

CONTRACTS

# Consumer Terms and Subscriptions

Selling to consumers under the Consumer Rights Act 2015 and the newer subscription contract rules.

## Consumers are treated differently

A business selling to consumers cannot rely on freedom of contract in the way it can with other businesses. A consumer is an individual acting for purposes outside their trade, business or profession. A range of statutes give consumers rights that cannot be signed away, and the consequences of getting terms wrong include the term being unenforceable, refunds and regulatory action.

The main source is the Consumer Rights Act 2015, which covers goods, digital content and services, and the fairness of terms. Distance and online sales are also covered by separate regulations on information and cancellation (the Consumer Contracts Regulations 2013).

## The core rights

- **Goods** must be of satisfactory quality, fit for a particular purpose made known to the seller, and as described. The consumer has a short-term right to reject, then rights to repair or replacement and price reductions.
- **Digital content** must meet similar standards, with remedies where it does not.
- **Services** must be performed with reasonable care and skill, and at a reasonable price if none is agreed.
- **Cancellation.** For most online and distance sales, a consumer has a right to cancel within a set period without giving a reason, subject to exceptions.

These rights apply whatever the terms say. A clause that tries to remove or limit them is not binding on the consumer.

## Unfair terms

A term in a consumer contract is unfair if, contrary to good faith, it causes a significant imbalance in the parties' rights to the consumer's detriment. An unfair term is not binding on the consumer. Terms must also be transparent and in plain language, and any ambiguity is read in the consumer's favour. Examples that often cause trouble include one-sided variation rights, high cancellation charges, and wide exclusions of liability.

### Key points

- Consumer rights cannot be excluded by terms.
- Unfair or unclear terms are not binding on the consumer.
- Plain language is a legal requirement, not just good practice.
- Pre-contract information must be given in distance sales.
- New subscription rules add reminders and easier exit.
- Regulators can now fine directly.

## Subscription contracts

Subscriptions and memberships that roll on automatically are a regulatory priority. Newer rules, introduced by the Digital Markets, Competition and Consumers Act 2024, are intended to give consumers clear pre-contract information, reminders before a free trial or fixed term ends, and a simple way to cancel. Check when they take effect before relying on them for a client.

Businesses should expect to:

- give clear information on price, term and renewal before signing
- send reminders before a trial or a long term rolls into a paid or renewed one
- allow cancellation by an easy route, with no more steps than sign-up
- give a cooling-off period on starting and in some cases on renewal

If the business already runs a subscription model, review the sign-up journey, the emails and the cancellation route against the rules once they apply.

## Pricing and advertising

The same law restricts drip pricing, fake reviews and misleading claims. The regulator can investigate and fine businesses directly, rather than needing to go to court.

## Practical drafting

- Write the terms in plain language, with headings.
- Keep a separate set for consumers and businesses.
- Include the information required before contracting, such as identity, price, delivery and complaints.
- State the cancellation and returns rights clearly.
- Keep dispute resolution options visible and fair.
- Review the website journey, because the terms and the checkout together form the contract.

## Complaints and redress

Consumers expect a simple complaints route, and regulators expect businesses to deal with complaints fairly and quickly. Say in the terms how to complain, who handles it and what the business will do. Where an alternative dispute resolution scheme applies to the sector, the business may need to tell consumers about it.

### Before you start

- Are customers consumers or businesses?
- Is there a subscription or auto-renewal?
- Is the cancellation route as easy as sign-up?
- Are the terms in plain English?
- Is the checkout journey compliant?
- Who reviews the website claims?

### How MTM can help

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We draft consumer terms, website terms and subscription terms, and review sign-up and cancellation journeys against the rules. We work through practices for their retail and online clients. Regulatory and marketing decisions remain with your client.