



Consumer protection in the Czech Republic



Unlock Your Potential

Index:

Ochrana spotřebitele v ČR

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1 CONSUMER AND ENTREPRENEUR

This publication encompasses selected important **consumer rights and corresponding entrepreneurial obligations**, according to legislation effective from 1. 1. 2014, when it came into effect with the new civil code (law no. 89/2012 Sb.).

If the contract has been finalized before the aforementioned date, the conditions of the contract may still relate to the legislation contained in the old civil code (law no. 40/1964 Sb.), to which we also refer to in this publication, although only in the case of the most significant changes.

In order for the customer to exercise his consumer rights, he has to fulfill the definition of a consumer according to the civil code, or alternatively the definition as stated in the consumer protection law (law no. 634/1992 Sb. on consumer protection)

A consumer is any individual, who strikes a deal with an entrepreneur, or deals with him in other ways, which do not directly pertain to the consumer's area of entrepreneurial activity or occupation.

A consumer contract, according to customer protection legislation, **is defined** as an arrangement, where one party is the consumer, and the other the entrepreneur. Individuals claiming an appropriate entrepreneurial certification, as well as individuals carrying out entrepreneurial practices without a license are both considered as an entrepreneur in this case.

A customer is considered a consumer, if he buys goods or orders services for personal needs (e.g. if he buys an electric appliance, clothes, shoes, food, a gift for his friends or family, orders construction repair for his flat, mowing the lawn in front of his family house).

A transaction of goods and/or services between two consumers or entrepreneurs **is not considered a consumer contract**

An individual, who buys goods for his business or other profitable enterprise (on a company ID) is not considered a consumer.

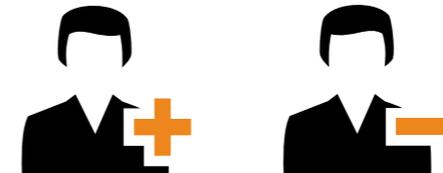
A customer who buys goods for his employer (e.g. office supplies, which the employer then uses for his entrepreneurial activities) is also not considered a consumer.

Examples:

If a consumer sells a product to another consumer, for example on an internet-based auction portal, internet bazaar, craigslist, through a classified ad or personally (for example between neighbors) as a one-time sale or irregularly (e.g. selling an old version of product after buying a new one, old clothes, basically selling anything the consumer doesn't need for financial gain), this doesn't constitute a consumer contract and the legal arrangement between both sides is guided by general regulations pertaining to purchase contracts (the customer will have less rights in cases of warranty claims, etc.).

However, if the selling party, for example on an internet portal, presents itself as a consumer, but from the character and amount of its sales it is clearly deducible, that he is in fact an entrepreneur (e.g. when he supplies several mobile phones into his selling portfolio each day), he is considered as such and the consumer has stronger customer rights, corresponding to the consumer contract legislation.

Furthermore, if an entrepreneur buys goods for use in his business effort, for example through an internet shop, this does not constitute a consumer contract, and the buyer cannot therefore exercise rights derived from consumer contract legislation (unless the store owner grants him this right)



2 CONSUMER CONTRACTS

2.1 Varying consumer rights according to type of sale

It is necessary to differentiate, if the consumer purchases goods or services:

- a) in a **common (brick and mortar) store**, or
- b) if he closes the deal through **long range communication devices** (i.e. without the physical presence of both parties), or
- c) if he closes the deal **outside of usual commercial premises**.

Consumer rights differ, in accordance with the place where the consumer facilitates the purchase.

A common store is considered to be not just your usual brick and mortar store, but also permanent sales booths and stalls in shopping malls (provided the customers approach these booths by themselves, as opposed to being roped in by salespeo-

ple), farmers markets, sales expos and so on.

Concerning purchases in common stores, the customer has less rights than in the case of long range sales or sales outside commercial premises. That's because in a common store the consumer usually does not feel rushed and has the possibility to examine or even try out the product, compare prices and quality of the product with the competition without the need to decide immediately, as is the case during showcase presentations or street vending.

When completing a purchase in a common store, the consumer does not have the right to withdraw from the contract within a 14 day period, without stating a reason.

Goods bought in a common store, that do not have defects for which the



customer can make claims (and if need be even withdraw from the contract), cannot be returned without stating a reason for their return, unless the salesman willingly grants this right to the customer (the terms and conditions of such a return are then determined by the selling party).

A contract closed through **long range communication devices** is for example a contract facilitated through the use of internet, by phone, tele-shopping, a contract realized through the sending of an order form from a catalogue and so on. The most important point here is, how the contract was closed, not how the goods were accepted.

Example:
If a customer orders goods online, and subsequently picks them up in a brick and mortar store, he has rights corresponding to a contract closed online.

Contracts closed outside of commercial premises are, for example contracts entered into with door to door salesmen, street vendors or contracts closed at showcase presentations.

Contracts, which were closed in premises usual for the entrepreneur's business can also fall into this category, provided that these contracts have been closed immediately after **the entrepreneur addressed the consumer** outside of these premises.

Example:
*A sales representative unexpectedly stops the consumer on the street and subsequently leads him to his office, which is located nearby, where he closes a deal with the customer. In this case, the contract falls into the category of **contracts closed outside of com-***

mercial premises, and the customer has more rights.

Contracts closed outside of commercial premises, also include **tours and tours organized by the entrepreneur for the purpose of advertising and selling goods** or rendering services (despite the fact, that the entrepreneur may have his place of business registered at the place of the showcase presentation and regardless whether the contract is closed at or during the showcase presentation, or later, for example in the place of business of the entrepreneur)

Timesharing, or consumer contracts, wherein the consumer gains the right to use lodging facilities for accommodation and eventual other services for more than one time period, if the contract is closed for a period longer than one year, or alternatively he participates in an exchange system relating to timesharing, is specified in the civil code § 1852 through § 1867. This legislation will not be used for standard contracts relating to tours or accommodation.

2.2 The content of consumer contracts

Regardless of the manner of sale, legislation states that all consumer contracts cannot be less favorable to the consumer than is defined by law.

Rights that are guaranteed by law cannot be limited by contract.

Example:
If the consumer buys something from an online store, whose terms and conditions state, that there can be no returns, or warranty claims on its products, this contradicts the law, and is therefore invalid. Even if the consumer agrees to the terms and conditions, this doesn't prevent him from exercising his right for a warranty claim later.

All information must be conveyed to the consumer in a clear and understandable fashion, in the language in which the contract is drawn.

If the contract can be interpreted in various ways, the **interpretation most**

favorable to the consumer will be used.

Forbidden arrangements, are those, which constitute an imbalance of rights and responsibilities to the detriment of the consumer.

The entrepreneur may not demand another payment from the consumer, without his agreement, other than the one about which the consumer has been informed prior to the finalizing of the contract, and on which they agreed in the contract.

The contract has to entail information conveyed to the consumer prior to its completion, unless the two parties agree otherwise.

The Entrepreneur has informational responsibilities as stated by law. He has to convey information to the customer, prior to the purchase.

The entrepreneur has to convey information as clarified in §1811 civil code (e.g. information about himself,

his goods, prices, possible payment means and costs, deliveries, warranty claims, contract duration and its termination, digital content function and its compatibility with hardware and software) **sufficiently in advance before closing the deal.**

If the transaction in question is a **sale using means of long range communication devices or outside of usual commercial premises**, the civil code states in §1820 additional informational duties for the entrepreneur, which he has to convey to the consumer sufficiently in advance prior to finalizing the contract (e.g. phone call charges, if they are different than regular rates, information on the right to withdraw from the contract, information about the existence, manner of and conditions of extrajudicial settlements of consumer complaints, including the information whether it is possible register the complaint at a state regulatory authority.

When finalizing contracts online (unless the contract is finalized by the

use of e-mail) the entrepreneur has to convey to the consumer information stated in §1826 of the civil code, as for example *the language in which the contract can be finalized, individual technical steps leading to finalizing the contract including means of correcting data already filled in etc.*

If the contract is finalized by means of telephone, the entrepreneur has to convey information about himself and the reason for his call at the beginning of the conversation.

If the entrepreneur delivers **goods or services to the consumer without him ordering**, the consumer does not have to return delivered goods or services at his own cost, or in any other way notify the entrepreneur.

Example:
The consumer receives a gift in the mail, which was not ordered by him/her, along with an appeal to pay up or return the gift, the consumer can keep the item, without having to pay the stated price.

3 TERMS AND CONDITIONS OF SALES AND FORBIDDEN BUSINESS PRACTICES



3.1 Sales terms and conditions and additional clauses

Upon entering into a contract with larger institutions, such as banks, insurance companies, telephone operators, energy suppliers and so on, the contract usually comes with terms and conditions, whose content the customer cannot influence.

The civil code then clearly states, that, for the protection of the weaker party, **terms and conditions, which the other side could not have reasonably expected** (e.g. *unreasonably high contract fines*), are deemed invalid, unless the customer specifically accepted them.

If there is reasonable cause to expect the need for subsequent changes of terms and conditions, the contract can

state, that the entrepreneur may be able to change them in a reasonable manner. The way in which the consumer will be notified of this change has to also be agreed upon, as well as the fact that the consumer may withdraw from the contract without sanctions within a notice period long enough for the consumer to procure similar services from a different supplier.

Terms and conditions along with additional contract clauses are considered valid, provided the **consumer has been acquainted with their meaning.**

The consumer has to understand contract clauses and terms and conditions. The entrepreneur has to explain the meaning of the regulations to the consumer.

If the contract contains a clause, which **can be read only with special difficulty**, or a clause which is **unintelligible** for the average individual, this clause is valid only in the case, that it is not inconvenient for the consumer, or when the meaning of it has been sufficiently explained to him.

If the contract contains a clause, that is especially disadvantageous to the consumer, without valid reasoning, and especially in cases, where the clause differs significantly from usual conditions in similar contracts, this clause is considered invalid.

Example:
A contract with a mobile operator contains a clause, which states, that if the consumer doesn't pay his phone bill on time, he has to give up his mobile tel-

ephone, which he had before entering into this contract, to the operator. Such a clause would then be invalid.

Also invalid is any contract, in which one party takes advantage of distress, inexperience, feeble-mindedness, agitation or carelessness of the other party and promises fulfilment, whose **property value is in gross imbalance to mutual fulfilment.** (e.g. a loan with extremely high interest).



3.2 Unfair business practices

The consumer protection law forbids the usage of unfair business practices when offering or selling goods and services.

An unfair business practice is considered, if the actions of the entrepreneur concerning the consumer are in contrast to requirements of business expertise and if these actions are able to considerably alter the consumer's actions in such a way, that he would make a decision, which he would not have made under normal circumstances.

Unfair business practices are especially considered as those which are **misleading and aggressive.** If an entrepreneur uses unfair business practices, it is possible to appeal to **The Czech Trade Inspection Authority.**

3.2.1 A business practice is considered as unfair when:

- a) untrue information is used
- b) information itself is true, but can

mislead the consumer considering circumstances and context of use

- c) entrepreneur omits important information which, taking into account the whole context, can be rightfully required; information which is stated incomprehensibly or ambiguously is considered as an omission as well
- d) presents their product or service with the intention of misrepresenting other products or services or to distinguish features from other entrepreneurs. This includes comparative advertising and introduction to the market
- e) commitment which is included in the Code of Conduct, and which is binding on the entrepreneur, is broken.

Offering and **selling of products breaking laws of intellectual property** is considered an unfair business practice, and the storing of these with the intention of selling or offering them for sale. Unauthorized use of protected marking in a commercial relationship is considered as an unfair business practice as well.

Essential obligations include the duty of ensuring that their **products are visibly and comprehensibly marked** by producer's trademark or that of the importer or supplier. If it is necessary in view of the type of product, name of product, information about weight, amount, size or shape and other information must be visibly displayed too. It is also important that information about the main materials be displayed. Not fulfilling any of these obligations is considered an unfair business practice.

Products must be visibly and comprehensibly labeled.

If it is necessary to act with regards to special instructions, when using the product, especially if instructions must be followed according to the manual, the seller is obligated to acquaint the consumer with the rules, unless the rules are generally known.

The vendor is obligated to inform the consumer about the price of products or services, in compliance with Price

Regulations and Regulations of the European Community. This information must be **clearly written with the price of products or services.**

Information about price must not seem to be:

- a) lower than it actually is,
- b) dependent on irrelevant circumstances,
- c) containing deliveries of products, services or work, which are in fact paid for separately
- d) going to be reduced, increased or unchanged, if it is not,
- e) marking other relationships between price and utility of the offered product or service and price and utility of comparable product or service.

The vendor is obligated to properly inform the consumer about the range, condition and way of application of the law of defective performance together with information about where consumer can complain.

Important information, which must be

given to the consumer is identification data about the vendor.

Example:

*An example of unfair business practice is so-called **bait advertising**, when the entrepreneur offers to buy products or services for a particular price without ensuring that there will be enough goods in the store, often with the purpose of attracting more customers. Similarly in some second-hand car dealers there could be advertisements for a car in good condition for a good price, although it has already been sold, and the dealer does not have similar cars for sale.*

Another example of an unfair business practice is when the vendor untruthfully claims that products will be sold only for a particular period of time or for a particular period of time if some conditions will be met or if he untruthfully claims he intends to end the business or move the premises with the intention of pressuring customers to make an immediate decision.

Another forbidden practice, which can be often seen on promotional events, is when the vendor provides incorrect information about the possibility of getting a similar product or service with not as good conditions as the usual market conditions.

3.2.2 A business practice is considered aggressive

A business practice is considered aggressive, if considering all the circumstances, the seller annoys, forces (including the use of force or inappropriate behavior) and limits the customer's ability to decide freely.

An aggressive business practice also includes being contacted by the entrepreneur even though you have rejected him once already.

A business practice is, according to Annex n.2 of the Law of consumer protection, always considered aggressive and therefore banned if the entrepreneur:

- a)** makes an impression that the consumer cannot leave the premises or the place of sale or offering a product without signing a contract,
- b)** personally visits consumer in his place of residence, even though consumer has asked him to leave his residence and not to come back, with the exception of claiming debts in a way that accords with the law.
- c)** repeatedly makes unsolicited proposals to the customer via phone, fax, e-mail, or other means of distance communication, with the exception of claiming debts in a way which accords with the law.
- d)** requests the consumer to submit papers, which are irrelevant when applying the rights ensuing from the insuring contract or when he does not respond to correspondence in order to discourage the consumer from applying rights ensuing from the contract
- e)** by means of advertising directly encourages children to buy an offered product or service or to make an adult person buy this product or service
- f)** requires from the consumer an immediate or delayed payment for the

product or services, that were given to the consumer, even though the consumer did not order them, or if the entrepreneur requires the return or deposit of the unwanted products, only if it is not a substitute delivery according to a contract

- g)** proclaims that if the consumer will not buy the product or service, the consumer's job, existence or establishment will be endangered
- h)** makes a false impression that the consumer has won or will win, if the consumer will act in a specific way, even though there is no prize or advantage or for the consumer to win or get that advantage, for which he must expend a financial sum or other expenses.

3.3 Other duties of the seller

There are many more duties of the seller in the consumer protection law that the consumer might demand. For example:



- The duty to sell products with the right weight, ratio or amount, in the prescribed, approved or usual quality, for the right price.
- Properly inform the consumer in the Czech language about the attributes and ways of using the sold products.
- Point out the possible defects of the product if the product is on sale for a lower price because of those defects. The seller is also required to sell these products separately.
- If the transaction is being held outside of the usual place of business (instead of the usual butcher's, the transaction is being held at a farmers' market) the seller must inform the buyer where he can file a complaint
- If it is possible, the seller must show the buyer the product, if the buyer demands it
- If the service is not given right away, the seller must give the consumer a document, stating that the transaction was successful
- If the buyer wants to receive a proof of purchase, the seller must give it to him.

4 SALES OVER THE INTERNET (THROUGH LONG DISTANCE COMMUNICATION) AND SALES OUTSIDE THE USUAL PLACE OF BUSINESS

If the consumer decides to buy something over the internet, it is in his best interest to check who runs the internet store (the name of the seller, address, make sure that the owner is not in any kind of trouble with the government or law). Valuable information can also be found on the internet, where past buyers write reviews about their past experience with a certain internet sale.

Paying before you receive the product is recommended only if the buyer is certain that he is buying from a reliable seller.

If the customer pays for the product, but does not receive it and the seller is not communicating with him, the customer is allowed to search the internet for other customers that have similar

problems and they may together put forward a complaint or join an already existing complaint and demand a refund. Alternatively, he may sign up his demand for insolvency proceedings (if the seller got himself into some kind of financial crisis). In some cases banks and providers of commercial and market portals can return the payment, provided the consumer makes a complaint in an agreed time limit.



4.1 The right to back out of the contract without giving a reason

Backing out of a contract is possible within a maximum 14 days after the contract has been signed over long distance or outside of the usual place of business.

In cases of contracts that were signed over long distance or in unusual places of business, the consumer has (not counting the following exceptions) **the right to back out of the contract without giving a valid reason within a maximum of 14 days.**

If the contract is not a contract of sale, the deadline starts when the contract is signed

In case of a contract of sale, the deadline starts the day the consumer picks up the product (for example, picking up the product at a post office)

In contracts whose subjects are a variety of products or different parts of a product (for example, the consumer orders a set of dishes, which will be delivered to him separately), the deadline starts when the consumer receives the last part.

On the other hand, in contracts the subject of which is a repeated delivery of the same product (for example, the consumer gets his pack of vitamins once every month), the deadline starts when the consumer receives his first delivery.

If the consumer wishes to step out of the contract, **the deadline is cancelled, provided the consumer sends the seller an announcement that he is stepping out of the contract.**

While according to legislation effective until 31. 12. 2013, it was necessary to deliver the withdrawal notice directly to the seller, when dealing with con-

tracts finalized since 1. 1. 2014, the customer only needs to prove that he sent the withdrawal notice before the deadline (by means of postal stamps on the sent letter, for example). It is therefore appropriate, for the consumer to have some evidence of timely withdrawal (e.g. a copy of a sent e-mail, post-office documentation etc.).

Example:
The customer of an internet shop on 4. 4. 2014 ordered a product, which was delivered to his home address on the 8. 4. 2014. From that day the 14-day withdrawal period starts and there is a chance to step out of the contract. If the consumer wishes to step out of the contract, he must send out his notification no later than 22. 4. 2014.

The entrepreneur is obliged to inform the consumer about his right to step out of the contract. If the entrepreneur does not inform the consumer about this option, the deadline is extended to 1 year. That means that the consumer can step out of the contract 1 year and 14 days after

the deadline started. If the consumer is instructed about his right to step out of the contract during this prolonged deadline, a new deadline starts on the day of his being instructed about his right. The new deadline lasts 14 days.

Example:
The consumer has bought a notebook online and received it from the postal services on 3. 4. 2014, without him being informed by the salesman beforehand about his right to withdraw from the contract (for example, in the terms and conditions of the online store). In such a case, the withdrawal deadline ends on 17. 4. 2015. If however, the salesman realizes his mistake and informs the customer about his rights after the fact, on 9. 6. 2014, the withdrawal deadline then ends on the 23. 6. 2014.

It is possible to step out of the contract that was agreed over the internet even before receiving the product. But it is necessary to let the entrepreneur know. Not accepting the product or not picking it up from the post office is not sufficient.

Otherwise, the entrepreneur could demand financial compensation from the consumer (because of the cost of keeping the product in storage, for example)

To limit the possible future risks, it is **advisable to step out of the contract in writing**, even in cases where legal provisions do not demand it.

A sample form for stepping out of a contract will be determined by government regulation No. 363/2013. Its provision to the consumer belongs to his informational duties that the entrepreneur must fulfill before a contract over long distance or outside of the usual place of business is signed.

If the entrepreneur makes it possible for the consumers to step out of the contract by filling out a form on his website, the entrepreneur will, without any delay, inform the consumer in text form when the form has been received by the entrepreneur.

Text form as a form of a document is in some cases defined in the civil code

as the easiest method of communication between the consumer and the entrepreneur, so that all the important information would not have to be sent in writing (on paper). Text form is preserved, if the information that is being given can be saved and opened repeatedly (for example, the entrepreneur sends a file in a normal format by e-mail to the consumer, or he gives the consumer a CD with the file saved on it. The consumer can then repeatedly open these files on his PC.)

Example:

If a contract is being signed by electronic means, the consumer has the right to demand the contract with the general terms and conditions in text form from the entrepreneur (for example, the entrepreneur gives the consumer the right to download the terms and conditions in a pdf format or he will send it by e-mail.)



4.2 Return of goods and the purchase price after the withdrawal, transportation costs

If the **consumer** steps out of the contract, he should **send or give back in person the products that he purchased from the entrepreneur, without any unnecessary delay, within a deadline of no longer than 14 days.**

The entrepreneur is required to repay, without any unnecessary delay, **any sum that the entrepreneur received for the returned product, including the delivery cost**, within 14 days of withdrawal by the consumer. **All these steps must be taken in the same way as the consumer took when buying this product.**

The entrepreneur will return all the received funds to the consumer by other means, only if the consumer agrees to this and it does not incur additional costs to the consumer. But **the entrepreneur does not have to return the received funds until the consumer**

returns the product in person, or until he proves that the product has been returned.

If the consumer chose a means of transportation of his ordered product other than the cheapest one, the entrepreneur will return the delivery cost for the cheapest delivery that the entrepreneur has to offer.

If the consumer decides to return the product without giving a reason within a period of no longer than 14 days, the consumer has the right to demand a full repayment of the product from the entrepreneur, including the delivery cost. The consumer will, however have to pay the postage for returning the product

The seller bears the costs of returning the goods, if the seller, before signing the contract, did not inform the consumer (for example, in the terms and conditions) about the fact that the consumer has to pay the cost of returning the product. The seller will also have to pay for the return of the product if the

contract has been signed outside the usual place of business and if the product has been delivered to the consumer at the time of signing the contract, and the product is not suitable to be sent back to the seller through a post office.

Examples:

Example no. 1: : If the consumer pays for the product with a bank transfer, the entrepreneur has to return the funds in the same way, unless the consumer agrees to another way of receiving his refund.

Example no. 2: The consumer ordered a mobile phone for the price of 2,999 Czech Crowns. The seller had 2 ways of delivery to offer – through the Czech post office for 99 Czech crowns or by a private company for 129 Czech crowns. The consumer chose the more expensive one, so the consumer paid 3,128 Czech crowns altogether. When the product was delivered, the consumer found out that the product did not suit his needs, so he stepped out of the contract without giving a reason, the unused product was put back in the

box and the consumer sent the product through a post office back to the seller, the consumer paid 89 Czech crowns for the post office delivery. The seller was then obliged to pay back 2,999 Czech crowns for the mobile phone and another 99 (because that is the price of the cheapest way of delivery that the seller had to offer), so the consumer got 3,098 Czech crowns from the seller.

Example no. 3: The consumer was visited in his home by a salesperson and the consumer bought a mattress for 49,900 Czech Crowns from the salesperson, and the mattress was immediately left in the consumer's home. If the consumer decides to step out of the contract no longer than 14 days after receiving the mattress, he has the right to not only get his money back, but he can also demand that the salesperson should take the mattress back himself.

After receiving the returned product, the seller has the right to check the product if it has been damaged or used so much, that the quality of the product has lowered.

If the consumer is using the product within the deadline of 14 days after stepping out of the contract and then returns the product, the consumer can pay the expenses, that exist because the product was used too much, thus reducing its quality.

The entrepreneur can only demand money from the consumer, because the product's quality was reduced, only if the entrepreneur told the consumer, before signing a contract, about the fact, that the consumer would have to pay for the products lowered quality if returned.

The consumer should always properly pack the product he wants to return, and choose a suitable way of transporting the product, otherwise the consumer may be liable for the damage that was done to the product during its transportation.

On the other hand, if the product was damaged on the way to the buyer, the seller is liable for damage to the product.

In order to prevent further disputes with the entrepreneur, it is advisable, for the consumer to check the goods immediately after receiving them, to find any possible defects, and upon finding any, to specify them in the goods hand-over protocol, which the deliveryman hands him to sign, and also to communicate his complaints to the selling party as soon as possible.

If the consumer tries out the goods in the usual manner, without there being any signs of wear and tear, he is entitled to a full refund, amounting to the buying price, and the entrepreneur cannot bill the consumer for any service charges in relation to the handling of the claim or their inspection.

Examples:

If the consumer receives a shirt from an online shop, he can unpack it, try it on, see if it fits him, and consequently, if it doesn't satisfy him, he can pack it up again and return it in its original state to the entrepreneur, who is then obliged to return the paid amount to the consumer.

The full amount doesn't have to be returned, if for example, the consumer were to wear the shirt all day, and in so doing cause wear and tear or spillage, or in some way tailored it etc. Even in this case, the entrepreneur cannot fully refuse withdrawal from the contract on the part of the consumer. He can, however, demand that the consumer compensate for general expenses, associated with the restoration of the given product to its original state, or the amount which makes up the difference in the selling values of the shirt in its original condition and the used condition (seeing that he has to sell this shirt in its used state). The reduction of value must be appropriate and the amount is subject to discussion. If the parties do not reach an agreement, they can, for example, choose one of the extrajudicial ways of resolving the dispute.

Similarly, if the consumer buys a camera, for example, he can try out its functions after unpacking, but he cannot, however, use it for a week on holiday, otherwise he may not receive the full amount from the entrepreneur.

4.3 Contracts, without the possibility of withdrawal without stating a reason

The civil code classifies other types of contracts, apart from the ones already stated, from which the consumer cannot withdraw without giving a reason why, even though they were finalized by means of long-range communication devices, or outside of the usual commercial premises. These concern for example:

- Deliveries of goods or services, whose prices depend on the fluctuations of the financial market independently of the will of the entrepreneur, and which can fluctuate even during the withdrawal period (e.g. gold)
- Delivery of goods, that were tailored according to the wishes of the consumer (e.g. the consumer had bought trousers which he had shortened, he had his name engraved on his newly bought notebook),
- Deliveries of perishable goods (e.g. groceries, that go bad easily),

- Deliveries of goods, that were upon delivery irretrievably mixed with other goods (e.g. the customer bought some coal or wood for fuel and had it dumped on a pile, where he already had some, without the possibility of distinguishing the newly bought coal/wood from that already there.),

- Deliveries of goods enclosed in a package, which the consumer opened, and which cannot be returned due to hygienic reasons (e.g. antiperspirant, lipstick),

- Deliveries of audio or video recordings or computer programs, if the customer opened their original packaging (e.g. CD, DVD)

- Deliveries of newspapers, magazines or periodicals

- Accommodation, transportation, gastronomy, or free time usage, if the entrepreneur offers these services at a certain time (e.g. a telephonic reservation for a concrete time and appointment at a hairdresser),

- The delivery of digital content, if it has not been provided on a physical medium and has been delivered with previous express consent of the consumer before the expiration of the withdrawal deadline and the entrepreneur conveyed to the consumer prior to entering into the contract, that in such a case he has no right to withdraw from the contract (e.g. an antiviral program, which the consumer downloads from the internet, using a given password).

Be wary of goods, which due to hygienic reasons cannot be used by another customer. Such goods cannot be returned without stating a reason.

The above stated regulations concerning withdrawal will also not be used for contracts listed in § 1840 of the civil code as these are governed by special legislation – e.g. providing social and healthcare services, renting a flat, gambling, wagers, games, lotteries, construction of a new building, home deliveries of food and beverages, transportation tickets, contracts finalized by means of a vending machine etc.

4.4 Withdrawal from contracts for services rendered

It is possible to buy not only goods, but also services, by means of long distance communication or by contracts closed outside of usual business premises.

Examples:

The consumer orders gardening services at an online gardening store, for regular upkeep of his garden in front of his family house.

A sales representative shows up at the consumer's house and enters into contract with him, concerning energies, internet services, telecommunication services and so on.

Even if the customer is persuaded by the sales representative to sign the contract, without him reading it comprehensively and weighing his options properly, all may not yet be lost. In these cases, the consumer has the right to withdraw from the contract without stating a reason within the

14 day deadline period, starting from the day the service has been ordered.

When entering into service contracts, it is necessary for the consumer to consider, whether he wants the service to start right away, or after the 14 day withdrawal deadline.

If the entrepreneur, acknowledging expressly stated consumer consent, started providing the service before the aforementioned deadline had passed (e.g. the garden workers arrive, at the customer's request, the very next day after the order had been placed), the outcome depends on whether the entrepreneur informed the consumer prior to closing the deal, that in such a case he will not have the right of withdrawal. If he did inform him, the consumer's right to withdraw is forfeit the moment the service starts being provided. If he didn't inform the consumer, the right of withdrawal is not ruled out completely but the consumer is however obliged to refund the entrepreneur for the proportionate

amount of services already rendered, which should amount to the usual market value of the given service (e.g. the customer will pay for one mowing of the lawn, that happened before he withdrew from the contract).

Special legislation further increases customer's rights concerning several types of services (e.g. energy providing, telecommunication services), and that applies to not only contracts finalized long distance or outside usual premises, but also to services provided in usual business premises (see chapters 8 and 9)

4.5 Long range financial service contracts

If the consumer enters into contract concerning financial services (i.e. he opens a new bank account, negotiates a loan or insurance, or exchanges currency) by means of long range communication devices (i.e. online or by phone), the civil code provides him with further protection, according to special legislation § 1841 to § 1851, than if he were to, say, go to the bank personally.

Apart from a plethora of informational duties, which the entrepreneur has to fulfill, the consumer has a **right to withdraw from the contract**, specifically within the **14 day deadline**, from the finalization of the contract, or from the moment of conveying the required information, if they were communicated after the deal had been finalized. **Life insurance contracts or supplemental pension insurance contracts** are covered by a **30 day deadline**, starting from the moment the customer was informed about the finalization of the contract. If the entrepreneur provides the customer with false information, the customer then has the right to withdraw from the contract for a period of up to 3 months, starting from the moment he learned about this, or when he could and should have.

It is impossible to withdraw from contracts:

- Concerning financial services dependent on financial market fluctuations independent of the will of the provider (e.g. buying stock),
- Concerning travel insurance, baggage insurance or any similar short term insurances with the insurance time shorter than one month.

It is impossible to withdraw from an insurance contract, which covers less than a month.

If the consumer withdraws from the contract, the entrepreneur may demand **the payment equaling to the proportionate amount of services rendered**, and even then only in the case, that the consumer was informed beforehand and that he agreed with the provision of the services before the deadline for withdrawal is up. Similarly, the entrepreneur, 30 days at the latest after the withdrawal, **has to return all funds**, which he accepted from the consumer upon the basis of the contract.



4.6 Consumer protection concerning showcase presentations and the sale of package tours, consumer ombudsman

Seeing as showcase presentations and retail tours have been, in the past, known for their **repeated violations of consumer rights** (e.g. using aggressive sales techniques to impose overpriced goods on the customers), there has been a strengthening of consumer rights in this area.

In addition to customer rights, as already stated for sales outside of usual commercial premises, (e.g. *the right to information from the salesman, the right to withdraw from the contract within the 14 day deadline*), the consumer protection law establishes another obligation for the entrepreneur, namely for him to clearly and intelligibly state, on each **invitation card**, where and when the action will take place, how long it will last, what products and services will be offered and also information about the organizer and sales staff. These data must

be then sent (along with a copy of the invitation) to the **Czech Sales Inspection**, no later than 10 working days before the date of the stated event.

If the customer, despite the above stated risks, decides to visit such an event, it is necessary for him to thoroughly consider the purchase of such goods and go through all the documents before he signs them.



Did you know that you can take advantage of the services of the consumer ombudsman?

If, in spite of everything, consumer rights are in some way breached, the consumer may use the services of the **consumer ombudsman**, i.e. turn to one of the trade licensing offices, or directly to one of the consumer rights organizations, where he will be given free legal advice (*for example, information on how to withdraw from a contract*). A list of consumer organizations may be found, for example, on the web pages of the Ministry of Industry and Trade (<http://www.mpo.cz>) in the "Consumer protection" section. Contact with consumer organization staff can also be handled through the trade licensing offices.

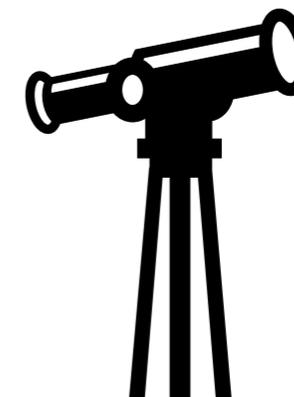
5 WARRANTY CLAIMS IN STORES

If the purchased product exhibits any defects, the customer has the right to claim warranty, regardless whether it was bought long range, outside of usual sales premises or in an ordinary store.

Goods can be claimed regardless of the way they were bought.

Consumer rights are determined according to when he bought the goods:

- **Rights concerning faults of goods bought before 31. 12. 2013** are determined by law no. **40/1964 Sb.** (the old civil code).
- **Rights concerning faults of goods bought since 1. 1. 2014** are determined by law no. **89/2012 Sb.** (the new civil code).



Ways of handling the claim (deadlines, confirmations etc.) are specified by law no. **634/1992 Sb.**, on consumer protection.

The legal interpretations concerning claims in this publication are based on the civil code valid since 1. 1. 2014 (law no. 89/2012 Sb.), while, at the same time, we point out the most important differences between the earlier and current legislation.

5.1 Responsibility of the salesman for the quality of goods upon handover to the customer and deadline for exercising rights concerning defective goods

According to legislation effective from 1. 1. 2014, **the salesman's responsibility to the buyer is**, that at the time, when the buyer was taking over the goods:

- a) the item has the properties, which both parties agreed upon, or, if there is no agreement, such properties that the seller or manufacturer described or which the buyer expected given the nature of the goods and based upon the advertisement
- b) the item is fit for the purpose, which the seller states is its function, or to which the item of this kind is normally used,
- c) the item fits or corresponds in quality or execution to a prearranged

sample or model, provided the quality or execution has been determined according to a given sample or model.

- d) The amount, measurement or weight of the item corresponds to given information
- e) The item complies with legal requirements

If the item doesn't fulfill these above stated characteristics, it may be considered faulty.

If the fault asserts itself in the course of six months after purchase, the assumption is that the goods in question were already faulty on purchase. If the seller were to disagree with this assertion, he has to prove the opposite, i.e. *e.g., that the fault was caused by the consumer through misused handling of the goods.* Thus the burden of evidence in these first six months is on the seller (entrepreneur).

After the six months have passed, the burden of evidence passes to the consumer, who then has to prove to the seller (*e.g. by means of expert opinion*),

that he is responsible for the fault.

It is possible to claim for most goods for up to 24 months after handover, provided the reason for the claim is based on a fault of the product.

The buyer is entitled to claim goods within these time limits:

- **24 months** – faults, that arise in new consumer goods,
- When selling used goods, it is possible to settle on shortening the time limit from 24 months, to up to **12 months,**
- **5 years** – in the cases of hidden faults of constructions connected to the ground through solid foundations. Uvedené lhůty pro reklamaci zboží nemohou být zkráceny, a to ani dohodou.

The above given time limits for claims cannot be shortened, not even by agreement.

It is necessary to inform the seller of the fault, as soon as it is found.

The law giving time limits cannot be interchanged with the durability of the goods, and common wear and tear is not considered a fault.

A fault is not the same as wear and tear.

Several types of goods (*for example groceries, fodder, cosmetics*) may be subject to different time limits than the ones given above, in conjunction with special legislation, if there is another time limit stated, such as an **expiry date** (*on the packaging, say*) or, for perishable goods, the **time, during which the item can be used** (*e.g. expiry date on the packaging of a yoghurt*)

As for items that were sold as already used these can't be claimed for faults corresponding to usage or wear and tear, which were already in place when the sale took place.

Items, that were sold for a lesser

price, because they (although new) already had a fault in place before the sale, cannot be claimed for those faults, for which the price has been decreased. The seller is obliged to advise the buyer, that the item has a fault, and specify the nature of it, if it is not already evident from the nature of the sale. Other faults can be claimed in the normal way.

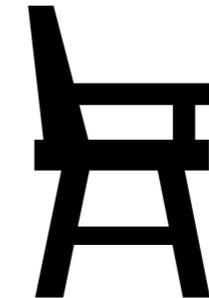
If the consumer requests, **the seller is obliged to issue a written confirmation of purchase (warranty card),** specifying the rights the customer is due, if the given item were to prove faulty.

The seller will state his identification on the **warranty card,** and, if necessary, explain to the consumer in a clear and concise manner the content, scope, requirements and duration of his responsibilities, and how to exercise the rights resulting from them.

Provided the nature of the item does not prevent it, the written confirmation **may be replaced by a document of**

purchase (sales slip) containing stated information.

The seller's responsibilities pertaining to possible faults of the item, must be at least the same, if not bigger, in scope, as specified by the manufacturer (*i.e. if the manufacturer states a 3 year warranty, the seller is obliged to provide this service to the customer*).



5.2 Defective performance rights

Interpretations on which rights pertaining to which faults, may be applied by the consumer towards the seller, slightly differ at the present time in certain areas. In general, if a dispute arises between the consumer and the seller, the authority legally authorized to decide in such matters, is the court.

In general, if a fault arises, for which the seller is responsible, **the consumer may,** (in accordance with § 2169 of the civil code), depending on the nature of the fault **demand** one or any of these rights:

- **Repair of the goods,**
- **Exchange of the goods,**
- **A discount off the price of the goods,**
- **Withdrawal from the contract** (refund of purchase price).

During the course of handling the fault claim, these solutions may occur: repair of the item, exchange of the item, discount off the price, or a refund of the purchase price.

1. If the fault may be easily removed, the customer has the right to a **repair of the item**.

2. An exchange is possible if it is not disproportionate to the nature of the fault. A request may be considered disproportionate, if, for example, the customer were to request an exchange of the item in the case, when the fault may be removed without further delay. (E.g. a simple replacement of a screw or a different part of a used bicycle, its adjustment, the sewing of a fallen off button on a shirt etc.).

If the fault relates to only a part of the item, the consumer may demand an exchange of the said part.

For goods bought before 31. 12. 2013 the old civil code states, that in the case of an exchange of old

goods for new, this then results in the start of a new warranty deadline, the new civil code, valid since 1. 1. 2014 does not define this to be so.

3. If it is not possible to remove the fault by repair or exchange, the consumer **may withdraw** from the contract and demand a refund of the purchase price.

4. The right to choose the delivery of a new item, the exchange of its parts or withdrawal from the contract also belongs to the consumer also in these cases:

- **The seller did not remove the fault during the legally defined time limit** (see chapter 5.4) or,

- If the consumer may not use the item properly, due to **repeated occurrences of the fault** after repair, or due to a **higher number of faults**.

A repeated occurrence is usually considered, when the same fault appears for the third time, a higher number

of faults than equals three or more faults, which occur simultaneously and prevent the consumer from using the item in its intended manner.

5. The buyer has a right to a proportionate discount, concerning goods bought after 1. 1. 2014, in these cases:

- If he does not withdraw from the contract or if he does not exercise his right to have a new item delivered free of faults, or to have parts of the old one exchanged, or the whole item repaired,

- In such cases, where the seller cannot deliver him a new item without faults, exchange its parts or repair the item, or if the seller does not fulfill his obligations in a sufficiently timely manner, or



- **If the removal of the fault (i.e. repair or exchange) were to cause considerable difficulties for the consumer**

If the purchase price of the goods has not yet been paid, the buyer does not have to pay a part of the purchase price appropriate to his right of discount, until the fault has been removed.

Example:

If it is proven, during a claim for a fault of the item, that the seller is responsible for the said fault, and that the removal of such a fault would cause significant difficulties for the customer (for example, if the consumer only has one pair of winter shoes, and snow has just fallen), the consumer may ask for an appropriate discount of the said item instead of repair, and try to repair the item himself, or have it repaired somewhere else, where it will be done faster. In such cases, however, the fault, to which the discount has been applied, cannot be claimed again if it reappears. The seller also is not held responsible for any possible faults created due to the consumer's unprofessional repair attempts. It is still possible to claim

other unrelated faults, if they appear.

6. Concerning items sold for a **lesser price, due to having defects, or already used items**, the buyer has a **right to an appropriate discount instead of the right of exchange**.

7. Apart from rights concerning defects of goods, consumers can **also claim damages**, if these arise.

Example:

If the consumer buys a refrigerator, which suddenly stops freezing, and groceries get spoiled as a result, or if it starts to deliver electric shocks and causes damages or harm to the consumer's health, the consumer may, apart from claiming for the fridge (requests for repair, exchange and so on) claim compensation for incurred damages, provided he does so within a three year time period, according to general provision § 2894 and following of the civil code. If the damage exceeds an amount of 500 EUR, he can also exercise rights stemming from provisions § 2939 to § 2943 concerning damages caused due to a defect in the product.

5.3 Quality guarantee

It is necessary to differentiate the above stated law giving responsibilities of the seller concerning defective performance (for which the term guarantee is no longer commonly used) **from the so-called quality guarantee, which the seller provides voluntarily to the customer beyond the legal requirements.**

The seller may offer quality guarantee to the customer on top of legally required defective performance rights.

A quality guarantee ensures that the item will, during a determined time period, be fit to use for its intended purpose or that it will retain its normal qualities. Stating a quality guarantee in an advertisement or on the packaging has the same effect. A guarantee may also pertain to a single part of the item. The seller is not held responsible for faults, which the customer created himself.

The guarantee starts the moment the item is delivered to the buyer; if the item was sent according to the contract, it starts from the arrival of the item to its destination. If the item in question is to be installed or started by someone other than the seller, the guarantee starts the day the item is to start functioning, provided the buyer ordered such installation three weeks after taking over the item at the latest, and provided the necessary cooperation in a swift and dutiful manner. (e.g. a customer buys a gas boiler, which will then be installed in his house by a gas worker).

If the contract and guarantee statement list **different guarantee times**, or if there are conflicting guarantees on the packaging and in the warranty card, the longer one is regarded as the valid one. If, on the other hand, the two parties agree to a different guarantee time, than the one stated on the packaging as shelf life, the contractual agreement takes precedence.

5.4 Exercising and handling (warranty) claims

Warranty laws apply to the salesperson who is accountable for the selling of the product. However, if there is a **different person, assigned for repairs**, and specified as such on the warranty sheet, and if this person is located in a place nearer to the buyer, the buyer may apply for his claim to the person, assigned for repair of the product. This person will then conduct the repair in the warranty period agreed upon by the buyer and seller during the sale of the product.

Example:

A consumer bought a mobile phone in Prague, which, after several months of use, has started showing signs of failure, for which the salesman is responsible. The summary of warranty services, which has been included with the phone, lists a service shop in Hradec Králové, where the consumer lives. The consumer may also, if he so wishes, apply for his claim to this service shop, which can ascertain the failure and, if it is possible, also repair

the device. If it became clear, for example, that the failure is unrepairable and therefore the product (which the service shop does not have in stock) has to be replaced, or if the service shop did not properly handle the claim, the customer may then file his claim with the salesperson, who is responsible for the subsequent handling of the warranty claim.

The consumer must present the product to the seller, inform him about the nature of the defect or malfunction, and where the law gives the consumer a choice between multiple options (e.g. repair or exchange of the product), he must also determine the way he would like his claim to be handled. The chosen option cannot be changed without the consent of the seller. This of course does not apply, if the customer asked for the repair of a product, that turns out to be irreparable, or is not repaired in time.

The claimant may prove his purchase (i.e. that he purchased given goods from this seller, and when this exchange took place) in any verifiable way (e.g. a war-

ranty sheet, sales slip, evidence of internet purchase and so on)

Purchase of goods without a receipt does not have to benefit the consumer, because in the case of defective goods, it is difficult to prove to the seller, that the given product was indeed bought from him.

With the exception of cases where another person is assigned for the repair, the **seller is bound to accept the claim in any of his places of business**, where accepting the claim is possible, with regard to the selection of sold goods and/or provided services. Alternatively he can also accept the claim in his seat of business. There has to be an employee authorized to deal with warranty claims, present in the place of business, **during the whole period of business hours**.

Example:

If a business firm has a chain of sports stores and a chain of restaurants spread out through the Czech Republic, and the consumer buys, let's say

a swimsuit in one of these sports shops during a trip to Třeboň, he may file a claim even after his return to Brno, provided he does so in a sports shop, seeing as he probably would not be successful in a restaurant.

It is necessary to distinguish such cases as the one above from franchising, which corresponds to several stores of the same brand, which are owned by various entrepreneurs. In such cases, the product can be claimed only in the stores belonging to the same owner.

The seller (alternatively a guaranteed service shop) is obliged to give the consumer, after receiving the product that is being claimed, a written confirmation, which has to include

- When the consumer made the claim
- What its content is
- What form of claim the consumer wants

When making a claim, the consumer has the right to receive a written confirmation about the fact, that the seller received the claim and that it is being worked on.

After the end of the claim process, the seller has a duty to send the consumer **a confirmation, which must include:**

- A date and the way the claim was executed
- A confirmation about the possible repair and how long it will take

If the claim was rejected, the customer has the right to ask for a **written document**, which **explains why the claim was rejected**. The customer can use this document as evidence in court, if the customer does not agree with the way the claim was rejected.

The seller or his verified employee, are **obliged to decide what they will do with the claim immediately. In a more complex situation they have 3 days. The claim (including the removal of the defect) must be done, without any unnecessary delay, no later than 30 days after the claim went to effect**, as long as the seller and the customer do not agree to a longer deadline.

If some of these duties are broken, it is possible to turn to the Czech Commercial Inspectorate to investigate these unfulfilled duties.

If the customer found out about the defect legitimately, the deadline given by the law, that makes it possible for the customer to complain, **has not started**, but only for the time, that the customer was not able to use the product.

If the claim is legitimate, the customer has **the right to receive financial compensation**, for all the funds that were used to make the claim, only if the claim was put forth no later than 1 month after the end of the deadline, in which it is possible to make a claim.

Example:

If it is possible to send the claimed product through the post office, the funds that were used during this are possible to get back in the form of the compensation. This also applies if the product must be delivered back in person (public transport, customer's car,

not a taxi). If the product cannot be delivered back (a gas boiler, for example), the seller will come to the customer's house and take it back at his own cost.

The specifications of claims for defects in the product

While making a claim because of a defect, one can notice several specifications:

- Contrary to a change in the law, which is in effect until the 31.12.2013, the current civil code does not distinguish between different deadlines for
- Defects of a product are needed to be pointed out to the maker, without any unnecessary delay, after the customer discovered them, no later than 2 years after the product has been delivered, or no longer than 5 years, if the defect is connected to a structure

5.5 The specifications of claims for defects in a work

While making a claim because of a defect, several stipulations can be noted:

- Contrary to a change in the law, which is in effect until the 31.1.2013, the current civil code **does not distinguish between different deadlines** for making it possible to complain about the defects (on the one hand) and the repair and adjustments of the work (on the other hand)
- Defects in a work need to be **pointed out to the maker, without any unnecessary delay**, after the customer discovered them, **no later than 2 years after the work has been made**, or no longer than **5 years, if the defect is connected to a structure**
- **A work is considered defective, if it does not correspond to the contract**

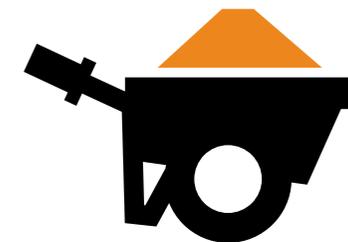
- Not every **item, that is being made**, is considered work (the essential factor, that distinguishes, whether the contract can be interpreted as a contract for work is simply this: If the value of the work put into the item is more than the value of the material, or if the prevalent part of the material was supplied by the customer it is considered to be a work contract; in other cases it is considered to be a contract of purchase; **repair, maintenance and construction** are always considered to be contracts for work)

- **The rights of the customer concerning a defect in work applies likewise to the provisions of a contract of purchase**

- **The customer is not entitled to request a replacement product**, if the subject of the work due to its nature cannot be returned to the maker (e.g. the customer cannot exchange a house built on his land for another.)

- the customer also does not has the right to refuse to accept a structure because of minor defects, which themselves or even in combination do not prevent the structure from being used without any major problems.

- Defects in structures can now be applied not only to the contractor, but also to his subcontractors, and the person who supplied the construction documentation, or who supervised the construction, to the extent that they are responsible for any construction defects.



6 CONSUMER LOANS

The legal definition of a consumer loan can be found in **law no. 145/2010 Sb**, on consumer loans

It is necessary to distinguish between a consumer loan and a mortgage, which is secured from the lender's point of view by a possible foreclosure on the borrower's property, or from loans between the consumers themselves. The aforementioned increased legal protection does not also apply in several other cases (for example, for loans less than 5,000 Kč)

When assessing the suitability of the loan, a consumer may take a look at the rate of APR.

Annual percentage rate (**APR**) is a beneficial factor in determining the suitability of a loan. Unlike the interest rate, it gives the consumer a clearer picture about how much he will have to pay above the borrowed amount

per year. In calculating APR, not only is the due amount plus interest taken into account, but other payments as well, for example fees pertaining to formation of the contract, fees for maintaining a loan account, insurance and more. The APR therefore, is in most cases larger than the interest rates would have you believe.

The contract legally binding the consumer loan **has to be in writing**, and has to contain certain **legally defined requirements**, such as the total amount and duration of the consumer loan, the conditions for withdrawing funds, APR including all fees pertaining to the consumer loan, the loan interest rate, the amount and due date of each installment, information about the rights of avoidance and about the right to a premature loan repayment, including information on procedures in the case of contract termination.

If the contract is not in writing, does not contain the law defined requisites, or at least one copy of the contract had not been provided to the consumer, and the consumer objects to this fact in the presence of the loan provider, the consumer loan's interest rate is considered to be that of the **discount rate of the Czech National Bank** valid at the time of the formation of the contract, and the agreements on other payments pertaining to the consumer loan are invalid. The discount rate is more convenient for the consumer, since it is usually lower than the agreed upon interest rate.

The consumer has to have an opportunity to study the conditions pertaining to the contract in advance.

The consumer has a right to be provided with all the available information pertaining to the contract (in written form, or in the form of other perma-

nent data carriers) with **sufficient time for a thorough acquaintance with the conditions, and possibly, a consultation, prior to entering into the contract**. This contract has also then to be thoroughly studied, in order to determine if it contains everything that has been agreed.

The loan provider is also obliged to assess the consumer's **ability to service the loan**. If it is found that the consumer is not able to pay off the loan, the loan cannot be extended. Any contracts signed, would be then considered null and void. The loan provider must provide information about the refusal to sign the contract to the consumer free of charge.

If the consumer were to find out, that the loan deal he struck is unsuitable for him, he may **withdraw from the deal without a stated reason, provided he does so within a 14 day time period**. The time period starts at the moment of entering into the contract, or from the moment the provider communicated the legal

information to the consumer, if that happened later. The withdrawal from the contract has to be sent on the last day of the time limit at the latest.

The consumer may withdraw from a consumer loan contract without stating a reason within a time period of 14 days from the finalization of the contract.

After withdrawing, the consumer is obliged to, without delay and no more than 30 days after sending the withdrawal, pay the loaned amount plus interest in an amount equal to the one the provider would be entitled to, had the withdrawal not happened, more specifically for the time period from the day the consumer loan started to the day the borrowed amount was repaid.

The consumer is also entitled to **withdraw from a consumer loan, arranged for an indefinite time period**, effective immediately, unless a length of notice has been agreed upon. The provider cannot charge the

consumer during the notice and it cannot be longer than 1 month.

The consumer is also permitted to **partly or fully repay the loan at any time during its duration**. In such a case the consumer has a right to an abatement of charges pertaining to the consumer loan, consisting of the amount of interest and other expenses, which the consumer would be bound to pay, provided he did not pay his loan off prematurely. The provider has a right to be recompensed only in conjunction with necessary and objectively justified expenses that accrued in direct connection to premature acquittal (the amount of compensation cannot exceed 1% of the prematurely paid part of the loan, provided the time between the acquittal and agreed final date of the consumer loan is longer than one year, in other cases, it may not exceed 0.5%).

If the loan contract is preceded by a contract about loan brokerage, it also has to be finalized in writing and the consumer may without reason and sanction withdraw from it no

later than 14 days after he entered into it (provided that during this time, the consumer loan has not yet been finalized). The consumer has to be advised about this in the contract. If the consumer has to pay for brokering the loan, it has to be explicitly stated in the contract. If any of these requirements are not fulfilled, the contract is considered invalid.

If the loan is provided to the consumer (be it by a salesman, or by a credit company) **exclusively in order to buy a specific product or service** (e.g. a consumer buys a personal automobile and agrees with the car salesman to finance it with a consumer loan), then in the case of the consumer withdrawing from the contract of purchase (e.g. in an online store without stating a reason within the 14 day deadline or when claiming for a fault), he is entitled to cancel the consumer loan used to finance the said purchase without any penalties. The consumer must however, inform the provider of the loan about his withdrawal.

The loan collateral must be in a balanced ratio in respect to the size of the loan.

A bill or a check cannot be used to pay off a consumer loan, or to use as collateral, and the collateral may not be in an obvious disparity with regard to the size of the loan (e.g. *when providing a consumer loan for 7 000 Kč, the provider cannot demand the consumer's family house worth 4,000,000 Kč as collateral*).

Offering, brokering or negotiating consumer loans through telephone lines with higher than normal charges is also forbidden.

Matters concerned with abiding by legal criteria is overseen by the **Czech Trade Inspectorate** (for non-banking providers) and the **Czech National Bank** (if the loan is provided by a bank).

7 TOURS AND TRANSPORT AGREEMENTS

7.1 Contract and confirmation of a tour

With a contract for a tour, the organizer is obliged to prepare a pre-prepared package of tourism services for the customer, which is arranged either for a period longer than 24 hours or includes an overnight stay, **and contains at least two of the following transactions:**

- a) accommodation,
- b) transport,
- c) other tourist services that are not a part of transport or accommodation and that are accounting for a significant proportion of the offered services (e.g. cultural programs, guided city tour).

The contract for a tour does not have to be in writing, but the consumer has the right to receive a written confirmation of the tour.

Contract for a tour does not need to be in writing. However, **a written confirmation** of the trip is needed and this confirmation must be given to the customer by the organizer after the contract is signed, or sometime after it. Confirmation may not be necessary, if the contract is concluded in writing and if it contains all the particulars required to confirm the trip. Along with the confirmation of the tour, the organizer is obliged to give the customer a **proof of their insurance**. If the agreement and the confirmation differ in some parts, only the things that are beneficial for the customer are valid.

Included among the requirements are, in particular an indication of acknowledgment of the parties to the contract, the definition of a travel agent or a tour reference to the catalog, if it is available to the customer, the price of the trip including a payment time schedule, and drawing the customer's attention to his rights, and the financial cost to the customer, if he decides to step out of the contract (without a valid reason.) If the tour includes services, that are not included in the total price of the tour, the organizer will also provide information about how much these services cost in the confirmation of tour. If accommodation is a part of the tour, the organizer is required to include this information in the confirmation of the tour: the place where the customer will be staying, tourist categories, how well the place of accommodation is equipped and other characteristics. The organizer will also say what means of

transport they will use, together with an itinerary and what food is provided, if there is any.

The organizer may also clarify a condition in the confirmation, that **the tour will take place only if a certain number of participants are signed up** (including a timeframe, when at the latest he will inform the customer of such a cancellation). The confirmation may also state the conditions, which the participants have to fulfill (such as age or health condition in the cases of more physically demanding tours)

If it is clarified in the contract, **the organizer can, in an agreed fashion, raise the cost of the tour**, under the circumstances, that up to 21 days before the start of the trip, these factors incur a price rise:

a) transportation costs including fuel prices, or

b) costs associated with transportation, such as airport, ferry or other fees included in the price of the trip, or

c) the Czech crown exchange rate, used as a measure for setting the price of the tour, provided it rises more than 10 % on average.

If however, the organizer were to inform the customer (i.e. sent a notice) later than the 21st day before departure, the organizer would have to bear the increase of the costs himself.

7.2 Stepping out of a contract for a tour

If some external factors force the organizer to change some conditions of the tour, **the customer has the right to step out of the contract if he does not find these conditions acceptable**. The deadline for stepping out of the contract is given by the organizer and cannot be shorter than 5 days and the deadline must end before the day the tour starts. Otherwise it is considered that the customer accepts these new conditions.

If the customer steps out of the contract, because the organizer changed the tour before it started, or if the organizer cancels the tour for a reason other than the customer not fulfilling his obligations, the organizer will, if possible, offer the customer another comparable tour. The customer can choose whether to accept the other tour, or not. If the two sides agree to these terms and if the tour is of a higher quality, the organizer does not have the right to demand more money from

the customer. If the quality of the new tour is lower than the original tour, the organizer will have to pay the customer the difference of these two tours.

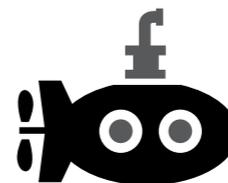
As a customer, you always have the right to step out of the contract, but you must respect the arrangements in the contract.

In general, **the customer can always step out of the contract before the start of the tour**. But if the customer steps out of the contract for a certain reason, other than the organizer not fulfilling his obligations, **the customer must pay a fine to the organizer** in the amount that was stated in the contract or in the confirmation of the tour. The customer also has to pay a fine if the organizer steps out of the contract, because the customer did not fulfill his obligations (for example, the customer did not pay for the tour or make an advanced payment within a specified deadline)

The organizer can step out of the contract only if the tour has been

cancelled or if the customer has not fulfilled his obligations.

If the organizer cancels the tour in a time limit shorter than 20 days before the start of the tour, he is bound to pay a **fine of 10%** of the original price of the tour and he is also bound to pay for any damage incurred to the customer. But if the customer is, for example, warned about the possibility of the tour being cancelled because of a low number of people on the tour, or if the tour is cancelled due to extraordinary circumstances (for example, a volcano eruption or an earthquake near to the place of destination), the organizer does not have to pay a 10% fine.



7.3 Shortcomings of a tour

The customer is bound to point out any shortcomings in the tour to the organizer (or a person that negotiated the contract) **without any undue delay, at the latest 1 month after the tour has ended**.

Refund for a tour must be paid within 1 month after the tour has ended.

If the tour does not meet the arranged or usual characteristics, **the organizer is bound to remove any shortcomings immediately**. If the organizer does not remove the shortcomings within a deadline, given by the customer, the customer can solve these problems by himself with all expenses paid by the organizer.

Example:

If the organizer does not arrange a taxi that would get the customer from the airport to his hotel, where the customer is supposed to stay, the customer can call his own taxi and all expenses will be paid by the organizer.

If the tour encounters **serious shortcomings, that make the tour unbearable**, the organizer is obliged to arrange transport to the place of original departure, or to a different arranged place. If the tour can continue, although with a lower quality than how it was written in the contract, the organizer is obliged to return money to the customer (the customer gets a discount). On the other hand, if the organizer arranges a continuation of the tour with a higher quality with higher expenses, all these expenses are paid by the organizer.

If the organizer does not fulfill his obligations, he is responsible to the customer for any **damage not only to property**, but from the 1. 1. 2014 also for the fact, **that he caused damage to the customer's holiday** (i.e. a "loss of enjoyment of the holiday").



7.4 Air transportation

If the consumer leaves from an airport, that is in the territory of a state of the EU (or even some other states), or if the airline is from the EU, the rights of the passengers are covered by **regulations of the European parliament and board No 261/2004**.

If the carrier cancels the flight, expects a delay longer than 2 hours or refuses to let a passenger onto a plane, the passengers has a right to receive **written information about his rights**.

If the flight is cancelled, the carrier must provide the passenger with a **redirected** flight (provide transport of the same quality as quickly as possible) and also the **necessary care** (for example, the carrier must provide food to the passenger, or also accommodation, if the passenger has to wait for his next flight overnight, also a telephone or an e-mail)

If the passenger does not agree with the redirected flight, he has **the right to get back his money for the plane ticket**, and if the cancelation of the flight is not announced in advance, the passenger also has the right to **receive financial compensation** of around 2500 – 600 euros depending on the length of the flight. The carrier does not have to pay this financial compensation if the flight was cancelled due to natural circumstances (for example, bad weather). These compensations can be reduced by half if the passenger got a redirected flight that will reach the passenger's original destination with a delay of not longer than 2 - 4 hours (depending on the length of the flight)

The same procedure follows if the passenger has a valid reserved ticket, the flight is not cancelled but the passenger **is prohibited from entering the plane** (for example, due to capacity reasons), without the passenger being to blame (for example, if the passenger arrived at the airport under the influence of alcohol or if the passenger arrived at the airport very late)

The same procedure follows if **the flight is delayed**. The passenger has the right to financial compensation if the flight was delayed by more than 3 hours and the plane was not delayed due to circumstances, that the carrier could not have overcome. The passenger can cancel his flight and demand a refund for the plane ticket, without any financial penalties, if the flight has been delayed by more than 5 hours.

If the consumer does not receive his **luggage** after arrival at his destination, or if the luggage is damaged, or parts of its contents are missing, it is suitable to ask for a protocol about this situation.

When luggage gets lost or gets damaged, it is appropriate to ask immediately for a protocol at the airport.

If it takes **too long for luggage to get sent back to the owner** (not talking about circumstances, where the carrier could not have done anything), the owner can ask for financial compensation, no later than 21 days after receiving

his luggage, for any damage that was done to him. It usually concerns products, that were necessary for the passenger, and that the passenger had to buy because of the loss of his luggage, for example, clothes or hygienic supplies.

In the case of **damaged luggage or when some of its contents are missing**, the claim for financial compensation has to be sent in writing no longer than 7 days after receiving the luggage.

Luggage is considered as lost, if it is not found within 21 days. If the **luggage has been damaged or lost**, the passenger has the right to claim financial compensation within a stated time limit. If the value of the luggage is very high, the passenger needs to pay a small fee to the carrier, so that the carrier can take responsibility for the luggage.

The passenger also has some of these rights in cases of a **delayed bus, train or ship**.

More information about passenger rights for international transportation can be found for example, at the **European Consumer Center** (or on its internet site <http://www.evropskyspotrebitel.cz> and this site can also help the consumer in finding a way to resolve an already existing problem)



8 SERVICES OF ELECTRONIC COMMUNICATION

8.1 Complaints for electronic communication services

As in buying products, when buying services it is possible to make complaints. For electronic communication this usually applies to the use of **mobile phones or landlines, cable TV or internet service providers.**

Legislation can be found in **law no. 127/2005 Sb.** concerning electronic communication.

Complaints can be made about the **quality of provided services** as well as **the way of billing.** If the complaint is justified, the provider is obligated to remove the defects and/or after the agreement with the customer and provide a replacement service or adequately decrease the price of the

service (e.g. the customer cannot use the internet connection temporarily).

The complaint must be made immediately, at the latest within two months of the defective provision of the service (or from the billing of the service). The provider is **obligated to settle a claim within a month** – if the provider is from abroad, the period is two months.

Making a claim has no suspensive effect i.e. when customer makes complaints about the bill he has to pay for it unless he agrees with provider otherwise. If the required sum is paid and the complaint is found justified, consumer has the right to get the overpayment back in a month after settling a claim unless he agrees with the provider otherwise.

Even when you make a complaint about billing, it is necessary to pay it. A refund will be made after the claim is settled.

If the consumer is convinced that the provider has not settled the claim correctly, he can appeal to the **Czech Telecommunication Office with an objection against settling the complaint within one month at the latest** from receiving settlement of the complaint or from the day of the end of the contract.

The consumer's submission to the Czech Telecommunication Office must include information about:

- who are parties of the dispute
- what is the substance of the dispute,

- what the consumer demands

The submission includes an obligation to pay for the relevant administrative fee.



8.2 Consumer's right to end the contract for electronic communication early

The consumer's rights to end a contract are wider than in 2013. Even when the customer is committed to pay for services for an exact time period according to the contract, **he can end the contract.** As a penalty for this the provider can ask the consumer to pay one fifth of the monthly fees outstanding to the end of the agreed time period, and an additional payment for a device lent to consumer.

The provider of mobile services is limited by the fee which the provider can require for the consumer's early termination of a contract.

Example:

A consumer concluded a contract for 24 months with a telephone operator with a monthly fee of 500 Kč. For this he was allowed to buy a mobile phone for half of the price. If the consumer decides to end the contract after two months, the provider can require a maximum of 2,200 Kč, - (i.e. 1/5 of

22 times 500) and then an additional payment for the mobile phone.

If the contract was concluded for a definite period which is always extended when the consumer does not terminate the extension in advance, the operator is obligated to inform the consumer about the possibility of ending the contract, 3 months in advance at the earliest or at the latest one month in advance.

Before the automatic extension of a contract you must be informed about this by the operator.

9 ENERGY SUPPLY

Consumer protection in energy supply, for example, electricity or gas, is determined by the **law No. 458/2000 Sb, - energy law.**

If the consumer has problems with energy supply, it is necessary to make a claim to the energy supplier, with whom the consumer signed a contract. If the supplier does not follow certain law regulations, or if the rights of the consumer are being overlooked, it is possible to file an application for investigation to the **Energy Regulatory Office**, which is a supervisory authority in this area and in certain limited cases, it can also deal with disputes between suppliers and customers.

For the purpose of increasing the protection of consumers, an **energy ombudsman** was established in 1. 2. 2014, who operates within the Energy Regulatory Office and who should facilitate out of court resolu-

tion of disputes between consumers and energy suppliers.

If the customer **signed a contract outside the usual place of business** (for example, a salesman that came to the customer's home, or when a customer signed a contract on the street), and the consumer then decides to **step out of the contract**, he can, **in a prolonged deadline, 5 days before the energy or gas starts to be supplied to the customer's home.**

The customer also has the right to step out of a contract, if the supplier changes the price of the electricity or gas, and no later than the tenth day before the changed price comes into effect, all provided, that the consumer was informed about this change by the supplier at least 30 days before the changed price comes into effect, and also about the possibility of backing out of the contract. The contract

is cancelled on the last day of the calendar month, in which the supplier received information about the fact that a customer is backing out of the contract.

If the consumer was informed about the change of price and his right to step out of the contract too late, the **consumer has 3 months, starting from the day of the change of the cost of energy or gas, to step out of the contract.** If the consumer stepped out of the contract less than 10 days before the end of a calendar month, the contract is cancelled on the last day of the following month.

More information can be found on the internet website: <http://www.eru.cz>.

10 OTHER SELECTED AREAS AND MEANS OF CONSUMER PROTECTION

10.1 Financial Arbiter

The financial arbiter is an extrajudicial authority established by the state **competent to adjudicate certain disputes in the financial market.**

The consumer can turn to it for its help free of charge, for example, in disputes:

- with a bank about the accuracy of payments posted.
- *with the lender to withdraw from the credit agreement, or about the fee for an early repayment of the loan.*

- *with the insurance company or insurance intermediary in disputes arising from providing or arranging life insurance.*

- with some public transport operators regarding a prepaid fare.

Particulars of the proposal, as well as further details about the proceedings before the Financial Arbiter can be found on the website: <http://www.finarbitr.cz> or in the Office of the Financial Arbiter.

10.2 The European Consumer Centre

The European Consumer Centre provides consumers mainly with:

- free information and advice on consumer rights in EU countries, Norway and Iceland.
- free assistance in dealing with their complaints about the quality of purchased goods and services or on the behavior of professionals in those countries.
- in the event of a dispute, assists in the search for an amicable solution to the dispute with a trader, or it

serves as a place of contact for free of charge assistance to consumers for extrajudicial solutions for their disputes with traders in those countries.

Example:

If a Czech consumer buys a product in a German internet shop, and that product is somehow damaged or not functioning, the Czech consumer can turn to the European Consumer Center for help.

The European Consumer Center cannot deal with situations, where the seller is not an entrepreneur, but a physical entity, or if the seller is from the Czech Republic or from another state, which is not under the influence of the European Consumer Center (for example, the USA)



10.3 Czech Trade Inspectorate and other supervisory bodies

The **Czech Trade Inspectorate (CTI)** is a government authority that carries out the control and supervision of legal entities and individuals that sell or supply goods and services to the market, unless under special laws such supervision is exercised by another administrative authority.

CTI supervises, for example:

- compliance of conditions set to ensure the quality of goods (excluding food), including their health status or conditions of storage,
- whether products placed on the market comply with the relevant technical requirements, and have a specified label and are safe.
- whether the products, that are on the market correspond to the technical requirements, whether they have a proper label and are safe

- whether, during the conclusion of a consumer loan with non-bank providers, all legal requirements are fulfilled

In addition to financial sanctions for breaking the relevant regulations, the CTI also bans products, which do not meet the requirements set out in the legal regulations.

CTI also checks, whether the entrepreneurs correctly inform the consumers about their rights, whether they meet the given deadlines for refunds, and give the consumers confirmations in advance about the way complaints are being dealt with, and so on. On the other hand, a consumer's dissatisfaction with the way the claim is being dealt with (for example, the claim was rejected), does not fall under the competence of the CTI. In this case, the consumer can turn to the law courts, or choose an extrajudicial form of solving such a dispute.

*Supervision of the quality of food products is dealt with the **State Agricul-***

tural Inspectorate.

*Supervision of the health status of food from animals is dealt with by the **State***



Veterinary Administration.

10.4 Extrajudicial ways of solving disputes

If a dispute arises between the consumer and the entrepreneur, it is not always necessary to go to court and it is also necessary not to renounce your rights.

As already indicated in the interpretation of individual areas of consumer protection, state authorities in the Czech Republic (e.g. Financial Arbiter) and government-supported non-profit organization offer consumers a variety of extrajudicial solutions, and very often for free. The aim is to gradually get to a state, where all disputes between a consumer and an entrepreneur that arose from the sale of goods or provision of services can be submitted to the appropriate court for settling consumer disputes.

Non-governmental consumer organizations currently provide mainly consultations in this area of law and

help with solutions to certain consumer disputes. A consumer can turn to:

The Czech Consumer Association
Pod Altánem 99/103, 100 00 Prague 10,
tel.: 261 263 574,
e-mail: spotrebitel@regio.cz

The Civil Association of consumers TEST
Černomořská 419/10, 101 00 Prague 10 — Vršovice, tel.: 241 404 922, e-mail: dtest@dtest.cz

Consumer net
Bělehradská 118, 120 00 Prague 2,
tel.: 222 516 521,
e-mail: spotrebitel@spotrebitel.net

Consumers Defence Association – Association
Mečová 5, 602 00 Brno,
tel.: 900101010 (10,- Kč/min.),
e-mail : poradna@asociace-sos.cz

GLE o.p.s.
Tyršova 1832/7, 120 00 Prague 2,



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(GLE o.p.s. v roce 2014 a 2015 realizuje projekt Poradenství a osvětová činnost pro spotřebitele, který podpořilo Ministerstvo průmyslu a obchodu v rámci státní dotační politiky vůči NNO pro rok 2014 a 2015 Ochrana spotřebitele.

V rámci projektu mohou klienti využít služeb otevřené poradny v Kolíně nebo položit dotaz prostřednictvím online poradny na stránkách www.skolaspotrebitele.cz.)

Všechny služby projektu jsou poskytovány zdarma.



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