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TRADING STANDARDS SERVICE

NOTES FOR GUIDANCE

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Civil law relating to the sale and supply of goods and services

This guidance includes the changes introduced by the Sale and Supply of Goods to Consumers Regulations 2002.

The contract

When a customer purchases goods and services from you as a trader, you are both entering into a legally binding contract which cannot be cancelled without both parties' agreement. (A few exceptions exist, e.g. when a credit agreement is signed off trade premises, or a contract signed at home as a result of an unsolicited visit where the goods or services cost more than £35).

Legal obligations are placed on both parties. Some are as a result of express terms (i.e. terms negotiated by the parties). Some are as a result of implied terms from legislation such as the Sale of Goods Act 1979 (as amended). Contracts can be written, or merely word of mouth agreements. However, it is easier to prove the details of the agreement which has been reached when a contract is in writing.

Before a contract is made

If you trade from a shop, you may display your goods in a window or shop display. By doing this you are inviting customers to make you an offer for such goods (called an invitation to treat). You can either accept the offer or you can refuse the offer. No one can force you to sell anything which you don't want to, or to sell anything at a particular price (but it is a criminal offence to indicate a price which is lower than the price which you then actually request for the goods). If you accept a customer's offer, a contract is made.

If, before a contract is made, you say factual things about a product or service you provide which prove to be untrue, and if the customer has based their decision to buy the product or service on these representations, they may have a claim against you for misrepresentation.

A misrepresentation is a false statement of fact made by one of the contracting parties (or their agent), which is intended to (and does) induce the other party to enter into a contract.

The party who has relied on the misrepresentation will have the remedy of rescinding the contract and may be entitled to damages.

The law

The law provides that, in every transaction for the sale and supply of goods (including hire purchase, hire, part exchange and contracts for work and materials), certain terms are implied.

The Sale of Goods Act 1979 (as amended) states that the person transferring or selling the goods must have the right to do so, and that the goods must meet the following criteria.

- **Correspond with the description.** Many transactions involve a description of some kind. When goods are supplied, and the customer relies on such a description, the goods must be 'as described'. If the description is false, a criminal offence may also be committed.
- **Be of satisfactory quality.** Goods must be of a standard that a reasonable person would regard as satisfactory (having regard to any description applied to them, the price, and all other relevant circumstances). Aspects of quality which may be relevant, depending on the circumstances, could include
 - ◆ fitness for all purposes for which the goods are commonly supplied
 - ◆ appearance and finish
 - ◆ freedom from minor defects
 - ◆ safety
 - ◆ durability

however, other characteristics may also be relevant.

- **Be fit for the purpose.** If a customer indicates, either expressly or by implication (e.g. asking for 'ski boots' would imply an intention to use the boots for skiing), that goods are wanted for a particular purpose (even if that is a purpose for which such goods are not usually supplied) and a trader supplies them to meet that requirement, the goods should be fit for that specified purpose. If, as a trader, you have doubts that particular goods will be fit for the purpose indicated, the customer must be made aware that they cannot rely on your skill and judgement.

Exceptions

A customer has no rights in relation to any defects which are brought to their attention before sale or (if the customer has examined the goods prior to purchase) any defects which should have been readily noticeable.

Customers also negate their rights if they themselves damage goods, or if they simply change their mind about wanting the goods. Also, if a customer specifies the product they want and chooses not to rely on the trader's expertise (or ignores the advice of the trader), they will not have a claim if the item is not fit for their chosen purpose.

Customers' remedies if any of the implied terms listed above are breached

A customer can reject the goods and receive a full refund, provided they have not accepted the goods. They may also be entitled to monetary compensation for any losses which have been incurred. Examples of acceptance are

- Telling you they have accepted them
- Altering the goods in some way
- Keeping the goods for a reasonable time (this time period may vary depending on the nature of the goods.) However, a customer is not considered to have accepted the goods if they allow you to repair them when they are first found to be faulty or if they sign an acceptance note without having had a reasonable opportunity to examine the goods

A customer must have a reasonable opportunity to examine the goods (to check that they conform with the contractual terms) before they are deemed to have accepted the goods.

Once goods are considered to have been accepted, the customer loses the right to reject them but may still be able to claim financial compensation. They may also still have other, additional rights (see below).

If your customer is not dealing as a consumer (i.e. they are buying for their business), they are not entitled to reject goods if the breach of contract is very minor but may still be entitled to claim compensation.

Additional remedies

Additional remedies are available when a customer is acting as a consumer (i.e. when they are not buying for their business) and the goods were defective at the time of delivery. In these circumstances (even if the customer has accepted the goods), the customer has a right to

- a repair or replacement (but see note under ***Exceptions*** on page 4).

If repairing or replacing the goods is not possible or practical, the consumer is entitled to

- a partial refund of an appropriate amount, taking into account the extent and nature of the defect, or
- rescission of the contract.

Rescission means that the consumer returns the goods to you and you return their payment, but it is not quite the same as rejection - for example, you can reduce the amount you repay to allow for the use the customer has had of the goods (if it is reasonable for you to do so).

If a defect occurs within six months of the customer taking delivery of the goods, it is automatically assumed that the fault was there at the time of delivery unless you can prove otherwise. If it occurs more than six months after delivery, it is up to the customer to prove that the defect was there at the time of delivery.

If a customer chooses the option of a repair, you must complete the repair in a reasonable time and without significant inconvenience to the customer - if you fail to do this, the customer can demand an alternative remedy. You must also pay all the relevant costs, e.g. labour, postage, etc.

Please note that these are additional remedies - for example, if you do not repair the item effectively, the customer can still reject the goods and demand a full refund if they have not accepted them (see above).

Exceptions

You do not have to repair or replace the goods if to do so would be impossible (e.g. if the goods are no longer available or if the item is not capable of being repaired). In addition, you do not have to give the particular remedy requested by the customer if the cost of it would be so high that it would be unreasonable to expect you to do as they ask instead of giving one of the other remedies. For example, if an item is beyond economic repair and it would be a lot cheaper to replace it you can offer a replacement instead of a repair; similarly, if you cannot obtain a replacement item you can offer a price reduction instead.

The Supply of Goods and Services Act 1982 (as amended) and Common Law

Any goods supplied as part of a contract for a service must conform to the implied terms detailed under the section headed **The Sale of Goods Act 1979** on page 2.

Any service provided must be carried out

- with reasonable care and skill
- for a reasonable price (unless a price has been agreed at the time the contract was made)
- within a reasonable time (unless time has been made of the essence, i.e. a date has been agreed at the time the contract was made).

The Consumer Protection from Unfair Trading Regulations 2008

This is a wide-ranging piece of legislation which makes it a criminal offence for a trader to engage in unfair commercial practices in relation to the provision of goods or services. This would include attempting or purporting to restrict consumers statutory rights by means of a notice, statement, document or advertisement, such as a notice displayed in a shop which states 'No refunds' or 'Sale items sold as seen'. In addition, any such attempted restriction would be invalid and unenforceable.

A separate guidance note ***Notices for Display on Retail Premises*** is available from the Trading Standards Service.

The Unfair Contract Terms Act 1977

A trader cannot limit or exclude liability for death or personal injury arising from their negligence. Attempts to exclude or restrict liability for other loss or damage resulting from negligence (i.e. any breach of a contractual duty) must meet the test of reasonableness.

The test of reasonableness looks at whether an exclusion clause can be shown to be fair and reasonable considering the circumstances known to the parties when the contract was made. It considers the strength of the bargaining power of the parties at the time, and any other relevant circumstances. A trader seeking to rely on an exclusion clause is required to prove that such a clause is reasonable.

A trader cannot restrict or limit a consumer's statutory rights, but when dealing with another business a trader may be permitted to use such an exclusion clause provided it satisfies the test of reasonableness.

The Unfair Terms in Consumer Contracts Regulations 1999

These Regulations, which only apply to consumer contracts, say that a consumer is not bound by a standard term (i.e. a term devised by a trader in advance, not a term negotiated with an individual consumer) in a contract with a trader if that term is unfair. (However, the main subject matter of the contract and the price agreed are excluded from these Regulations, as are certain mandatory terms).

The Consumer Protection Act 1987 (Part 1 - Product Liability)

People injured by defective products may have the right to sue for damages (monetary compensation). Product liability is the term given to the law affecting such rights. Manufacturers and importers can also be held liable under these Regulations.

The Business Names Act 1985

This Act requires any business trading under a name other than the true name(s) of its owner(s) to disclose information regarding its ownership to customers and suppliers. Failure to comply with these requirements constitutes a criminal offence and, in addition, the business may be unable to enforce its contracts with other parties.

Frequently asked questions

Q. A customer doesn't produce a receipt - do I have to do anything even if the goods are faulty?

A. There is no legal requirement to provide or produce a receipt; a customer needs to be able to provide proof of purchase, but this could be a credit card voucher or cheque stub or anything that indicates when and where the item was bought.

Q. The manufacturer offers a guarantee - can I refer the customer straight to them?

A. Remember your customer's statutory rights are with you, the trader. A guarantee offered by the manufacturer is in addition to such rights. A customer can choose whether they pursue you or the manufacturer. However, you in turn may have rights against your supplier.

Q. I sell sale goods or seconds - surely the customer doesn't have the same rights against me as they would have if they had bought new or perfect goods?

A. The same rights apply whether the goods are in the sale or seconds, although considerations such as price and age would be taken into account.

Q. A customer comes back to me about faulty goods purchased from me seven years ago - do I have to do anything?

A. A customer has up to five years from discovery to make a claim against a trader for breach of contract.

Q. I accept a deposit for goods but then the customer changes their mind - do I have to return the deposit?

A. In most circumstances deposits are non-refundable, because the customer is in breach of contract by wishing to withdraw from it. However, there are a few exceptions (relating to credit agreements signed off trade premises and contracts made as a result of an unsolicited visit to a customer's home).

Q. Someone asks me for a quotation - how does this differ from an estimate?

A. A quotation is normally a fixed price, whereas an estimate is generally a rough guess of what the work would cost.

Q. I put a notice in my shop stating that I don't give refunds in any circumstances?

A. It is illegal to try to restrict a customer's statutory rights. However, you can make it clear that you don't offer refunds for returned goods where the customer has simply changed their mind about wanting the goods.

Q. A customer rings me to say that the TV she bought from me last week is defective but she isn't prepared to return it back to my shop?

A. If the customer can prove that the TV is faulty, and she hasn't accepted it, it is sufficient for her just to give notice of rejection and allow you any reasonable opportunity to collect the TV.

Q. I give a customer a credit note and they cannot find anything they want - do I then have to offer a refund, and for how long should the credit note run?

A. Once a credit note has been issued and accepted by the customer (even if they cannot then use it) you don't have to offer a refund. You can determine for how long you wish a credit note to be valid, but you should make it clear to the customer (at the time of issue) what that time period is.

Q. A customer insists on a replacement, but the item is no longer manufactured and I have none in stock?

A. You can offer the customer a repair, a reduction in the price or allow them to rescind the contract - they have to choose one of these instead (unless they are still entitled to reject the goods and get a full refund from you).

Q. I cannot ascertain whether an item is faulty or whether it has failed due to misuse?

A. Within the first six months since purchase the onus is on you to prove the fault, so you can return it to the manufacturer for a second opinion. After six months, the onus is on the customer - but it may still be considered reasonable for them to ask you to send it back to the manufacturer.

Q. A customer states a specific date for delivery of goods and I fail to deliver them on time - does the customer have the right to cancel the contract?

A. Yes, if the customer has made time of the essence and you have failed to comply then they can treat this as breach of contract and cancel the contract.

If you require further information, please do not hesitate to contact the Trading Standards Service.

This is not an authoritative document on the law and is only intended for guidance

For a copy of this document on audio cassette, in large print or Braille, or if you require assistance in reading this, please contact the Council's Policy Unit.

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This document is also available at www.shetland.gov.uk/tradingstandards

Do you require the services of an interpreter?

If you do, please contact **01595 744537** for assistance.

We will provide an interpreter, or we can supply the document in your choice of language.

你是否需要傳譯服務？

如果需要，請致電 01595 744537 尋求幫助。

我們會適當地為你安排傳譯人員或者提供你需要文字的文件。

ਕੀ ਤੁਹਾਨੂੰ ਕਿਸੇ ਇੰਟਰਪਰੀਟਰ (ਤੁਰਾਜ਼ੀਆ) ਦੀਆਂ ਸੇਵਾਵਾਂ ਦੀ ਲੋੜ ਹੈ?

ਜੇਕਰ ਤੁਹਾਨੂੰ ਲੋੜ ਹੈ ਤਾਂ ਕ੍ਰਿਪਾ ਕਰਕੇ ਸਹਾਇਤਾ ਲਈ 01595 744537 ਤੇ ਸੰਪਰਕ ਕਰੋ।

ਜਿਥੇ ਸੰਭਵ ਹੈ ਸਕਿਆ ਇੰਟਰਪਰੀਟਰ ਉਪਲਬਧ ਕਰਵਾਇਆ ਜਾਵੇਗਾ ਜਾਂ ਤੁਹਾਡੀ ਪਸੰਦ ਵਾਲੀ ਭਾਸ਼ਾ ਵਿਚ ਦਸਤਾਵੇਜ਼ ਤੇਜ਼ੀਆਂ ਜਾਵੇਗਾ।

আপনি কি একজন দোভাষীর সাহায্য চান ?

যদি আপনার প্রয়োজন থাকে তাহলে অনুগ্রহ করে যোগাযোগ করুন -01595 744537 যেখানে সম্ভব সেখানে একজন দোভাষীর ব্যবস্থা করা হবে অথবা আপনি যে ভাষাতে চা দলীলটি অনুবাদ করে আপনাকে প্রদান করা হবে ।

کیا آپ کو انٹریٹریٹری کی ضرورت ہے؟

اگر ایسا ہے تو پھر (انٹریٹریٹری) مدد حاصل کرنے کیلئے فون نمبر 01595 744537 پر بات کریں۔

جہاں ممکن ہو اوہاں انٹریٹریٹری کی سہولت فراہم کی جائے گی یا پھر (مطلوبہ) دستہ دیز کارتر جمہ آپ کی

پسندیدہ زبان میں فراہم کیا جائے گا۔