



Savvy shopping Know your rights (2)

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 **VIBERTS**

Distance Selling (Jersey) Law 2007 (the “Law”)

Purpose and background:

- A Law concerning the sale of goods and services by mail, internet and other means of communication over distance.
- Sits together with the *Supply of Goods Services (Jersey) Law 2009* and the *Consumer Safety (Jersey) Law 2006*.
- The Law was based on the Distance Selling Regulations 2000.

Important definitions

- “Consumer” means the person who is to be supplied with goods or services under the distance contract.
- “Means of distance communication” means any means of communication that is effective without the simultaneous physical presence of the parties to the communication.
- “Supplier” means person who is to supply goods or services under the contract.
- “Distance contract” is a contract (a) for the supply of goods or services where one person acts in a commercial capacity and the other is a person not acting in the course of his business and (b) concluded under an organised distance-sales scheme.
- “An organised distance-sales scheme” is a scheme run by (a) a person in a commercial or professional capacity; and (b) that, for the purposes of communication in order to conclude any contract for supply under the scheme to a natural person not acting as a business, uses exclusively one or more means of distance communication up to and including the moment at which the contract is concluded.

Excluded contracts

The following contracts are excluded:

- for the sale, lease or other disposition of an interest in land;
- for the construction of a building where the contract also provides for a sale, lease, or other disposition, of an interest in the land on which the building is constructed;
- relating only to a financial service;
- concluded by means of an automated vending machine or automated commercial premises;
- concluded with a telecommunications operator through the use of a public pay-phone;
- concluded at an auction;
- concluded before the Law came into force;
- that the States may prescribe by Regulations.

Information the seller must give to the consumer

- the identity of the supplier;
- the address of the supplier, if the contract requires payment in advance;
- the main characteristics of the goods or services;
- the price of the goods or services including all taxes;
- the delivery costs;
- the arrangements for payment;
- the arrangements for delivery or performance;
- if the consumer has a right to cancel;
- if the contract is for a supply to be made indefinitely or recurrently, the minimum duration of the contract;
- the cost to the consumer of using the means of distance communication, if this cost is calculated otherwise than at the basic rate;
- the period for which the offer, or the price, in respect of the contract remains valid.

Information that must be given after the order is placed

- the name and address for giving the notice of cancellation;
- notification of whether the goods are required to be returned if there is cancellation;
- who is responsible for the cost of returning the goods;
- if a contract for sale of services, information as to how the right to cancel may be effected by the consumer's agreeing to the start of the performance of the services before the end of the cancellation period;
- the address to which complaints should be sent;
- details of any after-sales services and any guarantees;
- if the contract is of an unspecified duration or of a duration exceeding one year, the conditions for exercising a contractual right (if any) to terminate the contract;

The above list is not exhaustive.

Your right to cancel an order

- Article 8 details the Consumer's rights when cancelling a distance contract.
- Subject to the exceptions specified, the Consumer can give notice to cancel on all contracts provided the notice is given in accordance with the Law.
- Those requirements are:
 - Notice must be given with the cancellation period specified in Article 9/10
 - It must be given to the seller or a person nominated by the seller to receive notice.
 - The notice must indicate the intention to terminate the contact.
 - It is left or sent in accordance with the Law.

Cancelling goods in a distance contract

- Your right to cancel an order starts the moment you conclude your contract and doesn't end until seven working days from the day after you receive your goods.
- If the Seller complies with article 6 (4) within 3 months of the day after the day on which the consumer receives the goods, the 7 days starts when the information is provided.
- If the Seller does not comply with Article 6 (4) (provision of information), the cancellation period is 3 months and 7 days from the day after you receive your goods.

Cancelling a service contract

Generally the same as cancelling goods but also:

- If with agreement the supply of service has begun before the expiry of 7 days and the supplier has not provided the relevant information before the performance begun but provides the information during the performance of the contract, the cancellation period shall end;
 - On the expiry of the period of 7 working days beginning with the day after the day on which the consumer receives the information; or
 - If the performance is completed before the expiry period referred to above, on the day on which the performance of the contract is completed.
- Some contracts for services you can't cancel.

The goods you can't return

These include:

- CDs, DVDs or software if you've broken the seal on the wrapping
- perishable and other items that deteriorate or expire rapidly such as food and flowers
- the supply of newspaper, magazine or other periodical
- a gaming, betting or lottery service contract
- tailor-made or personalised goods

What should you get back?

- Unless there is a term providing the return of goods to be at the expense of the consumer – everything
- Even if there is such term it could be considered unfair.
- Can't be expected to pay for the return if legitimately entitled to refuse the goods.

Return of goods after cancellation

The Consumer duties:

- Take good (reasonable) care of them
- Retain possession of the goods
- To restore the goods to the supplier

Performance

- Supplier has 30 days to perform the contract starting from the day the Consumer sends the order.
- The parties can agree a longer or lesser period than 30 days.
- If the goods are unavailable which means performance is not possible the Supplier must inform the consumer and reimburse all expenses paid ASAP and within 30 days.
- If the contract provides for substitute service or services of equivalent quality and price and that supply is within the period for performance and article 5 (2) and (3) have been complied with, the Supplier can supply such substitute goods to the Consumer in compliance with his obligations.

Fraudulent use of card for distance contract

- If considered fraudulent the holder of the card is entitled to be recredited the full amount taken.
- If the card issuer does not accept the above in any proceedings, it is for the card issuer to prove that the use was authorised.
- This also applies to store cards, charge cards and debit cards.

Inertia selling

- The sending of unsolicited goods to potential customers in the hope of making a sale.
- If conditions in Article 20 satisfied, the receiving party may treat them as a gift and the rights of the sender are extinguished.
- Senders can commit an offence under the Law.

If you have any questions on knowing your rights as a savvy shopper, please contact:

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