

HANDBOOK FOR ONLINE RETAILERS

Practical resources and sample texts

July 2013



TRUSTED SHOPS®
The trustmark with buyer protection

Practical resources and
sample texts for online retailers

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Preface

During the last decade, electronic commerce (e-commerce) has brought significant change to the methods of selling goods and services in the UK and several legislative provisions have been developed by the EU to ensure that Member States provide for a certain level of protection of consumer interests without interfering with the freedom to provide services.

Further, the development of ecommerce has extended the scope of selling goods and services to consumers to a global context – whilst, in the past, those contracts were mainly concluded as commercial contracts, the percentage of cross-border contracts concluded with consumers has significantly risen over the last years.

This handbook for online retailers has been drawn up to provide companies whose central method of selling goods and services is via a website and whose contracts with consumers are hence mainly concluded by electronic means, with an overview of the most important legal provisions which must be considered. The handbook shall provide a concise reference to those provisions and a guide to how you – as an operator of an online shop – may best deal with standard and specific situations rather than confronting you with a pure legal analysis of the E-Commerce Regulation, the DSR or any other legislative provision.

In addition to the explanation of the provisions, this handbook for online retailers provides specimen of standard clauses with regard to any legislative requirement and samples of clauses which might interfere with those requirements.

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Part 1: Learn all about Trusted Shops

The aim of this first section is to allow you to learn, in detail, about all of the services that Trusted Shops offers and the advantages of membership.

Trusted Shops' service centres around three products:

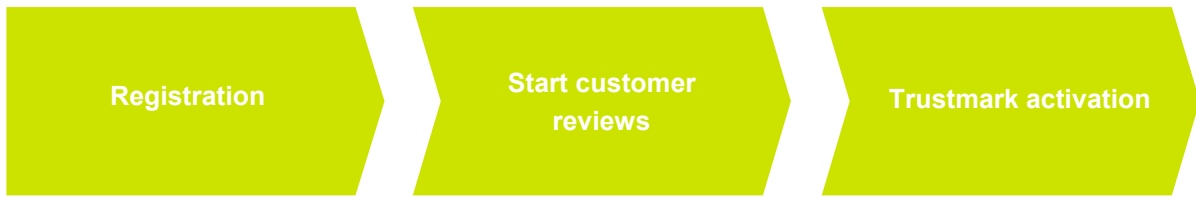
- The Trusted Shops **customer reviews**, which allows you to provide proof of your quality and good sense of customer service directly in your shop
- The certification and Trusted Shops trustmark, which allow you to visibly display the reliability and professionalism of your shop
- Trusted Shops **buyer protection**, which contributes to reducing the number of shopping baskets that are abandoned during the ordering process, thus increasing your turnover

In addition, as soon as you have obtained your trustmark, Trusted Shops offers you support with your marketing activities via different channels for communicating with the public.

Firmly established in European e-commerce markets, Trusted Shops is the perfect partner to assist you with your development on an international level.

Interested in a Trusted Shops membership? Already heard people talking about Trusted Shops and want more details? Then read on through the first section of this guide!

The Trusted Shops all-round security package!



You complete **our online order form** and confirm your entries on the last page.

If your order details are complete your application will be confirmed as quickly as possible by one of our team.

We will send you a code to be implemented on your website in order to be able to show our trustbadge. This trust element sticks to the bottom right corner of your website and indicates your trustworthiness.

You can then **immediately** start collecting **customer reviews**. In your Trusted Shops member account, you can **download instructions** on how to integrate your Trusted Shops customer reviews tool.

Once validated by Trusted Shops the trustmark automatically starts to appear on your trustbadge. Your customers can instantly view additional information on your trustworthiness.

How to make the trustworthiness of your shop visible to all

Buyer protection

Your customers can now start to use buyer protection. This buyer protection is **underwritten by our credit insurer**, which is why we check your creditworthiness to ascertain the level of **guarantee facility** we can offer you **for your buyer protection**. The guarantee facility is the maximum sum of Trusted Shops guarantees which may be claimed each month by your customers.

Expert audit

As soon as the level of guarantee facility for your online shop has been set, your Trusted Shops legal expert will begin the process of auditing your shop. He will create an **individual audit report** which will provide information on the degree to which your Internet presence complies with the Trusted Shops Code of Conduct. The **explanatory notes** in the audit report will make it easy for you to resolve those issues that are rated “no” in the audit report. If you happen to have any questions about the audit process, your Trusted Shops legal expert will be happy to help.

Performance monitoring

We will keep watching the performance on a continuous basis and let you know if irregularities occur.

Congratulations! Your shop is now accredited by Trusted Shops!

1 The Trusted Shops customer reviews

1.1 How the rating system work for the Trusted Shops customer reviews

The rating of online sellers is becoming increasingly important in today's e-commerce sector. Before making a purchase, consumers seek information on the reliability of the online seller. A large number of credible customer reviews increases the confidence that we have in the vendor and also helps to increase the conversion rate.

What your customers evaluate

The Trusted Shops rating system is both simple and secure. In a few clicks, buyers can rate the quality of the order and give their opinion on **delivery**, **goods** and **customer service**.

The overall customer reviews are calculated using these three criteria. The rating scale goes up to five stars. The customer also publishes a comment regarding his order.

Generating trust with credible ratings

The credibility of evaluations must, of course, be assured at all times. For this reason, in the Trusted Shops rating system, all customer ratings – both positive and negative – are published immediately and integrated into the overall rating that is displayed, without the seller being able to look at them beforehand. Neither the seller nor Trusted Shops can influence the customer. Ratings cannot be cancelled afterwards. Only comments representing a breach of law can be deleted.

Three types of comment are considered to be in violation of the law.

First, comments constituting a **statement of fact that is objectively incorrect**. For example, the customer claims that the seller never delivered the products even though the seller can prove otherwise, for example by presenting an acknowledgement of receipt.

An **insult** also constitutes content that is likely to be deleted.

Under these two hypothetical situations, the contentious comment will be deleted. However, the attributed stars will not be deleted and will continue to count towards the rating. Regardless of the comment, they constitute a valid viewpoint and cannot be deleted.

Finally, **fake ratings** will be completely deleted (stars and comments). These are ratings that have nothing to do with a real order, for example those left by a competitor to damage the seller's reputation.

In this way, the overall rating displayed on the seller's rating profile will be a trustworthy reflection of the customers' point of view.

Reacting to negative ratings

No seller likes to see negative ratings. Naturally, it can sometimes happen that online retailers feel that they are victims of unfair treatment following a negative rating and want to modify or delete the corresponding evaluation.

The Trusted Shops rating system has been designed in such a way that the online retailer can always consult and comment on all ratings received within their Trusted Shops user account.



Trusted Shops recommends that online retailers react to negative ratings from customers by using the “reply” function within the system. The simple act of presenting explanations to the dissatisfied customer may, in certain cases, suffice to publically demonstrate your professionalism and desire to satisfy your customers.

In addition, the online retailer is able to flag up illegal content (fake ratings, incorrect statement of fact or insult) at all times. In this case, you will need to prove that the rating constitutes illegal content.

The comment will be deleted if it is established that it is a case of comments representing a breach of law. The whole rating (stars and comment) will be deleted if the online retailer can prove beyond all doubt that it is a fake rating.

1.2 Inviting the customer to provide a rating

Online retailers often wonder how they can get the maximum possible number of ratings. The Trusted Shops rating system is very well designed to this effect. The invitation to rate the seller can be integrated **in the form of an HTML link** to the desired location when following up the order (for example in a post-delivery e-mail). In this way, it is guaranteed that the rating obtained is linked to a real transaction.

Below are some pieces of advice as to how to considerably increase your number of customer ratings:

- On the **order confirmation page**, you can attract the buyer’s attention for the first time to the possibility of evaluating your online shop. Think about creative presentation, for example in the form of a specific logo or clear links.
- Use the **confirmation e-mail** to remind customers of the possibility of evaluating your online shop, as long as the customer has provided his consent to receiving advertising material by e-mail. In addition, you can integrate a link into the customer’s account space, informing them of the possibility of evaluating your site.
- A few days after sending the goods, a **follow-up e-mail** may give the final impetus to provide a rating, as long as the customer has provided his consent to receiving advertising material by e-mail. The transaction is then complete and the customer feels able to evaluate the relevant areas.

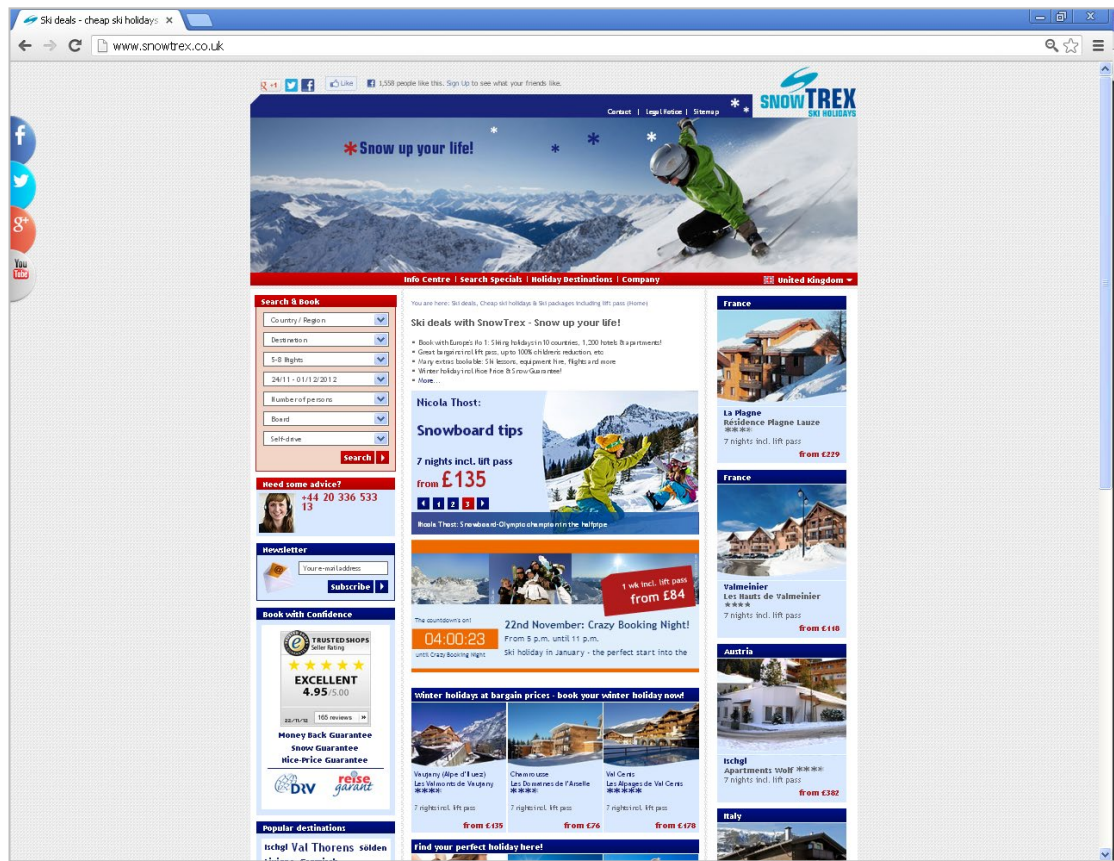


Example of a follow-up e-mail

Hello,
Thank you for ordering from www.example-shop.co.uk.
We hope that you are satisfied with your purchase and that everything went as you would have hoped.
So that we can continue to provide our customers with the best possible service, we would like to offer you the option of sharing your experience with other customers.
Continue by clicking on the button marked “rate now!” – it will only take a minute!
Many thanks for your rating.
Kind regards,
Your www.example-shop.co.uk team

Good after-sales service and personalised contact with the customer motivates even more customers to provide – in the best-case scenario – a positive rating. When communicating in written form, ensure that you always address your customers in an individual, friendly manner.

1.3 Integrating the customer reviews widget



Integrating the customer reviews widget into your online shop is very easy. Straight after registering, you will receive an integration manual containing an HTML code, which you simply need to place wherever you would like it to be in your online shop.

The Trusted Shops customer reviews widget, like the Trusted Shops trustmark itself, should always be integrated in an easily visible way wherever possible. This will ensure optimal effectiveness.

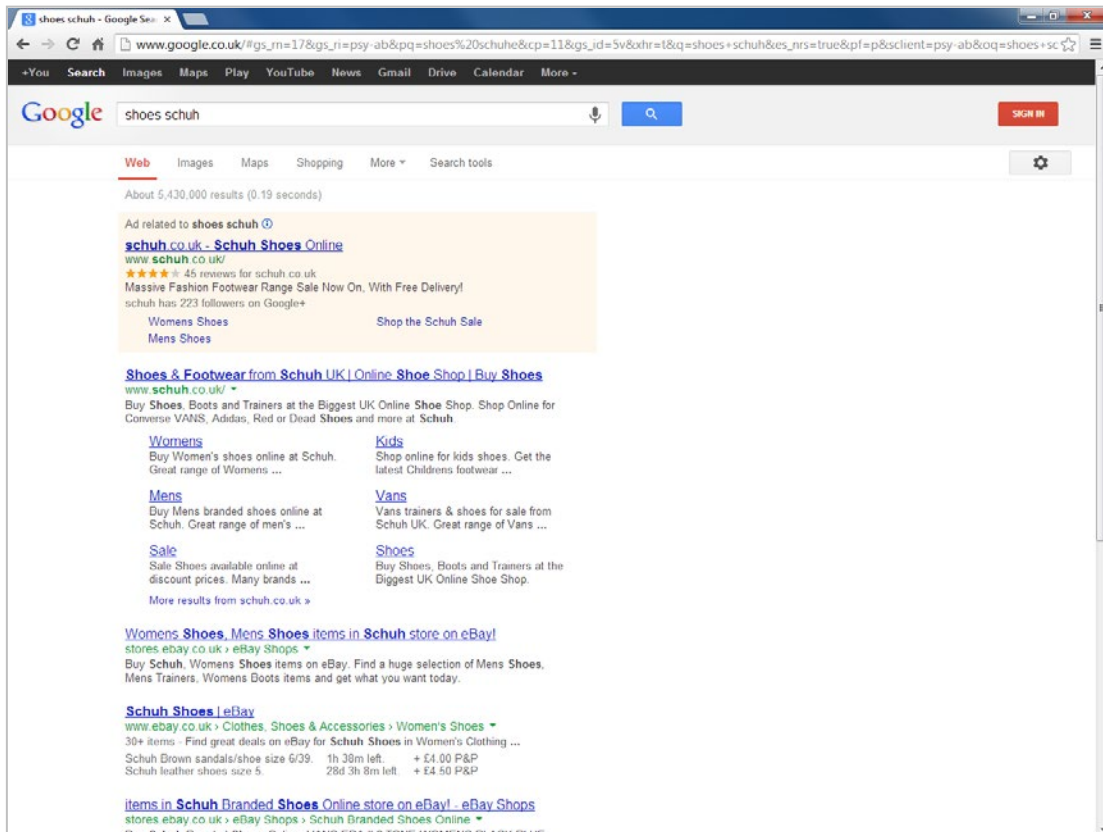
For the best possible configuration, we recommend that these elements feature on all of the site's destination pages (homepage, category page, product page or other special destination pages), and of course at all stages of the ordering process.

Customer reviews placed directly in your online shop quickly indicate your credibility and professionalism. In doing this, you will reduce the rate of abandonment during the purchasing process and increase your turnover.

1.4 Google integration (available as an additional option)

Google integrates Trusted Shops ratings both into Google Shopping search and directly into Google Adwords ads in the form of stars and a link to a page where the ratings can be viewed.

Automatic transmission to Google



In order to transmit ratings to Google, Trusted Shops has developed an interface that automatically sends the ratings to Google every day. The availability of the “Google Integration” feature as an additional option to a prior booked Trusted Shops certificate for your online shop depends on the main target market of the given online shop. In order to also display your Trusted Shops ratings in Google Adwords and Google Shopping, you must have collected at least 30 ratings and your rating must reach at least 4.0. The transmission to Google will be carried out automatically and as appropriate by the Trusted Shops interface.

Reduced costs for Adwords thanks to an increased click-through rate (CTR)

For online retailers, this is a very distinct competitive advantage. The Trusted Shops ratings not only allow you to increase the conversion rate inside your shop but also to prompt more Internet surfers to click on the link leading to your site in Google search results.

For you this means:

- More visitors from sources with high conversion rates, i.e. Google Shopping and Google Adwords!
- Improved click-through rates (CTR) allowing Google Adwords ads bearing stars to automatically reach a higher quality level. In turn, this improved quality level improves the position of the ad and reduces the cost of clicks.

2 The Trusted Shops trustmark and the audit

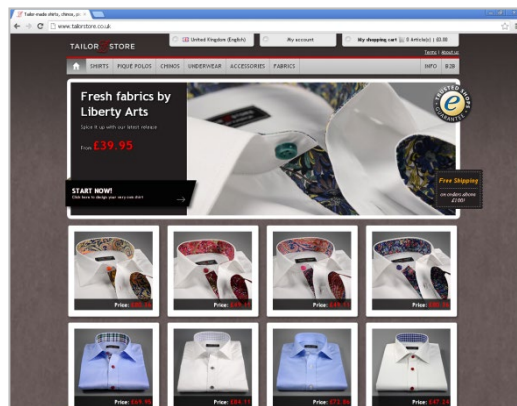
2.1 Trustmark integration

Integrating Trusted Shops products

Trusted Shops trustmark

The Trusted Shops trustmark must be displayed on the **homepage** of your site. We recommend that you place it within the direct field of vision of visitors to your shop (header). By placing the trustmark on all of the pages of your shop, you are increasing your chances of conveying the following message to your visitors: "You can make your purchases here in complete confidence!"

The trustmark must be **linked to your shop's Trusted Shops certificate**. When a visitor to your site clicks on the trustmark, he should be taken directly to information relating to your certification. The certificate specifically indicates the status of your trustmark as well as its period of validity.



Trusted Shops trustbadge

With the trustbadge we provide you with an easy-to-integrate solution of our trust services for your webshop.

The trustbadge sticks to the bottom right corner of your shop and gives instant information about your reliability and trustworthiness with a mouse over effect.

The integration is done within 2 steps and only 3 minutes!

- 1) Copy the code and replace the placeholder **TS-ID** with your specific Trusted Shops ID:

```
<script type="text/javascript">
  (function () {
    var _tsid = 'TS-ID';
    _tsConfig = {
      'yOffset': '0', //offset from page bottom
    };
    var _ts = document.createElement('script');
    _ts.type = 'text/javascript';
    _ts.async = true;
    _ts.src = '//widgets.trustedshops.com/js/' + _tsid + '.js';
    var __ts = document.getElementsByTagName('script')[0];
    __ts.parentNode.insertBefore(_ts, __ts);
  })();
</script>
<noscript><a href="https://www.trustedshops.de/shop/certificate.php?shop_id= TS-ID"
"></a></noscript>
```

2) Insert the code to your HTML, we recommend to do this immediately before the page's closing body tag.

For further information please see our integration manual

(<http://trustedshops.srv2.de/qu/1/RRQ3HQQ-RRQ3HQB-ROE4A6Z-10NMPFU.pdf>).



Congratulations! You can now be even more sure of your customers' attention!

Check out more on how to integrate the trustbadge with a few lines of code in our integration center:

www.trustedshops.co.uk/merchants/integration/trustmark.html



Best Practice

The presence of the trustmark on the homepage, the trustbadge and the link to the certificate are the minimum requirements of Trusted Shops in terms of integration. However, we recommend that you use the trustmark, which is a marketing tool demonstrating professionalism and the quality of your site, in the place where the customer is most in need of reassurance, i.e. **during the order process or on product pages, near the shopping basket.**

Warning: It must always be possible to click on the trustmark and be taken to the certificate for your shop.

Trusted Shops buyer protection

The Integration Manual provided by your examiner will guide you, using clear and detailed explanations, throughout the entire process of integrating Trusted Shops buyer protection into your shop.

It is always possible for consumers to access buyer protection via your certificate page or via the trustcard that is visible in your shop.

2.2 The Trusted Shops Code of Conduct

For English-language online shops, whose target customers live in the United Kingdom, we check compliance with our UK Code of Conduct.

Our Code of Conduct is developed with care

Our criteria are based on UK and European legislation that are important for making purchases on the Internet. Effectively, we want to ensure a certain standard in terms of clarity, transparency and consumer protection. Compliance with our criteria positively differentiates you from your competitors.

The criteria refer to specific areas

We have developed the Trusted Shops audit report on the basis of the Code of Conduct. The audit report is organised according to different topics that undergo audit. The audited topics contain elements from the following areas:

- Transparency
- Privacy and Security
- Product and Prices
- Ordering process
- Delivery
- Return Policy and Refunds
- Customer Service and Feedback

Important

We only check that your online shop meets the Trusted Shops Code of Conduct. We are not authorised to provide legal advice services.

The Code of Conduct is always up to date

Our criteria are updated regularly. The adaptations result from the latest developments in legislation. Consequently, the new aspects are integrated into our audit report.

Access our Code of Conduct!

You can quickly and simply download our Code of Conduct in PDF form from our website:

<http://www.trustedshops.co.uk/merchants/integration/downloadcenter.html>

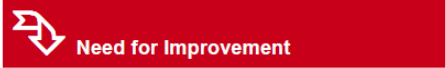
2.3 Working with the audit report

Accessing the audit report

As soon as your audit report has been compiled by our legal experts, you are given access to it within the Trusted Shops system and are informed of this by e-mail. From then on, you can access your audit report at any time by logging into the Trusted Shops system using the login details that you were given when you registered.

The structure of the audit report

Each point investigated within the audit report is structured in two columns:

9.2	no	
<p>Is the customer provided with adequate, effective and accessible technical facilities with which they can identify and correct entry mistakes before placing the order and are the correction options in the ordering process clearly and comprehensibly explained?</p>	 <p>Need for Improvement</p>	

Question

The left-hand column contains the question being investigated. The questions are based on our Code of Conduct.

Answer

If the answer is “yes”, the point is marked in green. This means that your site complies with the relevant criterion.

If the criterion relating to the audited point has not yet been fulfilled, the point is marked in red. As shown in the screenshot above, the answer will be “no”.

The other column contains suggested steps and indications of the corresponding locations in the shop (“Reference”). The suggested steps allow you to see what changes must be made for a positive answer to the investigated question. You will also find an indication and explanation of possible contradictions between different texts in your online shop. Your benefit? You can then inform your clients in a standardised and transparent manner. The location indications (“Reference”) help you to quickly and easily find the errors in your shop.

2.4 Support during audit

Getting help when working on the points to be improved

The name of your personal contact (“Examiner”) for the audit is indicated on the first page of the audit report.

You can contact this person via our online system or e-mail with any question you may have regarding the audit report.

URL:	www.shop.co.uk
Online-Shop:	Shop LLP
Range of product:	dispatch of goods B2C
Contact person:	M. John Trader 01 23 45 67 89 contact@shop.co.uk
Customer number:	00001
Cause of audit:	first examination
Date of examination:	05/11/2012
Examiner:	Glynnis Makoundou (nar) glynnis.makoundou@trustedshops.de +49 (0)2 21-7 75 36-7506

Make yourself heard via the Trusted Shops system!

With a view to quickly processing your requests, we recommend that you express these in writing via the Trusted Shops system.

Audit & legal support (by phone, available as an additional option)

In addition to the generally included support via e-mail, an expert in e-commerce law is on hand to answer questions about Code of Conduct, audit and guarantee conditions over the telephone.

2.5 The advantages of partner shop software

If you want to optimise and legally secure your online shop or obtain the Trusted Shops audit, it is often necessary to make numerous manual – sometimes technical – adaptations in terms of software, presentation and texts.

Trusted Shops works in close collaboration with online shop software solutions and has implemented partnership programmes allowing these solutions to respond by default to a large number of the legal requirements that an online retailer must meet during a Trusted Shops audit. This means that you can quickly and easily prepare your online shop for the Trusted Shops audit by simply using a software that has already been optimised from a legal point of view.

The partnership between Trusted Shops and the software solutions also allows you to integrate the trustmark and Trusted Shops buyer protection into your online shop more easily. You can also make use of the partnership to integrate the Trusted Shops customer reviews system. The interface with Google Products is automatically activated as soon as the system is used, provided that you subscribed to the additional option Google integration. There is no time-consuming programming needed. In general, it is enough to carry out the necessary configurations on the interface of your administration window and to integrate the Trusted Shops ID into the field designed for this purpose.

To sum up, if you use one of the Trusted Shops partner software, you will optimise your site from a legal point of view. If you take out Trusted Shops membership, you will save time and money whilst reducing the workload in technical terms.

Numerous well-known online shop software solutions are already partners of Trusted Shops. For example these include OXID, Shopware, ePages, Prestashop and Plentymarkets. On request, we can provide you with an exhaustive and up-to-date list of all of our partner online shop software solutions.

Integration of Trusted Shops in ePages

Integration of Trusted Shops in Prestashop

3 Trusted Shops buyer protection

As soon as the Trusted Shops trustmark has been activated, you can start to reap the benefits of all of the services offered through your Trusted Shops membership. In particular, you can offer your customers Trusted Shops buyer protection.

Three exclusive advantages

More security

Trusted Shops buyer protection is a refund guarantee for your customers and is part of your Trusted Shops membership. Offer your customers this additional security when they are making a purchase and witness a drop in the order abandonment rate and consequently an increase in your turnover! Thanks to buyer protection, methods of advance payment, which are of a risky nature, become a more secure alternative for the customer. The average shopping basket volume increases as the customer no longer hesitates to pay larger sums in advance: They are protected by the refund guarantee.

A higher conversion rate

With Trusted Shops buyer protection, your customer is insured against any financial losses in the event of failure to deliver or failure to refund following return of the goods. In the case of doubt, this additional security will help prompt the client to opt for your shop rather than another online shop that is unable to offer them this service. Any visitor to your online shop needs to know that they can trust you before making a purchase and becoming one of your customers. Even well-known, respected online shops do not rely solely on their reputation. They also provide their customers with Trusted Shops buyer protection.

More services

We help you in the event of disagreements between you and your customers. Thanks to the services offered by the Trusted Shops team, you will expand and optimise your own customer service.

Even if your customer is not subscribed to Trusted Shops buyer protection, the Trusted Shops customer service team will always be on hand to act as a mediator between you and your client.

Trusted Shops buyer protection: It's as simple as that!

Offering the guarantee in your online shop

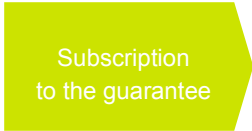
Trusted Shops members offer the buyer protection to their customers. The customer has the option of selecting this service on the confirmation page after placing the order. In this way your customer can select the Trusted Shops guarantee without interrupting the purchasing procedure. They then get an e-mail with a guarantee number corresponding to their purchase, accompanied by an invitation to activate their new guarantee account within the Trusted Shops system and create a personal password.

Managing guarantees

You and your customers can manage guarantees online through the Trusted Shops system. E-mails that are generated automatically keep you up to date with guarantees that have been subscribed to within your shop, inform you of customer comments and indicate whether the guarantee needs to be handled by you.

Practical example: handling a Trusted Shops guarantee

Marion has just found her dream pair of shoes in an online shop. She places her order immediately, makes an advance payment and, to be on the safe side, subscribes to the Trusted Shops guarantee, which protects her for 30 days in the event of failure to deliver or failure to refund following return of the goods.



The shoes are manufactured in Italy, which explains why the delivery takes a little longer than usual.

The guarantee period is reaching its end and Marion still has not received her shoes. In order to ensure that she will still be covered, she extends her Trusted Shops guarantee for 30 more days.

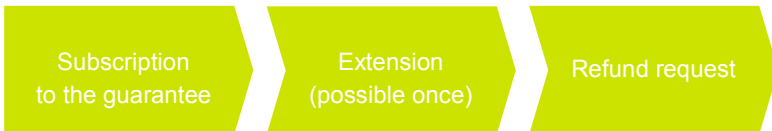


The vendor receives an e-mail asking him to confirm the status of the corresponding order. He can do this by simply selecting the corresponding menu element within the Trusted Shops system. In our example, the vendor selects: "We are going to deliver the missing goods."

Marion is automatically informed by e-mail.

Due to high demand, the Italian manufacturer is unfortunately unable to deliver. Marion is disappointed. She cancels her order and now wishes to call on her Trusted Shops guarantee.

At the end of the guarantee period, she requests a refund from Trusted Shops.



Marion has to provide Trusted Shops with proof of the initial payment made by presenting documentation showing the corresponding payment. Trusted Shops checks the validity of the documentation and confirms Marion's request within the Trusted Shops system. The vendor is informed of the refund request by e-mail. Trusted Shops will take charge of the communication between Marion and the vendor, take care of the file as quickly as possible and ensure that Marion gets her money back.



4 Additional option marketing/SEO

If you want to get your products and services known on the Internet and acquire even more customers, your online shop needs a good marketing concept. With the marketing/SEO package from Trusted Shops you will benefit more from the confidence-building effects of your trustmark or customer reviews.

Your benefits at a glance

Optimise your search engine ranking through a freely selectable “Trustlink” from your shop profile on the Trusted Shops site directly to your shop! “Trustlinks” are useful both for better and faster indexing of a website and for improved placement in the results list.

More clicks from rich snippets!

The use of vastly expanded search results snippets will allow you to display the important features of your product range directly in organic Google search results. Our star ratings will make stars out of your products.

Boost your ranking in all search engines!

Our API provides you with the last 25 comments from the Trusted Shops customer reviews. Once you’ve integrated it into your shop, you will receive up-to-date user-generated content!

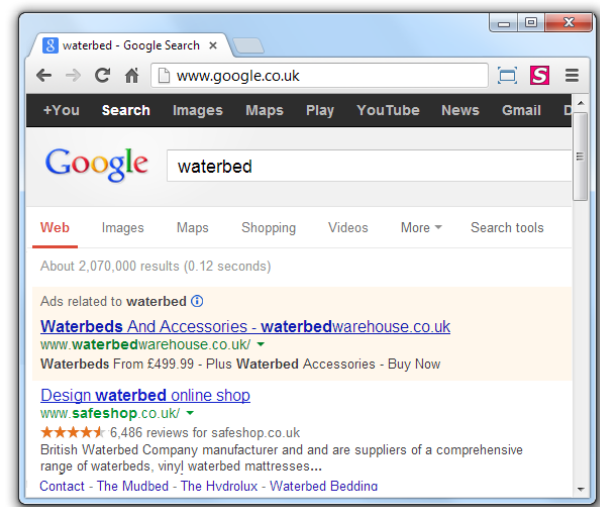
Increase awareness of your online shop with an interview!

In this way, your shop will be placed with an editorial contribution including your logo, a description and link. And the special thing about it is this: with every interview you will get a permanent backlink from our website to your shop!

Even more prominent in the “shop search”!

As a premium shop, you will be presented even more strikingly to the many visitors to our website with your logo and a detailed shop profile.

The marketing/SEO package from Trusted Shops is at your disposal as a valuable support in your day-to-day dealings as an online retailer.



5 Trusted Shops: the development partner for your online shop in Europe

5.1 Law applicable to e-commerce in Europe

Contract and consumer law

What legislation applies if you actively operate your commercial activity on the markets of other European Union countries? For example, your online shop may be considered active in a country if the consumer can select that country for delivery during the ordering process. In principle, it is the legislation of the country in which the consumer resides that applies.

You can circumvent this principle by inserting a clause in your T&Cs stating what law you would like to have applied. You can choose the law of the country in which your headquarters is located. Such a clause will be valid even if it infringes upon the legal principle in force. However, this choice must not lead to the buyer losing a certain level of protection of consumer rights that they would have been able to benefit from in their own country.

For example, a clause stipulating the applicability of English law would be valid within the framework of a contract concluded between an English online retailer and a German buyer. However, the buyer would reserve a right to cancel of 14 days as consumers are, in terms of this point, better protected in Germany than in the UK.

In addition, violations of any national legislation on the protection of consumers may be followed up in the company's country of origin. Each Member State of the European Union has a competent body to identify violations of legislation on the protection of consumers committed in other Member States by companies in the European Union. These offences are then followed up and dealt with according to the legal provisions of the corresponding country.

Competition law

The principle of the location in which the effects of the advertising are produced prevails in competition law. This means that national competition law applies in the countries in which the vendor's commercial activity takes place.

For example, an online retailer that is based in Germany but that also delivers its products to the UK must adhere to UK competition law in its transactions.

Competition law is harmonised at European level and national regulations do not differ greatly from those of the other Member States.

A violation of competition law in one European Union Member State in which you are active may generally be punished by virtue of the provisions in place in the corresponding target market.

Privacy law

The principle of the country of origin applies for laws on data protection. This means that a company based in a Member State of the European Union must always comply with the legal provisions in place in their country of origin. The advantage for the retailer: He doesn't have to think about the difficult question of data privacy laws in each of the countries if it merely delivers to foreign countries from an establishment situated in his country of origin. However, the situation changes as soon as he decides to undertake his activity from a stable establishment located within the territory of another European Union Member State (branch, office, company under foreign law).

Companies that violate the provisions for data protection may be prosecuted and punished by the relevant authorities in their country of origin by virtue of the national provisions in place.

5.2 Additional Trusted Shops certificates

Laws aside, it is important to note that selling in a country other than your own also means getting to know a different mentality, whether it be at the level of consumer behaviour (for example, in terms of returning products) or at the level of the appropriate partner solutions to be integrated (for example, payment methods, transport services, etc.). The online retailer is faced with a new environment: The established brand and even marketing investments and SEO built up in the country of origin have to be reconstructed. Studies have shown that upon launch of a site in a new country, the conversion rate of this new site may drop by half compared with the country of origin.

The Trusted Shops audit for additional foreign sites is a relatively easy step to take as the link with Trusted Shops has already been established. Alongside the audit and the Trusted Shops trustmark, all of the Trusted Shops products and services are available in different languages and countries. Technical interfaces for buyer protection and the Trusted Shops customer reviews are available in different languages (English, French, German, Polish, Italian, Dutch and Spanish). This is also the case for the Trusted Shops user service, where the employees, who are bilingual as a minimum requirement, ensure communication between the sellers and their buyers in the case of litigation.

The economic model proposed by Trusted Shops is highly beneficial for you as you can book additional certificates at a favourable price.

Trusted Shops – your partner in Europe



France



Online buyers

Total (2012):	28.3 m
Growth (2011-2012):	7.7%
Share of total population (2012)*:	57.0%

B2C online sales

Total (2012):	47.2 bn €
Growth (2011-2012):	22.0%
Share of retail market (2012):	9%

Selection of certified shops:



Germany



Online buyers

Total (2012):	43.3 m
Growth (2011-2012):	1.8%
Share of total population (2012)*:	65.0%

B2C online sales

Total (2012):	50.9 bn €
Growth (2011-2012):	12.9%
Share of retail market (2012):	10.0%

Selection of certified shops:



United Kingdom



Online buyers

Total (2012):	35.7 m
Growth (2011-2012):	3.5%
Share of total population (2012)*:	73.0%

B2C online sales

Total (2012):	67.7 bn €
Growth (2011-2012):	14.0%
Share of retail market (2012):	13.0%

Selection of certified shops:



Spain



Online buyers

Total (2012):	11.4 m
Growth (2011-2012):	14.5%
Share of total population (2012)*:	31.0%

B2C online sales

Total (2012):	10.9 bn €
Growth (2011-2012):	16.0%
Share of retail market (2012):	4.0%

Selection of certified shops:



Austria



Online buyers

Total (2012):	3.3 m
Growth (2011-2012):	9.9%
Share of total population (2012)*:	48.0%

B2C online sales

Total (2011):	3.7 bn €
Growth (2010-2011):	19.4%
Share of retail market (2011):	no data

Selection of certified shops:



Switzerland



Online buyers

Total (2011):	3.0 m
Growth (2010-2011):	1.0%
Share of total population (2011)*:	47.0%

B2C online sales

Total (2012):	6.3 bn €
Growth (2011-2012):	16.0%
Share of retail market (2012):	10.0%

Selection of certified shops:



Poland



Online buyers

Total (2012):	9.4 m
Growth (2011-2012):	1.1%
Share of total population (2012)*:	30.0%

B2C online sales

Total (2012):	5.6 bn €
Growth (2011-2012):	24%
Share of retail market (2012):	4%

Selection of certified shops:



Part 2: Legal explanations and practical resources

The second part in this handbook for online retailers aims to provide you with practical assistance to quickly and easily ensure your online shop conforms to the Trusted Shops Code of Conduct.

You will find an **explanation on the legal issues** relating to the audited points. This explanation contains Trusted Shops recommendations marked in pink and industry good practices entitled “Best Practice”.

Warning

This publication focuses on the major points to help you meet the Trusted Shops Code of Conduct. It does **not claim to supply exhaustive information** on all of the laws and regulations that you must observe when operating an online shop.

The use of this publication to **ensure your site complies with the Trusted Shops Code of Conduct** does not under any circumstances replace the consultation and assistance of a specialist advisor for legal matters relating to your online shop.

Use of the Trusted Shops handbook for online retailers during the audit preparations

1/ Implementation of necessary modifications and additions to the site

- Use the **Explanation** to help you understand what you need to change.

Example: Supplier Identification

Explanation

In order to enable the supplier to be identified, supplier information is required, which is easy to find, directly accessible and permanently available. The criterion regarding permanent availability can be fulfilled by including a link on every page in the shop or adding the information into your terms and conditions.

- You can draw inspiration from our **suggestions or Best Practices** when making your choice.

Example: when deciding where to position the link to the privacy policy.

Best Practice

A link can be placed in a footer in the online shop to fulfil the requirements. This makes it easy for consumers to find.

- If a piece of information needs to be corrected on the site, please implement the modification everywhere on your site where the information is provided to **prevent contradictions from occurring**.

Example: Information on delivery charges can be found in the T&Cs, on a special page and in the order process. If you alter the delivery charges, you should remember to make this modification on all of the pages concerned.

- If necessary, alter the **technical aspects** of your site.

Example: Re-configure the automatic calculation of delivery charges in the order process if the amount charged does not correspond to that shown on the site.

- Use the **Sample texts**, especially if a text necessary for the success of the audit is completely absent from your site.

Example: You still have no data protection policy for personal data.

2/ Your site is ready for an audit to be carried out by a Trusted Shops expert!

Please inform your contact person in the audit team using the Trusted Shops system. You will receive your personalised audit report shortly afterwards. Thanks to your good preparations, there are sure to only be a very small number of points that need changing.

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I. Supplier identification

To encourage trust in your website it is important that the customer knows who you are. There are legal requirements to provide certain information to users of your website. These include:

- the Consumer Protection (Distance Selling) Regulations 2000 (**Distance Selling Regulations**), which apply to the sale of goods or services under a "distance contract". This is a contract where the retailer makes exclusive use of one or more means of distance communication up to and including the moment at which the contract is concluded. This includes contracts made via email or via a website;
- the Electronic Commerce (EC Directive) Regulations 2002 (**E-Commerce Regulations**), which apply to anyone providing an "information society service". This includes websites used to conclude online contracts with consumers. Virtually every commercial website will be covered by the E-Commerce Regulations;
- the Companies (Trading Disclosures) Regulations 2008, which sets out specific information requirements for companies; and
- the Provision of Services Regulations 2009, which apply to retailers who provide services; and
- the Consumer Protection from Unfair Trading Regulations 2008, which contains various protections for consumers, including ensuring that retailers provide sufficient information about themselves.

1 Core supplier identification requirements

Under regulation 6(1) of the E-Commerce Regulations, **all providers of online services** must make certain key information available to the users of their service in a manner which is easily, directly and permanently accessible.

There are additional requirements for **companies** to provide information about themselves under the Companies (Trading Disclosures) Regulations 2008 regulations 6(2), 7(2) and 7(3).

Taking these together, online shops need to provide the following information (supplier identification) in a clearly visible and easily, directly and permanently accessible manner – ideally, on a separate “supplier identification” page or in the terms and conditions:

- **The identity (legal name) of the service provider**
Often the website’s name is not the legal name of the service provider, so any differences should be explained – e.g. “XYZ.co.uk is the trading name of XYZ Ltd”.
Sole traders need to provide their full name; companies need to provide their registered name.
- **The geographical address at which the service provider is established**
Companies need to state the address of their registered office, the part of the UK in which the company is registered and the company’s registered number:
e.g. "XYZ Limited is a company registered in England and Wales whose registered office is at [insert address] and whose company number is 1234567".
A PO box is not sufficient to fulfil this requirement.

I. Supplier identification

- **The contact details of the service provider, including the service provider's email address**, which makes it possible to contact the service provider rapidly and communicate with them in a direct and effective manner.

Offering merely a “contact us” form is not sufficient:

The Trusted Shops criteria require at least an e-mail address but we suggest that a telephone number is also provided for customer queries.

- If the service provider is registered in a trade or similar register available to the public, **details of the register in which the service provider is entered and the registration number** (or equivalent means of registration) in that register.
- Where the provision of the service is subject to an authorisation scheme, **details of the relevant supervisory authority**.
- If the service provider undertakes an activity that is subject to value added tax, its **VAT registration number**.
- **If the website refers to prices, these must be clear and indicate whether they include tax and delivery costs:**

When dealing with consumers, prices must always include VAT and usually a clause like “all prices include VAT and exclude shipping costs (which will be notified to you separately before you submit your order)” is included in the terms and conditions. (see section IV)

2 Additional supplier identification requirements

Under regulation 7(1)(a)(vii) of the Distance Selling Regulations, before a contract is concluded the customer must be given notice if the cost of communicating over a distance, such as by phone or other electronic means, exceeds the usual basic rates.

The Companies (Trading Disclosures) Regulations 2008 require some further details to be provided relating to limited companies and investment companies. For further information, go to dshub.tradingstandards.gov.uk.

Under the Insolvency Act 1986, a company that is being wound up must include a statement on all of its websites that it is being wound up.

If the service provider is a member of a regulated profession (such as a solicitor or a doctor), regulation 6(1) of the E-Commerce Regulations requires him or her to also provide:

- the details of any professional body or similar institution with which s/he is registered;
- the service provider's professional title and the member state where that title has been awarded / granted; and
- a reference (ideally through a hyperlink) to the professional rules applicable to the service provider in the member state where s/he is established. Where no hyperlink can be provided, the service provider must explain how such professional rules can be accessed.

The Provision of Services Regulations 2009 require retailers who provide services to make certain information available to customers in a clear and unambiguous way and in good time before the contract is concluded. In many cases these overlap with the requirements under the Distance Selling Regulations and the E-Commerce Regulations.

The Consumer Protection from Unfair Trading Regulations 2008 contains further specific rules regarding supplier identification. Retailers must provide information about the identity of the retailer and their geographical address.

More information about all these additional supplier identification requirements can be found at <http://dshub.tradingstandards.gov.uk>.

The sample Supplier Identification can be included at the beginning of your terms and conditions or as a separate “supplier identification”, “About us” or “Legal information” page.

M1 Supplier identification for companies

XYZ.co.uk is a site operated by [company name with legal status e.g. XYZ Ltd].

We are registered in [name place of registration, e.g. England and Wales, Scotland or Northern Ireland] under company number [your registration number] and with our registered office at [company address: street, postcode, location].

Our main trading address is [trading address].

[phone number and/or email address]

Our VAT number is [VAT number].

If applicable: We are regulated by [Name the relevant regulator].
[add other requirements applying to particular professions]

M2 Supplier identification for sole traders

XYZ.co.uk is a site operated by [your full name].

[geographical address]

[phone number and/or email address]

Our VAT number is [VAT number].

If applicable: We are regulated by [Name the relevant regulator].
[add other requirements applying to particular professions]

II. Privacy policy and cookies

How organisations use the personal information they collect about individuals has become an increasingly important topic for consumers and businesses alike. Data protection rules set out how this information must be collected, stored, managed and used.

The key pieces of data protection and privacy legislation are:

- the Data Protection Act 1998 (**DPA**); and
- the Privacy and Electronic Communications (EC Directive) Regulations 2003 (as amended) (**PECR**).

These obligations generally apply to all uses of personal information, regardless of whether they are carried out online or offline.

1 Information Commissioner's Office

The Information Commissioner's Office (**ICO**) is the independent regulator responsible for data protection in the UK.

There are a number of tools available to the ICO for taking action to change the behaviour of organisations and individuals that collect, use and keep personal information. They include criminal prosecution, non-criminal enforcement and audit, as well as awareness-raising and the production of useful guidance. The ICO also has the power to serve monetary penalty notices on data controllers for serious breaches of the DPA and the PECR.

The ICO's website provides a range of useful information for businesses. For further information go to www.ico.gov.uk.

2 Notification with the ICO

If you handle personal information, you may need to notify the ICO of your position as a data controller. Notification is a statutory requirement and every organisation that processes personal information about individuals (i.e. the data controllers) must notify the ICO of the types of personal data it will process and the purpose for which it will be processing personal data, unless they are exempt. Failure to notify is a criminal offence.

Notification must take place annually. The details of the notification will then appear on a publicly accessible register. For most businesses the cost is £35, although there is a higher rate of £500 for larger organisations. Further information can be found at www.ico.gov.uk or www.ico.gov.uk/what_we_cover/data_protection/notification.aspx.

The ICO provides a self-assessment tool to determine whether you will need to notify. Information can be found at http://www.ico.gov.uk/for_organisations/data_protection/notification/need_to_notify.aspx.

3 Non-compliance

Non-compliance with certain data protection laws can be a criminal offence and in some instances the directors or other officers of a company may be personally liable. Court fines can be imposed and the ICO has the power to impose monetary penalties of up to £500,000 for serious breaches of the DPA or the PECR.

4 Some common data protection terms

4.1 Personal data

The DPA applies to the processing of information from which it is possible to identify a living individual (this is known as "personal data"). For example, personal data may contain a person's name or email address or the identification may be less direct, such as where some other form of unique reference or identifier is used from which they can be recognised.

4.2 Processing of data

The legal definition of 'processing' is very broad and covers just about any use of personal data (including simply holding it). Because of this, website operators are likely to be processing personal data and therefore affected by data protection laws.

4.3 Data controller

Under the DPA, "data controllers" are the entities (companies, firms, sole traders etc.) which, either independently or jointly with others, decide how personal data will be used and what they are to be used for. As an e-commerce business you will usually be classed as a data controller.

4.4 Data processor

"Data processors" are entities that process personal data on behalf of data controllers. For example, if a business uses a supplier to host its servers or to hold its marketing data, it is likely that the business will be the data controller and the supplier will be the data processor.

The DPA only places obligations on data controllers, not on processors. However, if a data controller uses the services of a data processor, the DPA requires that the data controller must have a written agreement in place with the data processor in which the data processor is obliged to:

- do only what the data controller instructs it to do with the personal data; and
- maintain appropriate security measures in place with respect to the personal data.

The data controller is required to select a data processor that provides sufficient guarantees about its security measures.

5 Privacy Policy

One of the obligations on data controllers is to explain to individuals what information about them is collected and how it will be used. To meet this obligation, a clearly worded privacy policy should be included on any website from which personal data is collected either directly (e.g. through clear requests for information from a user, for example requesting an email address) or indirectly (e.g. through the use of tracking technologies such as cookies). Links to the privacy policy should be prominently displayed on all web pages but at least on web pages which are used to collect personal information.



Best Practice

As best practice you should provide a link to your privacy policy in the footer of all pages on your website or include a privacy section in your terms and conditions that is also available via a link in the footer of all pages on your website.

5.1 Content of the Privacy Policy

The DPA requires that personal data must be processed fairly. Personal data will not be treated as processed fairly unless the data controller ensures, so far as is practicable, that the individual is provided with or has made readily available:

- the identity of the data controller;
- the purpose, or purposes, for which the information will be processed; and
- any further information necessary, in the specific circumstances, to enable the processing in respect of the individual to be fair.

Generally, you may only process personal data for purposes you have not mentioned in your privacy policy if it would be fair to do so and in compliance with the DPA.

a) Data controller and ICO notification

The privacy policy should identify the online business responsible for operating the website and anyone else who collects or processes personal data through the site. The data controller must process data in accordance with the DPA and should mention its ICO registration number in the privacy policy.

M3 Data controller and ICO notification

The website is owned by xxx and the data controller is xxx. The data controller is responsible for and controls the processing of your personal data in accordance with the Data Protection Act 1998 (the "Act"). We are registered with the Information Commissioner's Office and our registration number is xxx.

b) Purpose of data processing

The privacy policy should detail the type of information collected from individuals via the website, and the uses that will be made of this data and any other data relating to those individuals which come into the retailer's possession.

The following examples of data processing activities illustrate some of the basic data uses and provide samples for their wording in the privacy policy.

Contract execution

The privacy policy should mention the use of personal data for contractual purposes as this will be the primary intended usage.

M4 Contract execution

Your personal data will be used to provide the information, goods and services offered through our website to you, for billing and order fulfilment.

Email newsletter

Where an email newsletter is offered, the customer must be informed in the privacy policy about the use of his email address for marketing purposes if he subscribes to the newsletter, and he must be informed that he can withdraw his consent to receiving such marketing emails at any time.

Any objection by a user to receiving marketing communications must be strictly observed.

M5 Email newsletter

If you sign up to our newsletter, we may use your email address to send you information about our products and services. At any stage you can ask us to stop using your personal data for direct marketing purposes. You can opt out of receiving any marketing communications from us by [explain opt-out mechanism]

Opt-in consent is typically required where marketing to a user is sent via email or other electronic communication (such as a text message). There are different rules relating to marketing by phone or fax. For more information, go to www.ico.org.uk/for_organisations/data_protection.

Where an email address will be used for marketing purposes it is highly recommended that you obtain opt-in consent from the customer.

Consent

The ICO's guidance regarding the obtaining of customer consent is that it should always be freely given, specific and fully informed. There should be a positive indication of consent on the part of the customer. He must fully understand that his action (be it ticking a box or clicking an icon, subscribing to a service, or sending a marketing request by email) leads to giving consent.

Therefore, relying on a pre-ticked opt in box as an indication of a customer's consent to receiving unsolicited marketing carries a risk that it may not be sufficient to constitute a valid consent.



Best Practice

Best practice is to obtain a customer's consent using an opt-in mechanism, for example by making him click a checkbox like:

I want to subscribe to the email newsletter

Soft opt-in

The PECR offers a so-called 'soft opt-in' exception which allows marketing communications by email and other electronic means to be sent to users from whom express consent has not been obtained (regulation 22(3)). In order to come within this exception the following must be satisfied:

- the sender of the direct marketing message has obtained the contact details of the recipient of that email in the course of the sale, or negotiations for the sale, of a product or service to that recipient;
- the direct marketing messages are in respect of the sender's similar products and services only; and
- the recipient has been given a simple means of refusing (free of charge except for the costs of the transmission of the refusal) the use of his contact details for the purposes of such direct marketing, at the time that the details were initially collected, and, where he did not initially refuse the use of the details, at the time of each subsequent communication (such as the unsubscribe mechanism that is included in the emails that are sent).

II. Privacy policy and cookies

It is advisable to always consider gaining the customer's consent rather than relying on the "soft opt-in". This will also allow you greater scope of marketing possibilities as you will not be restricted to advertising your own similar products only.

If however the "soft opt-in" option is used in the shop (provided all the prerequisites are met) the following sample text can be used in the privacy policy instead of the previous sample that applies to the use of data for marketing purposes with the customer's consent.

M6 Email newsletter

We may use your email address to send you information about products or services that are the same as or similar to those that you have ordered from us and that we think you may find useful. We will do so only if you have indicated that you do not object to being contacted for these purposes. At any stage you have the right to ask us to stop using your personal data for direct marketing purposes by [add opt-out mechanism]

Sensitive Personal Data

If your website collects any information that falls within the legal definition of 'sensitive personal data', it is likely that you will need to obtain an explicit opt-in consent to use that information. "Sensitive personal data" means any information about an individual's racial or ethnic origin; political opinions; religious or other similar beliefs; membership of a trade union; physical or mental health or conditions; sexual life; criminal record or offences committed or alleged to have been committed.

For more information, go to www.ico.org.uk/for_organisations/data_protection.

c) Monitoring

Often monitoring tools are used to collect customer information and aggregate this information to build user profiles (for example by using Google Analytics). You need to inform customers about this use in the privacy policy. Depending on the tools you use, the information you collect and the purposes for which you use it, you may also need to obtain customer consent in addition to providing notice in your privacy policy. The sample privacy policy wording below provides notice only.

M7 Monitoring

We may also monitor who accesses our website, for example we may automatically collect access information about you such as: the type of internet browser you use; the website from which you have come to our website and your IP address (the unique address which identifies your computer on the internet) which is automatically recognised by our web server. Such information enables us to assess and build a profile of our users. We use this information to:

- improve the layout and/or content of the pages of our website and customise them for users; and
- [add other purposes as appropriate]

If your monitoring tools use cookies or similar technologies you will also need to include information about the monitoring tools in your cookies policy and comply with the rules explained in section 4.3 below.

d) Cookies

See separate section on Cookies.

e) Disclosure of personal data

In most cases personal data will not be disclosed to third parties other than for fulfilling the contract. But if personal data is disclosed to third parties this must be explained in your privacy policy. The customer needs to be informed about the recipient (individual recipient's name) or group of recipients (e.g. credit reference agencies) and the purpose of disclosure.

M8 Disclosure of personal data

We may disclose your personal data:

- to other companies within our group;
- if we sell our business to a third party;
- to our agents and service providers (e.g. providers of web hosting or maintenance services);
- credit reference agents — see 'Credit Reference Agencies';
- in any other case where we are required to do so by law or if we believe that such action is necessary to prevent fraud or cyber crime or to protect the website or the rights, property or personal safety of any person.

We may also disclose aggregate statistics about visitors to our website [customers and sales] in order to describe our services to prospective partners [advertisers, sponsors] and other reputable third parties and for other lawful purposes, but these statistics will include no personally identifiable information.

To Credit Reference Agencies

Where credit assessments or scoring procedures are performed the customer must be informed about this in the privacy policy. Furthermore the customer must be informed whether or not a record of the credit search may be held on his credit file. The text below is an example of wording you may wish to consider including in your privacy policy. However, if you intend to use a credit reference agency, you should consider whether customer consent is required and, depending on the searches carried out and the information shared with credit reference agencies, what additional information should be included in your privacy policy. You should also check with the agency about whether any special conditions and forms of customer consent are required.

M9 To Credit Reference Agencies

We may request information about you from third parties such as credit reference agencies i.e. [name the agency]. We will add this information to the information we currently hold about you to enable us to make decisions about your creditworthiness and/or to detect or prevent money laundering and fraud.

Where we make such a request we will inform you of this intention and explain whether any record of the search will be recorded on a credit file. You have a right to obtain a copy of your credit file. For more information, go to (add link to credit reference agency website).

To third parties for marketing purposes

If the customer's personal data is disclosed to third parties for the purpose of providing them the opportunity to engage in direct marketing, the customer's consent has to be obtained for this disclosure and use. If you intend to share email addresses for marketing purposes, the sender of the emails will usually be required to obtain the consent of the individual before sending any marketing emails. You should consider obtaining advice on the form of consent wording you use.

M10 To third parties for marketing purposes

With your consent we may disclose your personal data to other companies / other companies within our group [specify] in order to enable them to send you information about products that might be of interest to you. At any stage you may object to this disclosure.

If you intend to advertise products and services of third parties without disclosing personal data to them you may do so by obtaining the customer's consent. It is unlikely you could send such advertisement on a soft opt-in basis as they are not your own similar products and services.

f) Personal data transfer outside the European Economic Area (EEA)

The data protection laws in the UK are largely based on European law. Each country in the European Union therefore has similar laws in place to protect personal information. Accordingly, in general it is possible to transfer personal data within the EEA (currently the EU member states and Iceland, Liechtenstein and Norway) without additional rules applying. However, there may be circumstances where you might need to transfer data to a country outside the EEA, for example because your service provider is located abroad. There are additional rules that apply to transfers outside the EEA, to ensure that the personal data is subject to adequate levels of protection.

The ICO provides some useful support on this issue on their website

http://www.ico.org.uk/for_organisations/data_protection/overseas.

If personal data is transferred outside the EEA, this needs to be explained in your privacy policy.

M11 Personal data is transferred outside the EEA

In certain circumstances it may be necessary for us to transfer your personal data outside the European Economic Area [specify the cases], including to countries which do not provide equivalent adequate protection for personal data. Where this is the case, we will take reasonable steps to ensure that your personal data is adequately protected in accordance with the requirements of the DPA.

g) Customer rights

Customers have a right to request access to personal data held about them. Customers may also request that you correct, delete or block their personal data.

M12 Customer rights

If you are concerned about your data, you have the right, subject to the payment of a small fee (currently £10), to request access to the personal data which we may hold or process about you.

As mentioned above, customers may at any time exercise their right to prevent marketing emails.

5.2 Retention of personal data

Personal data collected by data controllers must be kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the data was collected or for which it is further processed. In practice, this means that data controllers must not retain personal data for longer than is necessary for their own business purposes (including billing, invoicing and debt collection).

5.3 Security

Websites which collect personal data through the site must do so in a way that is sufficiently secure. The level of security required will depend on the type of data processed (name and address details will not require the same encryption as banking details). The Information Commissioner has stated that it

would be hard to see how collection would be sufficiently secure without the use of a secure, encryption-based transmission system if personal data is in any way sensitive or otherwise poses a risk to individuals, for example because it includes payment card numbers. Such data should also be held on a server properly secured by encryption or similar techniques.

Trusted Shops members need to ensure that payment card details are always processed and stored in an encrypted form. Payments by credit card should also comply with the Payment Card Industry Data Security Standards.

M13 Sample Privacy Policy

PRIVACY POLICY

We are committed to protecting your privacy on-line.

We appreciate that you do not want the personal information you provide to us distributed indiscriminately and this policy explains how we collect information about you, what we do with it and what controls you have.

Who we are?

The website is owned by xxxx and the Data Controller is xxxxx. The Data Controller is responsible for and controls the processing of your personal data in accordance with the Data Protection Act 1998 (the "Act"). We are registered with the Information Commissioner's Office and our registration number is xxxxxx.

Personal data we may collect about you

We can only provide the goods and services ordered by you if you provide us with your personal data. For the purpose of providing these services, we collect personal data about you such as

[choose appropriate: your name, address, date of birth, email address, telephone and mobile phone numbers, payment card information, (specify any other)]

We will use the information you provide for the purposes described in this privacy policy to which you agreed to at the time your data was obtained.

Your personal data will be used to provide the information, goods and services offered through our website to you, for billing and order fulfilment.

If applicable: E-Mail marketing

[If a newsletter is offered and consent is obtained by opt-in]

If you sign up to our newsletter, we may use your email address to send you information about our products and services. At any stage you can ask us to stop using your personal data for direct marketing purposes. You can opt out of receiving any marketing communications from us by *[explain opt-out mechanism]*.

[If data is used for direct marketing on the soft opt-in basis]

We may use your email address to send you information about products or services that are the same as or similar to those that you have ordered from us and that we think you may find useful. We will do so only if you have indicated that you do not object to being contacted for these purposes. At any stage you have the right to ask us to stop using your personal data for direct marketing purposes by *[add opt-out mechanism]*.

Furthermore your personal data will be used to *[add or delete as appropriate]*:

- administer your account with us;
- verify and carry out financial transactions in relation to payments you make online;

II. Privacy policy and cookies

- audit the downloading of data from our website;
- improve the layout and/or content of the pages of our website and customise them for users;
- identify visitors to our website;
- carry out research on our users' demographics and tracking of sales data;
- allow, with your consent, carefully selected third parties to send you information directly which you may find useful regarding their products and services.

If applicable: Monitoring

We may also monitor who accesses our website, for example we may automatically collect access information about you such as: the type of internet browser you use; the website from which you have come to our website and your IP address (the unique address which identifies your computer on the internet) which is automatically recognised by our web server. Such information enables us to assess and build a profile of our users. We use this information to:

- improve the layout and/or content of the pages of our website and customise them for users; and
- [add other purposes as appropriate]

If your monitoring tools use cookies or similar technologies you will also need to include information about the monitoring tools in your cookies policy and comply with the rules explained in section 4.3 below.

If applicable: Use of cookies and similar technologies

A cookie is a small text file that is stored on your device.

Our website uses cookies to distinguish you from other users of our website. Cookies also provide us with information about how this website is used so we can keep it as up to date, relevant and error-free as possible.

For further information about how we use cookies, please see our cookies policy [include a link here].

If applicable: Disclosure of your personal data

[choose appropriate]

We may disclose your personal data:

- to other companies within our group;
- if we sell our business to a third party;
- to our agents and service providers (e.g. providers of web hosting or maintenance services);
- to Credit Referencing Agencies

We may request information about you from third parties such as credit reference agencies i.e. [name the agency]. We will add this information to the information we currently hold about you to enable us to make decisions about your creditworthiness and/or to detect or prevent money laundering and fraud.

Where we make such a request we will inform you of this intention and explain whether any record of the search will be recorded on a credit file. You have a right to obtain a copy of your credit file. For more information, go to (add link to credit reference agency website).

- in any other case where we are required to do so by law or if we believe that such action is necessary to prevent fraud or cyber crime or to protect the website or the rights, property or personal safety of any person.

With your consent we may disclose your personal data to other companies / other companies within our group [specify] in order to enable them to send you information about products that might be of interest to you. At any stage you may object to this disclosure. We may also disclose aggregate statistics about visitors to our website [customers and sales] in order to describe our services to prospective partners [advertisers, sponsors] and other reputable third parties and for other lawful purposes, but these statistics will include no personally identifiable information.

Security

We place great importance on the security of all personally identifiable information associated with our users. We have security measures in place to attempt to protect against the loss, misuse and alteration of personal information under our control.

We will use technical and organisational measures to safeguard your personal data, for example: [(specify as appropriate)]

- access to your account is controlled by password and username which are unique to you;
- we store your personal data on secure servers;
- payment details are encrypted using SSL technology].

You should bear in mind that submission of information over the internet is never entirely secure. We cannot guarantee the security of information whilst it is in transit over the internet and any such submission is at your own risk. All we can do is use all our reasonable efforts to safeguard your data and ensure that we maintain a reliable and safe environment to use your data.

It is advisable to close your browser when you have finished your user session to help ensure others do not access your personal information if you use a shared computer or a computer in a public place.

Your rights

If you are concerned about your data, you have the right, subject to the payment of a small fee (currently £10), to request access to the personal data which we may hold or process about you.

[ONLY to be included where data is processed outside the EEA:

In certain circumstances it may be necessary for us to transfer your personal data outside the European Economic Area [specify the cases], including to countries which do not provide equivalent adequate protection for personal data. Where this is the case, we will take reasonable steps to ensure that your personal data is adequately protected in accordance with the requirements of the DPA.]

Our contact details

We welcome your feedback and questions. If you wish to contact us, please send an email to (email address) or you can write to us at (address) or call us on (telephone number). [Our registered office is (address)].

5.4 Cookies

The rules governing how websites use cookies (and similar technologies) were changed on 26 May 2011. Many websites now utilise 'cookies policies' and 'cookies consent banners' to comply with these new rules. In this section we use the term cookie to refer to cookies and similar technologies.

II. Privacy policy and cookies

Key pieces of legislation are:

- Privacy and Electronic Communications (EC Directive) Regulations 2003 (as amended) (**PECR**); and
- Data Protection Act 1998 (**DPA**).

Prior to 26 May 2011, websites were obliged to provide information about their use of cookies (which they often did through a section in their privacy policy), and to give individuals an opportunity to disable/reject cookies. On 26 May 2011, the law changed to require websites to obtain consent to the setting and reading of cookies on the computing equipment of a subscriber or user (as defined below). Websites must therefore provide a mechanism for obtaining the consent of their users for the cookies they set.

The requirements of the DPA remain the same and so, among other things, where personal data is being collected or processed by cookies, your privacy policy will need to include information about how such personal data is used, perhaps by cross-referring to the cookies policy (see section 4.2.1, above).

5.4.1 Definitions

A subscriber is the person who has the contract with the electronic communications service provider (such as an ISP), essentially the person who pays the bill for the internet connection (i.e. the person legally responsible for the charges).

A user is the individual using the website. Often the subscriber and the user will be the same person.

A cookie is a small file that is downloaded onto a user's device (such as a PC, tablet or smartphone) when the user accesses a website. Cookies are then sent back to the originating website on each subsequent visit. Cookies allow a website to recognise an individual's computing device. There are a number of different types of cookie, each of which has a different impact on privacy. See the model cookies policy, below, for information on these different types.

There is no definition of a cookie in the PECR. The PECR apply to any technology used for storing information, and accessing that information, on an individual's computing device (e.g. Local Shared Objects (commonly referred to as Flash Cookies), web beacons or bugs (including transparent or clear gifs).

5.4.2 What you need to do

The PECR require the person setting cookies to:

1. provide the 'subscriber' or 'user' with **clear and comprehensive information** about the cookies being used; and
2. **obtain the consent** of the 'subscriber' or 'user' to the storage and reading of those cookies on their computing device.

The requirements under the DPA to provide information to individuals about how their personal data are used overlaps with the first requirement to provide information about the use of cookies.

5.4.3 Non-compliance

Failure to comply is a breach of the PECR and may lead to regulatory action by the ICO.

5.4.4 Providing information about cookies

The first requirement for website operators is to provide to the subscriber or user information about the cookies which the website uses. Previously, such information was frequently contained in a website's privacy policy.

It is important for website operators to provide **clear** and **comprehensive** information about the use of cookies.



Best Practice

Guidance from the ICO states that it is best practice to have a separate 'cookies policy' rather than putting this information in your privacy policy.

The level of information website operators will need to provide to meet the requirements of the PECR depends on a number of factors including the types of cookies being used (see below for suggested wording to include in your cookies policy).

The information must be given prominently and must be clear. You should consider your audience and avoid using overly technical language that they may not understand. Most web users have a very limited understanding of how cookies work.

5.4.5 Obtaining consent

You can obtain a subscriber's/user's consent by including a tick-box or other button to allow the subscriber/user to actively select whether or not to accept cookies (this is known as express consent).

An alternative approach is to rely on implied consent. This approach is permitted in the UK, although other European countries insist upon express consent.

To rely on implied consent, you must inform the subscriber/user that a specific action on his or her part will be interpreted as him or her giving consent to the use of cookies. You must satisfy yourself that the subscriber's/user's actions (for example, moving from one web page to another or clicking on a particular button) are not only an explicit request for content or services but also constitute an expression of the subscriber's/user's consent to the setting and reading of cookies on their computing device. The key point is that the individual must have a reasonable understanding that by taking the particular action they are giving their consent to the use of cookies.

To obtain consent it may be possible to use a banner or a pop-up in a prominent position which states "This site uses cookies. By continuing to use this site you agree to our use of cookies in accordance with our cookies policy [insert link]".

5.4.6 Exception

You do not need to obtain consent (or provide clear and comprehensive information) if the cookies you use are 'strictly necessary' to the operation of the site. This means that where cookies are essential (rather than merely important), you do not need to obtain consent (or provide information). For example, a cookie that allows a website to remember what a user has put into their shopping basket when they click to go to the 'checkout' page is likely to be construed as a strictly necessary cookie.

5.4.7 Third party cookies

The person setting the cookie is primarily responsible for compliance with the requirements of the law. If third party cookies (such as cookies used by advertisers) are set from your site, the ICO guidance suggests that both you and the third party will have a responsibility for providing information about the use of those cookies and gaining the consent of the subscriber/user. You should work together to consider how best to provide the information and obtain this consent.

5.4.8 Writing a cookies policy

There is no prescribed format for a cookies policy. However, it should include information about the types of cookies that are used on the site and the purpose for which they are used.

II. Privacy policy and cookies

Once you have identified the cookies that are used in your shop the following sample might help you in drafting your cookies policy

M14 Cookies policy

A cookie is a small text file that we store on your device if you agree.

Our website uses cookies to distinguish you from other users of our website. Cookies also provide us with information about how this website is used so we can keep it as up to date, relevant and error-free as possible. Further information about the types of cookies that may be used on this website is set out below:

Strictly necessary cookies. These are cookies that are essential to the operation of our website. They include, for example, cookies that enable you to log into secure areas of our website or use a shopping basket.

Analytical/performance cookies. These cookies allow us to recognise and count the number of visitors to our website and to see how visitors move around our website when they are using it. This helps us to improve the way our website works, for example, by ensuring that users are finding what they are looking for easily.

Functionality cookies. These cookies are used to recognise you when you return to our website. This enables us to personalise our content for you, greet you by name and remember your preferences (for example, your choice of language or region).

Targeting cookies. These cookies record your visit to our website, the pages you have visited and the links you have followed. We will use this information to make our website and the advertising displayed on it more relevant to your interests. We may also share this information with third parties for this purpose.

You can find more information about the individual cookies we use and the purposes for which we use them in the table below:

Cookie	Purpose	More information
[Insert cookie name]	[Insert description of the purpose for which the cookie is used] This cookie enables us to: <ul style="list-style-type: none">▪ [Estimate our audience size and usage pattern.]▪ [Store information about your preferences, and so allow us to customise our site and to provide you with offers that are targeted at your individual interests.]▪ [Speed up your searches.]▪ [Recognise you when you return to our site.]▪ [Allow you to use our site in a way that makes your browsing experience more convenient, for example, by allowing you to store items in an electronic shopping basket between visits. If you register with us or complete our online forms, we will use cookies to remember your details during your current visit, and any future visits provided the cookie was not deleted in the interim.]	[Where appropriate, insert link to external information]

Please note that certain cookies may be set the moment you start visiting this website. You can choose to manage the cookies we use on this website through your browser settings at any time. However, if you use your browser settings to block all cookies (including strictly necessary cookies) you may not be able to access all or parts of our site. For more information about how to change your browser settings, and about cookies in general, you can visit www.allaboutcookies.org.

Except for strictly necessary cookies, all cookies will expire after [insert expiry period].

III. Product information and sale of age-restricted products and services

1 Product Description

Regulation 7(1)(a)(ii) of the Distance Selling Regulations requires a description of the main characteristics of the goods or services offered on the website to be provided in a clear and comprehensible manner appropriate to the means of the distance communication used. In an online shop “appropriate manner” will usually mean posting the main characteristics of the goods and services on your website.

Providing detailed information about the products that you offer is not only a legal requirement, it will also assist in generating sales. The more detailed, precise and illustrative you describe your products, the easier it will be for the customer to make an informed choice. This in turn will assist in reducing your returns rate.

Remember to describe your products and/or services in as much detail as possible.

2 The Consumer Protection from Unfair Trading Regulations 2008 ("CPRs")

The CPRs sit alongside other consumer legislation, and apply to any act, omission and other conduct by businesses directly connected to the promotion, sale or supply of a 'product' to or from consumers (whether before, during or after a commercial transaction). The CPRs use the term 'product' to refer to goods and services.

Schedule 1 of the CPRs lists 31 commercial practices which, because of their inherently unfair nature, are prohibited in all circumstances. In addition, other commercial practices which whilst not included in Schedule 1, may still be in breach of regulations 5 or 6 if it has or is likely to have an effect on the behaviour of the average consumer.

2.1 Misleading actions

The CPRs prohibit misleading actions (regulation 5), which cause or are likely to cause the average consumer to take a different decision. The prohibitions aim to ensure that consumers get from retailers, in a clear and timely fashion, the information they need to make informed decisions relating to products.

A misleading action generally occurs when a practice misleads through the information it contains, or its deceptive presentation, and causes or is likely to cause the average consumer to take a different decision. One type of misleading action is providing misleading information, where the false information or deception relates to one or more pieces of information in a list set out in regulation 5. This information is as follows:

III. Product information and sale of age restricted products and services

- the existence or nature of the product;
- the main characteristics of the product (as defined below);
- the extent of the trader's commitments;
- the motives for the commercial practice;
- the nature of the sales process;
- any statement or symbol relating to direct or indirect sponsorship or approval of the trader or the product;
- the price or the manner in which the price is calculated;
- the existence of a specific price advantage;
- the need for a service, part, replacement or repair;
- the nature, attributes and rights of the trader (as defined below);
- the consumer's rights (as defined below) or the risks he may face.

The 'main characteristics of the product' include:

- availability of the product;
- benefits of the product;
- risks of the product;
- execution of the product;
- composition of the product;
- accessories of the product;
- after-sale customer assistance concerning the product;
- the handling of complaints about the product;
- the method and date of manufacture of the product;
- the method and date of provision of the product;
- delivery of the product;
- fitness for purpose of the product;
- usage of the product;
- quantity of the product;
- specification of the product;
- geographical or commercial origin of the product;
- results to be expected from use of the product;
- results and material features of tests or checks carried out on the product.

The 'nature, attributes and rights of the trader or his agent' include:

- identity;
- assets;
- qualifications;
- status;

III. Product information and sale of age restricted products and services

- approval;
- affiliations or connections;
- ownership of industrial, commercial or intellectual property rights;
- awards and distinctions.

The 'consumer's rights' include rights the consumer may have under Part 5A of the Sale of Goods Act 1979 or Part 1B of the Supply of Goods and Services Act 1982.

2.2 Misleading omissions

The CPRs also prohibit misleading omissions (regulation 6). This occurs when retailers omit or hide 'material information', or provide it in an unclear, unintelligible, ambiguous or untimely manner, and the average consumer takes, or is likely to take, a different decision as a result. 'Material information' is information that the average consumer needs to have, in the context, in order to make informed decisions, and includes any information required by European-derived law including the Distance Selling Regulations.

It is therefore important for retailers to ensure that all relevant information is easily accessible from the website.

2.3 Invitations to purchase

The CPRs also make special provision for certain kinds of commercial practices referred to as 'invitations to purchase' (regulation 6(4)). Pages on a website where consumers can place an order will normally be an invitation to purchase. Where retailers make invitations to purchase on a website, they will need to ensure that they include the information required by the CPRs. Failure to provide information that is needed for that purpose can constitute a misleading omission, and thus constitute an offence under the CPRs.

Certain information is deemed to be 'material' when making an invitation to purchase, and that information must be provided in a clear, unambiguous, intelligible and timely manner, unless apparent from the context. This information is set out in regulation 6(4) i.e.:

- the main characteristics of the product, to the extent appropriate to the medium by which the invitation to purchase is communicated and the product;
- the identity of the trader, such as trading name, and the identity of any other trader on whose behalf the trader is acting;
- the geographical address of the trader(s) or agent;
- the price of the product (including taxes) or, where the price cannot be reasonably calculated in advance, the way it will be calculated;
- any freight, delivery or postal charges, or, where these cannot reasonably be calculated in advance, the fact that such charges may be payable;
- any arrangements for payment, delivery, performance and complaint handling that differ from the requirements of professional diligence;
- the existence of any cancellation rights.

This is in addition to any other information the average consumer needs, in the context, to make informed decisions, and any other information required under other European law (e.g. Distance Selling Regulations).

In relation to invitations to purchase on websites (i.e. the page or pages on a website where consumers can place an order), retailers will need to:

III. Product information and sale of age restricted products and services

- detail the product and price information on a page with a 'buy now' button (by clicking on which the product may be purchased) - this is known as the 'invitation to purchase'; and other information required by the CPRs on separate pages of the website that can be reached via a clearly-indicated link from the invitation to purchase i.e.:
 - the main characteristics of the product;
 - the full price (inclusive of taxes and any freight or delivery charge) if this was not given on the previous page;
 - the trader's name and geographical address;
 - the delivery and payment arrangements as well as the complaints / after sales procedure; and
 - other information required by the E-Commerce Regulations and the Distance Selling Regulations, including cancellation rights.

3 Age-restricted products

Retailers must ensure that they do not sell age restricted products to people under the legal age of purchase. All retailers must have effective systems in place to prevent sales to underage customers. Legislation prohibits the sale, offer, supply or hire of specified products under the minimum legal age. There is an age restriction of under 18 which applies to tobacco products, offensive weapons (knives and similar), crossbows, adult fireworks, airguns, lighter refills containing butane and alcohol.

There are further age restrictions (under 16) which apply to fireworks, lottery tickets, aerosol paint and liqueur confectionary.

There are different age restrictions for DVDs, videos and blu-ray discs – 12, 15 and 18 years, and video games – 12, 16 & 18. Please see the table below for full details of the products, age restriction and the maximum penalty under the relevant legislation if an offence is committed.

Product	Age Restriction	Maximum Penalty	Legislation
Alcohol	18	£5,000	Licensing Act 2003 Licensing (Scotland) Act 2005 Licensing (Northern Ireland) Order 1996
Solvents	18	£5,000/6 months imprisonment	Intoxicating Substances (Supply) Act 1985
Fireworks – Adult fireworks and sparklers	18	£5,000/6 months imprisonment	Pyrotechnic Articles (Safety) Regulations 2010
Party poppers and similar fireworks	16	£5000/6 months imprisonment	Pyrotechnic Articles (Safety) Regulations 2010
Christmas crackers	12	£5000/6 months imprisonment	Product Safety Amendment and Revocation Regulations 2012
Explosives	16	£5000	Explosives Act 1875

III. Product information and sale of age restricted products and services

Knives	16	£5,000/6 months imprisonment	Criminal Justice Act 1988 Offensive Weapons Act 1996
Crossbows	18	£5,000/6 months imprisonment	Crossbows Act 1987 Violent Crime Reduction Act 2006
Tobacco & tobacco products	18	£2,500	Children & Young Persons Act 1993 Children & Young Persons (Protection from Tobacco) Act 1991 Children & Young Persons (Sale of Tobacco) Order 2007
Video Recordings	12, 15 & 18	£5,000/6 months imprisonment	Video Recordings Act 1984 Video Recordings (Labelling) Regulations 2012
Video Games	12, 16 & 18	£5000/6 months imprisonment	Video Recordings Act 1984 Video Recordings (Labelling) Regulations 2012
National Lottery & scratch cards	16	£5,000/ 2 years imprisonment	National Lottery etc. Act 1993
Pets	12	£500/3 months imprisonment	Animal Welfare Act 2006
Liqueur chocolates	16	£500	Licensing Act 2003
Aerosol paints	16	£1,000	Anti-social Behaviour Act 2003 Anti-social Behaviour etc. (Scotland) Act 2004
Cigarette lighter fluid	18	£5,000/ 6 months imprisonment	Cigarette Lighter Refill (Safety) Regulations 1999
Petrol	16	£20,000/12 months imprisonment	Petroleum Consolidation Act 1928
Air Weapons	17	£5,000/ 6 months imprisonment	Firearms Act 1968

3.1 Duties of Retailers

Retailers must have effective systems in place for preventing sales to underage customers. Retailers must set up effective systems capable of verifying the age of potential customers to ensure they meet the minimum legal age to purchase a particular product. If an age-restricted product is sold to an under-age person, an offence is committed. It is not a defence for the retailer to say they did not know the buyer was under the relevant age. However, in the event of a sale to an under-age person, the retailer may be able to avoid prosecution if the retailer can show that they have taken all reasonable precautions and exercised all due diligence. What amounts to "all reasonable precautions" and all due diligence will be determined by the Courts and will vary from retailer to retailer. However, all retailers should have the following in place:

- Internal Policy on age restricted sales;
- Staff training on age restricted sales;
- Clear restrictions, sign posting and warnings on the website relating to online age-restricted products sales; and
- Monitoring and auditing to ensure compliance with the legislation.

3.2 Compliance

Trading Standards Departments have a responsibility to ensure that the law on age restricted product sales is complied with, including the power to test whether retailers have appropriate systems in place to prevent illegal age-restricted product sales. The use of test purchasing is becoming increasingly common in relation to online age related product sales. The Department for Business, Innovation and Skills has recently published a revised Code of Practice for Regulatory Delivery on age restricted products and services which sets out the approach that should be taken by regulators in enforcing the law on age restricted products and services. Whilst this does not expressly cover online sales it does refer to the fact that internet activities should be considered when regulators prioritise their resources and in the targeting of proactive checks on compliance. However, the Code offers no guidance on controls for online sales. Currently the only guidance available on the issue of online sales is that produced by the Trading Standards Institute (**TSI**).

The TSI guidance sets out those checks which are unlikely to be deemed to amount to due diligence. Retailers should take positive and active steps to verify the age of customers who are attempting to purchase age restricted products. The following are unlikely to satisfy the requirements of having taken all reasonable precautions and exercising due diligence:

- Relying on the customer to confirm that they are over the minimum age;
- Asking the customer to provide a date of birth;
- Using tick boxes to ask customers to confirm that they are over the minimum age;
- Using a general disclaimer or statement e.g. "You must be over the age of 18 to purchase this product" or "anyone ordering this product from our website will be deemed to be at least 18";
- Using an "accept" or "confirm" statement for the customer to confirm that they have read the terms and conditions , and that they are over the minimum required age; and
- Using e-payment services such as PayPal. Whilst these services may require a customer to be over 18, they may not verify a user's age.

In order to comply with the legislation and to avoid a potential prosecution, the following are possible solutions in terms of age verification checks which would satisfy the defence of due diligence:

III. Product information and sale of age restricted products and services

- Payment by credit card only for those products which carry age restrictions. Credit cards are generally available only to those over the age of 18, as opposed to debit cards which are available from 16 years onwards.
- Independent Age Verification Checks – There are specific online age verification software packages available, which include checks against the electoral register and/or credit reference agency information. Some businesses also offer to provide this service without the need to purchase software.
- Follow up offline checks – Retailers could request a copy of a valid/acceptable proof of age before the transaction can be completed.
- Age verification on delivery – Retailers could request that delivery drivers request a valid proof of age at the point of delivery.

Of these possible solutions, what will be sufficient will vary according to the size and nature of the retailer's business.

IV. Price, Delivery and Payment

Certain pre-contractual information relating to price, delivery, payment and other matters must be provided to the customer when operating an online shop, before the customer decides to buy.

Under regulation 7 of the Distance Selling Regulations, the online retailer must provide the consumer with certain information in good time prior to the conclusion of the contract. This information must be provided in a "clear and comprehensible manner appropriate to the means of distance communication used". In a web shop "appropriate manner" will usually mean posting it on your website.

There are also requirements under the UK Code of Non-broadcast Advertising, Sales Promotion and Direct Marketing (the **CAP Code**) when advertising prices and additional costs such as delivery costs to consumers.

1 Price

Price is one factor that influences the customer's decision whether or not to buy the product.

The E-Commerce Regulations and the Distance Selling Regulations require the retailer to provide the customer with the price of the goods or services. Whereas the E-Commerce Regulations demand a clear and unambiguous indication of prices and whether the prices include taxes and delivery costs, the Distance Selling Regulations and the CAP Code require retailers to quote prices inclusive of all taxes.

When dealing with consumers, the product prices must be inclusive of VAT.

Net prices must not be displayed. Under the CAP Code if a tax, duty, fee or charge cannot be calculated in advance, the website must make clear that these are excluded from the price and state how the price has been calculated, i.e. what the stated price does include.

However, if the website is solely meant for Business to Business commerce (i.e. consumers cannot purchase anything from the website), then prices may be shown excluding VAT. Such VAT exclusive prices must be accompanied by a prominent statement as to the amount or rate of VAT payable.

Retailers whose websites may be used by consumers to purchase products, even if they are primarily used by business customers, must show their prices inclusive of VAT.

The terms and conditions shall state whether or not VAT applies. There are exemptions for some product categories but generally VAT will apply.

A clause such as "All prices include VAT" should be included in the terms and conditions. It is also possible to note alongside each price on the product page that it includes VAT, by stating "incl. VAT".

If special offers are made the customer must be informed about the period for which the price or any special offer remains valid. Similarly, for permanent or recurrent contracts, the minimum duration has to be specified.

2 Delivery costs

Customers must be informed about any applicable delivery costs in a clear and comprehensible manner. Under the CAP Code, if such costs cannot be calculated in advance the website must state that such charges are payable.

At the latest, customers need to be informed about the total price (i.e. the product price as well as the applicable delivery cost or any other additional costs) before submitting the order online.

There are three common ways to meet this requirement. The earlier you provide the information, the better:

1. The terms and conditions state that prices include VAT and that additional delivery costs apply. The delivery costs are shown and added to the end price during the ordering process.
2. Each price is assigned with a link to the delivery costs (e.g. "Price incl. VAT excl. delivery costs" or "Price plus delivery costs"). The listing of delivery costs can contain either a flat rate, individual delivery costs per country or zones, or delivery costs related to other parameters such as weight or size.
3. The exact delivery costs are mentioned next to each price.

■ The delivery costs must be displayed or added to the end price during the ordering process.

It is also necessary to inform the customer about all applicable surcharges, e.g. cash on delivery, and additional customs duties or fees.

■ Note that there are no exemptions for providing charges to remote locations. It will not be enough to add a clause in the terms and conditions saying that delivery costs to remote areas apply and that the customer will be contacted after submitting his order.

If you offer "free delivery", make sure that any associated restrictions are clearly mentioned.

If a banner on the website or a clause in the terms and conditions state that you offer "free delivery" this means that each delivery option and each delivery area you are offering has to be free of charge.

If in fact you want to offer free delivery only for the UK mainland for example this has to be clearly stated.

3 Delivery

Time

■ Customers need to be informed of an expected date of delivery of goods or commencement of services. The contract should be performed within 30 days unless a different period is agreed.

The product pages should contain information on delivery times.

■ It is recommended that information about the availability of the product (e.g. in stock or available from xx) and the standard delivery time (e.g. 3 working days) is included on each product page. Information on express delivery options (if offered) are helpful for the consumer and may be included in the terms and conditions or in the ordering process where the option is selected.

The clearer and earlier you provide this information to the customer the more appealing your shop will be and this in turn might be the decisive factor to buy the goods from you and not your competitor.

Delivery area

Any restriction concerning the delivery area should be mentioned in the terms and conditions.

This information should match with the options in the ordering process, i.e. if the delivery area is restricted to UK, it should only be possible to order using a delivery address in the UK.

In connection with delivery you should carefully consider the costs of delivery to all parts of the UK. This may help you to decide on your delivery area and to structure your delivery charges accurately.

4 Payment

The terms and conditions or any other general information page should give information about the available payment methods. If payment by payment card or direct debit is available, the customer should be informed about the arrangements for payment, such as when his card will be charged.

Transmission or storage of the customer's payment card details must be encrypted at all times. Payments by payment card should also comply with the Payment Card Industry Data Security Standards. For more information, go to www.pcisecuritystandards.org/.

Any surcharges that may apply (e.g. cash on delivery) must also be mentioned.

Regulation 4 of the Consumer Rights (Payment Surcharges) Regulations 2012 requires that the retailer must not charge the consumer more than the cost borne by the retailer for use of that payment means.

If the payment surcharge was not included in the product price or it is not made clear that this cost is excluded from the price it is considered misleading under regulations 5 or 6 of the Consumer Protection from Unfair Trading Regulations (2008) and the CAP Code.

5 Premium rate telephone number

If customers are to use a premium rate telephone number such as 0871, 0872 or 0873 numbers, the cost of the call (including taxes) must be specified before any call charges are incurred (customers should also be advised that the cost of the call may differ from that quoted depending on their network provider). A suitable sample text assigned to each premium rate telephone number could be:

M15 Premium rate telephone number

(Calls cost £0.14 per minute from landlines. Higher fees may be applicable depending on your network provider from mobile phones.)

V. Right to Cancel

When buying online consumers are typically not able to examine goods prior to purchase in the same way they are able to do in a 'bricks and mortar' shop. The Distance Selling Regulations give consumers extra protection when buying online. They provide consumers with a statutory right to cancel an order. Consumers are entitled to a refund of any money they have paid in relation to the contract, even if the goods are not defective.

The stage at which you give your customers the required written information in accordance with regulation 8 of the Distance Selling Regulations will affect when the cancellation period ends, as set out below.

1 The 'Right to Cancel' in detail

After submitting their order online, consumers have a period of time (known as the "cooling off period") during which they are entitled to cancel the contract without having to give a reason.

Cooling off period

The cooling off period is **seven working days**. This period ends seven working days after the day on which the consumer received the goods. For services, the cooling off period begins the day after the day on which the contract is concluded.

The cooling off period is calculated in working days, which means all days other than Saturdays, Sundays or public holidays.

How consumers can exercise their cancellation right

The Distance Selling Regulations allow the right to cancel to be exercised by a consumer in writing or using another durable medium. The authorities have defined "durable medium" as a form in which information can be retained and reproduced but cannot be edited. Hence, a printable email, a letter or fax would each be considered a "durable medium".

The Trading Standards Institute's guidance states that a phone call is not enough unless the retailer says in its terms and conditions that it will accept cancellations by phone. More guidance can be found at <http://dshub.tradingstandards.gov.uk>.

Trusted Shops does not recommend cancellations by phone as it will be more difficult for both sides to prove the cancellation. We therefore recommended that you only accept cancellations by email, fax or post.

2 Consequences of cancellation

Refund

If the consumer exercises his right to cancel, s/he has the right to be reimbursed for the purchase price free of any additional charge (such as an administration fee or restocking fee) as soon as possible, and in any case, within thirty (30) days from the day on which the notice of cancellation was given (Regulations 14(1) and (3) of the Distance Selling Regulations).

The Trading Standards Institute's guidance states that money must be refunded even if the goods have yet to be collected or returned and you cannot insist on the goods being received before you make a refund. The cost of sending the goods to the consumers (delivery costs) needs to be refunded as well, but you can impose the cost of sending the goods back to you (return costs) on the consumer if an appropriate clause is included in your terms and conditions (see below "Return costs").

Consumer's duty of care

Prior to cancellation, where a consumer has the goods in his possession, s/he has a duty to retain possession of them and take reasonable care of them (regulation 17(2) of the Distance Selling Regulations).

On cancellation, the consumer is under a duty to restore the goods to the retailer and, in the meantime, to retain possession of them and take reasonable care of them. The consumer is not obliged to send the goods back to the retailer following receipt of a request in writing (or some other durable medium) from the retailer but s/he must make them available for collection (regulations 17(3) and (4) of the Distance Selling Regulations). However, the retailer may impose on the consumer the duty of sending back the goods by providing an appropriate clause in its terms and conditions.

Return costs

The online retailer will automatically be liable for the cost of returning the goods unless he has expressly stated in its terms and conditions that the cost of returning any goods already delivered will be borne by the consumer. An exception to this rule applies where the delivered goods were substitute goods provided by the retailer because the goods originally ordered by the customer were unavailable. In such cases, the cost of returning the goods must always be met by the retailer.

An appropriate clause in the terms and conditions to oblige the consumer to send back the goods and bear the cost of returning could be for example:

M16 Return costs

You must send the goods back to our contact address at your own cost (unless we delivered the item to you in error or the item is damaged or defective).

Where a term of the contract provides for the consumer to return goods if they cancel the contract, and the consumer either does not comply with that provision or returns the goods at the expense of the retailer, the retailer may make a charge not exceeding the direct cost of recovering any goods supplied. However, this right will not apply if the consumer has the contractual right to reject the goods or has the right to reject under a term implied by law (for example, if the goods are not of a satisfactory quality).

If there is no obligation on the consumer to send back the goods under the terms and conditions, a request in writing or some other durable medium must be made to arrange for their collection. The consumer must only make the goods available for collection and take reasonable care of them during a period of 21 days from the date of cancellation. If the retailer fails to give the customer a request in writing within this period the duty of the consumer to take reasonable care of the goods shall cease.

Cancellation of the contract has the effect of automatically cancelling any related credit agreements that have been entered into specifically to finance the purchase of the goods or services.

3 Exceptions

As stated above, the consumer is generally free to cancel a contract and send back the goods. Nevertheless, there are some exceptions where the right to cancel does not apply.

The cancellation provisions do not apply to contracts for the supply of food, drinks or other goods for everyday consumption delivered to the home or workplace by a regular delivery service, or to contracts to provide accommodation, transport, catering or leisure services on a specific date or period. Other exceptions (under regulation 13(1) of the Distance Selling Regulations) include contracts:

- for the supply of services, if the performance of the contract has begun and the retailer has supplied the required durable information before the service starts and the consumer agrees to the service starting before the end of the usual cancellation period;
- for the supply of goods or services the price of which is dependent on fluctuations in the financial market which cannot be controlled by the retailer;
- for the supply of goods made to the consumer's specifications (such as custom-made blinds or curtains) or clearly personalised or which by reason of their nature cannot be returned or are liable to deteriorate or expire rapidly (such as perishable fresh foods or cut flowers). It is important to note that "goods made to the consumer's specifications" are different from "goods ordered for the consumer". The latter is not exempted from the right to cancel;
- for the supply of audio or video recordings or computer software if they are unsealed by the consumer;
- for the supply of newspapers, periodicals or magazines; and
- for gaming, betting or lottery services.

The Trading Standards Institute's guidance states that downloads of electronic books or music from a website, or the purchase of ring tones and screen savers for mobile phones are likely to constitute services rather than goods, as consumers do not receive physical goods. This means it is likely that the right to cancel in relation to these types of purchases are those that apply to services.

There is no general exception for hygiene or health and safety related products. In its guidelines the Trading Standards Institute expresses the view that such goods do not fall under any of the statutory exceptions and reminds retailers that the Distance Selling Regulations do not link the consumer's right to cancel with the retailer's ability to resell the item as new.

In any case, under the Distance Selling Regulations the consumer has a duty to take reasonable care of the goods throughout the cancellation period. 'Reasonable care' is not legally defined, but depends on various factors. Retailers might want to stipulate what is considered to be reasonable care, such as not removing hygiene seals on garments or only trying shoes on indoors. Such stipulations, however, cannot restrict a consumer's ability to inspect and assess the goods. Consumers who fail to take reasonable care of the goods while they are in their possession may be liable for breach of the statutory duty to take reasonable care, but they cannot be deprived from exercising their right to cancel and the retailer may not retain any refund because of this.

It is highly recommended that you use the wording of regulation 13(1) of the Distance Selling Regulations to refer to the particular exceptions and you should be careful not to interpret these exceptions more widely than in the Trading Standards Institute's guidance.

To reduce the likelihood that the consumer misuses the goods while in his possession you may want to give clear instructions to consumers requiring them to take reasonable care of the goods.

4 Restrictions that are not acceptable

Retailers cannot use terms that restrict the consumer's statutory right to cancel. The obligations you may want to impose on the consumer might be helpful and reasonable from a business perspective but the right to cancel must not be restricted unduly. The consumer cannot be forced to use a specific procedure to exercise his right to cancel. This could be the mandatory use of a returns form that asks for the reason of return and further information that is not necessarily relevant for the return, the requirement to include a copy of the bill, to use an RMA number or to send back the goods in their original packaging. Similarly, consumers cannot be obliged to send back the goods within a specified time frame in order to receive a full refund. Retailers may request the goods to be returned within a reasonable and practicable period but you need to make sure that the giving of the refund is not linked to the receipt of the goods.

Furthermore, you may ask the consumer to keep some evidence of having cancelled the contract (e.g. certificate of posting or confirmation of fax transmission), but you cannot insist upon this as a requirement for cancellation.

Often clauses are used that exclude the right to cancel goods that have been opened. This is not permissible if it restricts the consumer's right to inspect the goods.

If you want the consumer to follow a specific procedure to make the returns process easier we recommend that you explain the process to the consumer and give him the option to follow it, without restricting the statutory right to cancel.

By providing a comprehensive and effective returns process you can encourage the consumer to use your procedure and it will help to increase your consumer's satisfaction with your service.

5 Failure to provide information

Failure to provide the information required by regulation 8 of the Distance Selling Regulations within the specified time will result in an extension of the standard cancellation period of seven working days under the following rules:

5.1 In relation to a contract for the supply of goods:

If the retailer provides the required written information to the consumer after the goods are delivered and within three months from the day after the consumer received the goods, then the consumer's right to cancel the contract will expire after seven working days, counting from the day after the day on which the consumer received the required written information.

If the retailer does not provide the required written information to the consumer at all (or after the three month period mentioned above), the consumer's right to cancel the contract will expire after three months and seven working days, counting from the day after the day when the consumer received the goods.

5.2 In relation to a contract for the provision of services:

If the retailer provides the required written information to the consumer after the contract is concluded and within three months (beginning the day after the contract was concluded), then the consumer's right to cancel the contract will expire after seven working days, counting from the day after the consumer received the required written information.

If the retailer does not provide the required written information to the consumer at all (or after the three month period mentioned above), the consumer's right to cancel the contract will expire after three months and seven working days, counting from the day after the contract was concluded.

5.3 Timing in case of early commencement of service provision

Where services are being provided, it is possible to circumvent the normal cancellation period if the consumer expressly agrees with an online retailer that the service should start before the usual cancellation period expires. Provided that the retailer has given the consumer the required information in a durable medium before the service starts, and the consumer has agreed to the service starting before the usual cancellation period ends, cancellation rights will end when the performance of the service starts.

M17 On the ordering page

I agree to the starting of the service and I acknowledge that my right to cancel expires when the performance of the service starts.

If the consumer agrees to an early start for the provision of the services before the usual cancellation period ends but the retailer fails to provide the required written information by the time the service has started, the consumer's right to cancel will extend to seven working days after the day he receives the information, as long as the information is provided in time for it to still be useful. However, in such circumstances, if the provision of the service is completed within the seven working days after the day the consumer receives the required information, his or her right to cancel will end on the day of completion.

5.4 Additional right to cancel

The consumer's statutory right to cancel may not be restricted by additional obligations imposed on the consumer, as explained above, but you are free to offer your customers further return rights.

In those cases you are free to ask the consumer to follow a specific procedure in order to return the goods so long as the terms are not unfair and in no way restrict the statutory right to cancel under the Distance Selling Regulations.

A clear distinction between your additional right to return and the statutory right to cancel should be drawn.

This can be done by adding the following clarification to your additional right to return.

M18 Additional right to cancel

This does not affect your statutory right to cancel.

5.5 Defective goods

Where the retailer delivers goods which turn out to be defective, the retailer is treated as having failed to correctly perform its obligations under the contract of sale as the goods are not of "satisfactory quality" or "fit for purpose" under the Sale of Goods Act 1979 (section 14(2)), and the seller must therefore bear the consequences of that faulty performance. There is an exception where the defect has been adequately drawn to the attention of the buyer.

Where goods are defective, the consumer is entitled to a full refund - if this is within a reasonable time of the sale - or a reasonable amount of compensation.

Alternatively, a consumer may choose to request to have the goods repaired or replaced at the seller's cost (including the cost of labour, materials or postage). The seller can refuse to do so where they can show this would be impossible or disproportionately costly in comparison with the alternative remedies. Any remedy must also be completed without causing significant inconvenience to the consumer. Where repair or replacement is not realistically possible, or if the seller fails to repair or replace goods

within a reasonable time and without significant inconvenience to the consumer, the consumer can instead request a full or partial refund depending on what is reasonable in the circumstances.

Goods which do not conform to the contract of sale at any time within the period of six months, starting with the date on which the goods were delivered to the consumer, must be taken not to have so conformed at that date. The burden is on the seller to establish that the goods did conform to the contract at the date of delivery, unless the application of the principle is incompatible with the nature of the goods (such as perishable foodstuffs) or the nature of the lack of conformity.

M19 Sample right to cancel for the delivery of goods

Right to cancel

You have the right to cancel the purchase of a good without having to give a reason at any time within the “cooling off period” of seven working days, beginning on the day after you receive the goods.

You must notify us of your cancellation in writing or in another durable medium to our contact address. [optional: Include contact details]

Cancellation consequences

If you are in possession of the goods you are under the duty to retain them and take reasonable care of them.

[choose appropriate:]

You must send the goods back to us to our contact address at your own cost (unless we delivered the item to you in error or the item is damaged or defective) as soon as possible once you have cancelled the contract.

We reserve the right to make a charge not exceeding our direct costs of recovering the goods if you do not return the goods or return them at our expense.

[or]

We will collect the goods from you. You must make the goods available for collection. We will contact you to make further arrangements

Once you have notified us that you wish to cancel the contract, any sum debited to us will be refunded to you as soon as possible and in any event within 30 days of your cancellation.

If applicable:

You will not have any right to cancel a purchase for the supply of any of the following goods:

[LIST OF goods – choose appropriate]

- for the supply of goods the price of which is dependent on fluctuations in the financial market which cannot be controlled by the retailer;
- for the supply of goods made to your specifications or clearly personalised or which by reason of their nature cannot be returned or are liable to deteriorate or expire rapidly;
- for the supply of audio or video recordings or computer software if they are unsealed by you;
- for the supply of newspapers, periodicals or magazines;
- for gaming, betting or lottery services

M20 Sample right to cancel for the delivery of goods AND the provision of services

Right to cancel

You have the right to cancel the purchase of an item or services without having to give any reason at any time within the “cooling off period” of seven working days, beginning, in the case of goods, on the day after you receive the goods, and in the case of services, beginning on the day after you purchase the services.

Please be aware that you will lose your right to cancel a contract for the provision of services during the cooling-off period once we have commenced activation of the services or you use the services, whichever is the earlier.

You must notify us of your cancellation in writing or in another durable medium to our contact address. [Optional: Include contact details]

Cancellation consequences

If you are in possession of the goods you are under the duty to retain them and take reasonable care of them.

[Choose appropriate:]

You must send the goods back to us in their original condition to our contact address at your own cost (unless we delivered the item to you in error or the item is damaged or defective) as soon as possible.

[or]

We will collect the goods from you. You must make the goods available for collection. We will contact you to make further arrangements. We reserve the right to charge the direct costs of recovery.

Once you have notified us that you wish to cancel the contract, any sum debited to us will be refunded to you as soon as possible and in any event within 30 days of your cancellation.

If applicable:

You will not have any right to cancel a purchase for the supply of any of the following goods:

[LIST OF goods – choose appropriate]

- for the supply of goods the price of which is dependent on fluctuations in the financial market which cannot be controlled by the retailer;
- for the supply of goods made to your specifications or clearly personalised or which by reason of their nature cannot be returned or are liable to deteriorate or expire rapidly;
- for the supply of audio or video recordings or computer software if they are unsealed by you;
- for the supply of newspapers, periodicals or magazines;
- for gaming, betting or lottery services

VI. Terms and Conditions

1 The Terms

The terms and conditions of the website form part of the contract between you, as the website owner, and the customer, and it is therefore important that the terms of the website are incorporated sufficiently into the terms of the contract. Customers will only be legally bound by terms that form part of the contract.

The purpose of the terms and conditions are to deal with the sale and purchase of goods or services over the internet via a website.

The terms and conditions need to be fair and reasonable, and must be easily accessible, and specifically brought to the customer's attention or they may not be enforceable. A customer can only be bound by the terms of any contract if the terms have been brought to the customer's attention before making the purchase. Regulation 7 of the Unfair Terms in Consumer Contracts Regulations 1999 requires that terms must be expressed in plain and intelligible language, and terms may be open to challenge if they are not.

Customers should be able to click through to the terms and conditions from each page of the website, and must be required to click to accept the terms and conditions before using services or ordering goods available from the website. A pre-populated 'accept' tick box is not sufficient.



Best Practice

It is common practice to add a link to the terms and conditions in the footer so that they are accessible from each website.

The customer can be made aware of the terms by adding a tick box on the ordering page.

M21 Terms on the ordering page

I have read the terms and accept them [\[link to terms\]](#)

Under regulation 9(3) of the E-Commerce Regulations, where terms and conditions applicable to the contract are provided to the customer, the customer must be allowed to store and reproduce them, preferably by allowing the customer to download and print electronic copies.

2 Notes on selected clauses

2.1 Information about us

Regulation 7(1) of the Distance Selling Regulations, regulation 6(1) of the E-Commerce Regulations and regulation 6(4) of the Consumer Protection from Unfair Trading Regulations 2008 require certain information relating to the retailer of the goods or services to be provided in a manner which is easily, directly and permanently accessible in a durable medium. Not doing so can result in action being taken against you by the Office of Fair Trading or local authority Trading Standards services as well as affecting your rights/consumers rights in relation to the cooling off period as set by the Distance Selling Regulations (including extending the cooling off period up to 3 months).

Including the information described in section 1 in the terms and conditions will be appropriate (although of course this information must also be provided in a durable medium – see section 7).

2.2 Code of Conduct

Under Regulation 9(2) of the E-Commerce Regulations, the service provider must inform the consumer about any subscription to any code(s) of conduct and must explain how the customer can consult such code(s) electronically.

Being a member of Trusted Shops obliges the retailer to comply with the Trusted Shops Code of Conduct.

The following text can therefore be used to inform consumers about the subscription to the Trusted Shops Code of Conduct. Please note that this information may only be included into the terms after the auditing process has been completed.

M22 Code of Conduct

[insert shop name] is certified by Trusted Shops and has committed itself to the Trusted Shops Code of Conduct which can be viewed at www.trustedshops.co.uk

2.3 Contract conclusion and E-Commerce Regulations information obligations

Contract conclusion

It is important to set out exactly how the contract is concluded.

English law distinguishes between an “offer” and an “invitation to treat”. In nearly all cases the retailer will be concerned to control the contract.

When setting out the contract formation process it is important that the process set out in the terms matches the actual circumstances in the shop and that there are no discrepancies in the shop or in the email confirmation or your process. The place and time of contract conclusion is essential to judge when each party becomes liable for his part of the contract.

In most cases the display of goods in an online shop will be an “invitation to treat”, not an offer.

With his order the customer asks the retailer if he can buy the goods. This constitutes an offer.

The retailer then has two possibilities to accept this offer:

- he accepts the offer through an automated email; or
- he acknowledges the receipt of the order with an automatically generated email, but accepts the order only with a second email later on.

Where the display of goods is meant to be an offer, the contract is concluded when the customer submits his order.

In this context regulation 9(1) of the E-Commerce Regulations requires that the website operator must provide the following information to the customer in a “clear, comprehensible and unambiguous manner” before an order is placed.

Failure to provide this information may provide the customers with a cause of action in damages for breach of statutory duty (regulation 13 of the E-Commerce Regulations).

Technical steps

A description of the different technical steps the customer must follow to conclude the contract (so that the customer is made aware of the process in which they are involved and the point of the process at which they will commit themselves).

This requirement will usually be fulfilled satisfactorily where there is a comprehensible ordering process.

Storage of contract's content

Confirmation of whether or not any contract concluded between the service provider and the customer will be filed by the service provider and, if so, whether it will be accessible by the customer.

The contract's content includes the order details and the applicable terms. Normally these will be stored by the retailer automatically, hence the question is usually whether the data is accessible by the customer or not.

The following sample texts could be used in the terms or in the privacy policy:

M23 Privacy Policy

The contract's content will be stored. You may store the general terms and conditions and readily look them up. For safety reasons your order's data will not be available via internet. We keep this data in confidence according to our privacy policy.

or

We store the contract's content and will send you the details of your order as well as our general terms via email. The general terms can be found here <link to general terms> at all times. The details about your recent orders can be found via your customer login.

Input errors

A description of the technical means by which the customer can identify and correct input errors before s/he places an order.

Where there is a comprehensibly structured ordering process there might not be any necessity for an explanatory text

Nevertheless the following sample could be included on the last page of the ordering process.

M24 Input errors

Please check your entries. You can correct input errors by clicking the button "change"/"back". If all the data is correct, click the order button.

Failure to provide the consumer with the means to identify and correct input errors entitles the consumer to rescind the contract. This is in addition to the right to cancel and is not limited in time (regulation 15 of the E-Commerce Regulations)

Contract language

The language(s) offered for the conclusion of the online contract.

Usually the language offered for the conclusion of the online contract will be English, but likewise the web shop could be made available in different languages, e.g. German and English. The following information should be included in the terms and conditions.

M25 Contract language

The contractual language is English.

or

The contract can be concluded in either German or English.

Regulation 11(1) of the E-Commerce Regulations requires that where a customer places an order through a website:

- an electronic acknowledgement of receipt of the order should be given without undue delay (as set out in section 7); and
- the customer must be given appropriate, effective and accessible technical means to identify and correct input errors before placing the order.

2.4 Statutory right to cancel

As set out in section V, the right to cancel is a key consumer right in distance selling. Making this clear in the terms and conditions is very important. As mentioned already, the consumer is obliged to send back any goods at their own expense only if this is explicitly set out in the terms and conditions. Otherwise, the retailer will be responsible for the cost of returning the item.

2.5 Refunds Policy

If the customer decides to cancel the contract, the retailer must refund the price of the goods or services in full, including, in the case of goods, the cost of sending the item to the consumer. However, the consumer will be responsible for the cost of returning the item to the retailer where this is made clear in the terms.

If a customer returns the goods because of a defect, they must be refunded in full. The refund should also include the costs of delivering the goods and the costs incurred by the customer in returning them.

You need to also bear in mind that if a customer cancels the contract during the cooling off period, you cannot withhold their refund on the condition that they return the goods.

However, once the refund has been paid, if the customer either fails to return goods or returns them damaged, and it can be proven that the damage was done while the goods were in their possession, you may be able to sue them for breach of contract.

2.6 Cancellation by us

It is also important to allow for cancellation by you as a provider of the goods, and the consequences of cancellation. This allows for cancellation if you do not have the goods in your possession e.g. if they are out of stock.

2.7 Title and risk

This clause is important as it discusses when risk will pass (i.e. when care of the goods is passed from the seller to the purchaser) and when title will pass (i.e. when ownership of the goods will pass). If risk and title are not dealt with in contracts for the supply of goods, the implied terms dealing with the passing of risk and title set out in sections 20(1) and (4) Sale of Goods Act 1979 will apply.

This clause will usually state that risk will pass to the customer on delivery (on the basis that the website operator will not want to remain responsible for the goods once they are in the customer's possession). When dealing with a consumer you are under the obligation to either send new goods or offer a full refund if the goods are lost in transit from you to the consumer.

This clause should also specify that ownership of the goods will pass to the customer once they have been delivered and full payment has been received, though you should ensure that the website payment method automatically manages this.

2.8 Liability

It is difficult for retailers to limit their liability to consumers in the same way that they would normally seek to limit their liability under business-to-business contracts, given the effect of statutory law (including the Unfair Contract Terms Act 1977 and the Consumer Protection from Unfair Trading Regulations 2008). For example if the contract is business-to-consumer, then you cannot restrict the implied terms of satisfactory quality and fitness for purpose that arise under section 14(2) and section 14(3) of the Sale of Goods Act.

Any restrictions on liability must be 'reasonable' to be enforceable under the Unfair Contract Terms Act 1977. There are also absolute prohibitions on including certain terms in consumer contracts that purport to exclude or limit a retailer's liability (see below).

2.9 Law and jurisdiction

This clause states that the contract will be governed by English law and that any dispute may be brought before the courts of England and Wales. Consumers in Scotland and Northern Ireland may bring proceedings in their own local courts.

The Office of Fair Trading's guidance states that a clause which gives both exclusive governing law and exclusive jurisdiction (such as making consumers in Scotland use the English courts) is likely to be unfair under the Unfair Terms in Consumer Contracts Regulations 1999.

You should take advice on whether the model clause is appropriate for your particular circumstances.

3 Drafting Issues

In drafting website terms and conditions, careful consideration should be given to the nature of the goods and/or services sold via the website as well as the target audience and any restrictions resulting from these. In addition to being compliant with general statutory law applicable to the sale of goods and/or services over the internet, it is also important to ensure that you are compliant with any rules or law that applies to your specific goods and/or services.

There are absolute prohibitions on including terms in consumer contracts that purport to exclude or limit a retailer's liability:

- for liability for death or personal injury resulting from negligence;
- for fraudulent misrepresentation;
- under Part 1 of the Consumer Protection Act 1987;
- under the General Product Safety Regulations 2005;
- in respect of those provisions in the Sale of Goods Act 1979 and Supply of Goods and Services Act 1982 that cannot be excluded or limited

4 Implied Terms

The Sale of Goods Act 1979

Although the terms of a contract are essentially a matter for the parties to agree, the law will imply certain terms into some contracts and will prohibit the inclusion of unfair terms to protect consumers.

VI. Terms and Conditions

The Sale of Goods Act 1979 implies the following terms into contracts which, under the Unfair Contract Terms Act 1977, cannot be excluded:

- that the seller has a right to sell the goods (section 12(1));
- that the goods are free and will remain free until the time property passes to the customer, from any charge or encumbrance not disclosed or known to the buyer before the contract is made (section 12(2));
- that the buyer will enjoy quiet possession of the goods (section 12(2));
- that the goods correspond with their description (section 13). Subject to exceptions, any lack of conformity of the goods with their description in the contract, which becomes apparent within six months of delivery, is presumed to have existed at the time of delivery;
- that the goods will be of satisfactory quality (section 14(2)). Public statements made by the seller, the manufacturer or the manufacturer's representative about a product will be used in determining whether the product is of satisfactory quality;
- that the goods are fit for their purpose (section 14(3));
- that the goods will correspond with a sample where it is a contract for sale by sample (section 15).

In addition to terms relating to the nature of the goods, if a sale of goods contract does not refer to certain matters about the performance of the contract, and there is no evidence of the parties' intentions, the Sale of Goods Act 1979 will imply terms to fill the gap. For example, if no:

- price for the goods is agreed, the price will be a reasonable one (section 8).
- time for payment is stated, it is implied that the consumer must pay cash on delivery (section 28);
- place for delivery is agreed, it takes place at the seller's place of business (section 29);
- mention is made of when title in goods passes to the consumer, it is deemed to pass when the goods become ascertained and the parties intend it to pass (section 17), with the intention of the parties being ascertained using a set of rules (section 18).

Goods also need to be described fully, so that it is clear what the consumer is receiving (section 13).

Supply of Goods and Services Act 1982

The Supply of Goods and Services Act 1982 implies substantially the same conditions as the Sale of Goods Act 1979 into a contract for services and materials relating to title (section 2), description (section 3), quality and fitness for purpose (section 4) and transfer by sample (section 5).

A contract for the sale of services will also include implied terms that services will be carried out with reasonable skill and care (section 13), within a reasonable time (section 14) and for a reasonable price (section 15).

Exclusion of these implied terms is also subject to the Unfair Contract Terms Act 1977.

Unfair Terms in Consumer Contracts Regulations 1999

Enforcement action can be taken to stop businesses from using unfair terms. A standard term (i.e. a term that has not been individually negotiated) is unfair if, contrary to the requirement of good faith, it creates a significant imbalance in the parties' rights and obligations under the contract to the detriment of the consumer.

Schedule 2 of the Unfair Terms in Consumer Contracts Regulations 1999 gives a non-exhaustive list of terms that may be regarded as unfair. The OFT has released guidance on these Regulations, and has supplemented the list of terms that may be open to challenge.

Further information can be found in the Unfair Terms Hub at <http://oft.gov.uk/business-advice/unfairterms/>

The following non-exhaustive list gives some examples of terms that may be considered to be unfair:

General:

- Terms that are misleading (which may also constitute an unfair commercial practice under the Consumer Protection from Unfair Trading Regulations 2008);
- Terms that are not in plain English (as part of the general requirement that consumers should be able to read and understand terms before becoming bound by them);
- Use of legal terms or jargon that are not generally understood by the general public;
- Binding consumers to hidden terms that they have not had an opportunity to see;
- Allowing the retailer to vary the terms of the contract unilaterally without a valid reason;
- Terms that allow the retailer to unilaterally vary the goods or services so that they are not of the agreed description (although terms which allow only technical product modifications of no significance to the consumer are usually acceptable);
- Terms that allow the retailer to determine the price at the time of delivery, or increase the price, without in both cases giving the consumer the right to cancel the contract if the final price is too high in relation to the price agreed when the contract was concluded;
- Giving the retailer the right to determine whether the goods or services supplied are in conformity with the contract, or giving the retailer the exclusive right to interpret any term of the contract (e.g. the retailer will repair or replace any part as it deems necessary);
- Obliging the consumer to fulfil all of his or her obligations where the retailer does not perform its obligations;
- Unbalanced assignment clauses (e.g. allowing the retailer to assign the contract to a third party at any time; prohibiting a consumer from assigning at all);
- Excluding or hindering the consumer's right to take legal action or exercise any other legal remedy, particularly by requiring the consumer to take disputes exclusively to arbitration or requiring them to go to remote or inappropriate courts;
- Allowing excessive burdens or requirements to be imposed on the customer (e.g. indefinite financial burdens in addition to the agreed price without the right for the consumer to cancel the contract);
- Requiring the consumer to bear inappropriate risks (e.g. indemnities);
- Requiring the consumer to waive non-contractual (e.g. statutory) rights.

Liability:

- A term which could be used to prevent or hinder customers from seeking redress when the retailer is in default;
- Disclaimers which deny or limit the retailer's liability for negligence;
- Terms that exclude or limit the retailer's liability for death or personal injury resulting from its acts or omissions
- Disclaimers of liability relating to faulty or misdescribed goods, or unsatisfactory services (see above for a summary of statutory implied terms that cannot be excluded contractually);

VI. Terms and Conditions

- Terms that exclude or limit the buyer's statutory rights (e.g. under the Sale of Goods Act 1979, the Supply of Goods and Services Act 1982 and the Consumer Protection from Unfair Trading Regulations 2008);
- Terms that deny or restrict liability if goods prove to be defective;
- Disclaimers of liability for failure to do what was agreed;
- Terms that reduce the amount or availability of redress (e.g. where liability is accepted up to the value of the goods only; or if the customer is required to pay for carriage and packaging for the return of faulty goods);
- Where the retailer excludes its liability for consequential or indirect loss.;
- Terms erecting barriers to seeking redress e.g. if a time limit on claims is too short (e.g. within 3 days of delivery) or a formality requirement is unreasonable (e.g. notice of cancellation must be sent by recorded delivery);
- Terms that force the consumer to pay in full for goods or services regardless of whether there may be a legitimate complaint about them;
- A guarantee that gives the consumer fewer or weaker rights than the ordinary law. Fairness requires that consumers have, and understand they have, their full legal rights in relation to faulty or misdescribed goods and services;
- Denying liability for statements made by the retailer's agents and employees (e.g. 'no employee has authority to make statements inconsistent with these terms').

Delivery:

- Terms that allow unduly long periods for delivery;
- Terms that exclude or limit liability for non-delivery / delay;
- Terms that pass the risk of loss or damage before delivery;
- Terms that deem that the goods are accepted by the customer on delivery.

Payment/Cancellation:

- Requiring any consumer who fails to fulfil his or her obligation to pay a disproportionately high sum in compensation;
- Terms that request full payment in advance;
- Terms that give the retailer the right to vary the price after the contract has been concluded;
- Terms that place excessive penalty / compensation obligations on the buyer;
- Terms that give unequal / inadequate cancellation rights (e.g. wide cancellation rights for retailers may be considered unfair unless consumers have equal freedom to opt out of the agreement; and termination charges and over-long notice periods for the consumer may be unfair if they tend to force consumers to continue with contracts);
- Terms that gives the retailer the right to cancel for trivial reasons are open to particular objection if the consumer is likely to suffer loss or inconvenience;
- Terms which allow the retailer to cancel the contract without refund / notice (except on serious grounds).

Preparing the terms requires special attention and it is advisable to consult an expert on this issue. Furthermore, you should ensure that none of the clauses in your terms contradicts any information on your website or your processes.

M26 Sample Terms and Conditions – for sale of goods via website

TERMS AND CONDITIONS

1. INFORMATION ABOUT US

[choose appropriate information on supplier identification]

This site is operated by and the goods you purchase will be supplied by [name of company] ("we"). We are registered in [name the place of registration, i.e. England and Wales, Northern Ireland or Scotland] under company number [your registration number] and with our registered office at [company address]. Our main trading address is [trading address]. Our VAT number is [VAT number]. [We are regulated by [NAME OF RELEVANT REGULATOR; [OTHER REQUIREMENTS APPLYING TO PARTICULAR PROFESSIONS]

You can contact us by email at [insert email address], by telephone on [insert number] or write to us at [insert address].

2. YOUR PERSONAL INFORMATION

We will use your personal information in accordance with our Privacy Policy [link], which forms part of these terms.

3. CONTRACT CONCLUSION

If you submit an order for goods via this site by clicking 'Submit order', your order is an offer to us to buy the goods on our website.

[choose appropriate way of contract conclusion:]

We will acknowledge receipt of your order by sending you an automatically generated email acknowledging your order. This is only an acknowledgement of receipt of your order, and no binding contract will be formed between us unless and until we accept your order by separate email.

[or]

We will acknowledge receipt of your order by sending you an automatically generated email accepting your order. With this email the contract will be concluded.]

The contract will relate only to those specific goods which are referred to in our email confirming our acceptance of your order. You should read and check the details in this email to ensure that they are correct.

If the details in the email confirming your order are not correct, or if you are not satisfied with the details in the email, please contact us at [LINK to email address and address]

The contractual language is English.

We store the contract's content and will send you the details of your order as well as our general terms via email. The general terms can be found <link to general terms> at all times. The details about your recent orders can be found in your customer login.

4. PRICE AND DELIVERY COSTS

We shall use our reasonable endeavours to ensure that the prices quoted on our site are correct. Information displayed on this site relating to pricing is subject to change by us without notice, but those on the site at the time of any order placed will be the prices applicable to that order.

Where the correct price of the goods is less than our stated price, we will charge the lower amount on dispatch. If the correct price of the goods is higher than the price stated on our site, we may, if possible, reject your order in our discretion, in which case we will notify you of such rejection and the correct price for the goods.

Unless stated otherwise, all prices include VAT (where applicable) but exclude delivery costs. Delivery costs can be looked up here [link to listing of shipping costs]. They will be notified to you separately before you submit your order and will be confirmed to you by email.

For cash-on delivery extra charges of [£xy] apply.

5. AVAILABILITY AND DELIVERY

Information displayed on this site relating to availability is subject to change by us without notice. We cannot guarantee permanent or continuous availability of all products on this site. All orders are subject to availability at all times.

We deliver within the United Kingdom only.

We will deliver the goods ordered by you to the address you give us for delivery at the time you make your order on the site.

Delivery will be made according to the information on the product pages after your order is accepted.

We are not responsible for any delay in delivery caused by the unavailability of someone to take delivery of the products. It is your responsibility to contact the post office or courier company as applicable to arrange the collection or delivery of products that could not be delivered because you were unavailable.

6. PAYMENT

Payment for goods can be made by one of the following payment methods [choose appropriate or extend accordingly]:

- payment in advance
- cash on delivery (surcharges of [£xy] apply)
- PayPal
- Credit card ([choose appropriate: Your credit card will be charged following our acceptance of your order/ Your credit card will be charged following the submission of your order])
- Debit card ([choose appropriate: Your account will be charged following our acceptance of your order/ Your account will be charged following the submission of your order])

[If an information page is included into the shop that informs about the payment methods, the following sample can be used:]

Payment for goods will be made in accordance with the procedure explained in the information page “payment methods”.

7. RIGHT TO CANCEL

Right to cancel

You have the right to cancel the purchase of a good without having to give a reason at any time within the “cooling off period” of seven working days, beginning on the day after you receive the goods.

You must notify us of your cancellation in writing or in another durable medium to our contact address. [optional: Include contact details]

Cancellation consequences

If you are in possession of the goods you are under the duty to retain them and take reasonable care of them.

[choose appropriate:]

You must send the goods back to us to our contact address at your own cost (unless we delivered the item to you in error or the item is damaged or defective) as soon as possible once you have cancelled the contract.

We reserve the right to make a charge not exceeding our direct costs of recovering the goods if you do not return the goods or return them at our expense.

[or]

We will collect the goods from you. You must make the goods available for collection. We will contact you to make further arrangements

Once you have notified us that you wish to cancel the contract, any sum debited to us will be refunded to you as soon as possible and in any event within 30 days of your cancellation.

If applicable:

You will not have any right to cancel a purchase for the supply of any of the following goods:

[LIST OF goods – choose appropriate]

- for the supply of goods the price of which is dependent on fluctuations in the financial market which cannot be controlled by the retailer;
- for the supply of goods made to your specifications or clearly personalised or which by reason of their nature cannot be returned or are liable to deteriorate or expire rapidly;
- for the supply of audio or video recordings or computer software if they are unsealed by you;
- for the supply of newspapers, periodicals or magazines;
- for gaming, betting or lottery services

8. REFUNDS POLICY

When you return goods to us because you have cancelled the contract between us during the cooling-off period we will process the refund due to you as soon as possible and, in any case, within 30 days of the day on which notice of your cancellation was given. We will refund the price of the goods in full, including the cost of sending the item to you. However, you will be responsible for the cost of returning the item to us.

If you are not satisfied with a product for any reason e.g. if it is not what you ordered, it is damaged or defective, or we have delivered an incorrect quantity, please return the product to us. Once we have confirmed the product defect or other problem, we will:

- provide a full refund for any goods that are damaged or defective, if this is within a reasonable time following the sale; or

- at your option, repair or replace the goods at our cost (including the cost of postage), unless this would not be possible or would be disproportionately costly in the circumstances, in which case we will refund to you the amount paid for the goods in question.

We will notify you of your refund via email within a reasonable period of time. We will usually process the refund due to you as soon as possible and, in any case, within 30 days of the day we confirmed to you via email that you were entitled to a refund for defective goods.

We will usually refund any money received from you using the same method originally used to pay for your purchase.

9. CANCELLATION BY US

We reserve the right to cancel the contract between us if, for example:

- we have insufficient stock to deliver the goods you have ordered;
- we do not deliver to your area; or
- one or more of the goods you ordered was listed at an incorrect price due to a typographical error or an error in the pricing information received by us from our suppliers.

If we do cancel your contract we will notify you by email and will re-credit to your account any sum deducted by us from your credit or debit card as soon as possible but in any event within 30 days of your order.

10. TITLE AND RISK

You will become the owner of the goods you have ordered when they have been delivered to you and we have received clear funds in full payment for the goods. Once goods have been delivered to you they will be held at your own risk and we will not be liable for their loss or destruction.

11. LIABILITY

We are not responsible if you cannot access the site properly or at all because of any event outside our control, for example (without limitation) the performance of your or our ISP, your browser or the internet.

This site relies in part on software to work. Whilst we will monitor the site, we cannot guarantee that the site or any individual feature of the site will be error free, available all the time and/or free from viruses. It is your responsibility to implement appropriate IT security safeguards (including anti-virus and other security checks) to satisfy your particular requirements as to the safety and reliability of content.

Nothing in these terms will affect any liability we may have: (a) for fraudulent misrepresentation; (b) for death or personal injury arising from our negligence; (c) under Part I of the Consumer Protection Act 1987; (d) for breach of any condition as to title or quiet enjoyment of or in relation to any goods supplied by us; or (e) in relation to any other liability, including any liabilities under sale of goods or supply of services legislation, that may not by applicable law be excluded or limited.

12. EVENTS BEYOND OUR CONTROL

We will have no liability to you for any delay in delivering goods you have ordered that is caused by any event or circumstance beyond our reasonable control including, without limitation, strikes, lock-outs and other industrial disputes, breakdown of systems or network access, flood, fire, explosion.

13. INVALIDITY

If any part of these terms is unenforceable, the enforceability of any other part of these terms will not be affected.

14. LAW AND JURISDICTION

These terms are governed by English law. Any contract for the purchase of goods from this site and any dispute or claim arising out of or in connection with any such contract will be governed by English law. You and we both agree that the courts of England and Wales will have non-exclusive jurisdiction. However, if you are a resident in Northern Ireland you may also bring proceedings in Northern Ireland, and if you are a resident in Scotland you may also bring proceedings in Scotland.

15. NOTICES

All notices you send us must be sent to the contact details on this site [LINK]. We may give notice to you at either the email or postal address you provide to us when making a purchase. [Notice will be deemed received and properly served 24 hours after an email is sent or three days after the date of posting of any letter.] In proving the service of any notice, it will be sufficient to prove, in the case of a letter, that the letter was properly addressed, stamped and placed in the post and, in the case of an email that the email was sent to the specified email address of the addressee.

VII. Acknowledgement of Order

Confirmation of pre-contractual information

Regulation 8 of the Distance Selling Regulations requires the retailer to provide certain information to the consumer in writing, or in another durable medium which is available and accessible to the consumer. Posting information on your website is not sufficient to qualify as a durable medium, as it can be changed at any time after the consumer has accessed the information. Where you have provided pre-contractual information on your website, therefore, you must confirm the information in writing or another durable medium.

The Distance Selling Regulations do not contain a definition of "durable medium", but in its guidance on the Regulations, the Trading Standards Institute expresses the view that the term means that the information must be provided in a form in which it can be retained and reproduced but not edited by the consumer, such as an email that can be printed or a letter, fax or brochure that can be kept for future reference.

The information which must be confirmed in this way includes:

- the information that must be provided under regulation 7(1)(a) of the Distance Selling Regulations;
- information about when, and how, to exercise the right to cancel, including: (i) in the case of goods: whether the retailer requires goods to be returned by the consumer and, if so, who pays for their return; (ii) in the case of services: clarification that the consumer will have no right to cancel if s/he agrees to a service starting before the end of the usual seven-working-day cancellation period;
- details of any guarantees relating to the goods or services or to any after-sales services;
- the geographical address of the business to which the consumer may address any complaints; and
- for contracts lasting more than a year and open-ended contracts, the contractual conditions for cancelling it.

However, to the extent that the retailer is required to confirm the information in a durable medium, regulation 8 states that such confirmation must be supplied either before the contract is concluded or in good time afterwards. According to the Trading Standards Institute's guidance, information is deemed to be received "in good time" if the consumer has enough time to act on it when s/he receives it, for example, to enable him or her to exercise their right to cancel.

At the very latest, the information must be provided:

- in the case of goods, at the time of delivery (provided the goods are not for delivery to third parties) and
- in the case of services, once the retailer has started carrying out the services.

Trusted Shops members must provide the information about the ordered products and their prices including delivery in the first order acknowledgement email, regardless of when the contract is concluded.

M27 Sample order acknowledgement email (send out immediately after submission of the order):

Dear xy,

Thank you for your order.

Please note that this email is only an acknowledgement of receipt of your order and the contract to purchase these items is not complete until we send you another email confirming acceptance of your order.

[Or (if the contract is concluded with this first email)

Thank you for your order, which we have accepted with this email.]

You have ordered the following items:

[Please list individual products and prices, as well as total price (including VAT and shipping costs) e.g.]

1 x football size 5: £ 49.00

2 x chair "Leo": £ 25.00

shipping costs: £ 6.90

total price: £ 105.90

You have chosen the payment method [name appropriate: e.g. credit card]

Your card will be charged after the dispatch of goods.

Right to cancel

You have the right to cancel the purchase of a good without having to give a reason at any time within the "cooling off period" of seven working days, beginning on the day after you receive the goods.

You must notify us of your cancellation in writing or in another durable medium to our contact address. [optional: Include contact details]

Cancellation consequences

If you are in possession of the goods you are under the duty to retain them and take reasonable care of them.

[choose appropriate:]

You must send the goods back to us to our contact address at your own cost (unless we delivered the item to you in error or the item is damaged or defective) as soon as possible once you have cancelled the contract.

We reserve the right to make a charge not exceeding our direct costs of recovering the goods if you do not return the goods or return them at our expense.

[or]

We will collect the goods from you. You must make the goods available for collection. We will contact you for further arrangements.

Once you have notified us that you wish to cancel the contract, any sum debited to us will be refunded to you as soon as possible and in any event within 30 days of your cancellation.

VII. Acknowledgement of Order

If applicable:

You will not have any right to cancel a purchase for the supply of any of the following goods:

[LIST OF goods – choose appropriate]

- for the supply of goods the price of which is dependent on fluctuations in the financial market which cannot be controlled by the retailer;
- for the supply of goods made to your specifications or clearly personalised or which by reason of their nature cannot be returned or are liable to deteriorate or expire rapidly;
- for the supply of audio or video recordings or computer software if they are unsealed by you;
- for the supply of newspapers, periodicals or magazines;
- for gaming, betting or lottery services

VIII. Legislation

2.1 Consumer Protection (Distance Selling) Regulations 2000

<http://www.legislation.gov.uk/ukxi/2000/2334/made/data.pdf>

Information required prior to the conclusion of the contract

7. —(1) Subject to paragraph (4), in good time prior to the conclusion of the contract the supplier shall
- (a) provide to the consumer the following information—
 - (i) the identity of the supplier and, where the contract requires payment in advance, the supplier's address;
 - (ii) a description of the main characteristics of the goods or services;
 - (iii) the price of the goods or services including all taxes;
 - (iv) delivery costs where appropriate;
 - (v) the arrangements for payment, delivery or performance;
 - (vi) the existence of a right of cancellation except in the cases referred to in regulation 13;
 - (vii) the cost of using the means of distance communication where it is calculated other than at the basic rate;
 - (viii) the period for which the offer or the price remains valid; and
 - (ix) where appropriate, the minimum duration of the contract, in the case of contracts for the supply of goods or services to be performed permanently or recurrently;
 - (b) inform the consumer if he proposes, in the event of the goods or services ordered by the consumer being unavailable, to provide substitute goods or services (as the case may be) of equivalent quality and price; and
 - (c) inform the consumer that the cost of returning any such substitute goods to the supplier in the event of cancellation by the consumer would be met by the supplier.
- (2) The supplier shall ensure that the information required by paragraph (1) is provided in a clear and comprehensible manner appropriate to the means of distance communication used, with due regard in particular to the principles of good faith in commercial transactions and the principles governing the protection of those who are unable to give their consent such as minors.
- (3) Subject to paragraph (4), the supplier shall ensure that his commercial purpose is made clear when providing the information required by paragraph (1).
- (4) In the case of a telephone communication, the identity of the supplier and the commercial purpose of the call shall be made clear at the beginning of the conversation with the consumer.

Written and additional information

- 8.—(1) Subject to regulation 9, the supplier shall provide to the consumer in writing, or in another durable medium which is available and accessible to the consumer, the information referred to in paragraph (2), either—
- (a) prior to the conclusion of the contract, or
 - (b) thereafter, in good time and in any event—
 - (i) during the performance of the contract, in the case of services; and
 - (ii) at the latest at the time of delivery where goods not for delivery to third parties are concerned.
- (2) The information required to be provided by paragraph (1) is—
- (a) the information set out in paragraphs (i) to (vi) of Regulation 7(1)(a);
 - (b) information about the conditions and procedures for exercising the right to cancel under regulation 10, including—

VIII. Legislation

- (i) where a term of the contract requires (or the supplier intends that it will require) that the consumer shall return the goods to the supplier in the event of cancellation, notification of that requirement; and
- (ii) information as to whether the consumer or the supplier would be responsible under these Regulations for the cost of returning any goods to the supplier, or the cost of his recovering them, if the consumer cancels the contract under regulation 10;
- (c) the geographical address of the place of business of the supplier to which the consumer may address any complaints;
- (d) information about any after-sales services and guarantees; and
- (e) the conditions for exercising any contractual right to cancel the contract, where the contract is of an unspecified duration or a duration exceeding one year.

Services performed through the use of a means of distance communication

9.—(1) Regulation 8 shall not apply to a contract for the supply of services which are performed through the use of a means of distance communication, where those services are supplied on only one occasion and are invoiced by the operator of the means of distance communication.

(2) But the supplier shall take all necessary steps to ensure that a consumer who is a party to a contract to which paragraph (1) applies is able to obtain the supplier's geographical address and the place of business to which the consumer may address any complaints.

Right to cancel

10.—(1) Subject to regulation 13, if within the cancellation period set out in regulations 11 and 12, the consumer gives a notice of cancellation to the supplier, or any other person previously notified by the supplier to the consumer as a person to whom notice of cancellation may be given, the notice of cancellation shall operate to cancel the contract.

(2) Except as otherwise provided by these Regulations, the effect of a notice of cancellation is that the contract shall be treated as if it had not been made.

(3) For the purposes of these Regulations, a notice of cancellation is a notice in writing or in another durable medium available and accessible to the supplier (or to the other person to whom it is given) which, however expressed, indicates the intention of the consumer to cancel the contract.

(4) A notice of cancellation given under this regulation by a consumer to a supplier or other person is to be treated as having been properly given if the consumer—

- (a)** leaves it at the address last known to the consumer and addressed to the supplier or other person by name (in which case it is to be taken to have been given on the day on which it was left);
- (b)** sends it by post to the address last known to the consumer and addressed to the supplier or other person by name (in which case, it is to be taken to have been given on the day on which it was posted);
- (c)** sends it by facsimile to the business facsimile number last known to the consumer (in which case it is to be taken to have been given on the day on which it is sent); or
- (d)** sends it by electronic mail, to the business electronic mail address last known to the consumer (in which case it is to be taken to have been given on the day on which it is sent).

(5) Where a consumer gives a notice in accordance with paragraph (4)(a) or (b) to a supplier who is a body corporate or a partnership, the notice is to be treated as having been properly given if—

- (a)** in the case of a body corporate, it is left at the address of, or sent to, the secretary or clerk of that body; or
- (b)** in the case of a partnership, it is left with or sent to a partner or a person having control or management of the partnership business.

Cancellation period in the case of contracts for the supply of goods

11.—(1) For the purposes of regulation 10, the cancellation period in the case of contracts for the supply of goods begins with the day on which the contract is concluded and ends as provided in paragraphs (2) to (5).

(2) Where the supplier complies with regulation 8, the cancellation period ends on the expiry of the period of seven working days beginning with the day after the day on which the consumer receives the goods.

(3) Where a supplier who has not complied with regulation 8 provides to the consumer the information referred to in regulation 8(2), and does so in writing or in another durable medium available and accessible to the consumer, within the period of three months beginning with the day after the day on which the consumer receives the goods, the cancellation period ends on the expiry of the period of seven working days beginning with the day after the day on which the consumer receives the information.

(4) Where neither paragraph (2) nor (3) applies, the cancellation period ends on the expiry of the period of three months and seven working days beginning with the day after the day on which the consumer receives the goods.

(5) In the case of contracts for goods for delivery to third parties, paragraphs (2) to (4) shall apply as if the consumer had received the goods on the day on which they were received by the third party.

Cancellation period in the case of contracts for the supply of services

12.—(1) For the purposes of regulation 10, the cancellation period in the case of contracts for the supply of services begins with the day on which the contract is concluded and ends as provided in paragraphs (2) to (4).

(2) Where the supplier complies with regulation 8 on or before the day on which the contract is concluded, the cancellation period ends on the expiry of the period of seven working days beginning with the day after the day on which the contract is concluded.

(3) Subject to paragraph (3A) where a supplier who has not complied with regulation 8 on or before the day on which the contract is concluded provides to the consumer the information referred to in regulation 8(2) and does so in writing or in another durable medium available and accessible to the consumer, within the period of three months beginning with the day after the day on which the contract is concluded, the cancellation period ends on the expiry of the period of seven working days beginning with the day after the day on which the consumer receives the information.

(3A) Where the performance of the contract has begun with the consumer's agreement before the expiry of the period of seven working days beginning with the day after the day on which the contract was concluded and the supplier has not complied with regulation 8 on or before the day on which performance began, but provides to the consumer the information referred to in regulation 8(2) in good time during the performance of the contract, the cancellation period ends—

(a) on the expiry of the period of seven working days beginning with the day after the day on which the consumer receives the information; or .

(b) if the performance of the contract is completed before the expiry of the period referred to in sub-paragraph (a), on the day when the performance of the contract is completed.

(4) Where none of paragraphs (2) to (3A) applies, the cancellation period ends on the expiry of the period of three months and seven working days beginning with the day after the day on which the contract is concluded.

Exceptions to the right to cancel

13.—(1) Unless the parties have agreed otherwise, the consumer will not have the right to cancel the contract by giving notice of cancellation pursuant to regulation 10 in respect of contracts—

(a) for the supply of services if the performance of the contract has begun with the consumer's agreement— .

(i) before the end of the cancellation period applicable under regulation 12(2); and .

(ii) after the supplier has provided the information referred to in regulation 8(2).;

(b) for the supply of goods or services the price of which is dependent on fluctuations in the financial market which cannot be controlled by the supplier;

(c) for the supply of goods made to the consumer's specifications or clearly personalised or which by reason of their nature cannot be returned or are liable to deteriorate or expire rapidly;

(d) for the supply of audio or video recordings or computer software if they are unsealed by the consumer;

(e) for the supply of newspapers, periodicals or magazines; or

(f) for gaming, betting or lottery services.

Recovery of sums paid by or on behalf of the consumer on cancellation, and return of security

14.—(1) On the cancellation of a contract under regulation 10, the supplier shall reimburse any sum paid by or on behalf of the consumer under or in relation to the contract to the person by whom it was made free of any charge, less any charge made in accordance with paragraph (5).

(2) The reference in paragraph (1) to any sum paid on behalf of the consumer includes any sum paid by a creditor who is not the same person as the supplier under a personal credit agreement with the consumer.

(3) The supplier shall make the reimbursement referred to in paragraph (1) as soon as possible and in any case within a period not exceeding 30 days beginning with the day on which the notice of cancellation was given.

(4) Where any security has been provided in relation to the contract, the security (so far as it is so provided) shall, on cancellation under regulation 10, be treated as never having had effect and any property lodged with the supplier solely for the purposes of the security as so provided shall be returned by him forthwith.

(5) Subject to paragraphs (6) and (7), the supplier may make a charge, not exceeding the direct costs of recovering any goods supplied under the contract, where a term of the contract provides that the consumer must return any goods supplied if he cancels the contract under regulation 10 but the consumer does not comply with this provision or returns the goods at the expense of the supplier.

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(6) Paragraph (5) shall not apply where—

- (a)** the consumer cancels in circumstances where he has the right to reject the goods under a term of the contract, including a term implied by virtue of any enactment, or
- (b)** the term requiring the consumer to return any goods supplied if he cancels the contract is an “unfair term” within the meaning of the Unfair Terms in Consumer Contracts Regulations 1999(j).

(7) Paragraph (5) shall not apply to the cost of recovering any goods which were supplied as substitutes for the goods ordered by the consumer.

(8) For the purposes of these Regulations, a personal credit agreement is an agreement between the consumer and any other person (“the creditor”) by which the creditor provides the consumer with credit of any amount.

Automatic cancellation of a related credit agreement

15.—(1) Where a notice of cancellation is given under regulation 10 which has the effect of cancelling the contract, the giving of the notice shall also have the effect of cancelling any related credit agreement.

Restoration of goods by consumer after cancellation

17.—(1) This regulation applies where a contract is cancelled under regulation 10 after the consumer has acquired possession of any goods under the contract other than any goods mentioned in regulation 13(1)(b) to (e).

(2) The consumer shall be treated as having been under a duty throughout the period prior to cancellation—

- (a)** to retain possession of the goods, and
- (b)** to take reasonable care of them.

(3) On cancellation, the consumer shall be under a duty to restore the goods to the supplier in accordance with this regulation, and in the meanwhile to retain possession of the goods and take reasonable care of them.

(4) The consumer shall not be under any duty to deliver the goods except at his own premises and in pursuance of a request in writing, or in another durable medium available and accessible to the consumer, from the supplier and given to the consumer either before, or at the time when, the goods are collected from those premises.

(5) If the consumer—

- (a)** delivers the goods (whether at his own premises or elsewhere) to any person to whom, under regulation 10(1), a notice of cancellation could have been given; or
- (b)** sends the goods at his own expense to such a person, he shall be discharged from any duty to retain possession of the goods or restore them to the supplier.

(6) Where the consumer delivers the goods in accordance with paragraph (5)(a) his obligation to take care of the goods shall cease; and if he sends the goods in accordance with paragraph (5)(b) he shall be under a duty to take reasonable care to see that they are received by the supplier and not damaged in transit, but in other respects his duty to take care of the goods shall cease when he sends them.

(7) Where, at any time during the period of 21 days beginning with the day notice of cancellation was given, the consumer receives such a request as is mentioned in paragraph (4), and unreasonably refuses or unreasonably fails to comply with it, his duty to retain possession and take reasonable care of the goods shall continue until he delivers or sends the goods as mentioned in paragraph (5), but if within that period he does not receive such a request his duty to take reasonable care of the goods shall cease at the end of that period.

(8) Where—

- (a)** a term of the contract provides that if the consumer cancels the contract, he must return the goods to the supplier, and
- (b)** the consumer is not otherwise entitled to reject the goods under the terms of the contract or by virtue of any enactment, paragraph (7) shall apply as if for the period of 21 days there were substituted the period of 6 months.

(9) Where any security has been provided in relation to the cancelled contract, the duty to restore goods imposed on the consumer by this regulation shall not be enforceable before the supplier has discharged any duty imposed on him by regulation 14(4) to return any property lodged with him as security on cancellation.

(10) Breach of a duty imposed by this regulation on a consumer is actionable as a breach of statutory duty.

2.2 Electronic Commerce (EC Directive) Regulations 2002

<http://www.legislation.gov.uk/ukksi/2002/2013/made/data.pdf>

General information to be provided by a person providing an information society service

6.—(1) A person providing an information society service shall make available to the recipient of the service and any relevant enforcement authority, in a form and manner which is easily, directly and permanently accessible, the following information—

- (a) the name of the service provider;
- (b) the geographic address at which the service provider is established;
- (c) the details of the service provider, including his electronic mail address, which make it possible to contact him rapidly and communicate with him in a direct and effective manner;
- (d) where the service provider is registered in a trade or similar register available to the public, details of the register in which the service provider is entered and his registration number, or equivalent means of identification in that register;
- (e) where the provision of the service is subject to an authorisation scheme, the particulars of the relevant supervisory authority;
- (f) where the service provider exercises a regulated profession—
 - (i) the details of any professional body or similar institution with which the service provider is registered;
 - (ii) his professional title and the member State where that title has been granted;
 - (iii) a reference to the professional rules applicable to the service provider in the member State of establishment and the means to access them; and
- (g) where the service provider undertakes an activity that is subject to value added tax, the identification number referred to in Article 22(1) of the sixth Council Directive 77/388/ EEC of 17 May 1977 on the harmonisation of the laws of the member States relating to turnover taxes—Common system of value added tax: uniform basis of assessment.

(2) Where a person providing an information society service refers to prices, these shall be indicated clearly and unambiguously and, in particular, shall indicate whether they are inclusive of tax and delivery costs.

Commercial communications

7. A service provider shall ensure that any commercial communication provided by him and which constitutes or forms part of an information society service shall—

- (a) be clearly identifiable as a commercial communication;
- (b) clearly identify the person on whose behalf the commercial communication is made;
- (c) clearly identify as such any promotional offer (including any discount, premium or gift) and ensure that any conditions which must be met to qualify for it are easily accessible, and presented clearly and unambiguously; and
- (d) clearly identify as such any promotional competition or game and ensure that any conditions for participation are easily accessible and presented clearly and unambiguously.

Information to be provided where contracts are concluded by electronic means

9.—(1) Unless parties who are not consumers have agreed otherwise, where a contract is to be concluded by electronic means a service provider shall, prior to an order being placed by the recipient of a service, provide to that recipient in a clear, comprehensible and unambiguous manner the information set out in (a) to (d) below—

- (a) the different technical steps to follow to conclude the contract;
- (b) whether or not the concluded contract will be filed by the service provider and whether it will be accessible;
- (c) the technical means for identifying and correcting input errors prior to the placing of the order; and
- (d) the languages offered for the conclusion of the contract.

(2) Unless parties who are not consumers have agreed otherwise, a service provider shall indicate which relevant codes of conduct he subscribes to and give information on how those codes can be consulted electronically.

(3) Where the service provider provides terms and conditions applicable to the contract to the recipient, the service provider shall make them available to him in a way that allows him to store and reproduce them.

(4) The requirements of paragraphs (1) and (2) above shall not apply to contracts concluded exclusively by exchange of electronic mail or by equivalent individual communications.

Placing of the order

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11.—(1) Unless parties who are not consumers have agreed otherwise, where the recipient of the service places his order through technological means, a service provider shall—

- (a) acknowledge receipt of the order to the recipient of the service without undue delay and by electronic means; and
- (b) make available to the recipient of the service appropriate, effective and accessible technical means allowing him to identify and correct input errors prior to the placing of the order.

(2) For the purposes of paragraph (1)(a) above—

- (a) the order and the acknowledgement of receipt will be deemed to be received when the parties to whom they are addressed are able to access them; and
- (b) the acknowledgement of receipt may take the form of the provision of the service paid for where that service is an information society service.

(3) The requirements of paragraph (1) above shall not apply to contracts concluded exclusively by exchange of electronic mail or by equivalent individual communications.

Liability of the service provider

13. The duties imposed by regulations 6, 7, 8, 9(1) and 11(1)(a) shall be enforceable, at the suit of any recipient of a service, by an action against the service provider for damages for breach of statutory duty.

Compliance with Regulation 9(3)

14. Where on request a service provider has failed to comply with the requirement in regulation 9(3), the recipient may seek an order from any court having jurisdiction in relation to the contract requiring that service provider to comply with that requirement.

Right to rescind contract

15. Where a person—

- (a) has entered into a contract to which these Regulations apply, and
- (b) the service provider has not made available means of allowing him to identify and correct input errors in compliance with regulation 11(1)(b), he shall be entitled to rescind the contract unless any court having jurisdiction in relation to the contract in question orders otherwise on the application of the service provider.

2.3 Companies (Trading Disclosures) Regulations 2008

<http://www.legislation.gov.uk/ukxi/2008/495/made/data.pdf>

Registered name to appear in communications

6.—(1) Every company shall disclose its registered name on—

- (a) its business letters, notices and other official publications;
- (b) its bills of exchange, promissory notes, endorsements and order forms;
- (c) cheques purporting to be signed by or on behalf of the company;
- (d) orders for money, goods or services purporting to be signed by or on behalf of the company;
- (e) its bills of parcels, invoices and other demands for payment, receipts and letters of credit;
- (f) its applications for licences to carry on a trade or activity; and
- (g) all other forms of its business correspondence and documentation.

(2) Every company shall disclose its registered name on its websites.

Further particulars to appear in business letters, order forms and websites

7.—(1) Every company shall disclose the particulars set out in paragraph (2) on—

- (a) its business letters;
- (b) its order forms; and
- (c) its websites.

(2) The particulars are—

- (a) the part of the United Kingdom in which the company is registered;
 - (b) the company's registered number;
 - (c) the address of the company's registered office;
 - (d) in the case of a limited company exempt from the obligation to use the word "limited" as part of its registered name under section 60 of the Act, the fact that it is a limited company;
 - (e) in the case of a community interest company which is not a public company, the fact that it is a limited company; and
 - (f) in the case of an investment company within the meaning of section 833 of the Act, the fact that it is such a company.
- (3) If, in the case of a company having a share capital, there is a disclosure as to the amount of share capital on—
- (a) its business letters;
 - (b) its order forms; or
 - (c) its websites, that disclosure must be to paid up share capital.

2.4 Data Protection Act 1998

<http://www.legislation.gov.uk/ukpga/1998/29/data.pdf>

1 Basic interpretative provisions.

(1) In this Act, unless the context otherwise requires—

“**data**” means information which—

- (a) is being processed by means of equipment operating automatically in response to instructions given for that purpose,
- (b) is recorded with the intention that it should be processed by means of such equipment,
- (c) is recorded as part of a relevant filing system or with the intention that it should form part of a relevant filing system,
- (d) does not fall within paragraph (a), (b) or (c) but forms part of an accessible record as defined by section 68 or;
- (e) is recorded information held by a public authority and does not fall within any of paragraphs (a) to (d);

“**data controller**” means, subject to subsection (4), a person who (either alone or jointly or in common with other persons) determines the purposes for which and the manner in which any personal data are, or are to be, processed;

“**data processor**”, in relation to personal data, means any person (other than an employee of the data controller) who processes the data on behalf of the data controller;

“**data subject**” means an individual who is the subject of personal data;

“**personal data**” means data which relate to a living individual who can be identified—

- (a) from those data, or
- (b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual;

“**processing**”, in relation to information or data, means obtaining, recording or holding the information or data or carrying out any operation or set of operations on the information or data, including—

- (a) organisation, adaptation or alteration of the information or data,
- (b) retrieval, consultation or use of the information or data,
- (c) disclosure of the information or data by transmission, dissemination or otherwise making available, or
- (d) alignment, combination, blocking, erasure or destruction of the information or data

“**public authority**” means a public authority as defined by the Freedom of Information Act 2000 or a Scottish public authority as defined by the Freedom of Information (Scotland) Act 2002;

“**relevant filing system**” means any set of information relating to individuals to the extent that, although the information is not processed by means of equipment operating automatically in response to instructions given for that purpose, the set is structured, either by reference to individuals or by reference to criteria relating to individuals, in such a way that specific information relating to a particular individual is readily accessible.

(2) In this Act, unless the context otherwise requires—

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(a) “obtaining” or “recording”, in relation to personal data, includes obtaining or recording the information to be contained in the data, and

(b) “using” or “disclosing”, in relation to personal data, includes using or disclosing the information contained in the data.

(3) In determining for the purposes of this Act whether any information is recorded with the intention—

(a) that it should be processed by means of equipment operating automatically in response to instructions given for that purpose, or

(b) that it should form part of a relevant filing system, it is immaterial that it is intended to be so processed or to form part of such a system only after being transferred to a country or territory outside the European Economic Area.

(4) Where personal data are processed only for purposes for which they are required by or under any enactment to be processed, the person on whom the obligation to process the data is imposed by or under that enactment is for the purposes of this Act the data controller.

(5) In paragraph (e) of the definition of “data” in subsection (1), the reference to information “held” by a public authority shall be construed in accordance with section 3(2) of the Freedom of Information Act 2000 [or section 3(2), (4) and (5) of the Freedom of Information (Scotland) Act 2002.]

(6) Where

(a) section 7 of the Freedom of Information Act 2000 prevents Parts I to V of that Act or

(b) section 7(1) of the Freedom of Information (Scotland) Act 2002 prevents that Act

from applying to certain information held by a public authority, that information is not to be treated for the purposes of paragraph (e) of the definition of “data” in subsection (1) as held by a public authority.

2 Sensitive personal data.

In this Act “sensitive personal data” means personal data consisting of information as to—

(a) the racial or ethnic origin of the data subject,

(b) his political opinions,

(c) his religious beliefs or other beliefs of a similar nature,

(d) whether he is a member of a trade union (within the meaning of the M1 Trade Union and Labour Relations (Consolidation) Act 1992),

(e) his physical or mental health or condition,

(f) his sexual life,

(g) the commission or alleged commission by him of any offence, or

(h) any proceedings for any offence committed or alleged to have been committed by him, the disposal of such proceedings or the sentence of any court in such proceedings.

7 Right of access to personal data.

(1) Subject to the following provisions of this section and to sections 8, 9 and 9A, an individual is entitled—

(a) to be informed by any data controller whether personal data of which that individual is the data subject are being processed by or on behalf of that data controller,

(b) if that is the case, to be given by the data controller a description of—

(i) the personal data of which that individual is the data subject,

(ii) the purposes for which they are being or are to be processed, and

(iii) the recipients or classes of recipients to whom they are or may be disclosed,

(c) to have communicated to him in an intelligible form—

(i) the information constituting any personal data of which that individual is the data subject, and

(ii) any information available to the data controller as to the source of those data, and

(d) where the processing by automatic means of personal data of which that individual is the data subject for the purpose of evaluating matters relating to him such as, for example, his performance at work, his credit-worthiness, his reliability or his conduct, has constituted or is likely to constitute the sole basis for any decision significantly affecting him, to be informed by the data controller of the logic involved in that decision-taking.

(2) A data controller is not obliged to supply any information under subsection (1) unless he has received—

(a) a request in writing, and

(b) except in prescribed cases, such fee (not exceeding the prescribed maximum) as he may require.

11 Right to prevent processing for purposes of direct marketing.

(1) An individual is entitled at any time by notice in writing to a data controller to require the data controller at the end of such period as is reasonable in the circumstances to cease, or not to begin, processing for the purposes of direct marketing personal data in respect of which he is the data subject.

(2) If the court is satisfied, on the application of any person who has given a notice under subsection (1), that the data controller has failed to comply with the notice, the court may order him to take such steps for complying with the notice as the court thinks fit.

(2A) This section shall not apply in relation to the processing of such data as are mentioned in paragraph (1) of regulation 8 of the Telecommunications (Data Protection and Privacy) Regulations 1999 (processing of telecommunications billing data for certain marketing purposes) for the purposes mentioned in paragraph (2) of that regulation.

(3) In this section “direct marketing” means the communication (by whatever means) of any advertising or marketing material which is directed to particular individuals.

17 Prohibition on processing without registration.

(1) Subject to the following provisions of this section, personal data must not be processed unless an entry in respect of the data controller is included in the register maintained by the Commissioner under section 19 (or is treated by notification regulations made by virtue of section 19(3) as being so included).

(2) Except where the processing is assessable processing for the purposes of section 22, subsection (1) does not apply in relation to personal data consisting of information which falls neither within paragraph (a) of the definition of “data” in section 1(1) nor within paragraph (b) of that definition.

(3) If it appears to the Secretary of State that processing of a particular description is unlikely to prejudice the rights and freedoms of data subjects, notification regulations may provide that, in such cases as may be prescribed, subsection (1) is not to apply in relation to processing of that description.

(4) Subsection (1) does not apply in relation to any processing whose sole purpose is the maintenance of a public register.

18 Notification by data controllers.

(1) Any data controller who wishes to be included in the register maintained under section 19 shall give a notification to the Commissioner under this section.

(2) A notification under this section must specify in accordance with notification regulations—

(a) the registrable particulars, and

(b) a general description of measures to be taken for the purpose of complying with the seventh data protection principle.

(3) Notification regulations made by virtue of subsection (2) may provide for the determination by the Commissioner, in accordance with any requirements of the regulations, of the form in which the registrable particulars and the description mentioned in subsection (2)(b) are to be specified, including in particular the detail required for the purposes of section 16(1)(c), (d), (e) and (f) and subsection (2)(b).

(4) Notification regulations may make provision as to the giving of notification—

(a) by partnerships, or

(b) in other cases where two or more persons are the data controllers in respect of any personal data.

(5) The notification must be accompanied by such fee as may be prescribed by fees regulations.

(5A) Notification regulations may prescribe the information about the data controller which is required for the purpose of verifying the fee payable under subsection (5).

(6) Notification regulations may provide for any fee paid under subsection (5) or section 19(4) to be refunded in prescribed circumstances.

SCHEDULE 1.

The Data Protection Principles

Part I

The Principles

1 Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless—

(a) at least one of the conditions in Schedule 2 is met, and

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(b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.

2 Personal data shall be obtained only for one or more specified and lawful purposes, and shall not be further processed in any manner incompatible with that purpose or those purposes.

3 Personal data shall be adequate, relevant and not excessive in relation to the purpose or purposes for which they are processed.

4 Personal data shall be accurate and, where necessary, kept up to date.

5 Personal data processed for any purpose or purposes shall not be kept for longer than is necessary for that purpose or those purposes.

6 Personal data shall be processed in accordance with the rights of data subjects under this Act.

7 Appropriate technical and organisational measures shall be taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.

8 Personal data shall not be transferred to a country or territory outside the European Economic Area unless that country or territory ensures an adequate level of protection for the rights and freedoms of data subjects in relation to the processing of personal data.

Part II

Interpretation of the Principles in Part I

2. (1) Subject to paragraph 3, for the purposes of the first principle personal data are not to be treated as processed fairly unless—

(a) in the case of data obtained from the data subject, the data controller ensures so far as practicable that the data subject has, is provided with, or has made readily available to him, the information specified in sub-paragraph (3), and

(b) in any other case, the data controller ensures so far as practicable that, before the relevant time or as soon as practicable after that time, the data subject has, is provided with, or has made readily available to him, the information specified in sub-paragraph (3).

(3) The information referred to in sub-paragraph (1) is as follows, namely—

(a) the identity of the data controller,

(b) if he has nominated a representative for the purposes of this Act, the identity of that representative,

(c) the purpose or purposes for which the data are intended to be processed, and

(d) any further information which is necessary, having regard to the specific circumstances in which the data are or are to be processed, to enable processing in respect of the data subject to be fair.

SCHEDULE 2.

Conditions relevant for the purposes of the First Principle: Processing of any Personal Data

1 The data subject has given his consent to the processing.

2 The processing is necessary—

(a) for the performance of a contract to which the data subject is a party, or

(b) for the taking of steps at the request of the data subject with a view to entering into a contract.

3 The processing is necessary for compliance with any legal obligation to which the data controller is subject, other than an obligation imposed by contract.

4 The processing is necessary in order to protect the vital interests of the data subject.

5 The processing is necessary—

(a) for the administration of justice,

(aa) for the exercise of any functions of either House of Parliament,

(b) for the exercise of any functions conferred on any person by or under any enactment,

(c) for the exercise of any functions of the Crown, a Minister of the Crown or a government department, or

(d) for the exercise of any other functions of a public nature exercised in the public interest by any person.

SCHEDULE 4.

Cases where the Eighth Principle does not apply

- 1 The data subject has given his consent to the transfer.
- 2 The transfer is necessary—
 - (a) for the performance of a contract between the data subject and the data controller, or
 - (b) for the taking of steps at the request of the data subject with a view to his entering into a contract with the data controller.

2.5 Privacy and Electronic Communications (EC Directive) Regulations 2003

<http://www.legislation.gov.uk/ukxi/2003/2426/made/data.pdf>

Security of public electronic communications services

5.—(1) Subject to paragraph (2), a provider of a public electronic communications service (“the service provider”) shall take appropriate technical and organisational measures to safeguard the security of that service.

Confidentiality of communications

6.—(1) Subject to paragraph (4), a person shall not store or gain access to information stored, in the terminal equipment of a subscriber or user unless the requirements of paragraph (2) are met.

- (2) The requirements are that the subscriber or user of that terminal equipment—
 - (a) is provided with clear and comprehensive information about the purposes of the storage of, or access to, that information; and
 - (b) has given his or her consent.

Use of electronic mail for direct marketing purposes

22.—(1) This regulation applies to the transmission of unsolicited communications by means of electronic mail to individual subscribers.

(2) Except in the circumstances referred to in paragraph (3), a person shall neither transmit, nor instigate the transmission of, unsolicited communications for the purposes of direct marketing by means of electronic mail unless the recipient of the electronic mail has previously notified the sender that he consents for the time being to such communications being sent by, or at the instigation of, the sender.

- (3) A person may send or instigate the sending of electronic mail for the purposes of direct marketing where—
 - (a) that person has obtained the contact details of the recipient of that electronic mail in the course of the sale or negotiations for the sale of a product or service to that recipient;
 - (b) the direct marketing is in respect of that person’s similar products and services only; and
 - (c) the recipient has been given a simple means of refusing (free of charge except for the costs of the transmission of the refusal) the use of his contact details for the purposes of such direct marketing, at the time that the details were initially collected, and, where he did not initially refuse the use of the details, at the time of each subsequent communication.
- (4) A subscriber shall not permit his line to be used in contravention of paragraph (2).

2.6 The Consumer Protection from Unfair Trading Regulations 2008

<http://www.legislation.gov.uk/ukxi/2008/1277/contents/made>

Prohibition of unfair commercial practices

- 3.—(1) Unfair commercial practices are prohibited.
- (2) Paragraphs (3) and (4) set out the circumstances when a commercial practice is unfair.
- (3) A commercial practice is unfair if—
 - (a) it contravenes the requirements of professional diligence; and
 - (b) it materially distorts or is likely to materially distort the economic behaviour of the average consumer with regard to the product.
- (4) A commercial practice is unfair if—
 - (a) it is a misleading action under the provisions of regulation 5;

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- (b) it is a misleading omission under the provisions of regulation 6;
- (c) it is aggressive under the provisions of regulation 7; or
- (d) it is listed in Schedule 1.

Misleading actions

5.—(1) A commercial practice is a misleading action if it satisfies the conditions in either paragraph (2) or paragraph (3).

(2) A commercial practice satisfies the conditions of this paragraph—

- (a) if it contains false information and is therefore untruthful in relation to any of the matters in paragraph (4) or if it or its overall presentation in any way deceives or is likely to deceive the average consumer in relation to any of the matters in that paragraph, even if the information is factually correct; and
- (b) it causes or is likely to cause the average consumer to take a transactional decision he would not have taken otherwise.

(3) A commercial practice satisfies the conditions of this paragraph if—

- (a) it concerns any marketing of a product (including comparative advertising) which creates confusion with any products, trade marks, trade names or other distinguishing marks of a competitor; or
- (b) it concerns any failure by a trader to comply with a commitment contained in a code of conduct which the trader has undertaken to comply with, if—
 - (i) the trader indicates in a commercial practice that he is bound by that code of conduct, and
 - (ii) the commitment is firm and capable of being verified and is not aspirational,

and it causes or is likely to cause the average consumer to take a transactional decision he would not have taken otherwise, taking account of its factual context and of all its features and circumstances.

(4) The matters referred to in paragraph (2)(a) are—

- (a) the existence or nature of the product;
- (b) the main characteristics of the product (as defined in paragraph 5);
- (c) the extent of the trader's commitments;
- (d) the motives for the commercial practice;
- (e) the nature of the sales process;
- (f) any statement or symbol relating to direct or indirect sponsorship or approval of the trader or the product;
- (g) the price or the manner in which the price is calculated;
- (h) the existence of a specific price advantage;
- (i) the need for a service, part, replacement or repair;
- (j) the nature, attributes and rights of the trader (as defined in paragraph 6);
- (k) the consumer's rights or the risks he may face.

(5) In paragraph (4)(b), the "main characteristics of the product" include—

- (a) availability of the product;
- (b) benefits of the product;
- (c) risks of the product;
- (d) execution of the product;
- (e) composition of the product;
- (f) accessories of the product;
- (g) after-sale customer assistance concerning the product;
- (h) the handling of complaints about the product;
- (i) the method and date of manufacture of the product;
- (j) the method and date of provision of the product;
- (k) delivery of the product;
- (l) fitness for purpose of the product;

- (m) usage of the product;
- (n) quantity of the product;
- (o) specification of the product;
- (p) geographical or commercial origin of the product;
- (q) results to be expected from use of the product; and
- (r) results and material features of tests or checks carried out on the product.

(6) In paragraph (4)(j), the “nature, attributes and rights” as far as concern the trader include the trader’s—

- (a) identity;
- (b) assets;
- (c) qualifications;
- (d) status;
- (e) approval;
- (f) affiliations or connections;
- (g) ownership of industrial, commercial or intellectual property rights; and
- (h) awards and distinctions.

(7) In paragraph (4)(k) “consumer’s rights” include rights the consumer may have under Part 5A of the Sale of Goods Act 1979 or Part 1B of the Supply of Goods and Services Act 1982.

Misleading omissions

6.—(1) A commercial practice is a misleading omission if, in its factual context, taking account of the matters in paragraph (2)—

- (a) the commercial practice omits material information,
- (b) the commercial practice hides material information,
- (c) the commercial practice provides material information in a manner which is unclear, unintelligible, ambiguous or untimely, or
- (d) the commercial practice fails to identify its commercial intent, unless this is already apparent from the context, and as a result it causes or is likely to cause the average consumer to take a transactional decision he would not have taken otherwise.

(2) The matters referred to in paragraph (1) are—

- (a) all the features and circumstances of the commercial practice;
- (b) the limitations of the medium used to communicate the commercial practice (including limitations of space or time); and
- (c) where the medium used to communicate the commercial practice imposes limitations of space or time, any measures taken by the trader to make the information available to consumers by other means.

(3) In paragraph (1) “material information” means—

- (a) the information which the average consumer needs, according to the context, to take an informed transactional decision; and
- (b) any information requirement which applies in relation to a commercial communication as a result of an EU obligation.

(4) Where a commercial practice is an invitation to purchase, the following information will be material if not already apparent from the context in addition to any other information which is material information under paragraph (3)—

- (a) the main characteristics of the product, to the extent appropriate to the medium by which the invitation to purchase is communicated and the product;
- (b) the identity of the trader, such as his trading name, and the identity of any other trader on whose behalf the trader is acting;
- (c) the geographical address of the trader and the geographical address of any other trader on whose behalf the trader is acting;
- (d) either—
 - (i) the price, including any taxes; or

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- (ii) where the nature of the product is such that the price cannot reasonably be calculated in advance, the manner in which the price is calculated;
- (e) where appropriate, either—
 - (i) all additional freight, delivery or postal charges; or
 - (ii) where such charges cannot reasonably be calculated in advance, the fact that such charges may be payable;
- (f) the following matters where they depart from the requirements of professional diligence—
 - (i) arrangements for payment,
 - (ii) arrangements for delivery,
 - (iii) arrangements for performance,
 - (iv) complaint handling policy;
- (g) for products and transactions involving a right of withdrawal or cancellation, the existence of such a right.

SCHEDULE 1

Commercial practices which are in all circumstances considered unfair

1. Claiming to be a signatory to a code of conduct when the trader is not.
2. Displaying a trust mark, quality mark or equivalent without having obtained the necessary authorisation.
3. Claiming that a code of conduct has an endorsement from a public or other body which it does not have.
4. Claiming that a trader (including his commercial practices) or a product has been approved, endorsed or authorised by a public or private body when the trader, the commercial practices or the product have not or making such a claim without complying with the terms of the approval, endorsement or authorisation.
5. Making an invitation to purchase products at a specified price without disclosing the existence of any reasonable grounds the trader may have for believing that he will not be able to offer for supply, or to procure another trader to supply, those products or equivalent products at that price for a period that is, and in quantities that are, reasonable having regard to the product, the scale of advertising of the product and the price offered (bait advertising).
6. Making an invitation to purchase products at a specified price and then—
 - (a) refusing to show the advertised item to consumers,
 - (b) refusing to take orders for it or deliver it within a reasonable time, or
 - (c) demonstrating a defective sample of it,with the intention of promoting a different product (bait and switch).
7. Falsely stating that a product will only be available for a very limited time, or that it will only be available on particular terms for a very limited time, in order to elicit an immediate decision and deprive consumers of sufficient opportunity or time to make an informed choice.
8. Undertaking to provide after-sales service to consumers with whom the trader has communicated prior to a transaction in a language which is not an official language of the EEA State where the trader is located and then making such service available only in another language without clearly disclosing this to the consumer before the consumer is committed to the transaction.
9. Stating or otherwise creating the impression that a product can legally be sold when it cannot.
10. Presenting rights given to consumers in law as a distinctive feature of the trader's offer.
11. Using editorial content in the media to promote a product where a trader has paid for the promotion without making that clear in the content or by images or sounds clearly identifiable by the consumer (advertorial).
12. Making a materially inaccurate claim concerning the nature and extent of the risk to the personal security of the consumer or his family if the consumer does not purchase the product.
13. Promoting a product similar to a product made by a particular manufacturer in such a manner as deliberately to mislead the consumer into believing that the product is made by that same manufacturer when it is not.
14. Establishing, operating or promoting a pyramid promotional scheme where a consumer gives consideration for the opportunity to receive compensation that is derived primarily from the introduction of other consumers into the scheme rather than from the sale or consumption of products.
15. Claiming that the trader is about to cease trading or move premises when he is not.
16. Claiming that products are able to facilitate winning in games of chance.

17. Falsely claiming that a product is able to cure illnesses, dysfunction or malformations.
18. Passing on materially inaccurate information on market conditions or on the possibility of finding the product with the intention of inducing the consumer to acquire the product at conditions less favourable than normal market conditions.
19. Claiming in a commercial practice to offer a competition or prize promotion without awarding the prizes described or a reasonable equivalent.
20. Describing a product as 'gratis', 'free', 'without charge' or similar if the consumer has to pay anything other than the unavoidable cost of responding to the commercial practice and collecting or paying for delivery of the item.
21. Including in marketing material an invoice or similar document seeking payment which gives the consumer the impression that he has already ordered the marketed product when he has not.
22. Falsely claiming or creating the impression that the trader is not acting for purposes relating to his trade, business, craft or profession, or falsely representing oneself as a consumer.
23. Creating the false impression that after-sales service in relation to a product is available in an EEA State other than the one in which the product is sold.
24. Creating the impression that the consumer cannot leave the premises until a contract is formed.
25. Conducting personal visits to the consumer's home ignoring the consumer's request to leave or not to return, except in circumstances and to the extent justified to enforce a contractual obligation.
26. Making persistent and unwanted solicitations by telephone, fax, e-mail or other remote media except in circumstances and to the extent justified to enforce a contractual obligation.
27. Requiring a consumer who wishes to claim on an insurance policy to produce documents which could not reasonably be considered relevant as to whether the claim was valid, or failing systematically to respond to pertinent correspondence, in order to dissuade a consumer from exercising his contractual rights.
28. Including in an advertisement a direct exhortation to children to buy advertised products or persuade their parents or other adults to buy advertised products for them.
29. Demanding immediate or deferred payment for or the return or safekeeping of products supplied by the trader, but not solicited by the consumer, except where the product is a substitute supplied in accordance with regulation 19(7) of the Consumer Protection (Distance Selling) Regulations 2000 (inertia selling).
30. Explicitly informing a consumer that if he does not buy the product or service, the trader's job or livelihood will be in jeopardy.
31. Creating the false impression that the consumer has already won, will win, or will on doing a particular act win, a prize or other equivalent benefit, when in fact either—
 - (a) there is no prize or other equivalent benefit, or
 - (b) taking any action in relation to claiming the prize or other equivalent benefit is subject to the consumer paying money or incurring a cost.

2.7 Sale of Goods Act 1979

<http://www.legislation.gov.uk/ukpga/1979/54>

8 Ascertainment of price

- (1) The price in a contract of sale may be fixed by the contract, or may be left to be fixed in a manner agreed by the contract, or may be determined by the course of dealing between the parties.
- (2) Where the price is not determined as mentioned in sub-section (1) above the buyer must pay a reasonable price.
- (3) What is a reasonable price is a question of fact dependent on the circumstances of each particular case.

12 Implied terms about title, etc

- (1) In a contract of sale, other than one to which subsection (3) below applies, there is an implied term on the part of the seller that in the case of a sale he has a right to sell the goods, and in the case of an agreement to sell he will have such a right at the time when the property is to pass.
- (2) In a contract of sale, other than one to which subsection (3) below applies, there is also an implied term that—
 - (a) the goods are free, and will remain free until the time when the property is to pass, from any charge or encumbrance not disclosed or known to the buyer before the contract is made, and

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(b) the buyer will enjoy quiet possession of the goods except so far as it may be disturbed by the owner or other person entitled to the benefit of any charge or encumbrance so disclosed or known.

13 Sale by description

(1) Where there is a contract for the sale of goods by description, there is an implied term that the goods will correspond with the description.

(1A) As regards England and Wales and Northern Ireland, the term implied by subsection (1) above is a condition.

(2) If the sale is by sample as well as by description it is not sufficient that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description.

(3) A sale of goods is not prevented from being a sale by description by reason only that, being exposed for sale or hire, they are selected by the buyer.

(4) Paragraph 4 of Schedule 1 below applies in relation to a contract made before 18 May 1973.

14 Implied terms about quality or fitness

(2) Where the seller sells goods in the course of a business, there is an implied term that the goods supplied under the contract are of satisfactory quality.

(2A) For the purposes of this Act, goods are of satisfactory quality if they meet the standard that a reasonable person would regard as satisfactory, taking account of any description of the goods, the price (if relevant) and all the other relevant circumstances.

(2B) For the purposes of this Act, the quality of goods includes their state and condition and the following (among others) are in appropriate cases aspects of the quality of goods—

- (a) fitness for all the purposes for which goods of the kind in question are commonly supplied,
- (b) appearance and finish,
- (c) freedom from minor defects,
- (d) safety, and
- (e) durability.

(2C) The term implied by subsection (2) above does not extend to any matter making the quality of goods unsatisfactory—

- (a) which is specifically drawn to the buyer's attention before the contract is made,
- (b) where the buyer examines the goods before the contract is made, which that examination ought to reveal, or
- (c) in the case of a contract for sale by sample, which would have been apparent on a reasonable examination of the sample.

(2D) If the buyer deals as consumer or, in Scotland, if a contract of sale is a consumer contract, the relevant circumstances mentioned in subsection (2A) above include any public statements on the specific characteristics of the goods made about them by the seller, the producer or his representative, particularly in advertising or on labelling.

(2E) A public statement is not by virtue of subsection (2D) above a relevant circumstance for the purposes of subsection (2A) above in the case of a contract of sale, if the seller shows that—

- (a) at the time the contract was made, he was not, and could not reasonably have been, aware of the statement,
- (b) before the contract was made, the statement had been withdrawn in public or, to the extent that it contained anything which was incorrect or misleading, it had been corrected in public, or
- (c) the decision to buy the goods could not have been influenced by the statement.

(2F) Subsections (2D) and (2E) above do not prevent any public statement from being a relevant circumstance for the purposes of subsection (2A) above (whether or not the buyer deals as consumer or, in Scotland, whether or not the contract of sale is a consumer contract) if the statement would have been such a circumstance apart from those subsections.

(3) Where the seller sells goods in the course of a business and the buyer, expressly or by implication, makes known—

- (a) to the seller, or
- (b) where the purchase price or part of it is payable by instalments and the goods were previously sold by a credit-broker to the seller, to that credit-broker,

any particular purpose for which the goods are being bought, there is an implied term that the goods supplied under the contract are reasonably fit for that purpose, whether or not that is a purpose for which such goods are commonly supplied, except where the circumstances show that the buyer does not rely, or that it is unreasonable for him to rely, on the skill or judgment of the seller or credit-broker.

15 Sale by sample

- (1) A contract of sale is a contract for sale by sample where there is an express or implied term to that effect in the contract.
- (2) In the case of a contract for sale by sample there is an implied term—
 - (a) that the bulk will correspond with the sample in quality;
 - (c) that the goods will be free from any defect, [making their quality unsatisfactory], which would not be apparent on reasonable examination of the sample.
- (3) As regards England and Wales and Northern Ireland, the term implied by subsection (2) above is a condition.
- (4) Paragraph 7 of Schedule 1 below applies in relation to a contract made before 18 May 1973.

17 Property passes when intended to pass

- (1) Where there is a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.
- (2) For the purpose of ascertaining the intention of the parties regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case.

18 Rules for ascertaining intention

Unless a different intention appears, the following are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer.

Rule 1. —Where there is an unconditional contract for the sale of specific goods in a deliverable state the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment or the time of delivery, or both, be postponed.

Rule 2. —Where there is a contract for the sale of specific goods and the seller is bound to do something to the goods for the purpose of putting them into a deliverable state, the property does not pass until the thing is done and the buyer has notice that it has been done.

Rule 3. —Where there is a contract for the sale of specific goods in a deliverable state but the seller is bound to weigh, measure, test, or do some other act or thing with reference to the goods for the purpose of ascertaining the price, the property does not pass until the act or thing is done and the buyer has notice that it has been done.

Rule 4. —When goods are delivered to the buyer on approval or on sale or return or other similar terms the property in the goods passes to the buyer:—

- (a) when he signifies his approval or acceptance to the seller or does any other act adopting the transaction;
- (b) if he does not signify his approval or acceptance to the seller but retains the goods without giving notice of rejection, then, if a time has been fixed for the return of the goods, on the expiration of that time, and, if no time has been fixed, on the expiration of a reasonable time.

Rule 5. (1) Where there is a contract for the sale of unascertained or future goods by description, and goods of that description and in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer or by the buyer with the assent of the seller, the property in the goods then passes to the buyer; and the assent may be express or implied, and may be given either before or after the appropriation is made.

(2) Where, in pursuance of the contract, the seller delivers the goods to the buyer or to a carrier or other bailee or custodian (whether named by the buyer or not) for the purpose of transmission to the buyer, and does not reserve the right of disposal, he is to be taken to have unconditionally appropriated the goods to the contract.

(3) Where there is a contract for the sale of a specified quantity of unascertained goods in a deliverable state forming part of a bulk which is identified either in the contract or by subsequent agreement between the parties and the bulk is reduced to (or to less than) that quantity, then, if the buyer under that contract is the only buyer to whom goods are then due out of the bulk—

- (a) the remaining goods are to be taken as appropriated to that contract at the time when the bulk is so reduced; and
- (b) the property in those goods then passes to that buyer.

(4) Paragraph (3) above applies also (with the necessary modifications) where a bulk is reduced to (or to less than) the aggregate of the quantities due to a single buyer under separate contracts relating to that bulk and he is the only buyer to whom goods are then due out of that bulk.

20 Passing of risk

- (1) Unless otherwise agreed, the goods remain at the seller's risk until the property in them is transferred to the buyer, but when the property in them is transferred to the buyer the goods are at the buyer's risk whether delivery has been made or not.

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(2) But where delivery has been delayed through the fault of either buyer or seller the goods are at the risk of the party at fault as regards any loss which might not have occurred but for such fault.

(3) Nothing in this section affects the duties or liabilities of either seller or buyer as a bailee or custodian of the goods of the other party.

(4) In a case where the buyer deals as consumer or, in Scotland, where there is a consumer contract in which the buyer is a consumer, subsections (1) to (3) above must be ignored and the goods remain at the seller's risk until they are delivered to the consumer.

28 Payment and delivery are concurrent conditions

Unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions, that is to say, the seller must be ready and willing to give possession of the goods to the buyer in exchange for the price and the buyer must be ready and willing to pay the price in exchange for possession of the goods.

29 Rules about delivery

(1) Whether it is for the buyer to take possession of the goods or for the seller to send them to the buyer is a question depending in each case on the contract, express or implied, between the parties.

(2) Apart from any such contract, express or implied, the place of delivery is the seller's place of business if he has one, and if not, his residence; except that, if the contract is for the sale of specific goods, which to the knowledge of the parties when the contract is made are in some other place, then that place is the place of delivery.

(3) Where under the contract of sale the seller is bound to send the goods to the buyer, but no time for sending them is fixed, the seller is bound to send them within a reasonable time.

(4) Where the goods at the time of sale are in the possession of a third person, there is no delivery by seller to buyer unless and until the third person acknowledges to the buyer that he holds the goods on his behalf; but nothing in this section affects the operation of the issue or transfer of any document of title to goods.

(5) Demand or tender of delivery may be treated as ineffectual unless made at a reasonable hour; and what is a reasonable hour is a question of fact.

(6) Unless otherwise agreed, the expenses of and incidental to putting the goods into a deliverable state must be borne by the seller.

2.8 Supply of Goods and Services Act 1982

<http://www.legislation.gov.uk/ukpga/1982/29>

2 Implied terms about title, etc.

(1) In a contract for the transfer of goods, other than one to which subsection (3) below applies, there is an implied condition on the part of the transferor that in the case of a transfer of the property in the goods he has a right to transfer the property and in the case of an agreement to transfer the property in the goods he will have such a right at the time when the property is to be transferred.

(2) In a contract for the transfer of goods, other than one to which subsection (3) below applies, there is also an implied warranty that—

(a) the goods are free, and will remain free until the time when the property is to be transferred, from any charge or encumbrance not disclosed or known to the transferee before the contract is made, and

(b) the transferee will enjoy quiet possession of the goods except so far as it may be disturbed by the owner or other person entitled to the benefit of any charge or encumbrance so disclosed or known.

(3) This subsection applies to a contract for the transfer of goods in the case of which there appears from the contract or is to be inferred from its circumstances an intention that the transferor should transfer only such title as he or a third person may have.

(4) In a contract to which subsection (3) above applies there is an implied warranty that all charges or encumbrances known to the transferor and not known to the transferee have been disclosed to the transferee before the contract is made.

(5) In a contract to which subsection (3) above applies there is also an implied warranty that none of the following will disturb the transferee's quiet possession of the goods, namely—

(a) the transferor;

(b) in a case where the parties to the contract intend that the transferor should transfer only such title as a third person may have, that person;

(c) anyone claiming through or under the transferor or that third person otherwise than under a charge or encumbrance disclosed or known to the transferee before the contract is made.

3 Implied terms where transfer is by description.

(1) This section applies where, under a contract for the transfer of goods, the transferor transfers or agrees to transfer the property in the goods by description.

(2) In such a case there is an implied condition that the goods will correspond with the description.

(3) If the transferor transfers or agrees to transfer the property in the goods by sample as well as by description it is not sufficient that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description.

(4) A contract is not prevented from falling within subsection (1) above by reason only that, being exposed for supply, the goods are selected by the transferee.

4 Implied terms about quality or fitness.

(1) Except as provided by this section and section 5 below and subject to the provisions of any other enactment, there is no implied condition or warranty about the quality or fitness for any particular purpose of goods supplied under a contract for the transfer of goods.

(2) Where, under such a contract, the transferor transfers the property in goods in the course of a business, there is an implied condition that the goods supplied under the contract are of satisfactory quality.

(2A) For the purposes of this section and section 5 below, goods are of satisfactory quality if they meet the standard that a reasonable person would regard as satisfactory, taking account of any description of the goods, the price (if relevant) and all the other relevant circumstances.

(2B) If the transferee deals as consumer, the relevant circumstances mentioned in subsection (2A) above include any public statements on the specific characteristics of the goods made about them by the transferor, the producer or his representative, particularly in advertising or on labelling.

(2C) A public statement is not by virtue of subsection (2B) above a relevant circumstance for the purposes of subsection (2A) above in the case of a contract for the transfer of goods, if the transferor shows that—

- (a) at the time the contract was made, he was not, and could not reasonably have been, aware of the statement,
- (b) before the contract was made, the statement had been withdrawn in public or, to the extent that it contained anything which was incorrect or misleading, it had been corrected in public, or
- (c) the decision to acquire the goods could not have been influenced by the statement.

(2D) Subsections (2B) and (2C) above do not prevent any public statement from being a relevant circumstance for the purposes of subsection (2A) above (whether or not the transferee deals as consumer) if the statement would have been such a circumstance apart from those subsections.

(3) The condition implied by subsection (2) above does not extend to any matter making the quality of goods unsatisfactory—

- (a) which is specifically drawn to the transferee's attention before the contract is made,
- (b) where the transferee examines the goods before the contract is made, which that examination ought to reveal, or
- (c) where the property in the goods is transferred by reference to a sample, which would have been apparent on a reasonable examination of the sample.

(4) Subsection (5) below applies where, under a contract for the transfer of goods, the transferor transfers the property in goods in the course of a business and the transferee, expressly or by implication, makes known—

- (a) to the transferor, or
- (b) where the consideration or part of the consideration for the transfer is a sum payable by instalments and the goods were previously sold by a credit-broker to the transferor, to that credit-broker,

any particular purpose for which the goods are being acquired.

(5) In that case there is (subject to subsection (6) below) an implied condition that the goods supplied under the contract are reasonably fit for that purpose, whether or not that is a purpose for which such goods are commonly supplied.

(6) Subsection (5) above does not apply where the circumstances show that the transferee does not rely, or that it is unreasonable for him to rely, on the skill or judgment of the transferor or credit-broker.

(7) An implied condition or warranty about quality or fitness for a particular purpose may be annexed by usage to a contract for the transfer of goods.

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(8) The preceding provisions of this section apply to a transfer by a person who in the course of a business is acting as agent for another as they apply to a transfer by a principal in the course of a business, except where that other is not transferring in the course of a business and either the transferee knows that fact or reasonable steps are taken to bring it to the transferee's notice before the contract concerned is made.

5 Implied terms where transfer is by sample.

(1) This section applies where, under a contract for the transfer of goods, the transferor transfers or agrees to transfer the property in the goods by reference to a sample.

(2) In such a case there is an implied condition—

(a) that the bulk will correspond with the sample in quality; and

(b) that the transferee will have a reasonable opportunity of comparing the bulk with the sample; and

(c) that the goods will be free from any defect, [F1making their quality unsatisfactory], which would not be apparent on reasonable examination of the sample.

(4) For the purposes of this section a transferor transfers or agrees to transfer the property in goods by reference to a sample where there is an express or implied term to that effect in the contract concerned.

13 Implied term about care and skill.

In a contract for the supply of a service where the supplier is acting in the course of a business, there is an implied term that the supplier will carry out the service with reasonable care and skill.

14 Implied term about time for performance.

(1) Where, under a contract for the supply of a service by a supplier acting in the course of a business, the time for the service to be carried out is not fixed by the contract, left to be fixed in a manner agreed by the contract or determined by the course of dealing between the parties, there is an implied term that the supplier will carry out the service within a reasonable time.

(2) What is a reasonable time is a question of fact.

15 Implied term about consideration.

(1) Where, under a contract for the supply of a service, the consideration for the service is not determined by the contract, left to be determined in a manner agreed by the contract or determined by the course of dealing between the parties, there is an implied term that the party contracting with the supplier will pay a reasonable charge.

(2) What is a reasonable charge is a question of fact.

2.9 The Unfair Terms in Consumer Contracts Regulations 1999

<http://www.legislation.gov.uk/ukksi/1999/2083/made/data.pdf>

Written contracts

7.—(1) A seller or supplier shall ensure that any written term of a contract is expressed in plain, intelligible language.

(2) If there is doubt about the meaning of a written term, the interpretation which is most favourable to the consumer shall prevail but this rule shall not apply in proceedings brought under regulation 12.

SCHEDULE 2

Indicative and non-exhaustive list of terms which may be regarded as unfair

1. Terms which have the object or effect of—

(a) excluding or limiting the legal liability of a seller or supplier in the event of the death of a consumer or personal injury to the latter resulting from an act or omission of that seller or supplier;

(b) inappropriately excluding or limiting the legal rights of the consumer vis-à-vis the seller or supplier or another party in the event of total or partial non-performance or inadequate performance by the seller or supplier of any of the contractual obligations, including the option of offsetting a debt owed to the seller or supplier against any claim which the consumer may have against him;

(c) making an agreement binding on the consumer whereas provision of services by the seller or supplier is subject to a condition whose realisation depends on his own will alone;

(d) permitting the seller or supplier to retain sums paid by the consumer where the latter decides not to conclude or perform the contract, without providing for the consumer to receive compensation of an equivalent amount from the seller or supplier where the latter is the party cancelling the contract;

- (e)** requiring any consumer who fails to fulfil his obligation to pay a disproportionately high sum in compensation;
- (f)** authorising the seller or supplier to dissolve the contract on a discretionary basis where the same facility is not granted to the consumer, or permitting the seller or supplier to retain the sums paid for services not yet supplied by him where it is the seller or supplier himself who dissolves the contract;
- (g)** enabling the seller or supplier to terminate a contract of indeterminate duration without reasonable notice except where there are serious grounds for doing so;
- (h)** automatically extending a contract of fixed duration where the consumer does not indicate otherwise, when the deadline fixed for the consumer to express his desire not to extend the contract is unreasonably early;
- (i)** irrevocably binding the consumer to terms with which he had no real opportunity of becoming acquainted before the conclusion of the contract;
- (j)** enabling the seller or supplier to alter the terms of the contract unilaterally without a valid reason which is specified in the contract;
- (k)** enabling the seller or supplier to alter unilaterally without a valid reason any characteristics of the product or service to be provided;
- (l)** providing for the price of goods to be determined at the time of delivery or allowing a seller of goods or supplier of services to increase their price without in both cases giving the consumer the corresponding right to cancel the contract if the final price is too high in relation to the price agreed when the contract was concluded;
- (m)** giving the seller or supplier the right to determine whether the goods or services supplied are in conformity with the contract, or giving him the exclusive right to interpret any term of the contract;
- (n)** limiting the seller's or supplier's obligation to respect commitments undertaken by his agents or making his commitments subject to compliance with a particular formality;
- (o)** obliging the consumer to fulfil all his obligations where the seller or supplier does not perform his;
- (p)** giving the seller or supplier the possibility of transferring his rights and obligations under the contract, where this may serve to reduce the guarantees for the consumer, without the latter's agreement;
- (q)** excluding or hindering the consumer's right to take legal action or exercise any other legal remedy, particularly by requiring the consumer to take disputes exclusively to arbitration not covered by legal provisions, unduly restricting the evidence available to him or imposing on him a burden of proof which, according to the applicable law, should lie with another party to the contract.

2. Scope of paragraphs 1(g), (j) and (l)

(a) Paragraph 1(g) is without hindrance to terms by which a supplier of financial services reserves the right to terminate unilaterally a contract of indeterminate duration without notice where there is a valid reason, provided that the supplier is required to inform the other contracting party or parties thereof immediately.

(b) Paragraph 1(j) is without hindrance to terms under which a supplier of financial services reserves the right to alter the rate of interest payable by the consumer or due to the latter, or the amount of other charges for financial services without notice where there is a valid reason, provided that the supplier is required to inform the other contracting party or parties thereof at the earliest opportunity and that the latter are free to dissolve the contract immediately.

Paragraph 1(j) is also without hindrance to terms under which a seller or supplier reserves the right to alter unilaterally the conditions of a contract of indeterminate duration, provided that he is required to inform the consumer with reasonable notice and that the consumer is free to dissolve the contract.

(c) Paragraphs 1(g), (j) and (l) do not apply to:

- transactions in transferable securities, financial instruments and other products or services where the price is linked to fluctuations in a stock exchange quotation or index or a financial market rate that the seller or supplier does not control;
- contracts for the purchase or sale of foreign currency, traveller's cheques or international money orders denominated in foreign currency;

(d) Paragraph 1(l) is without hindrance to price indexation clauses, where lawful, provided that the method by which prices vary is explicitly described.

Provision of Services Regulations 2009

<http://www.legislation.gov.uk/ukxi/2009/2999/made>

Part 2 – Duties of Service Providers

Duty to make contact details available

7.—(1) The provider of a service must make available contact details to which all recipients of the service can send a complaint or a request for information about the service.

(2) Those contact details must include in particular—

(a) a postal address, fax number or e-mail address, .

(b) a telephone number, and .

(c) where the service provider has an official address, that address. .

(3) In paragraph (2)(c) “official address” means an address which a person is required by law to register, notify or maintain for the purpose of receiving notices or other communications.

Other information to be made available

8.—(1) The provider of a service must make the following information available to a recipient of the service—

(a) the provider’s name; .

(b) the provider’s legal status and form; .

(c) the geographic address at which the provider is established and details by which the provider may be contacted rapidly and communicated with directly (including, where the provider may be contacted and communicated with by electronic means, the details of how the provider may be so contacted and communicated with); .

(d) where the provider is registered in a trade or other similar public register, the name of the register and the provider’s registration number or equivalent means of identification in that register; .

(e) where the activity is subject to an authorisation scheme in the United Kingdom, the particulars of the relevant competent authority or the electronic assistance facility referred to in regulation 38; .

(f) where the activity is subject in another EEA state to a scheme equivalent to an authorisation scheme, the particulars of the authority involved or the single point of contact in that state; .

(g) where the provider exercises an activity which is subject to VAT, the identification number referred to in Article 22(1) of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the member states relating to turnover taxes – Common system of value added tax: uniform basis of assessment(1); .

(h) where the provider is carrying on a regulated profession, any professional body or similar institution with which the provider is registered, the professional title and the EEA state in which that title has been granted; .

(i) the general terms and conditions, if any, used by the provider; .

(j) the existence of contractual terms, if any, used by the provider concerning the competent courts or the law applicable to the contract; .

(k) the existence of any after-sales guarantee not imposed by law; .

(l) the price of the service, where a price is pre-determined by the provider for a given type of service; .

(m) the main features of the service, if not already apparent from the context; .

(n) where the provider is subject to a requirement to hold any professional liability insurance or guarantee, information about the insurance or guarantee and in particular— .

(i) the contact details of the insurer or guarantor, and .

(ii) the territorial coverage of the insurance or guarantee. .

(2) For the purposes of paragraph (1), information is made available to the recipient if—

(a) it is supplied by the provider to the recipient on the provider’s own initiative, .

(b) it is easily accessible to the recipient at the place where the service is provided or the contract for the service is concluded, .

(c) it is easily accessible to the recipient electronically by means of an address supplied by the provider, or .

(d) it appears in any information document supplied to the recipient by the provider in which the provider gives a detailed description of the service. .

Information to be supplied on request etc

9.—(1) The provider of a service must, on the request of a recipient of the service, supply the following information to the recipient—

(a) where the price is not pre-determined by the provider for a given type of service— .

(i) the price of the service, or .

(ii) if an exact price cannot be given, the method for calculating the price so that it can be checked by the recipient, or a sufficiently detailed estimate; .

(b) where the provider is carrying on a regulated profession, a reference to the professional rules applicable in the EEA state in which the provider is established and how to access them; .

(c) information on other activities undertaken by the provider which are directly linked to the service in question and on the measures taken to avoid conflicts of interest; .

(d) any codes of conduct to which the provider is subject and the address at which these codes may be consulted by electronic means, specifying the language available. .

(2) The information referred to in paragraph (1)(c) must be included in any information document in which the provider gives a detailed description of the service.

Information about dispute resolution

10. The provider of a service who is subject to a code of conduct, or is a member of a trade association or professional body, which provides for recourse to a non-judicial dispute resolution procedure must—

(a) inform a recipient of the service of that fact, and

(b) mention it in any information document in which the provider gives a detailed description of the service, .

specifying how to access detailed information about that procedure.

General

11. Information which must be made available or supplied by the provider of a service in accordance with the provisions of this Chapter must be made available or supplied—

(a) in a clear and unambiguous manner, and

(b) in good time before the conclusion of the contract or, where there is no written contract, before the service is provided (unless the information is requested as specified in regulation 9 after the provision of the service).

Consumer Rights (Payment Surcharges) Regulations 2012

<http://www.legislation.gov.uk/uksi/2012/3110/introduction/made>

Excessive charges prohibited

4. A trader must not charge consumers, in respect of the use of a given means of payment, fees that exceed the cost borne by the trader for the use of that means.

Consumer Protection Act 1987

<http://www.legislation.gov.uk/ukpga/1987/43/contents>

Part 1

Product Liability

1 Purpose and construction of Part I.

(1) This Part shall have effect for the purpose of making such provision as is necessary in order to comply with the product liability Directive and shall be construed accordingly.

(2) In this Part, except in so far as the context otherwise requires—

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- “dependant” and “relative” have the same meaning as they have in, respectively, the Fatal Accidents Act 1976 and the Damages (Scotland) Act 1976;
- “producer”, in relation to a product, means—
 - (a) the person who manufactured it;
 - (b) in the case of a substance which has not been manufactured but has been won or abstracted, the person who won or abstracted it;
 - (c) in the case of a product which has not been manufactured, won or abstracted but essential characteristics of which are attributable to an industrial or other process having been carried out (for example, in relation to agricultural produce), the person who carried out that process;
- “product” means any goods or electricity and (subject to subsection (3) below) includes a product which is comprised in another product, whether by virtue of being a component part or raw material or otherwise; and
- “the product liability Directive” means the Directive of the Council of the European Communities, dated 25th July 1985, (No. [85/374/EEC](#)) on the approximation of the laws, regulations and administrative provisions of the member States concerning liability for defective products.

(3) For the purposes of this Part a person who supplies any product in which products are comprised, whether by virtue of being component parts or raw materials or otherwise, shall not be treated by reason only of his supply of that product as supplying any of the products so comprised.

2 Liability for defective products.

(1) Subject to the following provisions of this Part, where any damage is caused wholly or partly by a defect in a product, every person to whom subsection (2) below applies shall be liable for the damage.

(2) This subsection applies to—

- (a) the producer of the product;
- (b) any person who, by putting his name on the product or using a trade mark or other distinguishing mark in relation to the product, has held himself out to be the producer of the product;
- (c) any person who has imported the product into a member State from a place outside the member States in order, in the course of any business of his, to supply it to another.

(3) Subject as aforesaid, where any damage is caused wholly or partly by a defect in a product, any person who supplied the product (whether to the person who suffered the damage, to the producer of any product in which the product in question is comprised or to any other person) shall be liable for the damage if—

- (a) the person who suffered the damage requests the supplier to identify one or more of the persons (whether still in existence or not) to whom subsection (2) above applies in relation to the product;
- (b) that request is made within a reasonable period after the damage occurs and at a time when it is not reasonably practicable for the person making the request to identify all those persons; and
- (c) the supplier fails, within a reasonable period after receiving the request, either to comply with the request or to identify the person who supplied the product to him.

(5) Where two or more persons are liable by virtue of this Part for the same damage, their liability shall be joint and several.

(6) This section shall be without prejudice to any liability arising otherwise than by virtue of this Part.

3 Meaning of “defect”.

(1) Subject to the following provisions of this section, there is a defect in a product for the purposes of this Part if the safety of the product is not such as persons generally are entitled to expect; and for those purposes “safety”, in relation to a product, shall include safety with respect to products comprised in that product and safety in the context of risks of damage to property, as well as in the context of risks of death or personal injury.

(2) In determining for the purposes of subsection (1) above what persons generally are entitled to expect in relation to a product all the circumstances shall be taken into account, including—

- (a) the manner in which, and purposes for which, the product has been marketed, its get-up, the use of any mark in relation to the product and any instructions for, or warnings with respect to, doing or refraining from doing anything with or in relation to the product;
- (b) what might reasonably be expected to be done with or in relation to the product; and
- (c) the time when the product was supplied by its producer to another;

and nothing in this section shall require a defect to be inferred from the fact alone that the safety of a product which is supplied after that time is greater than the safety of the product in question.

4 Defences.

(1) In any civil proceedings by virtue of this Part against any person ("the person proceeded against") in respect of a defect in a product it shall be a defence for him to show—

(a) that the defect is attributable to compliance with any requirement imposed by or under any enactment or with any Community obligation; or

(b) that the person proceeded against did not at any time supply the product to another; or

(c) that the following conditions are satisfied, that is to say—

(i) that the only supply of the product to another by the person proceeded against was otherwise than in the course of a business of that person's; and

(ii) that section 2(2) above does not apply to that person or applies to him by virtue only of things done otherwise than with a view to profit; or

(d) that the defect did not exist in the product at the relevant time; or

(e) that the state of scientific and technical knowledge at the relevant time was not such that a producer of products of the same description as the product in question might be expected to have discovered the defect if it had existed in his products while they were under his control; or

(f) that the defect—

(i) constituted a defect in a product ("the subsequent product") in which the product in question had been comprised; and

(ii) was wholly attributable to the design of the subsequent product or to compliance by the producer of the product in question with instructions given by the producer of the subsequent product.

(2) In this section "the relevant time", in relation to electricity, means the time at which it was generated, being a time before it was transmitted or distributed, and in relation to any other product, means—

(a) if the person proceeded against is a person to whom subsection (2) of section 2 above applies in relation to the product, the time when he supplied the product to another;

(b) if that subsection does not apply to that person in relation to the product, the time when the product was last supplied by a person to whom that subsection does apply in relation to the product.

5 Damage giving rise to liability.

(1) Subject to the following provisions of this section, in this Part "damage" means death or personal injury or any loss of or damage to any property (including land).

(2) A person shall not be liable under section 2 above in respect of any defect in a product for the loss of or any damage to the product itself or for the loss of or any damage to the whole or any part of any product which has been supplied with the product in question comprised in it.

(3) A person shall not be liable under section 2 above for any loss of or damage to any property which, at the time it is lost or damaged, is not—

(a) of a description of property ordinarily intended for private use, occupation or consumption; and

(b) intended by the person suffering the loss or damage mainly for his own private use, occupation or consumption.

(4) No damages shall be awarded to any person by virtue of this Part in respect of any loss of or damage to any property if the amount which would fall to be so awarded to that person, apart from this subsection and any liability for interest, does not exceed £275.

(5) In determining for the purposes of this Part who has suffered any loss of or damage to property and when any such loss or damage occurred, the loss or damage shall be regarded as having occurred at the earliest time at which a person with an interest in the property had knowledge of the material facts about the loss or damage.

(6) For the purposes of subsection (5) above the material facts about any loss of or damage to any property are such facts about the loss or damage as would lead a reasonable person with an interest in the property to consider the loss or damage sufficiently serious to justify his instituting proceedings for damages against a defendant who did not dispute liability and was able to satisfy a judgment.

(7) For the purposes of subsection (5) above a person's knowledge includes knowledge which he might reasonably have been expected to acquire—

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(a) from facts observable or ascertainable by him; or

(b) from facts ascertainable by him with the help of appropriate expert advice which it is reasonable for him to seek;

but a person shall not be taken by virtue of this subsection to have knowledge of a fact ascertainable by him only with the help of expert advice unless he has failed to take all reasonable steps to obtain (and, where appropriate, to act on) that advice.

(8) Subsections (5) to (7) above shall not extend to Scotland.

7 Prohibition on exclusions from liability.

The liability of a person by virtue of this Part to a person who has suffered damage caused wholly or partly by a defect in a product, or to a dependant or relative of such a person, shall not be limited or excluded by any contract term, by any notice or by any other provision.

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