

ICC MODEL

ONLINE B2C GENERAL
CONDITIONS OF SALE

(To be Adapted to Comply with Local Consumer
Protection Law of Consumer/Client)

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FOREWORD

International trade is increasingly conducted virtually, and greater numbers of traders are moving towards selling their goods online directly to consumers. This leaves many companies—particularly micro/small/medium-sized businesses (MSMEs)—needing guidance on how to draft online conditions of sale to reach their desired customers around the world.

Building on its tradition of providing concrete, practical tools to help global companies of all sizes, ICC has prepared (i) a set of model online B2C general conditions of sale, **to be adapted by users for their particular target markets and products**, and (ii) an accompanying guidance document.

ICC is very grateful to the members of the dedicated international expert Working Group who prepared this work, ably chaired by Mariaelena Giorcelli (Italy), and including contributions by José Gabriel Assis de Almeida (Brazil), Horst Becker (Germany), Jan Willem Bitter (The Netherlands), Maria Boada Descalzo (Spain), Fabio Bortolotti (Italy), Silvia Bueno de Miranda (Brazil), Adriano Chaves (Brazil), Sabrina Costanzo (Italy), Valle Garcia de Novales (Spain), Sergi Gimenez Binder (Spain), Margarida Lima Rego (Portugal), Mikhail G. Movshovich (Russia), Lorenzo Prats Albentosa (Spain), Qi Jiang (China), Lauri Railas (Finland), Costanzo Rapone (Italy), Joan Roca Sagarra (Spain), Søren Theilgaard (Denmark), Oscar Tiberg (Sweden), and Mickael Viglino (Brazil).

Secretariat oversight and support was provided by ICC Secretariat staff Emily O'Connor, Florence Binta Diao-Gueye and Whitney Jolivet (ICC), all part of the ICC Trade and Investment policy team.

INTRODUCTORY NOTE ON THE APPLICATION AND GENERAL STRUCTURE

Note: These model conditions of sale are to be adapted to comply with the local consumer protection law of the consumer/client.

1. Background/Context

In our increasingly virtual world, manufacturers and companies who want to remain competitive need to have a website, not only for the promotion of their products, but also for the sale of their goods to consumers. Consequently, those who decide to sell online are faced with the problem of **complying with consumer protection rules** and need to establish online conditions of sale to consumers (B2C), which are substantially different from those used when selling through their traditional channels, since they imply compliance with special rules protecting purchasers, such as the pre-contractual information to be provided, the right of withdrawal, and the means of payment.

In order to assist businesses in adapting to this new situation, ICC has drafted a set of Model Online B2C General Conditions of Sale in order to provide companies with a **helpful tool to assist companies in drafting their own tailor-made B2C general conditions of sale**.

This model set of sale conditions does not constitute legal advice and must be adapted to comply with the consumer protection law[s] of the customers/clients to whom goods are being sold.

2. Purpose

A variety of legal rules currently exist to protect consumers in online transactions. Since these rules differ from country to country, it would have been impracticable for ICC to draft model conditions complying totally with these myriad rules. However, based on feedback from the market, ICC concluded that there was demand for a set of model clauses which would **conform to the main conditions typically imposed by consumer protection regulations**.

Since drafting general conditions complying in detail with all possible consumer laws was impossible, the drafting group decided that – considering the importance of this project for business – it was necessary to find a **compromise**, i.e. to draft a standard text complying with the main typical consumer protection rules and to **invite users of the model to check the existence of further requirements in the law of the countries where they are selling online and adapt the model as needed to comply with them**.

In order to achieve this result the drafting group focused on the consumer protection rules of the European Union (particularly the 2011/83/EU Directive of 25 October 2011) and drafted on this basis a standard model text **dealing with all the typical issues** of an online B2C sales contract. In an accompanying document (*EU Requirements and Non-EU Annexes*), further guidance on EU requirements – as well as additional information on the domestic legal requirements of some Member States and non-EU countries – is set out, with the expectation that additional information may be added over time.

Users should use the model online B2C sale conditions as a **basis for drafting their own B2C conditions**, adjusting the model form as needed to take account of different national laws and the particular needs of each business.

3. The contents of the Model Online B2C General Conditions

The model general conditions of sale (GCS) deal with the main issues regarding the contract of sale, such as:

- > conclusion of contract – order and acceptance;
- > prices and payment conditions;
- > delivery;
- > return right - effects of withdrawal and exceptions;
- > characteristics and conformity of products displayed on the website; and
- > applicable law and dispute resolution, etc.

4. Scope of application

The model takes into account only **online sale of goods, defined as tangible movable items**, and therefore does not consider contracts for the provision of services. Furthermore, it is intended to be used by **manufacturers who directly sell online from their website** and does not consider the sale of goods through online marketplaces operated by third parties or where a variety of traders sell their products online.

5. The website requirements

In addition to the model Online B2C General Conditions of Sale, the drafting group has prepared an accompanying document setting out EU requirements as of May 2020 for the contents of a B2C sales website, including:

- i. General information to be provided to the consumer;
- ii. Information on the ordering process to be provided prior to the order being placed;
- iii. Information on the sale contract to be provided before the consumer is bound by the contract; and
- iv. Indication of price.

This accompanying *EU Requirements and Non-EU Country Annexes* document may be supplemented from time to time on the ICC website with additional EU Member State information and/or Annexes setting out the respective consumer protection requirements for the contents of a B2C sales website in non-EU countries.

MODEL FORM OF ONLINE B2C GENERAL CONDITIONS OF SALE

(TO BE ADAPTED TO COMPLY WITH LOCAL CONSUMER PROTECTION LAW OF CONSUMER/CLIENT)

Identification of the Seller

Name:

Address:

E-mail:

Telephone:

(hereinafter called “the Seller”)

Article 1

Field of application

- 1.1. These General Conditions of Sale (hereinafter the “GCS”), together with the website terms of use (hereinafter the “Website terms”), are intended to be applied to all sales of the products displayed via the internet site www..... (hereinafter the “Website”).
- 1.2. The Seller reserves the right to change the current GCS at any time. Any amendment of the GCS shall be effective exclusively for all new orders submitted following the publication of the amendment on the Website. Customers should check the GCS posted on the Website before clicking on the “Buy now” button—they may have changed since the last visit.
- 1.3. The GCS may be printed, downloaded, and/or stored by customers.
- 1.4. The Website is intended only for sales to consumers being of legal age, acting for purposes which are outside their trade, business, craft or profession (hereinafter “the Customer(s)"). The products displayed on the Website are not intended for re-sale. Orders for quantities exceeding typical personal use are not permitted.

Article 2

Purchase procedure and conclusion of contract / Order and acceptance

- 2.1. Customers choose products by clicking on their respective images. The chosen products will be included in the shopping cart, after which Customers can place their orders by filling out the order form and accepting the current GCS. Prior to submitting an order a Customer is required to verify the accuracy of the information provided after making any necessary corrections. A purchase order is submitted to Seller when the Customer selects the “Buy now” option, shortly after which the Customer will receive an e-mail acknowledging the receipt of the order. Customers may regularly access updated information on the status of their pending orders by clicking on the personal section in the customer care area of the Website.
- 2.2. An order submitted by a Customer is an offer to purchase the chosen products from the Seller. Orders are subject to the Seller’s acceptance, which shall be provided by means of an e-mail of acceptance within 10 (ten) calendar days from the submission of the order. A Customer may cancel its order any time prior to the Seller’s dispatch of the acceptance e-mail. Upon Seller’s acceptance, the sale contract shall be deemed concluded. The Seller may refuse to accept any order at its discretion. The price of the products will be blocked on the Customer’s credit card at the time the order is submitted but charged only after the acceptance of the order by the Seller.

- 2.3. The Seller reserves the right to change the assortment of products displayed on the Website at any time.
- 2.4. The Seller reserves the right to cancel a sale contract with any Customer with whom litigation is pending, or who is or has been in breach of the Seller's General Conditions of Sale in the course of a previous purchase.

Article 3

Prices and payment conditions

- 3.1. The prices of the products on sale on the Website are inclusive of VAT or other applicable sales taxes in the Seller's country. The prices shown on the Website do not include the delivery fee or any customs duty or sales taxes applicable in the country to which products will be delivered, which shall be charged to the Customer separately. Unless the Customer takes charge of the consignment of the products with a carrier, the Seller remains responsible for any customs clearance and payment of the duties or taxes on behalf of the Customer. The total order price will be shown before Customer is prompted to select the "Buy now" button.
- 3.2. The Seller reserves the right to modify the prices of products displayed on the Website, or to correct any errors or inaccuracies, at any time.
- 3.3. If, before the Seller accepts an order, it discovers an error in the price of the products ordered by the Customer, the Seller shall inform the Customer as soon as reasonably possible. The Customer will then be given the option of re-confirming the order at the correct price or cancelling the order, If the Seller is not able to contact the Customer using the contact details provided by the Customer during the order process, the order shall be considered as cancelled and notice thereof shall be given by e-mail.
- 3.4. The means of payment accepted by the Seller are indicated at the beginning of the ordering process.

Article 4

Delivery

- 4.1. The products sold through the Website can be delivered only [to the following countries [.....]]/[to the countries indicated at the following link [.....]]. Orders to be delivered in countries other than the listed countries shall not be accepted.
- 4.2. The products shall be delivered to the address indicated in the order within the time indicated in the order acceptance and in any case no later than [.....] from the date the order is submitted as provided by applicable law. No delivery shall be made to P.O. boxes. Delivery shall be made only to persons of legal age. The Customer acknowledges that any person at the delivery address shall be authorised to take delivery.
- 4.3. The risk of loss of or damage to the ordered products passes to the Customer at delivery pursuant to Article 4.2. However, if the Customer is in charge of the consignment of the products, delivery shall take place and the risk shall pass to the Customer upon handing the goods over to the carrier, without prejudice to the rights of the Customer against the carrier. When the Customer is in charge of the consignment, the Customer is also responsible for any customs clearance, and the payment of any duties or taxes in connection therewith, as these are normally part of the logistics services provided by the carrier.
- 4.4. In the event the Seller has indicated a delivery time and delivery is not possible for reasons attributable to the Customer, the Customer may be charged a fee to have the products re-delivered at a new delivery time/date, as arranged by the Seller and the Customer.

- 4.5. If the Seller is unable to contact the Customer after making reasonable attempts to arrange delivery, the Seller may notify the Customer of a 30-calendar-day notice period within which delivery will be attempted. Subject to the right to cancel the purchase according to Article 5, below, if the Customer fails to take delivery within the notice period the Seller may terminate the sale contract and may charge the Customer the costs of delivery and claim additional damages, if any.

Article 5¹

Customers in the European Union

Return right

- 5.1. The Customer has the right to withdraw from this contract within 14 (fourteen) calendar days after receiving the products without giving any reason, subject to the exceptions listed in Article 5.7. The withdrawal period will expire after 14 (fourteen) calendar days from the day on which the Customer, or a third party—other than the carrier—which has been indicated by the Customer, acquires physical possession of the products. To exercise the right of withdrawal, the Customer must give notice to the Seller [*insert contact details*] of its decision to withdraw from this contract by an unequivocal statement (e.g. a letter sent by post, fax or e-mail). The Customer may fill in and submit the model return form indicated in **Annex 1**, but it is not obligatory; the Customer may alternatively submit any other unequivocal statement of its withdrawal from this contract electronically on the Seller's Website or otherwise. If the Customer exercises this withdrawal option, the Seller will communicate to the Customer an acknowledgement of receipt of such a withdrawal in a durable medium (e.g. by e-mail) without delay. To meet the withdrawal deadline, it is sufficient for the Customer to send its communication concerning the exercise of the right of withdrawal before the withdrawal period has expired.

Effects of withdrawal

- 5.2. If the Customer withdraws from this contract, the Seller shall reimburse the Customer for all payments received, including the costs of delivery (with the exception of the supplementary costs resulting from the Customer's choice of a type of delivery other than the least expensive type of standard delivery offered by the Seller and possible applicable charges, such as customs duties), without undue delay and in any event not later than 14 (fourteen) calendar days from the day on which the Seller is informed of the Customer's decision to withdraw from this contract. The Seller will carry out such reimbursement using the same means of payment as the Customer used for the initial transaction, unless the Customer has expressly agreed otherwise; in any event, the Customer will not incur any fees as a result of such reimbursement. The Seller may withhold reimbursement until it has received the products back or the Customer has supplied evidence of having sent back the products, whichever is earlier.
- 5.3. The Customer shall send back the products or hand them over to the Seller without undue delay and in any event not later than 14 (fourteen) calendar days from the day on which the Customer communicates its withdrawal from this contract to the Seller. The deadline is met if the Customer sends back the products before the period of 14 (fourteen) calendar days has expired. The Customer will have to bear the direct costs of returning the products.
- 5.4. The Customer must return the products in their original state and with the packaging in which they were delivered together with any accessories or instruction manuals. Labels must not be removed. The Customer shall be responsible for any diminished value of the products resulting from the handling other than that necessary to establish the nature,

¹ For sales to customers in non-EU countries Seller should check whether or not the applicable law provides for a right of withdrawal and in such case adapt the Article as needed.

characteristics and functioning of the products. The Seller may refuse to refund products that have deteriorated; been damaged or tampered with; have had their labels removed; or are in a state that clearly indicates that the products have been used other than as permitted by applicable law.

- 5.5. Unless the Seller, after receiving notice of the exercise of the right of withdrawal, has offered to pick up the products itself, the risks of damage to or loss of the products during their return is borne by the Customer.
- 5.6. Where the sale contract concerns multiple products, the exercise of the right of withdrawal may apply to one or more products purchased.

[If applicable:]

Exception to the right of withdrawal

- 5.7. The Customer shall not be entitled to return products falling within any of the following categories²:
- > products made to the Customer's specifications or clearly personalised (e.g. tailor-made curtains or shoes);
 - > products which are liable to deteriorate or expire rapidly;
 - > sealed products which are not suitable for return due to health protection or hygiene reasons and were unsealed after delivery;
 - > products which are, after delivery, according to their nature, inseparably mixed with other items;
 - > alcoholic beverages, the price of which has been agreed upon at the time of the conclusion of the sale contract, the delivery of which can only take place after 30 (thirty) calendar days and the actual value of which is dependent on fluctuations in the market which cannot be controlled by the Seller;
 - > sealed audio or video recordings or sealed computer software which were unsealed after delivery; or
 - > newspapers, periodicals or magazines with the exception of subscription contracts for the supply of such publications.

Article 6

Characteristics of products

The Seller has undertaken reasonable efforts to ensure that the images of the products on the Website are faithful reproductions of the physical products. Despite the adoption of technical solutions to minimise inaccuracies, however, there may be some discrepancies (e.g. colour resolution) between the images and the products due to technical limitations. The Seller shall not be liable for any inadequacy of the graphic representation of the Seller's products displayed on the Website arising from such technical limitations.

Article 7

Conformity of products³

- 7.1. Upon receipt of the products the Customer should check that they correspond to items ordered and their conformity with the contract.

² Seller should select the category relevant for its business, deleting all others. If the Seller sells only products falling within one of these categories Seller may exclude the right of withdrawal entirely.

³ Periods of conformity notice should be checked under the applicable law, which differ from country to country.

- 7.2. All the products displayed for sale on the Website benefit from the legal guarantee of conformity for products pursuant to the applicable consumer protection law. The Seller is liable for any lack of conformity that becomes apparent within 2 (two) years from delivery of the products, or any longer period if provided by the national applicable law pursuant to Article 9 of the GCS.
- 7.3. Any complaint for non-conformity must be communicated to the Seller to the following address: [.....] with a description of the non-conformity, as soon as possible and in any case within a reasonable time or the time limit provided for by applicable law, if any.
- 7.4. For repair inquiries that do not fall within the legal guarantee, please contact the Seller's customer service at the following address: [.....]

Article 8

Privacy and data protection

With regard to data processed in connection with Customer orders, Seller's privacy and data protection notice is applicable and is available at the following link: [.....]

Article 9

Applicable law

These General Conditions of Sale are governed by the laws of [.....] without prejudice to the protection afforded to the Customer by mandatory applicable law.

Article 10

Dispute resolution

A⁴ (for sales to consumers residing in the European Union)

B⁵ (for sales to consumers not residing in the European Union, to be checked against applicable law)

- 10.1. A European Platform for Online Dispute resolution is provided for extrajudicial consumer disputes (ODR platform). The ODR platform is accessible at the following link: <http://ec.europa.eu/consumers/odr/>
 - 10.2. In case of disputes that may arise in relation to the current GCS the Courts of the Member State where the Customer has its domicile shall be competent, or, at the choice of the Customer, the Courts of the Member State where the Seller is domiciled shall be competent.
 - 10.3. However, if the Seller does not direct its business to the Member State of the Customer's domicile, the Courts of shall have exclusive jurisdiction.
- 10.1. In case of disputes that may arise in relation to the current GCS the Courts of shall have exclusive jurisdiction.

⁴ This alternative A has been drafted to comply with the EU consumer protection rules in effect as of February 2019.

⁵ This alternative B is not compatible the EU consumer protection rules in effect as of February 2019 in case of delivery to multiple jurisdictions. Outside the EU it should be checked against any mandatory rules under the applicable law.

Article 11

Code of Conduct (if applicable)

The Seller adheres to the Code of Conduct which can be found at the following link [.....]

Article 12

Non-Waiver

Failure by the Seller to solicit compliance by the Customer with the terms provided in the current GCS or any delay by the Seller in taking steps to enforce its rights, shall not be considered as a waiver by the Seller of any such rights or as a tacit amendment of the terms of the GCS and shall not prevent the Seller from enforcing any such rights at a later stage.

ANNEX I

Model return form

To [Customer's name, geographical address and, where available, fax number and e-mail address are to be inserted by the Customer]:

- I hereby give notice that I withdraw from my contract of sale of the following products,
- Ordered on / received on,
- Name of Customer(s),
- Address of Customer(s),
- Signature of Customer(s) (only if this form is notified on paper),
- Date

ABOUT THE INTERNATIONAL CHAMBER OF COMMERCE (ICC)

The International Chamber of Commerce (ICC) is the institutional representative of more than 45 million companies in over 100 countries. ICC's core mission is to make business work for everyone, every day, everywhere. Through a unique mix of advocacy, solutions and standard setting, we promote international trade, responsible business conduct and a global approach to regulation, in addition to providing market-leading dispute resolution services. Our members include many of the world's leading companies, SMEs, business associations and local chambers of commerce.



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