

Selling to consumers – can you rely on your terms?

Selling products and services over the internet, by telephone or mail order to consumers can cause unnecessary headaches (usually 'legally' induced).

Consumer regulation is updated regularly and provides extensive protections to consumer purchasers.

Many businesses have still to adopt new terms of sale in response to the Consumer Rights Act 2015 (and more worrying still, have not even incorporated the changes required by the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013).

Terms which have been left un-amended for a number of years run the risk of being unenforceable and attracting the unwanted attention of Trading Standards.

Perhaps the most important change has been in the cancellation rights of consumers:

Is the consumer given the correct period to cancel?

Any product, service or digital content which is sold to a consumer at a distance may be subject to a consumer's right to cancel.

The right to cancel is subject to some exceptions (such as for products which are made to measure or goods which will expire rapidly). Generally speaking however a consumer has 14 days to cancel a distance contract without giving a reason.

When the 14 day period starts to run will depend on what the consumer has ordered. For digital content and services the 14 day period will run from the date of order. For goods, the period will commence from the date on which all of the goods are delivered.

As a good starting point, terms should be reviewed to check if the enhanced cancellation rights have been incorporated.

It is important to note that the right to cancel does not replace a consumer's broader rights in respect of faulty goods, services or digital content. Those wider rights set out when a business will be required to offer to replace, refund or repair a fault. However, unlike the right of cancellation, those rights do not need to be expressly set out in a business' terms of sale.

Spring cleaning your terms

Getting consumer terms right is unfortunately no small task.

Consumer protection regulations are extensive and guidance by regulatory bodies such as the Competition and Markets Authority is constantly refined.

As a rule of good risk management it is advisable to keep as up to date with the area as is possible and to ensure your terms of sale are kept under regular review (annually is a good idea).

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