

Checklist for consumers - General e-commerce

Know the trader

- Try to shop on a familiar or recommended site and make sure you have the name and full contact details, including postal address, of the web trader so you know who you are dealing with. Do not rely on just an e-mail address or a post office box.
- Do not assume that a website is based in the country indicated by its web address, e.g. '.ie.' does not necessarily mean the trader is based in Ireland. It should be stated somewhere on the website in which country the trader is registered. Your rights and ECC-Net's ability to help you depends on where the company is based. If this information is not clearly available consider shopping elsewhere.
- Remember: If you shop from websites based outside the EU, Norway and Iceland your European consumer rights will not necessarily apply and you may face unexpected customs and tax bills!
- When shopping through auctions, be aware of that sometimes the seller is not a professional seller and therefore the e-commerce protection is not applicable.

Check the trader

- Beware of sites that have only recently been set up. Fraudulent sites come and go very quickly.
- Check for trust marks. Electronic labels on websites may indicate that the e-trader has agreed to follow certain rules and regulations of a trust mark scheme.¹ However, some trust marks can be fake and one way to check this is to click on the trust mark to verify its official registration.
- Always research the background of unfamiliar web traders before purchase (e.g. www.whois.com). A simple internet search should reveal any negative feedback about the trader left by other consumer's in their consumer reviews, but be aware that some unscrupulous traders may also leave false positive feedback about themselves, especially on their own websites.²
- Don't be fooled by a prominent search engine ranking. Web based fraudsters may pay for search advertising so their sites appear at the top of search results.
- If you are having doubts about the trader, the terms and conditions or do not know if the trader is reliable, contact the European Consumer Centre (ECC) in the country where you live and ask for advice.

Avoid Scams

- Never ever reply to unsolicited emails (spam) and be careful when clicking on links or attachments in emails to avoid potential threats such as phishing.
- Watch out for tell-tale signs of scams: promises of huge rewards such as lottery winnings, messages stating urgent action is required to claim your winnings, and requests for upfront payment or private information. Be skeptical of all unsolicited contact and remember if it sounds too good to be true, it generally is.
- Do not disclose personal information that is not necessary to complete a transaction. Certain personal details, combined with your credit card number, place you at risk of identity theft.

1 Trust marks report 2013 "Can I trust the trust mark", p. 7. http://www.konsumenteuropa.se/PageFiles/155682/Trust_Mark_Report_2013.pdf

2 Ibid. page 51.

- Avoid buying counterfeit goods. Such products are often dangerous or of poor quality and it can be very difficult to get redress if something should go wrong. Bear in mind that the sale of fake goods is illegal and is often linked to organized crime. Also buying counterfeit goods can be illegal (for example in Italy). Be wary of large discounts of the recommended retail price, often a good indicator that an item is counterfeit. If in doubt contact the brand/rights holder directly to verify if the seller is an authorised agent.

Read the terms and conditions and keep documentation

Always read the terms and conditions applicable to your order and know exactly what you are agreeing to before going ahead with the contract. In particular, ensure you are aware of the trader's cancellation and return policies.

To be on the safe side, in case you need evidence later on, the following is recommended:

- Print and save the terms and conditions before ordering.
- Make screenshots during the selling procedure in order to keep records of all steps that have been taken.
- Keep copies of your order confirmation, receipts, letters, e-mails, all correspondence exchanged and screenshots of anything unusual.

Pay Safely

- Never send cash or use a money-wiring service because you will have no recourse if something goes wrong. You usually have more protection if you use a credit card.
- In case of prepayment, avoid bank transfer if you do not have experience with the trader.
- Make sure you use a secure website to enter credit card information. Look for a closed padlock symbol in the bottom right of the browser window and for the website address to begin with "https ://"(🔒)
- Some websites provide payment through payment transaction intermediaries, which may provide some safety and assistance in certain matters, e.g. in case of non-delivery. Check the terms and conditions for the payment transaction intermediary you intend to use. Also check the identity of intermediary as a lot of fraudsters set up their own in order to dupe consumers.
- Make sure your computer has up-to-date anti-virus software and a firewall installed to avoid getting hacked.
- It is also recommended to open a virtual sub bank account dedicated to online shopping if possible or to use virtual credit cards which are valid only for one transaction.

Data protection

Check the site's privacy policy and be wary if there isn't one. A privacy policy describes the type of personal information that is collected from you, the reason the information is collected, and who will have access to the information.

Your right to information – before the purchase

The trader must provide the following information on their website:

- the name and address of the trader and the business registration number
- the main characteristics of the product or service
- the total price, including taxes and fees, of the product or service
- the delivery costs
- the different payment methods

- the date for and information on delivery
- information on the cooling off period and exclusion
- information on the existence of a legal guarantee of conformity for goods
- for how long the offer is valid
- where applicable, the minimum duration of the contract

After the purchase the trader has to give you a written confirmation of the concluded contract and he is also obliged to send you information about:

- the right to withdraw / cooling off period
- how the cooling off period is calculated
- what to do if you want to cancel the purchase
- what happens after you have cancelled the purchase
- who to contact if you want to cancel the purchase
- that you have to pay for sending the goods back to the trader, unless agreed otherwise.
- that you are liable for diminished value of the returned goods.
- warranties and service
- the conditions to cancel the agreement if it is indefinite or exceeds one year

The information should be given to you as soon as the contract has been concluded or at the latest upon delivery even if it occurred at an earlier time.

The information should be given to you in a document that you can save. It is up to the trader to prove that you have received the information.

Guarantees

- The term **commercial guarantee**, relates to the willingness of the guarantor, who voluntarily assumes liability for certain defects. It is defined as follows: "any additional undertaking given by a seller or producer, over and above the legal rules governing the sale of consumer goods, to reimburse the price paid, to exchange, repair or handle product in any way, in the case of non-conformity of the product with the contract".³ Commercial guarantees are in addition to, and not in substitution for, consumers' statutory rights.
- The term **legal guarantee** relates to the legal protection of the consumer in respect of defects in the goods acquired. This legal protection is rendered compulsory by the law and is not dependent upon the contract. It is the seller of the product who is responsible for faulty goods under consumer legislation.

3 http://europa.eu/legislation_summaries/consumers/protection_of_consumers/l32022_en.htm

Cooling off

- The trader has to inform you about your right to withdraw from a distance contract. The cooling off period of 14 days starts the date you physically receive the items. If it is a service you have purchased, the period of withdrawal starts the date the contract was concluded.
- If the trader never informed you about your right to withdrawal, the cooling off period extends for up to additional 12 months from the end of the initial cooling off period. However, if the trader informs you in the meantime, then the withdrawal period expires 14 days after the day you received that information.
- After withdrawal, the trader has 14 days to refund the payment. If the contract concerns the purchase of goods, the trader has the right to postpone the repayment until he has received the goods back or until you have supplied evidence of having sent back the goods.
- Unless the trader has offered to collect the goods himself, you have 14 days to send back the goods, calculated from the date you informed the trader of your withdrawal. You have to bear the costs of returning the goods, unless the trader has agreed to bear them or if the trader has not informed you that you have to bear them.

You are liable for the diminished value of the goods if you have handled the goods in excess of what is necessary to establish the nature, characteristic and functioning of the goods. The trader may return a smaller amount to you after making a deduction for depreciation. This does not apply if the trader has not given you information about the right of withdrawal. Just to clarify, you can try a dress at home if it suits, but you cannot wear it at the "Vienna Operaball".

It is important to bear in mind that there are some exceptions to the cooling off period, where there is no right of withdrawal for consumers, e.g. plane tickets, package travels, car rental services, personalised goods etc.⁴

In case of non-delivery

- After the conclusion of a contract, the trader has 30 days to deliver the goods or to perform the service ordered, unless you and the trader have agreed on another time of delivery.
- If the trader has not delivered the goods within the time agreed, you can call upon him to make the delivery within an additional period of time appropriate to the circumstances. Keep proof that this has been done.
- If the trader still has not delivered the goods within that additional time given, you have the right to end the contract.
- However, if the delivery of the product within the agreed timeframe was essential the consumer is entitled to terminate the contract immediately upon expiry of the initially agreed time limit. If you require delivery by a certain date eg for a special occasion or Christmas, you should inform the trader, prior to the conclusion of the contract, that delivery by the specified date is essential.
- When you have terminated the contract, the trader has to reimburse all sums paid without any delay.
- If the trader refuses to pay you back, try contacting your bank. For credit card transactions you may be able to obtain assistance from your bank, in recovering the money if the trader refuses to refund you.⁵ Debit card payments may be covered by internal rules of the card schemes which gives the bank a possibility, under certain conditions, to try and help the consumer reverse payments made to a trader. However strict deadlines operate for these schemes and so it is important to act promptly.

4 Art. 16 DIRECTIVE 2011/83/EU, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32011L0083&rid=1>

5 In some countries there is a statutory right of assistance by the bank when paying with a credit card. See ECC-Net report "Chargeback in the EU/EEA. A solution to get your money back when a trader does not respect your consumer rights". http://www.konsumenteuropa.se/PageFiles/159452/Chargeback_Report.pdf

Legal warranty - in case of faulty products and services

- A product or service is faulty if it does not comply with the given description of the product or service or if it cannot be used for normal purposes or the specific purposes given by you to the trader. The product or service is also faulty if it does not show the normal quality and performance as can be reasonably expected.
- In the first place, the consumer may require the seller to repair the goods or replace them (in either case free of charge) unless this is impossible or disproportionate. Under certain conditions the consumer may require an appropriate price reduction or have the contract rescinded. These rules apply in general up to, at least, 24 months from the date of purchase but some countries have a longer period during which you can exercise your rights.
- The seller is liable for any lack of conformity which exists when the goods are delivered to you or which arises within a period of, at least, two years from delivery. However, the lack of conformity cannot be established if, at the moment of conclusion of the contract of sale, the consumer knew or could not reasonably have been unaware of the lack of conformity.
- Any lack of conformity that becomes apparent within six months of delivery will be presumed to have existed at the time of delivery, unless proof to the contrary is furnished or this presumption is incompatible with the nature of the goods or the nature of the lack of conformity.⁶ During the first 6 months after purchase the burden of proof is on the trader to demonstrate that a product is not faulty; whereas after 6 months have elapsed, it is up to consumers to prove that the product is not in conformity. (Except in Portugal and, as of 2016, France). If the purchase is cancelled the trader must reimburse all sums paid under the contract. The trader is also obliged to pay for the expenses you had when sending back the good.

If things go wrong – making a complaint

- Start by making a complaint to the web trader in writing and complain about the fault. Explain what the problem is, what you want them to do about it and when you want it done by. Enclose a description of the fault, photos can also be helpful to clearly point out the fault.
- It is important that you inform the trader whether you are using your right of withdrawal or if you are complaining about a faulty product or service.
- It is important to know that the term **legal guarantee** relates to the legal protection of the purchaser in respect of defects in the goods acquired. This legal protection is rendered compulsory by the law and is not dependent upon the contract. It is the seller of the product who is responsible for faulty goods under consumer legislation.
- The term **commercial guarantee**, relates to the willingness of the guarantor, who voluntarily assumes liability for certain defects e.g. a manufacturer.
- If you receive no satisfactory answer from a trader located in another EU country or Norway and Iceland, contact the European Consumer Centre (ECC) in the country where you live for further advice and assistance.

Can I be responsible for lost or damaged goods?

In general, the trader is responsible for the goods until you have acquired the physical possession of them. This means that if the goods are lost or damaged before they are delivered to you, the trader is responsible for it. However, if the transportation of the goods is arranged by you, you are responsible for the goods directly upon delivery to the carrier.

⁶ DIRECTIVE 1999/44/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees.

Be aware that when returning goods following the exercise of your right of withdrawal, you are responsible for them until they are received by the seller. For this reason it is important to return goods by means of recorded delivery so you will have some redress against the transport company for damaged items or if the goods are misplaced.

When delivery is accepted by the neighbors without previous consent by you, the responsibility remains the trader's. This is not the case when delivery is done to a third person which you agreed with.

Your right to customer services without extra charges

If the trader operates a customer service telephone helpline, you cannot be charged more than the basic telephone rate.⁷ Traders are obliged to use as standard (geographic) numbers that are not subject to any special tariff regime.

Additional payment

The trader is not allowed to charge you any extra fees in addition to the price agreed, without your express consent. In particular the trader is not allowed to use pre-ticked boxes to offer and charge for additional goods/services.

The trader is also not allowed to charge consumers more for paying by credit card (or other means of payment) than what it actually costs the trader to offer such means of payment.

Be aware of currency conversions and charges which may increase the final price to be paid.

7 In Austria the contract has already been concluded. Only for customer service hotlines referring to a concluded contract the charge cannot be higher than the basic rate.



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