

SUBSIDIARY LEGISLATION 378.17
CONSUMER RIGHTS REGULATIONS

13th June, 2014*

LEGAL NOTICE 439 of 2013.

PART I
PRELIMINARY

1. (1) The title of these regulations is the Consumer Rights Regulations. Citation and purpose.

(2) The purpose of these regulations is to implement Directive 2011/83/EU of the European Parliament and of the Council of the 25 October 2011 on consumer rights amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council.

2. (1) Any reference in these regulations to the "Act" is a reference to the Consumer Affairs Act, and the provisions of article 2 of the said Act shall apply to these regulations, provided that the definitions contained in sub-regulation (2) shall in all instances for the purposes of these regulations prevail. Interpretation. Cap. 378.

(2) In these regulations, unless the context otherwise requires -
"ancillary contract" means a contract by which the consumer acquires goods or services related to a distance contract or an off-premises contract and where those goods are supplied or those services are provided by the trader or by a third party on the basis of an arrangement between that third party and the trader;

"business premises" means:

- (a) any immovable retail premises where the trader carries out his activity on a permanent basis; or
- (b) any movable retail premises where the trader carries out his activity on a usual basis;

"commercial guarantee" means any undertaking by the trader or a producer (the guarantor) to the consumer, in addition to his legal obligation relating to the guarantee of conformity, to reimburse the price paid or to replace, repair or service goods in any way if they do not meet the specifications or any other requirements not related to conformity set out in the guarantee statement or in the relevant advertising available at the time of, or before the conclusion of the contract;

"consumer" means any natural person who, in contracts covered by these regulations, is acting for purposes which are outside his

*see regulation 1(3) of these Regulations, as originally promulgated.

trade, business, craft or profession;

"digital content" means data which are produced and supplied in digital form;

"distance contract" means any contract concluded between the trader and the consumer under an organised distance sales or service-provision scheme without the simultaneous physical presence of the trader and the consumer, with the exclusive use of one or more means of distance communication up to and including the time at which the contract is concluded;

"durable medium" means any instrument which enables the consumer or the trader to store information addressed personally to him in a way accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored;

"financial service" means any service of a banking, credit, insurance, personal pension, investment or payment nature;

"goods" means any tangible movable items, with the exception of items sold by way of execution or otherwise by authority of law:

Provided that water, gas and electricity shall be considered as goods within the meaning of these regulations where they are put up for sale in a limited volume or a set quantity;

"goods made to the specifications of the consumer" means non-prefabricated goods made on the basis of an individual choice of or decision by the consumer;

"off-premises contract" means any contract between the trader and the consumer:

- (a) concluded in the simultaneous physical presence of the trader and the consumer, in a place which is not the business premises of the trader;
- (b) for which an offer was made by the consumer in the same circumstances as referred to in paragraph (a);
- (c) concluded on the business premises of the trader or through any means of distance communication immediately after the consumer was personally and individually addressed in a place which is not the business premises of the trader in the simultaneous physical presence of the trader and the consumer; or
- (d) concluded during an excursion organised by the trader with the aim or effect of promoting and selling goods or services to the consumer;

"public auction" means a method of sale where goods or services are offered by the trader to consumers, who attend or are given the possibility to attend the auction in person, through a transparent, competitive bidding procedure run by an auctioneer and where the successful bidder is bound to purchase the goods or services;

"sales contract" means any contract under which the trader transfers or undertakes to transfer the ownership of goods to the consumer and the consumer pays or undertakes to pay the price

thereof, including any contract having as its object both goods and services;

"service contract" means any contract other than a sales contract under which the trader supplies or undertakes to supply a service to the consumer and the consumer pays or undertakes to pay the price thereof; and

"trader" means any natural person or any legal person, irrespective of whether privately or publicly owned, who is acting, including through any other person acting in his name or on his behalf, for persons relating to his trade, business, craft or profession in relation to contracts covered by these regulations.

3. (1) These regulations shall apply, under the conditions and to the extent set out in their provisions, to any contract concluded between a trader and a consumer. These regulations shall also apply to contracts for the supply of water, gas or electricity, including by public providers, to the extent that these commodities are provided on a contractual basis. Applicability.

(2) If any provision of these regulations conflicts with a provision of another law governing specific sectors, the provision of that other law shall prevail and shall apply to those specific sectors.

(3) These regulations shall not apply to contracts:

- (a) for social services, including social housing, childcare and support of families and persons permanently or temporarily in need, including long-term care;
- (b) for healthcare as defined in regulation 2 of the Cross-Border Healthcare Regulations; S.L. 528.03.
- (c) for gambling, which involves wagering a stake with pecuniary value in games of chance, including lotteries, casino games and betting transactions;
- (d) for financial services;
- (e) for the creation, acquisition or transfer of immovable property or of rights in immovable property;
- (f) for the construction of new buildings, the substantial conversion of existing buildings and for rental of accommodation for residential purposes;
- (g) which fall within the scope of the Package Travel, Package Holidays and Package Tours Regulations; S.L. 409.01
- (h) which fall within the scope of the Protection of Consumer (Timeshare, Long-Term Holiday Product, Resale and Exchange Contracts) Regulations; S.L. 409.02
- (i) which, in accordance with national law, are established by a public office-holder who has a statutory obligation to be independent and impartial and who must ensure, by providing comprehensive legal information, that the consumer only concludes the contract on the basis of careful legal consideration and with knowledge of its legal scope;

- (j) for the supply of foodstuffs, beverages or other goods intended for current consumption in the household, and which are physically supplied by a trader on frequent and regular rounds to the consumer's home, residence or workplace;
- (k) for passenger transport services, with the exception of regulations 9(2), 21 and 24;
- (l) concluded by means of automatic vending machines or automated commercial premises;
- (m) concluded with telecommunications operators through public payphones for their use or concluded for the use of one single connection by telephone, Internet or fax established by a consumer.

(4) These regulations shall not apply to off-premises contracts under which the overall price payable by the consumer does not exceed thirty euro (€30).

(5) These regulations shall not affect national general contract law such as the rules on the validity, formation or effect of a contract, in so far as general contract law aspects are not regulated in these regulations.

(6) These regulations shall not prevent traders from offering consumers contractual arrangements which go beyond the protection provided for in these regulations.

(7) These regulations shall only apply to contracts concluded on or after the 13 June 2014.

PART II

CONSUMER INFORMATION FOR CONTRACTS OTHER THAN DISTANCE OR OFF-PREMISES CONTRACTS

Information requirements for contracts other than distance or off-premises contracts.

4. (1) Before the consumer is bound by a contract other than a distance or an off-premises contract, or any corresponding offer, the trader shall provide the consumer with the following information in a clear and comprehensible manner, if that information is not already apparent from the context:

- (a) the main characteristics of the goods or services, to the extent appropriate to the medium and to the goods or services;
- (b) the identity of the trader, such as his trading name, the geographical address at which he is established and his telephone number;
- (c) the total price of the goods or services inclusive of taxes, or where the nature of the goods or services is such that the price cannot reasonably be calculated in advance, the manner in which the price is to be calculated, as well as, where applicable, all additional freight, delivery or postal charges or, where those charges cannot reasonably be calculated in advance, the fact that such additional charges may be payable;
- (d) where applicable, the arrangements for payment,

delivery, performance, the time by which the trader undertakes to deliver the goods or to perform the service, and the trader's complaint handling policy;

- (e) in addition to a reminder of the existence of a legal guarantee of conformity for goods, the existence and the conditions of after-sales services and commercial guarantees, where applicable;
- (f) the duration of the contract, where applicable, or, if the contract is of indeterminate duration or is to be extended automatically, the conditions for terminating the contract;
- (g) where applicable, the functionality, including applicable technical protection measures, of digital content;
- (h) where applicable, any relevant interoperability of digital content with hardware and software that the trader is aware of or can reasonably be expected to have been aware of.

(2) Sub-regulation (1) shall also apply to contracts for the supply of water, gas or electricity, where they are not put up for sale in a limited volume or set quantity, of digital content which is not supplied on a tangible medium.

(3) Sub-regulation (1) shall not apply with regard to contracts which involve day-to-day transactions and which are performed immediately at the time of their conclusion.

PART III

CONSUMER INFORMATION AND RIGHT OF WITHDRAWAL FOR DISTANCE AND OFF-PREMISES CONTRACTS

5. (1) Before the consumer is bound by a distance or off-premises contract, or any corresponding offer, the trader shall provide the consumer with the following information in a clear and comprehensible manner and in at least one of the official languages of Malta:

Information requirements for distance and off-premises contracts.

- (a) the main characteristics of the goods or services, to the extent appropriate to the medium and to the goods or services;
- (b) the identity of the trader, such as his trading name;
- (c) the geographical address at which the trader is established and his telephone number, fax number and e-mail address, where available, to enable the consumer to contact the trader quickly and communicate with him efficiently and, where applicable, the geographical address and identity of the trader on whose behalf he is acting;
- (d) if different from the address provided in accordance with paragraph (c), the geographical address of the place of business of the trader, and, where applicable, that of the trader on whose behalf he is acting, where

- the consumer can address any complaints;
- (e) the total price of the goods or services inclusive of taxes, or where the nature of the goods or services is such that the price cannot reasonably be calculated in advance, the manner in which the price is to be calculated, as well as, where applicable, all additional freight, delivery or postal charges and any other costs or, where those charges cannot reasonably be calculated in advance, the fact that such additional charges may be payable. In the case of a contract of indeterminate duration or a contract containing a subscription, the total price shall include the total costs per billing period. Where such contracts are charged at a fixed rate, the total price shall also mean the total monthly costs. Where the total costs cannot be reasonably calculated in advance, the manner in which the price is to be calculated shall be provided;
 - (f) the cost of using the means of distance communication for the conclusion of the contract where that cost is calculated other than at the basic rate;
 - (g) the arrangements for payment, delivery, performance, the time by which the trader undertakes to deliver the goods or to perform the services and, where applicable, the complaint handling policy of the trader;
 - (h) where a right of withdrawal exists, the conditions, time limit and procedures for exercising that right in accordance with regulation 13(1), as well as the model withdrawal form set out in Part B of the Schedule;
 - (i) where applicable, that the consumer will have to bear the cost of returning the goods in case of withdrawal and, for distance contracts, if the goods, by their nature, cannot normally be returned by post, the cost of returning the goods;
 - (j) that, if the consumer exercises the right of withdrawal after having made a request in accordance with regulation 8(3) or regulation 9(8), the consumer shall be liable to pay the trader reasonable costs in accordance with regulation 16(3);
 - (k) where a right of withdrawal is not provided for in accordance with regulation 18, the information that the consumer will not benefit from a right of withdrawal or, where applicable, the circumstances under which the consumer loses his right of withdrawal;
 - (l) a reminder of the existence of a legal guarantee of conformity for goods;
 - (m) where applicable, the existence and the conditions of after-sale customer assistance, after-sales services and commercial guarantees;
 - (n) the existence of relevant codes of conduct, as defined in article 51A of the Act and how copies of them can be obtained, where applicable;

- (o) the duration of the contract, where applicable, or, if the contract is of indeterminate duration or is to be extended automatically, the conditions for terminating the contract;
- (p) where applicable, the minimum duration of the obligations of the consumer under the contract;
- (q) where applicable, the existence and the conditions of deposits or other financial guarantees to be paid or provided by the consumer at the request of the trader;
- (r) where applicable, the functionality, including applicable technical protection measures, of digital content;
- (s) where applicable, any relevant interoperability of digital content with hardware and software that the trader is aware of or can reasonably be expected to have been aware of;
- (t) where applicable, the possibility of having recourse to an out-of-court complaint and redress mechanism, to which the trader is subject, and the methods for having access to it.

(2) Sub-regulation (1) shall also apply to contracts for the supply of water, gas or electricity, where they are not put up for sale in a limited volume or set quantity, of digital content which is not supplied on a tangible medium.

(3) In the case of a public auction, the information referred to in sub-regulation (1)(b), (c) and (d) may be replaced by the equivalent details for the auctioneer.

(4) The information referred to in sub-regulation (1)(h), (i) and (j) may be provided by means of the model instructions on withdrawal set out in Part A of the Schedule. The trader shall have fulfilled the information requirements laid down in sub-regulation (1)(h), (i) and (j) if he has supplied these instructions to the consumer, correctly filled in.

(5) The information referred to in sub-regulation (1) shall form an integral part of the distance or off-premises contract and shall not be altered unless the contracting parties expressly agree otherwise.

(6) If the trader has not complied with the information requirements on additional charges or other costs as referred to in sub-regulation (1)(e), or on the costs of returning the goods as referred to in sub-regulation (1)(i), the consumer shall not bear those charges or costs.

Information requirements in addition to those in the Services (Internal Market) Act, in the Electronic Commerce Act and the Electronic Commerce (General) Regulations. Cap. 500. Cap. 426. L.N. 426.02

6. The information requirements laid down in these regulations are in addition to information requirements contained in the Services (Internal Market) Act, in the Electronic Commerce Act and in the Electronic Commerce (General) Regulations:

Provided that if a provision of the Services (Internal Market) Act or of the Electronic Commerce Act, or of the Electronic Commerce (General) Regulations, on the content and the manner in which the information is to be provided conflicts with a provision of these regulations, the provision of these regulations shall prevail.

Burden of proof.

7. As regards compliance with the information requirements laid down in this Part, the burden of proof shall be on the trader.

Formal requirements for off-premises contracts.

8. (1) With respect to off-premises contracts, the trader shall give the information provided for in regulation 5(1) to the consumer on paper or, if the consumer agrees, on another durable medium. Any such information shall be legible and in plain, intelligible language.

(2) The trader shall provide the consumer with a copy of the signed contract or the confirmation of the contract on paper or, if the consumer agrees, on another durable medium, including, where applicable, the confirmation of the prior express consent and acknowledgement of the consumer in accordance with regulation 18(m).

(3) Where a consumer wants the performance of services or the supply of water, gas or electricity, where they are not put up for sale in a limited volume or set quantity, to begin during the withdrawal period provided for in regulation 10(2), the trader shall require that the consumer makes such an express request on a durable medium.

(4) With respect to off-premises contracts where the consumer has explicitly requested the services of the trader for the purpose of carrying out repairs or maintenance for which the trader and the consumer immediately perform their contractual obligations and where the payment to be made by the consumer does not exceed two hundred euro (€200):

(a) the trader shall provide the consumer with the information referred to in regulation 5(1)(b) and (c) and information about the price or the manner in which the price is to be calculated together with an estimate of the total price, on paper or, if the consumer agrees, on another durable medium. The trader shall provide the information referred to in regulation 5(1)(a), (h) and (k), but may choose not to provide it on paper or another durable medium if the consumer expressly agrees;

(b) the confirmation of the contract provided in accordance with sub-regulation (2) shall contain the information provided for in regulation 5(1).

9. (1) With respect to distance contracts, the trader shall give the information provided for in regulation 5(1) or make that information available to the consumer in a way appropriate to the means of distance communication used in plain and intelligible language. In so far as that information is provided on a durable medium, it shall be legible.

Formal requirements for distance contracts.

(2) If a distance contract to be concluded by electronic means places the consumer under an obligation to pay, the trader shall make the consumer aware in a clear and prominent manner, and directly before the consumer places his order, of the information provided for in regulation 5(1)(a), (e), (o) and (p):

Provided that the trader shall ensure that the consumer, when placing his order, explicitly acknowledges that the order implies an obligation to pay. If placing an order entails activating a button or a similar function, the button or similar function shall be labelled in an easily legible manner only with the words 'order with obligation to pay' or a corresponding unambiguous formulation indicating that placing the order entails an obligation to pay the trader. If the trader has not complied with this sub-regulation, the consumer shall not be bound by the contract or order.

(3) Trading websites shall indicate clearly and legibly at the latest at the beginning of the ordering process whether any delivery restrictions apply and which means of payment are accepted.

(4) If the contract is concluded through a means of distance communication which allows limited space or time to display the information, the trader shall provide, on that particular means prior to the conclusion of such a contract, at least the pre-contractual information regarding the main characteristics of the goods or services, the identity of the trader, the total price, the right of withdrawal, the duration of the contract and, if the contract is of indeterminate duration, the conditions for terminating the contract, as referred to in regulation 5(1)(a), (b), (e), (h) and (o). The other information referred to in regulation 5(1) shall be provided by the trader to the consumer in an appropriate way in accordance with sub-regulation (1).

(5) Without prejudice to sub-regulation (4), if the trader makes a telephone call to the consumer with a view to concluding a distance contract, he shall, at the beginning of the conversation with the consumer, disclose his identity and, where applicable, the identity of the person on whose behalf he makes that call, and the commercial purpose of the call.

(6) Where a distance contract is to be concluded by telephone, the trader shall confirm on a durable medium the offer to the consumer, who is bound only once he has signed the offer or has sent his written consent.

(7) The trader shall provide the consumer with the confirmation of the contract concluded, on a durable medium within a reasonable time after the conclusion of the distance contract, and at the latest at the time of the delivery of the goods or before the performance of the service begins. That confirmation shall include:

- (a) all the information referred to in regulation 6(1) unless the trader has already provided that information to the consumer on a durable medium prior to the conclusion of the distance contract; and
- (b) where applicable, the confirmation of the prior express consent and acknowledgment of the consumer in accordance with regulation 18(m).

(8) Where a consumer wants the performance of services, or the supply of water, gas or electricity, where they are not put up for sale in a limited volume or set quantity to begin during the withdrawal period provided for in regulation 10(2), the trader shall require that the consumer makes an express request:

Provided that any communications made under this sub-regulation shall be made on a durable medium.

(9) This regulation shall be without prejudice to the provisions on the conclusion of e-contracts and the placing of e-orders set out in Part III and Part IV of the Electronic Commerce Act.

Cap. 426.

Right of
withdrawal.

10. (1) Save where the exceptions provided for in regulation 18 apply, the consumer shall have a period of fourteen (14) days to withdraw from a distance or off-premises contract, without giving any reason, and without incurring any costs other than those provided for in regulations 15(2) and 16.

(2) Without prejudice to regulation 12, the withdrawal period referred to in sub-regulation (1) shall expire after fourteen (14) days from:

- (a) in the case of service contracts, the day of the conclusion of the contract;
- (b) in the case of sales contracts, the day on which the consumer or a third party other than the carrier and indicated by the consumer acquires physical possession of the goods or:
 - (i) in the case of multiple goods ordered by the consumer in one order and delivered separately, the day on which the consumer or a third party other than the carrier and indicated by the consumer acquires physical possession of the last good;
 - (ii) in the case of delivery of a good consisting of multiple lots or pieces, the day on which the consumer or a third party other than the carrier and indicated by the consumer acquires physical possession of the last lot or piece;
 - (iii) in the case of contracts for regular delivery of goods during a defined period of time, the day on which the consumer or a third party other than the carrier and indicated by the consumer acquires physical possession of the first good;
- (c) in the case of contracts for the supply of water, gas or electricity, where they are not put up for sale in a

limited volume or set quantity, or of digital content which is not supplied on a tangible medium, the day of the conclusion of the contract.

11. In the case of an off-premises contract the trader shall not require the consumer to pay any part of the price before the delivery of the goods, and where the goods are delivered in parts no payment shall be demanded except as represents the price of the part delivered:

Payment before delivery in the case of off-premises contract.

Provided that the trader may request a payment of a deposit not exceeding ten per cent of the price of the goods being the subject of the off-premises contract, which deposit shall not be payable before fourteen (14) days from the date of the off-premises contract, without prejudice to the right of withdrawal as established in these regulations.

12. (1) If the trader has not provided the consumer with the information on the right of withdrawal as required by regulation 5(1)(h), the withdrawal period shall expire twelve (12) months from the end of the initial withdrawal period, as determined in accordance with regulation 10(2).

Omission of information on the right of withdrawal.

(2) If the trader has provided the consumer with the information provided for in sub-regulation (1) within twelve (12) months from the day referred to in regulation 10(2), the withdrawal period shall expire fourteen (14) days after the day upon which the consumer receives that information.

13. (1) Before the expiry of the withdrawal period, the consumer shall inform the trader of his decision to withdraw from the contract. For this purpose, the consumer may either:

Exercise of the right of withdrawal.

- (a) use the model withdrawal form as set out in Part B of the Schedule; or
- (b) make any other unequivocal statement setting out his decision to withdraw from the contract.

(2) The consumer shall have exercised his right of withdrawal within the withdrawal period referred to in regulations 10(2) and 12 if the communication concerning the exercise of the right of withdrawal is sent by the consumer before that period has expired.

(3) The trader may, in addition to the possibilities referred to in sub-regulation (1), give the option to the consumer to electronically fill in and submit either the model withdrawal form set out in Part B of the Schedule or any other unequivocal statement on the website of the trader. In those cases the trader shall communicate to the consumer an acknowledgement of receipt of such a withdrawal on a durable medium without delay.

(4) The burden of proof of exercising the right of withdrawal in accordance with this regulation shall be on the consumer.

14. The exercise of the right of withdrawal shall terminate the obligations of the parties:

Effects of withdrawal.

- (a) to perform the distance or off-premises contract; or

- (b) to conclude the distance or off-premises contract, in cases where an offer was made by the consumer.

Obligations of the trader in the event of withdrawal.

15. (1) The trader shall reimburse all payments received from the consumer, including, if applicable, the costs of delivery without undue delay and in any event not later than fourteen (14) days from the day on which he is informed of the decision of the consumer to withdraw from the contract in accordance with regulation 13:

Provided that the trader shall carry out the reimbursement referred to in this sub-regulation using the same means of payment as the consumer used for the initial transaction, unless the consumer has expressly agreed otherwise and provided that the consumer does not incur any fees as a result of such reimbursement.

(2) Notwithstanding sub-regulation (1), the trader shall not be required to reimburse the supplementary costs, if the consumer has expressly opted for a type of delivery other than the least expensive type of standard delivery offered by the trader.

(3) Unless the trader has offered to collect the goods himself, with regard to sales contracts, the trader may withhold the reimbursement until he has received the goods back, or until the consumer has supplied evidence of having sent back the goods, whichever is the earliest.

Obligations of the consumer in the event of withdrawal.

16. (1) Unless the trader has offered to collect the goods himself, the consumer shall send back the goods or hand them over to the trader or to a person authorised by the trader to receive the goods, without undue delay and in any event not later than fourteen (14) days from the day on which he has communicated his decision to withdraw from the contract to the trader in accordance with regulation 13. The deadline shall be met if the consumer sends back the goods before the period of fourteen (14) days has expired:

Provided that the consumer shall only bear the direct cost of returning the goods unless the trader has agreed to bear them or the trader failed to inform the consumer that the consumer has to bear them:

Provided further that in the case of off-premises contracts where the goods have been delivered to the home of the consumer at the time of the conclusion of the contract, the trader shall at his own expense collect the goods if, by their nature, those goods cannot normally be returned by post.

(2) The consumer shall only be liable for any diminished value of the goods resulting from the handling of the goods other than what is necessary to establish the nature, characteristics and functioning of the goods. The consumer shall in any event not be liable for diminished value of the goods where the trader has failed to provide notice of the right of withdrawal in accordance with regulation 5(1)(h).

(3) Where a consumer exercises the right of withdrawal after having made a request in accordance with regulations 8(3) or 9(8), the consumer shall pay to the trader an amount which is in

proportion to what has been provided until the time the consumer has informed the trader of the exercise of the right of withdrawal, in comparison with the full coverage of the contract. The proportionate amount to be paid by the consumer to the trader shall be calculated on the basis of the total price agreed in the contract. If the total price is excessive, the proportionate amount shall be calculated on the basis of the market value of what has been provided.

(4) The consumer shall bear no cost for:

- (a) the performance of services or the supply of water, gas or electricity, where they are not put up for sale in a limited volume or set quantity, in full or in part, during the withdrawal period, where:
 - (i) the trader has failed to provide information in accordance with regulation 5(1)(h) or (j); or
 - (ii) the consumer has not expressly requested performance to begin during the withdrawal period in accordance with regulations 8(3) and 9(8); or
- (b) the supply, in full or in part, of digital content which is not supplied on a tangible medium where:
 - (i) the consumer has not given his prior express consent to the beginning of the performance before the end of the fourteen (14) day period referred to in regulation 10;
 - (ii) the consumer has not acknowledged that he loses his right of withdrawal when giving his consent; or
 - (iii) the trader has failed to provide confirmation in accordance with regulations 8(2) or 9(7).

(5) Except as provided for in regulation 15(2) and in this regulation, the consumer shall not incur any liability as a consequence of the exercise of the right of withdrawal.

17. (1) Without prejudice to regulation 15 of the Consumer Credit Regulations, if the consumer exercises his right of withdrawal from a distance or an off-premises contract in accordance with regulations 10 to 16, any ancillary contracts shall be automatically terminated, without any costs for the consumer, except as provided for in regulations 15(2) and 16.

Effects of the exercise of the right of withdrawal on ancillary contracts.
S.L. 378.12

(2) Regulations 10 to 16 shall also apply when an ancillary contract is terminated.

18. There shall be no right of withdrawal as set out in regulations 10 to 17 in respect of distance and off-premises contracts as regards the following:

Exceptions from the right of withdrawal.

- (a) service contracts after the service has been fully performed if the performance has begun with the consumer's prior express consent, and with the acknowledgement that he will lose his right of

- withdrawal once the contract has been fully performed by the trader;
- (b) the supply of goods or services for which the price is dependent on fluctuations in the financial market which cannot be controlled by the trader and which may occur within the withdrawal period;
 - (c) the supply of goods made to the specifications of the consumer or where these are clearly personalised;
 - (d) the supply of goods which are liable to deteriorate or expire rapidly;
 - (e) the supply of sealed goods which are not suitable for return due to health protection or hygiene reasons and were unsealed after delivery;
 - (f) the supply of goods which are, after delivery, according to their nature, inseparably mixed with other items;
 - (g) the supply of alcoholic beverages, the price of which has been agreed upon at the time of the conclusion of the sales contract, the delivery of which can only take place after thirty (30) days and the actual value of which is dependent on fluctuations in the market which cannot be controlled by the trader;
 - (h) contracts where the consumer has specifically requested a visit from the trader for the purpose of carrying out urgent repairs or maintenance. If, on the occasion of such visit, the trader provides services in addition to those specifically requested by the consumer or goods other than replacement parts necessarily used in carrying out the maintenance or in making the repairs, the right of withdrawal shall apply to those additional services or goods;
 - (i) the supply of sealed audio or sealed video recordings or sealed computer software which were unsealed after delivery;
 - (j) the supply of a newspaper, periodical or magazine with the exception of subscription contracts for the supply of such publications;
 - (k) contracts concluded at a public auction;
 - (l) the provision of accommodation other than for residential purpose, transport of goods, car rental services, catering or services related to leisure activities if the contract provides for a specific date or period of performance; or
 - (m) the supply of digital content which is not supplied on a tangible medium if the performance has begun with the prior express consent of the consumer and his acknowledgment that he thereby loses his right of withdrawal.

PART IV

OTHER CONSUMER RIGHTS

19. (1) Regulations 20 and 22 shall apply to sales contracts other than to contracts for the supply of water, gas or electricity, where they are not put up for sale in a limited volume or set quantity, or the supply of digital content which is not supplied on a tangible medium. Scope.

(2) Regulations 21, 23 and 24 shall apply to sales and service contracts and to contracts for the supply of water, gas, electricity, or digital content.

20. (1) Unless the parties have agreed otherwise on the time of delivery, the trader shall deliver the goods by transferring the physical possession or control of the goods to the consumer without undue delay, but not later than thirty (30) days from the conclusion of the contract. Delivery.

(2) Where the trader has failed to fulfil his obligation to deliver the goods at the time agreed upon with the consumer or within the time limit set out in sub-regulation (1), the consumer shall by means of a durable medium require him to make the delivery within an additional period of time appropriate to the circumstances. If the trader fails to deliver the goods within that additional period of time, the consumer shall be entitled to terminate the contract:

Provided this sub-regulation shall not be applicable to sales contracts where the trader has refused to deliver the goods or where delivery within the agreed delivery period is essential taking into account all the circumstances attending the conclusion of the contract or where the consumer informs the trader, prior to the conclusion of the contract, that delivery by or on a specified date is essential. In those cases, if the trader fails to deliver the goods at the time agreed upon with the consumer or within the time limit set out in sub-regulation (1), the consumer shall be entitled to terminate the contract immediately.

(3) Upon termination of the contract, the trader shall, without undue delay, reimburse all sums paid under the contract.

(4) In addition to the termination of the contract in accordance with sub-regulation (2), the consumer may have recourse to other remedies provided for by national law.

21. Traders shall not charge consumers, in respect of the use of a given means of payment, fees that exceed the cost borne by the trader for the use of such means. Fees for the use of means of payment.

22. In contracts where the trader dispatches the goods to the consumer, the risk of loss of or damage to the goods shall pass to the consumer when he or a third party indicated by the consumer and other than the carrier has acquired the physical possession of the goods: Passing of risk.

Provided that the risk shall pass to the consumer upon delivery to the carrier if the carrier was commissioned by the consumer to carry the goods and that choice was not offered by the

	trader, without prejudice to the rights of the consumer against the carrier.
Communication by telephone.	23. Where the trader operates a telephone line for the purpose of contacting him by telephone in relation to the contract concluded, the consumer, when contacting the trader, shall not be bound to pay more than the basic rate, this without prejudice to the right of telecommunication services providers to charge for such calls.
Additional payments.	24. Before the consumer is bound by the contract or offer, the trader shall seek the express consent of the consumer to any extra payment in addition to the remuneration agreed upon for the main contractual obligation of the trader. If the trader has not obtained the express consent of the consumer but has inferred it by using default options which the consumer is required to reject in order to avoid the additional payment, the consumer shall be entitled to reimbursement of this payment.
Imperative nature of the regulations.	25. (1) If the law applicable to the contract is the law of a Member State, consumers may not waive the rights conferred on them by these regulations. (2) Any contractual terms which directly or indirectly waive or restrict the rights resulting from these regulations shall not be binding on the consumer.
Inertia selling.	26. The consumer shall be exempted from the obligation to provide any consideration in cases of unsolicited supply of goods, water, gas, electricity, or digital content or unsolicited provision of services, prohibited by article 51B(4) and by paragraph 29 of the First Schedule to the Act. In such cases, the absence of a response from the consumer following such an unsolicited supply or provision shall not constitute consent.
Sanctions that may be imposed.	27. The Director General may impose administrative fines of not less than five hundred euro (€500) and not more than forty-seven thousand euro (€47,000) on any person who fails to comply with any of the provisions of these regulations.

SCHEDULE

(Regulation 13)

Information concerning the exercise of the right of withdrawal

Part A. Model instructions on withdrawal

Right of withdrawal

You have the right to withdraw from this contract within 14 days without giving any reason.

The withdrawal period will expire after 14 days from the day [1].

To exercise the right of withdrawal, you must inform us [2] of your decision to withdraw from this contract by an unequivocal statement (e.g. a letter sent by post, fax or e-mail). You may use the attached model withdrawal form, but it is not obligatory [3].

To meet the withdrawal deadline, it is sufficient for you to send your communication concerning your exercise of the right of withdrawal before the withdrawal period has expired.

Effects of withdrawal

If you withdraw from this contract, we shall reimburse to you all payments received from you, including the costs of delivery (with the exception of the supplementary costs resulting from your choice of a type of delivery other than the least expensive type of standard delivery offered by us), without undue delay and in any event not later than fourteen (14) days from the day on which we are informed about your decision to withdraw from this contract. We will carry out such reimbursement using the same means of payment as you used for the initial transaction, unless you have expressly agreed otherwise; in any event, you will not incur any fees as a result of such reimbursement. [4]

[5]

[6]

Instructions for completion:

[1]. Insert one of the following texts between inverted commas:

- (a) in the case of a service contract or a contract for the supply of water, gas or electricity, where they are not put up for sale in a limited volume or set quantity, or of digital content which is not supplied on a tangible medium: 'of the conclusion of the contract.';
- (b) in the case of a sales contract: 'on which you acquire, or a third party other than the carrier and indicated by you acquires, physical possession of the goods.';
- (c) in the case of a contract relating to multiple goods ordered by the consumer in one order and delivered separately: 'on which you acquire, or a third party other than the carrier and indicated by you acquires, physical possession of the last good.';
- (d) in the case of a contract relating to delivery of a good consisting of multiple lots or pieces: 'on which you acquire, or a third party other than the carrier and indicated by you acquires, physical possession of the last lot or piece.';

- (e) in the case of a contract for regular delivery of goods during a defined period of time: ‘on which you acquire, or a third party other than the carrier and indicated by you acquires, physical possession of the first good.’.

[2]. Insert your name, geographical address and, where available, your telephone number, fax number and e-mail address.

[3]. If you give the option to the consumer to electronically fill in and submit information about his withdrawal from the contract on your website, insert the following: ‘You can also electronically fill in and submit the model withdrawal form or any other unequivocal statement on our website [insert Internet address]. If you use this option, we will communicate to you an acknowledgement of receipt of such a withdrawal on a durable medium (e.g. by e-mail) without delay.’.

[4]. In the case of sales contracts in which you have not offered to collect the goods in the event of withdrawal insert the following: ‘We may withhold reimbursement until we have received the goods back or you have supplied evidence of having sent back the goods, whichever is the earliest.’.

[5]. If the consumer has received goods in connection with the contract:

(a) insert:

- ‘We will collect the goods.’; or,
- ‘You shall send back the goods or hand them over to us or [insert the name and geographical address, where applicable, of the person authorised by you to receive the goods], without undue delay and in any event not later than fourteen (14) days from the day on which you communicate your withdrawal from this contract to us. The deadline is met if you send back the goods before the period of fourteen (14) days has expired.’

(b) insert:

- ‘We will bear the cost of returning the goods.’;
- ‘You will have to bear the direct cost of returning the goods.’;
- If, in a distance contract, you do not offer to bear the cost of returning the goods and the goods, by their nature, cannot normally be returned by post: ‘You will have to bear the direct cost of returning the goods, EUR [insert the amount].’; or if the cost of returning the goods cannot reasonably be calculated in advance: ‘You will have to bear the direct cost of returning the goods. The cost is estimated at a maximum of approximately EUR [insert the amount].’; or
- If, in an off-premises contract, the goods, by their nature, cannot normally be returned by post and have been delivered to the consumer’s home at the time of the conclusion of the contract: ‘We will collect the goods at our own expense.’; and

(c) insert ‘You are only liable for any diminished value of the goods resulting from the handling other than what is necessary to establish the nature, characteristics and functioning of the goods.’.

[6]. In the case of a contract for the provision of services or the supply of water, gas or electricity, where they are not put up for sale in a limited volume or set quantity, insert the following: ‘If you requested to begin the performance of services or the supply of water/gas/electricity [delete where inapplicable] during the withdrawal period, you shall pay us an amount which is in proportion to what has

been provided until you have communicated us your withdrawal from this contract, in comparison with the full coverage of the contract.’

Part B. Model withdrawal form

(complete and return this form only if you wish to withdraw from the contract)

- To [here the trader’s name, geographical address and, where available, his fax number and e-mail address are to be inserted by the trader]:
- I/We (*) hereby give notice that I/We (*) withdraw from my/our (*) contract of sale of the following goods (*)/for the provision of the following service (*),
 - Ordered on (*)/received on (*),
 - Name of consumer(s),
 - Address of consumer(s),
 - Signature of consumer(s) (only if this form is notified on paper),
 - Date

(*) Delete
