period the seller should check whether the applicable law allows the seller to reduce the amount of refund and compensate for the diminished value of goods.

Germany	The seller is entitled to set off with his claim for compensation for the diminished value of the returned good, provided that the diminished value results from mishandling of said good.
Italy	The Italian antitrust authority considered valid the right of a seller of vehicles, as set out in seller's General Conditions of Sale, to charge consumer 5 € for each km driven over and above 120 km during the withdrawal period on the basis that the amount requested was proportional to the type of good sold and that the provision was justified to avoid the mishandling of the good during the withdrawal period.

**Can the seller rely on a common text of
online B2C general conditions of sale?**

Roadmap to the ICC Model Online B2C General Conditions of Sale

1. **Why** did ICC **create** a common text of online B2C general conditions of sale?
2. **How** were the ICC Model Online B2C General Conditions of Sale **prepared**?
3. **How** are the ICC Model Online B2C General Conditions of Sale **structured**?
4. **What topics** do the ICC Model Online B2C General Conditions of Sale cover?
5. **How to use** the ICC Model Online B2C General Conditions of Sale?

Why did ICC create a common text of online B2C general conditions of sale?

- ICC represents **45 million companies in over 100 countries**, promoting international trade and investment for inclusive growth and prosperity.
- **Focus on helping SMEs and MSMEs**, the main actors in the 'real economy'.
- Commission on Commercial Law and Practice (CLP) produces **practical tools for business** - model contracts/clauses, books, rules (eg, Incoterms® rules).
- Market signals that **companies need help moving → selling goods on websites**; situation becomes more urgent in light of Covid-19 pandemic.
- Usually we address B2B trade but decided in this case to address this demand for a set of **model clauses conforming to the main conditions typically imposed by consumer protection regulations**.

How were the ICC Model Online B2C General Conditions of Sale prepared?

- **CLP Commission = expert group of international lawyers.** Ad hoc working parties convened for particular projects.
- **Multi-sectoral Working Group created** for online B2C sale conditions – members **representing the Americas, Europe and Asia.**
- WG met and prepared subsequent drafts, circulated for **consultation with full Commission + network of 90+ ICC national committees.**
- **Final text approved** by CLP Commission + ICC Executive Board in **2020.**

How are the ICC Model Online B2C General Conditions of Sale structured?

- Impractical to draft general conditions for all global consumer laws so **compromise = standard text complying with main typical consumer protection rules** in an online B2C sale contract.
- **Focus on EU consumer protection rules**, especially the 2011/83/EU Directive of 25 October 2011.
- **Further guidance** on EU B2C sale website requirements as of May 2020 in **accompanying *EU Requirements and Non-EU Annexes*** document, also including domestic legal requirements for select
 - Member States (Denmark, Germany, Ireland, Italy, Spain, Sweden, UK)
 - non-EU countries (Brazil, Georgia)
- **Additional annexes may be added** in future – a living document! - and **Spanish translation** in progress.

What topics do the ICC Model Online B2C General Conditions of Sale cover?

- **General Conditions cover main issues in the contract of sale, such as:**
 - Conclusion of contract – order and acceptance
 - Prices and payment conditions
 - Delivery
 - Return rights – effects of withdrawal and exceptions
 - Characteristics and conformity of products displayed on the website
 - Applicable law and dispute resolution
- **Scope of application – online sale of goods, for use by manufacturers who sell directly online from their websites (not marketplaces).**
- Accompanying ***EU Requirements* document deals with contents of a B2C sales website** (at May 2020), including general information to be provided to consumer on price, ordering process, and the sale contract.

How to use the ICC Model Online B2C General Conditions of Sale?

- Traders should use the model online B2C sale conditions as a **basis for drafting their own B2C conditions**, adjusting the model form as needed to take account of different national laws and the particular needs of each business.
- Model conditions to be **filled in/adapted** as needed **and checked by an attorney to ensure compliance with consumer protection and other requirements of countries into which the goods are being sold online.**
- Spanish translation in process. 1700+ views via ICC website.
- Available on ICC website: <https://bit.ly/3x9tjnS>

What to pay attention to (*A FEW EXAMPLES*):

- **Offer to sell or Offer to buy?**
 - Bait advertising vs. Stock availability
 - Delivery time: disclosure/diligent delivery/mandatory delivery deadlines
 - Advertised price

What to pay attention to *(A FEW EXAMPLES):*

- **Proof of delivery**
 - For seller to document!
 - No delivery to post boxes or hotels Signature of person of age. ID check?
- **Differences between pictures and actual product**

What to pay attention to (*A FEW EXAMPLES*):

- **Mandatory provisions of law**
 - INFO disclosure - language – payments - form of contract – unfair/aggressive/misleading clauses/practices - right to a refund – delivery – jurisdiction – legal guaranty



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Thank you !