

# Terms and conditions of sale

## 2. Introduction

- 2.1 These terms and conditions shall govern the sale and purchase of products through our website.
- 2.2 You will be asked to give your express agreement to these terms and conditions before you place an order on our website.
- 2.3 This document does not affect any statutory rights you may have as a consumer (such as rights under the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 or the Consumer Rights Act 2015).

## 3. Interpretation

- 3.1 In these terms and conditions:
  - (a) "we" means *[name]*; and
  - (b) "you" means our customer or prospective customer, and "us", "our" and "your" should be construed accordingly.

## 4. Order process

- 4.1 The advertising of products on our website constitutes an "invitation to treat" rather than a contractual offer.
- 4.2 No contract will come into force between you and us unless and until we accept your order in accordance with the procedure set out in this Section 4[ or *[alternative order procedure]*].
- 4.3 To enter into a contract through our website to purchase products from us, the following steps must be taken: [you must add the products you wish to purchase to your shopping cart, and then proceed to the checkout; if you are a new customer, you must then create an account with us and log in; if you are an existing customer, you must enter your login details; once you are logged in, you must select your preferred method of delivery and confirm your order and your consent to the terms of this document; you will be transferred to our payment service provider's website, and our payment service provider will handle your payment; we will then send you an initial acknowledgement; and once we have checked whether we are able to meet your order, we will either send you an order confirmation (at which point your order will become a binding contract) or we will confirm by email that we are unable to meet your order].
- 4.4 You will have the opportunity to identify and correct input errors prior to making your order[ by *[describe process]*].

## **5. Products**

- 5.1 The following types of products are or may be available on our website from time to time: *[specify product types]*.
- 5.2 We may periodically change the products available on our website, and we do not undertake to continue to supply any particular product or type of product.

## **6. Prices**

- 6.1 Our prices are quoted on our website.
- 6.2 We will from time to time change the prices quoted on our website, but this will not affect contracts that have previously come into force.
- 6.3 All amounts stated in these terms and conditions or on our website are stated *[inclusive of VAT] OR [exclusive of VAT]*.
- 6.4 It is possible that prices on the website may be incorrectly quoted; accordingly, we will verify prices as part of our sale procedures so that the correct price will be notified to you before the contract comes into force.
- 6.5 In addition to the price of the products, you *[will] OR [may]* have to pay a delivery charge, which will be notified to you before the contract of sale comes into force.

## **7. Payments**

- 7.1 You must, during the checkout process, pay the prices of the products you order.
- 7.2 Payments may be made by *[any of the permitted methods specified on our website from time to time]*.
- 7.3 If you fail to pay to us any amount due under these terms and conditions in accordance with the provisions of these terms and conditions, then we may withhold the products ordered and/or by written notice to you at any time cancel the contract of sale for the products.
- 7.4 If you make an unjustified credit card, debit card or other charge-back then you will be liable to pay us, within *[7 days]* following the date of our written request:
  - (a) an amount equal to the amount of the charge-back;
  - (b) all third party expenses incurred by us in relation to the charge-back (including charges made by our or your bank or payment processor or card issuer);
  - (c) an administration fee of *[GBP 25.00 including VAT]*; and
  - (d) all our reasonable costs, losses and expenses incurred in recovering the amounts referred to in this Section 7.4 (including without limitation legal fees and debt collection fees),

and for the avoidance of doubt, if you fail to recognise or fail to remember the source of an entry on your card statement or other financial statement, and make a charge-back as a result, this will constitute an unjustified charge-back for the purposes of this Section 7.4.

## **8. Deliveries**

- 8.1 Our policies and procedures relating to the delivery of products are set out [in this Section 8] OR [in our delivery policy document].
- 8.2 We will arrange for the products you purchase to be delivered to the delivery address you specify during the checkout process.
- 8.3 We will use reasonable endeavours to deliver your products on or before the date for delivery set out in the order confirmation or, if no date is set out in the order confirmation, within [7 days following the date of the order confirmation]; however, we do not guarantee delivery by this date.
- 8.4 We do guarantee that unless there are exceptional circumstances all deliveries of products will be dispatched within [30] days following the later of receipt of payment and the date of the order confirmation.
- 8.5 We will only deliver products [to addresses on the UK mainland].

## **9. Distance contracts: cancellation right**

- 9.1 This Section 9 applies if and only if you offer to contract with us, or contract with us, as a consumer - that is, as an individual acting wholly or mainly outside your trade, business, craft or profession.
- 9.2 You may withdraw an offer to enter into a contract with us through our website or cancel a contract entered into with us through our website (without giving any reason for your withdrawal or cancellation) at any time within the period:
  - (a) beginning upon the submission of your offer; and
  - (b) ending at the end of 14 days after the day on which the products come into your physical possession or the physical possession of a person identified by you to take possession of them (or, if the contract is for delivery of multiple products, lots or pieces of something, 14 days after the day on which the last of those products, lots or pieces comes into your physical possession or the physical possession of a period identified by you to take possession of them).
- 9.3 In order to withdraw an offer to contract or cancel a contract on the basis described in this Section 9, you must inform us of your decision to withdraw or cancel (as the case may be). You may inform us by means of any clear statement setting out the decision. In the case of cancellation, you may inform us using the cancellation form that we will make available to you. To meet the cancellation deadline, it is sufficient for you to send your communication concerning the exercise of the right to cancel before the cancellation period has expired.

- 9.4 If you cancel a contract on the basis described in this Section 9, you must send the products back to us (to *[return address]*) or hand them over to us or a person authorised by us to receive them. You must comply with your obligations referred to in this Section 9 without undue delay and in any event not later than 14 days after the day on which you inform us of your decision to cancel the contract. You must pay the direct cost of returning the products.
- 9.5 If you cancel an order in accordance with this Section 9, you will receive a full refund of the amount you paid to us in respect of the order including the costs of delivery to you, except:
- (a) if you chose a kind of delivery costing more than the least expensive kind of delivery that we offer, we reserve the right to retain the difference in cost between the kind of delivery you chose and the least expensive kind of delivery that we offer; and
  - (b) as otherwise provided in this Section 9.
- 9.6 If the value of the products returned by you is diminished by any amount as a result of the handling of those products by you beyond what is necessary to establish the nature, characteristics and functioning of the products, we may recover that amount from you up to the contract price. We may recover that amount by deducting it from any refund due to you or require you to pay that amount direct to us. Handling which goes beyond the sort of handling that might reasonably be allowed in a shop will be "beyond what is necessary to establish the nature, characteristics and functioning of the products" for these purposes.
- 9.7 We will refund money using the same method used to make the payment, unless you have expressly agreed otherwise. In any case, you will not incur any fees as a result of the refund.
- 9.8 Unless we have offered to collect the products, we will process a refund due to you as a result of a cancellation on the basis described in this Section 9 within the period of 14 days after the day on which we receive the returned products or (if earlier) after the day on which you supply to us evidence of having sent the products back. If we have not sent the products to you at the time of withdrawal or cancellation or have offered to collect the products, we will process a refund due to you without undue delay and, in any case, within the period of 14 days after the day on which we are informed of the withdrawal or cancellation.
- 9.9 You will not have any right to cancel a contract as described in this Section 9 insofar as the contract relates to:
- (a) [the supply of any sealed audio recordings, sealed video recordings or sealed computer software which have been unsealed by you];
  - (b) [the supply of products the price of which is dependent upon fluctuations in financial markets which we cannot control and which may occur during the cancellation period];

- (c) [the supply of newspapers, periodicals or magazines, with the exception of subscription contracts for the supply of such publications];
- (d) [the supply of goods which are liable to deteriorate or expire rapidly];
- (e) [the supply of non-prefabricated goods that are made on the basis of an individual choice of or decision by you, or goods that are clearly personalised];
- (f) [the supply of sealed goods which are not suitable for return due to health protection or hygiene reasons, where such goods have been unsealed by you]; or
- (g) [the supply of goods which are, according to their nature, inseparably mixed with other items after delivery].

## **10. Warranties and representations**

10.1 You warrant and represent to us that:

- (a) you are legally capable of entering into binding contracts;
- (b) you have full authority, power and capacity to agree to these terms and conditions;
- (c) all the information that you provide to us in connection with your order is true, accurate, complete and non-misleading; and
- (d) you will be able to take delivery of the products in accordance with these terms and conditions[ and our delivery policy].

10.2 We warrant to you that:

- (a) we have the right to sell the products that you buy;
- (b) the products we sell to you are sold free from any charge or encumbrance, except as specified in these terms and conditions;
- (c) you shall enjoy quiet possession of the products you buy, except as specified in these terms and conditions;
- (d) the products you buy will correspond to any description published on our website; and
- (e) the products you buy will be of satisfactory quality.

10.3 All of our warranties and representations relating to the supply of products are set out in these terms and conditions. To the maximum extent permitted by applicable law and subject to Section 11.1, all other warranties and representations are expressly excluded.

## **11. Limitations and exclusions of liability**

11.1 Nothing in these terms and conditions will:

- (a) limit or exclude any liability for death or personal injury resulting from negligence;
- (b) limit or exclude any liability for fraud or fraudulent misrepresentation;
- (c) limit any liabilities in any way that is not permitted under applicable law; or
- (d) exclude any liabilities that may not be excluded under applicable law, and, if you are a consumer, your statutory rights will not be excluded or limited by these terms and conditions, except to the extent permitted by law.

11.2 The limitations and exclusions of liability set out in this Section 11 and elsewhere in these terms and conditions:

- (a) are subject to Section 11.1; and
- (b) govern all liabilities arising under these terms and conditions or relating to the subject matter of these terms and conditions, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty, except to the extent expressly provided otherwise in these terms and conditions.

11.3 We will not be liable to you in respect of any losses arising out of any event or events beyond our reasonable control.

11.4 We will not be liable to you in respect of any business losses, including (without limitation) loss of or damage to profits, income, revenue, use, production, anticipated savings, business, contracts, commercial opportunities or goodwill.

11.5 You accept that we have an interest in limiting the personal liability of our officers and employees and, having regard to that interest, you acknowledge that we are a limited liability entity; you agree that you will not bring any claim personally against our officers or employees in respect of any losses you suffer in connection with the website or these terms and conditions (this will not, of course, limit or exclude the liability of the limited liability entity itself for the acts and omissions of our officers and employees).

11.6 Our aggregate liability to you in respect of any contract to purchase products from us under these terms and conditions shall not exceed the greater of:

- (a) *[amount]*; and
- (b) [the total amount paid and payable to us under the contract].

## **12. Order cancellation**

12.1 We may cancel a contract under these terms and conditions immediately, by giving you written notice of termination, if:

- (a) you fail to pay, on time and in full, any amount due to us under that contract; or

(b) you commit any[ material] breach of that contract.

12.2 You may cancel a contract under these terms and conditions immediately, by giving us written notice of termination, if we commit any[ material] breach of that contract.

12.3 We may cancel a contract under these terms and conditions by written notice to you if we are prevented from fulfilling that contract by any event beyond our reasonable control, including without limitation any unavailability of raw materials, components or products, or any power failure, industrial dispute affecting any third party, governmental regulations, fire, flood, disaster, riot, terrorist attack or war.

### **13. Consequences of order cancellation**

13.1 If a contract under these terms and conditions is cancelled in accordance with Section 12:

- (a) we will cease to have any obligation to deliver products which are undelivered at the date of cancellation;
- (b) you will continue to have an obligation where applicable to pay for products which have been delivered at the date of cancellation (without prejudice to any right we may have to recover the products); and
- (c) all the other provisions of these terms and conditions will cease to have effect, except that [Sections 2.3, 7.4, 11, 16, 17, 18, 19, 20 and 21] will survive termination and continue in effect indefinitely.

### **14. Scope**

14.1 These terms and conditions shall not constitute or effect any assignment or licence of any intellectual property rights.

14.2 These terms and conditions shall not govern the licensing of works (including software and literary works) comprised or stored in products.

14.3 These terms and conditions shall not govern the provision of any services by us or any third party in relation to the products (other than delivery services).

### **15. Variation**

15.1 We may revise these terms and conditions from time to time by publishing a new version on our website.

15.2 A revision of these terms and conditions will apply to contracts entered into at any time following the time of the revision, but will not affect contracts made before the time of the revision.

### **16. Assignment**

16.1 You hereby agree that we may assign, transfer, sub-contract or otherwise deal with our rights and/or obligations under these terms and conditions[ -

providing, if you are a consumer, that such action does not serve to reduce the guarantees benefiting you under these terms and conditions].

- 16.2 You may not without our prior written consent assign, transfer, sub-contract or otherwise deal with any of your rights and/or obligations under these terms and conditions.

## **17. No waivers**

- 17.1 No breach of any provision of a contract under these terms and conditions will be waived except with the express written consent of the party not in breach.
- 17.2 No waiver of any breach of any provision of a contract under these terms and conditions shall be construed as a further or continuing waiver of any other breach of that provision or any breach of any other provision of that contract.

## **18. Severability**

- 18.1 If a provision of these terms and conditions is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions will continue in effect.
- 18.2 If any unlawful and/or unenforceable provision of these terms and conditions would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect.

## **19. Third party rights**

- 19.1 A contract under these terms and conditions is for our benefit and your benefit, and is not intended to benefit or be enforceable by any third party.
- 19.2 The exercise of the parties' rights under a contract under these terms and conditions is not subject to the consent of any third party.

## **20. Entire agreement**

- 20.1 Subject to Section 11.1, these terms and conditions[, together with [our delivery policy and our returns policy],] shall constitute the entire agreement between you and us in relation to the sale and purchase of our products and shall supersede all previous agreements between you and us in relation to the sale and purchase of our products.

## **21. Law and jurisdiction**

- 21.1 These terms and conditions shall be governed by and construed in accordance with [English law].
- 21.2 Any disputes relating to these terms and conditions shall be subject to the [exclusive] OR [non-exclusive] jurisdiction of the courts of [England].

## **22. Statutory and regulatory disclosures**

- 22.1 We will not file a copy of these terms and conditions specifically in relation to each user or customer and, if we update these terms and conditions, the version to which you originally agreed will no longer be available on our

website. We recommend that you consider saving a copy of these terms and conditions for future reference.

22.2 These terms and conditions are available in [the English language only].

22.3 Our VAT number is *[number]*.

22.4 The website of the European Union's online dispute resolution platform is available at <http://ec.europa.eu/odr>. [ The online dispute resolution platform may be used for resolving disputes.]

22.5 The name of the [alternative dispute resolution entity] that we use dispute resolution is *[name]* and its website address is *[URL]*.

### **23. Our details**

23.1 This website is owned and operated by *[name]*.

23.2 We are registered in [England and Wales] under registration number *[number]*, and our registered office is at *[address]*.

23.3 Our principal place of business is at *[address]*.

23.4 You can contact us:

- (a) [by post, to [the postal address given above]];
- (b) [using our website contact form];
- (c) [by telephone, on [the contact number published on our website from time to time]]; or
- (d) [by email, using [the email address published on our website from time to time]].

*[additional list items]*

# **Free terms and conditions of sale via website (B2C): drafting notes**

Under this free-to-use T&Cs template, a website operator may contract through the website to supply goods to consumers.

The T&Cs have three main purposes. First, they set out the legal basis of the contract between the supplier and the customer. Second, they help mitigate risks to the supplier that arise out of that contract. Third, they help the supplier to comply with applicable legislation. In this regard, the document reflects the latest requirements of consumer protection legislation (including distance selling legislation).

This document should not be used for offline sales or for sales to businesses. Nor should it be used for sales of services or digital products. If the products you wish to sell are subject to special regulation of any kind, you should take legal advice before using this template.

## **Section 1: Credit**

### **Section: Free documents licensing warning**

Optional element. Although you need to retain the credit, you should remove the inline copyright warning from this document before use.

## **Section 3: Interpretation**

### **Section 3.1**

- Identify the seller by its (or his or her) full legal name.

## **Section 4: Order process**

### **Section 4.2**

- Are there any alternative order procedures?
- Identify the alternative order procedure (or the place where the alternative order procedure is described).

### **Section 4.3**

Regulation 9(1)(a) of the Electronic Commerce (EC Directive) Regulations 2002: "Unless parties who are not consumers have agreed otherwise, where a contract is to be concluded by electronic means a service provider shall, prior to an order being placed by the recipient of a service, provide to that recipient in a clear, comprehensible and unambiguous manner the information set out in (a) to (d) below ... (a) the different technical steps to follow to conclude the contract".

One such step should be the provision of an acknowledgement of receipt of the order "without undue delay and by electronic means" (Regulation 11(1)(a)). This requirement does not however apply "where parties who are not consumers have agreed otherwise".

- What steps must be in order for a contract for the sale and purchase of a product or products through the website to come into force?

#### **Section 4.4**

Optional element.

This is intended to meet the requirements of Regulation 9(1)(c) of the Electronic Commerce (EC Directive) Regulations 2002, which states: "Unless parties who are not consumers have agreed otherwise, where a contract is to be concluded by electronic means a service provider shall, prior to an order being placed by the recipient of a service, provide to that recipient in a clear, comprehensible and unambiguous manner the information set out in (a) to (d) below ... (c) the technical means for identifying and correcting input errors prior to the placing of the order."

See also Regulation 11(1)(b): "Unless parties who are not consumers have agreed otherwise, where the recipient of the service places his order through technological means, a service provider shall ... make available to the recipient of the service appropriate, effective and accessible technical means allowing him to identify and correct input errors prior to the placing of the order".

- Can you describe the error identification and correction process?
- Describe process.

#### **Section 5: Products**

Optional element.

##### **Section 5.1**

Optional element.

- What types of products will be sold through the website?

#### **Section 6: Prices**

##### **Section 6.3**

Optional element. Is the website operator registered for VAT?

Under the Price Marking Order 2004, VAT-inclusive selling prices must be shown to consumers. VAT-exclusive prices can be, and usually are, shown to business customers.

- Will fees be stated inclusive or exclusive of VAT?

##### **Section 6.4**

Optional element. Is there any possibility that prices may be incorrectly stated on the website (eg because of a large number of products being offered and prices being added manually)?

##### **Section 6.5**

Optional element. Are distinct delivery charges ever payable?

- Are delivery charges always payable, or only sometimes payable?

## **Section 7: Payments**

### **Section 7.2**

- What payment methods may be used?

### **Section 7.3**

Optional element.

### **Section 7.4**

Optional element. Will the website operator be entitled to compensation in the event of an unjustified charge-back?

- Within what period will customers have to pay charges associated with charge-backs (starting on the date of a written request for payment)?
- Will the website operator be entitled to compensation in the event of an unjustified charge-back?
- What administration fee will you charge to customers who initiate an unjustified charge-back?

## **Section 8: Deliveries**

Optional element.

### **Section 8.1**

- Are delivery policies and procedures set out in this document or in a separate delivery policy?

### **Section 8.2**

Optional element. Do you wish to identify the place for delivery of products in this document?

### **Section 8.3**

Optional element. Will delivery periods be specified in this document?

- What is the long-stop date for delivery of products?

### **Section 8.4**

Optional element. Should a long-stop delivery period guarantee be included in this document?

30 days is the default long-stop period for the fulfilment of consumer supply contracts.

- Within what period are deliveries guaranteed to be made?

## **Section 8.5**

Optional element. Should geographical limitations upon deliveries be specified in this document?

- To what addresses will deliveries be made?

## **Section 9: Distance contracts: cancellation right**

The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 apply special rules to certain distance contracts between traders and consumers (i.e. B2C) for the sale of goods entered into via a website, as well as certain other contracts (not discussed here).

The Regulations, effective on 13 June 2014, replace the Consumer Protection (Distance Selling) Regulations 2000. See:  
<http://www.legislation.gov.uk/ukxi/2013/3134/contents/made>

Unfortunately, the rules are too complex to describe in detail here, and you should read the Regulations or at least a more detailed summary of them. A handful of the key points have been set out below.

First, traders must make certain pre-contract disclosures. The information traders need to disclose is set out in Schedule 2 to the Regulations, and includes information about the cancellation rights under the Regulations. Some of the information may be contained in terms and conditions or other standard documents, whilst some will usually be customer-specific.

Second, certain of the Schedule 2 information (mostly concerned with the characteristics of the goods, pricing, payments and contract duration - see Regulation 14(2)) must be provided directly before the order is placed. This could be on a page of a checkout process where the consumer is asked to check the details of the order before paying.

Third, when placing an order the consumer should explicitly acknowledge the obligation to pay. If the order is made by pressing a button, the button text should be "Order with obligation to pay" or something equivalent.

Fourth, the trader must send to the consumer confirmation of the contract on a "durable medium". Typically, this will be a confirmation email. The confirmation should repeat any Schedule 2 information that was not previously given on a durable medium.

Fifth, the trader should make available to consumers a partially filled-in copy of the model cancellation form set out in Schedule 3(B). The trader may also wish to make available a filled-in copy of the model instructions for cancellation set out in Schedule 3(A) - but one of the purposes of the distance selling provisions in this document is to replace those model instructions. If both are used, ensure they are consistent.

Sixth, the trader should have in place appropriate procedures to comply with cancellation requests. In summary, consumers may cancel a contract to purchase goods at any time within the period of 14 days following delivery.

There are lots of exceptions and special rules that are not covered in this note, so do read the Regulations or some more detailed guidance. See, for instance, the Distance Selling Hub on the Trading Standards website:  
<http://dshub.tradingstandards.gov.uk/>

### **Section 9.3**

The trader must make available to the consumer a Schedule 3(B) cancellation form. In the Regulations, "something is made available to a consumer only if the consumer can reasonably be expected to know how to access it" (Regulation 8). If the trader gives the consumer the option of cancelling by means of a web form and the consumer uses that web form to cancel, the trader must acknowledge the cancellation "on a durable medium without delay". See Regulation 31.

### **Section 9.4**

If the trader has offered to collect the goods, or the goods were delivered to the consumer's home and could not, by their nature, normally be returned by post, then it is the trader's responsibility to collect the goods. See Regulation 34(1) of the Regulations. If either of these circumstances may apply, then this provision should be amended accordingly.

- To what address should products be returned?

### **Section 9.9**

This provision sets out those categories of product that a seller may legally exclude from the general right of cancellation.

- Will contracts of sale cover any of these categories of subject matter?

## **Section 10: Warranties and representations**

### **Section 10.1**

Optional element.

- Will the website operator have a separate delivery policy?

### **Section 10.2**

The terms listed here are implied by law into most English law contracts for the sale of goods, and in many cases cannot be excluded. See: the Consumer Rights Act 2015, the Sale of Goods Act 1979 and the Unfair Contract Terms Act 1977.

- Should express seller warranties be included in the document?

## **Section 11: Limitations and exclusions of liability**

Contractual limitations and exclusions of liability are regulated and controlled by law, and the courts may rule that particular limitations and exclusions of liability in contracts are unenforceable.

Limitations and exclusions of liability in UK B2C contracts are primarily regulated by the Consumer Rights Act 2015 ("CRA").

Consumer contracts regulated by the CRA cannot exclude or restrict liability for death or personal injury resulting from negligence (Section 65(1), CRA). Further, any "unfair term" in such a contract will not be binding on the consumer (Section 62(1), CRA). A contractual term is unfair "if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations arising under the contract to the detriment of the consumer" (Section 62(3), CRA).

Section 31 of the CRA provides that a term of a contract to supply goods is not binding on the consumer to the extent that it would exclude or restrict the trader's liability arising under certain provisions of the CRA relating to: (a) goods being of satisfactory quality; (b) goods being fit for a particular purpose; (c) goods being as described; (d) pre-contract information; (e) goods matching a sample; (f) goods matching a model seen or examined; (g) installation of goods; (h) ancillary digital content; (i) the trader having the right to supply the goods; (j) the delivery of the goods; and (h) the passing of risk in the goods.

A "grey list" of provisions that may be regarded as unfair is set out in Part 1 of Schedule 2 to the CRA. Some of these have implications for the drafting of limitations and exclusions of liability. For example, they include: "[a] term which has the object or effect of excluding or limiting the trader's liability in the event of the death of or personal injury to the consumer resulting from an act or omission of the trader."

"Where a term of a consumer contract, or a consumer notice, purports to exclude or restrict a trader's liability for negligence, a person is not to be taken to have voluntarily accepted any risk merely because the person agreed to or knew about the term or notice" (Section 65(2), CRA).

The courts may be more likely to rule that provisions excluding liability, as opposed to those merely limiting liability, are unenforceable.

If there is a risk that any particular limitation or exclusion of liability will be found to be unenforceable by the courts, that provision should usually be drafted as an independent term, and be numbered separately from the other provisions.

These guidance notes provide a very incomplete and basic overview of a complex subject. Accordingly, you should take legal advice if you may wish to rely upon a limitation or exclusion of liability.

### **Section 11.1**

Do not delete this provision (except upon legal advice). Without this provision, the specific limitations and exclusions of liability in the document are more likely to be unenforceable.

### **Section 11.4**

Optional element.

### **Section 11.5**

Optional element. If the website operator is a limited liability entity (eg a limited company), do you want to expressly exclude liability on the part of officers and employees?

### **Section 11.6**

Optional element. Do you want to include a liability cap in this document?

Liability caps may be unenforceable in practice.

- Do you want to include a liability cap in this document?
- What monetary amount should be used in the liability cap?
- What floating amount should be used in the liability cap?

## **Section 12: Order cancellation**

Optional element.

### **Section 12.1**

- Will this right to terminate only apply in the case of a material breach?

### **Section 12.2**

- Will this right to terminate only apply in the case of material breaches?

## **Section 13: Consequences of order cancellation**

Optional element.

### **Section 14: Scope**

Optional element.

### **Section 14.2**

Optional element.

### **Section 14.3**

Optional element.

## **Section 16: Assignment**

### **Section 16.1**

Part 1 of Schedule 2 to the Consumer Rights Act 2015 contains an indicative and non-exhaustive list of terms which may be regarded as unfair. Included in this list are terms having "the object or effect of allowing the trader to transfer the trader's rights and obligations under the contract, where this may reduce the guarantees for the consumer, without the consumer's agreement".

- Do you want to explicitly state that consumers will not lose any "guarantees" as a result of an assignment?

### **Section 19: Third party rights**

Optional element.

This provision is designed to exclude any rights a third party may have under the Contracts (Rights of Third Parties) Act 1999.

### **Section 20: Entire agreement**

#### **Section 20.1**

- Do any other documents apply to the contract of sale (e.g. a separate returns policy)?
- Which other documents?

### **Section 21: Law and jurisdiction**

The questions of which law governs a document and where disputes relating to the document may be litigated are two distinct questions.

#### **Section 21.1**

This document has been drafted to comply with English law, and the governing law provision should not be changed without obtaining expert advice from a lawyer qualified in the appropriate jurisdiction. In some circumstances the courts will apply provisions of their local law, such as local competition law or consumer protection law, irrespective of a choice of law clause.

- Which law should govern the document?

#### **Section 21.2**

In some circumstances your jurisdiction clause may be overridden by the courts.

- Should the jurisdiction granted be exclusive or non-exclusive? Choose "non-exclusive" jurisdiction if you may want to enforce the terms and conditions against users outside England and Wales. Otherwise, choose "exclusive jurisdiction".
- The courts of which country or jurisdiction should adjudicate disputes under the document?

### **Section 22: Statutory and regulatory disclosures**

Optional element.

This provision includes certain disclosures that may aid compliance with certain statutes and regulations, including the Electronic Commerce (EC Directive) Regulations 2002.

#### **Section 22.1**

Optional element.

## **Section 22.2**

Optional element.

This is intended to meet the requirements of Regulation 9(1)(d) of the Electronic Commerce (EC Directive) Regulations 2002.

- What language or languages will the document be available in?

## **Section 22.3**

Optional element. Is the website operator registered for VAT?

- What is the website operator's VAT number?

## **Section 22.4**

Optional element.

Article 14(1) of Regulation (EU) No 524/2013 provides: "Traders established within the Union engaging in online sales or service contracts, and online marketplaces established within the Union, shall provide on their websites an electronic link to the ODR platform. That link shall be easily accessible for consumers. Traders established within the Union engaging in online sales or service contracts shall also state their e-mail addresses."

Also note Article 14(2), which provides: "Traders established within the Union engaging in online sales or service contracts, which are committed or obliged to use one or more ADR entities to resolve disputes with consumers, shall inform consumers about the existence of the ODR platform and the possibility of using the ODR platform for resolving their disputes. They shall provide an electronic link to the ODR platform on their websites and, if the offer is made by e-mail, in that e-mail. The information shall also be provided, where applicable, in the general terms and conditions applicable to online sales and service contracts."

Some of the same ground is covered in the equivalent UK rules, which are contained in Regulations 19 and 19A of the Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015 (as amended by The Alternative Dispute Resolution for Consumer Disputes (Amendment) Regulations 2015).

Regulation 19A(1) provides: "Where under an enactment, rules of a trade association, or term of a contract, an online trader is obliged to use an alternative dispute resolution procedure provided by an ADR entity or EU listed body, the trader must - (a) provide a link to the ODR platform in any offer made to a consumer by email; and (b) inform consumers of - (i) the existence of the ODR platform; and (ii) the possibility of using the ODR platform for resolving disputes."

Regulation 19A(2) provides: "The information in (1)(b) must also be included in the general terms and conditions of online sales contracts and online service contracts of the trader, where such general terms and conditions exist."

Regulation 19A(3) provides: "An online trader must on its website - (i) provide a link to the ODR platform; and (ii) state the online trader's email address."

Regulation 19A(4) provides: "An online marketplace must provide a link to the ODR platform on its website."

- Include this text if "under an enactment, rules of a trade association, or term of a contract, [the] online trader is obliged to use an alternative dispute resolution procedure provided by an ADR entity or EU listed body".

## **Section 22.5**

Optional element.

Regulations 19(1) of the Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015 (as amended by The Alternative Dispute Resolution for Consumer Disputes (Amendment) Regulations 2015) provides: "Where, under an enactment, rules of a trade association, or term of a contract, a trader is obliged to use an alternative dispute resolution procedure provided by an ADR entity or EU listed body the trader must provide the name and website address of the ADR entity or EU listed body - (a) on the trader's website, if the trader has a website; and (b) in the general terms and conditions of sales contracts or service contracts of the trader, where such general terms and conditions exist."

## **Section 23: Our details**

Optional element.

UK companies must provide their corporate names, their registration numbers, their place of registration and their registered office address on their websites (although not necessarily in this document).

Sole traders and partnerships that carry on a business in the UK under a "business name" (i.e. a name which is not the name of the trader/names of the partners or certain other specified classes of name) must also make certain website disclosures: (i) in the case of a sole trader, the individual's name; (ii) in the case of a partnership, the name of each member of the partnership; and (iii) in either case, in relation to each person named, an address in the UK at which service of any document relating in any way to the business will be effective. All websites covered by the Electronic Commerce (EC Directive) Regulations 2002 must provide a geographic address (not a PO Box number) and an email address. All website operators covered by the Provision of Services Regulations 2009 must also provide a telephone number.

### **Section 23.1**

- What is the name of the company, partnership, individual or other legal person or entity that owns and operates the website?

### **Section 23.2**

Optional element. Is the relevant person a company?

- In what jurisdiction is the company registered?
- What is the company's registration number or equivalent?
- Where is the company's registered address?

### **Section 23.3**

Optional element.

- Where is the relevant person's head office or principal place of business?

### **Section 23.4**

Optional element.

- By what means may the relevant person be contacted?
- Where is the relevant person's postal address published?
- Either specify a telephone number or give details of where the relevant number may be found.
- Either specify an email address or give details of where the relevant email address may be found.