

Distance and Off Premises Contracts



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A Distance Contract

A contract concluded between a trader and a consumer with the exclusive use of one or more means of distance communication, such as mail order, internet, telephone, or fax.



An Off-Premises Contract

A contract concluded with the simultaneous physical presence of the trader and the consumer, in a place which is not the business premises of the trader, such as for example, at the consumer's home or workplace.



Information requirements for distance or off-premises contracts

Before concluding a distance or an off-premises contract consumers should be provided with the following information in at least one of the official languages of Malta:

- a clear description of the main characteristics of the goods or services;
- the identity of the trader, such as his trading name, and his contact details;
- the total price of the goods or services, including taxes and any additional charges;
- the cost of using the means of distance communication if the charge is more than the basic rate;

- the method of payment and by when the goods will be delivered. In case of services, when these will be performed;
- the duration of the contract, if the contract is of indeterminate duration, and the conditions for terminating the contract;
- the right of withdrawal if it is applicable to the sale being concluded;
- a reminder of the existence of a legal guarantee of conformity for goods;
- where applicable, the existence and the conditions of after sale customer assistance, after sales services and commercial guarantees.

In case of off-premises contracts all information related to the contract of sale must be provided to the consumer on paper or, if the consumer agrees, on another durable medium. The consumer must also be provided with a copy of the signed contract.



Off-premises contract payment

Traders cannot request any payment from consumers before the delivery of the goods, and where the goods are delivered in parts, the trader can only request the payment that represents the price of the part delivered.

If the trader requires the payment of a deposit, this deposit must not exceed 10% of the price of the goods ordered, and shall not be payable before fourteen (14) days from the date of the off-premises contract.



The right of withdrawal

Before concluding the distance or off-premises sale, consumers must be informed about their right of withdrawal, which amounts to fourteen (14) days. When exercising their cancellation rights, consumers do not have to give any reason and must not incur any costs, except the cost of returning the unwanted goods back to the seller.

In both distance and off-premises sales the cancellation period starts from the day the consumer acquires physical possession of the goods. In the case of service contracts, the withdrawal period expires after fourteen (14) days from the conclusion of the contract.

When the right of withdrawal does not apply, consumers must be informed accordingly.



Returning goods back to the trader

Consumers have to bear the cost of returning the goods. Consumers must be clearly informed about these costs, otherwise they must be paid by the trader.

Unwanted goods must be returned back to the seller within fourteen (14) days from the day consumers informed the trader that they wanted to cancel the sale.

With regards to off premises contracts, if the goods have been delivered to the home of the consumer when the contract of sale was concluded, the seller must collect back the goods at his own expense, if, by their nature, the goods cannot be returned by post.



When consumers are not informed about their right of withdrawal

The withdrawal period is extended to a year. Once information on the right of withdrawal is provided to the consumer, the cancellation period will expire fourteen (14) days after the day upon which the consumer receives that information.



Cancellation Procedure

Consumers should be provided with a withdrawal form which they can, but are not obliged to use if they wish to cancel the sale. This form should also be available electronically on the trader's website.

Consumers may also cancel a sale by making an unequivocal statement that they want to withdraw from the contract. The burden of proof of having withdrawn within the stipulated time-limit is on the consumer.



Refund

The trader is obliged to reimburse all payments received from the consumer not later than fourteen (14) days from the day the trader is informed of the consumer's decision to cancel the sale.

Unless the trader has offered to collect the goods himself, the trader may withhold the reimbursement until he has received the goods back, or until the consumer has supplied evidence of having sent back the goods.



Exceptions to the right of withdrawal

- in case of services when these have begun with the consumer's consent;
- for the supply of goods and services the price of which depends on fluctuations in the financial market;
- the supply of goods made to the consumer's specifications or clearly personalised;
- the supply of goods which are liable to deteriorate or expire rapidly;
- the supply of sealed goods which are not suitable for return due to health protection or hygiene reasons and were unsealed after delivery;
- the supply of newspapers, periodicals and magazines, with the exception of subscription contracts for the supply of such periodicals;
- contracts concluded at a public auction;
- the provision of accommodation other than for residential purpose, transport of goods, car rental services, catering or services related to leisure activities if the contract provides for a specific date or period of performance;
- the supply of digital content which is not supplied on a tangible medium if the performance has begun with the consumer's prior express consent and his acknowledgement that he thereby loses his right of withdrawal.

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