

## Consumer contracts

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**Consumer contracts are those between traders and consumers, and require agreement from at least two parties**

To understand your legal responsibilities when selling to consumers, you need to know how and when a contract is made. You also need to have a broad understanding of contract terms so that you can be sure they are fair to consumers.

This also applies to non-written contracts - for example, selling goods in a shop

### What is a consumer contract?

A consumer contract is a legally binding agreement between you and the consumer concerning the sale of goods or digital content, or the supply of services (with or without goods).

Contracts can be made:

- verbally
- in writing
- by your and the consumer's conduct ('silent contracts'). An example of a silent contract is when a customer picks up goods and pays for them using a self-service checkout in a supermarket. No words are spoken, but it is a contract all the same

### Invitation to treat: what does this mean?

When you display goods in your store, or display goods or services on your website or in a brochure, you are inviting the consumer to make an offer to buy. You then have the right to accept the offer or decline it.

What this means is that the consumer cannot legally insist that you sell the goods, service or digital content if you choose not to (for example, there may have been a mistake in the way you placed them on display, or included them in your website or brochure).

This invitation to make an offer to buy is known as an 'invitation to treat'.

## **What are the elements of a contract?**

A legally binding consumer contract is made only when specific parts come together.

### **Offer**

Firstly there must be an offer.

Examples of a consumer offering to buy goods:

- removes them from the shelf and takes them to the checkout
- clicks 'add to basket' on your website
- contacts you to place an order from your brochure

If you give the consumer a quote for a service this is also an offer.

### **Acceptance**

Then there must be acceptance of the offer.

Examples of you accepting the offer:

- put the goods through the till
- send a confirmation email to the consumer after an order was placed and payment received through your website
- accept and take payment for an order placed from your brochure

If the consumer agrees to your quote for a service then this is also acceptance.

Some online businesses delay their acceptance / confirmation of the consumer's offer to buy, sometimes issuing an order acknowledgement in the first instance. This is to safeguard against any errors on the website. Businesses may then have the right to decline the consumer's offer rather than a consumer being able to argue that they had a legally binding contract.

### **Consideration**

In a consumer contract this is usually 'money consideration' (payment), including promise to make a payment.

### **Intention**

Intention to make a contract means you and the consumer must intend to be legally bound by the contract and you must both understand what the contract actually means.

### **Legal capacity**

The consumer must be legally capable of making a contract.

Examples of when people, depending on the situation, may not have legal capacity:

- too young

- mental health issues
- under the influence of drugs

## What happens if you don't want to go ahead with the contract?

You have the right to withdraw from a prospective contract; in other words, you do not have to accept the consumer's offer to buy.

For example, if you made a mistake with the price, you do not have to sell at the incorrect price if you can clearly establish that a contract has not been made.

You must take care because you run the risk of the consumer claiming he has been misled and that you are trading unfairly. You may be in breach of the law if you trade unfairly. You will find more information in the 'Good practice' Quick Guide

## Contract terms

Terms in consumer contracts set out the agreement you have with consumers - that is, what you agree to do and what you expect the consumer to do.

Not all contracts will have written terms, but you may find it difficult to prove what you and the consumer had agreed in the event of a dispute if the contract was verbal.

Your terms can appear:

- on the back of the contract
- on your website
- in the back of your brochure, if you sell by mail order

Any terms that are individually agreed with the consumer are called 'express terms'. This could be the price of the goods or service if it is not fixed.

Any terms that are the same across all your consumer contracts, such as payment or delivery arrangements, are called 'standard terms'.

In consumer law, some terms are automatically part of a contract for the sale of goods or the supply of services (with or without goods). For example, it is to be expected that goods are all of the following:

- of satisfactory quality
- as described
- fit for purpose

(You can find out more about these in the 'Goods' Quick Guide.)

It is also expected that services will be carried out with reasonable care and skill, within a reasonable time (if no time agreed beforehand) and at a reasonable charge (if the cost is not agreed beforehand).

(Read the Quick Guide on 'Services' for more info.)

It is against the law to try to take away a consumer's 'statutory rights' in your contract terms, on your website or brochure or through a notice in your business premises.

You are required you to give certain information to consumers who buy goods, services or digital content from you before the contract is made. These information requirements form part of the contract that the consumer has with you so if you do not provide the information, the consumer can claim you have breached the contract and seek a suitable resolution. You can find more information in the 'On-premises sales', 'Off-premises sales' and 'Distance sales' Quick Guides

## Unfair contract terms

The government department that leads on unfair terms is the Competition and Markets Authority and links to its guidance can be found in the In-depth Guide below.

## Breach of contract

If you or the consumer do not do what you agreed to do as set out in the contract - for example, you might not deliver the right goods or provide the service on time, or the consumer might not pay - this is called being in 'breach of contract'.

If you are in breach of contract the consumer may claim for repair or replacement of goods, full or partial refund, or damages (money compensation).

There are circumstances where you are entitled to claim compensation for the reduction in value of goods sold or supplied under a distance or off-premises contract where the consumer cancels the contract.

***For more detailed information please see the In-depth Guides below. Once you've finished, make sure you look at the full range of Quick Guides to see whether there are any other areas of law that affect your business.***

### Before you start

Make sure you choose your location using the drop-down list at the top of the page. The In-depth Guides provide country-specific information as some laws are different in England, Scotland and Wales, and some are enforced differently

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