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E-Commerce Websites and the Law

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UK laws for e-commerce sites

1. Introduction

Under UK and EU law, owners of e-commerce websites are required to display an enormous amount of information regarding the terms and conditions of an online purchase and how personal data will be used by the site operators.

If you're about to launch a new website then it's important that you understand and comply with the regulations that apply to trading online. This e-book is designed as an introduction to e-commerce law, but is equally of interest to other website owners. Over the next few pages we'll be covering the following regulations:

1. The Electronic Commerce (EC Directive) Regulations 2002
2. The Privacy and Electronic Communications (EC Directive) Regulations 2003.
3. Distance Selling Regulations

In this e-book we provide an overview of each regulation and suggest how you can comply with the rules. If you need further information, we include links to detailed articles on the web.

Important Notice: This e-book has been produced by the team at www.e-termsandconditions.com as a guide. This e-book does not constitute legal advice on any of the matters referred to or upon any other legal issues. This book was updated on 15-Feb-2010.

We hope you enjoy this information and find it useful reading when planning or operating an e-commerce website. If you have any questions you can talk to us via live chat on our website www.e-terms.co.uk.

Disclaimer:

This e-book has been produced by the team at www.e-termsandconditions.com, providers of custom-made terms and conditions templates for e-commerce websites. E-Terms produce personalised documents using an online interactive system based on professionally worded legal templates. This e-book does not constitute legal advice on any of the matters referred to or upon any other legal issues. If you require advice as to whether any sample document or information provided in this e-book is suitable for your business you should seek the legal advice of a suitably qualified lawyer.

2. E-Commerce and the law

E-Commerce Definition: E-Commerce refers to the buying and selling of goods and services via the internet. The trader and the customer are not face to face, and the transaction is conducted remotely.

Over the past 10 years, legislation has been introduced to ensure that online contracts (i.e. E-commerce transactions) are legally binding. When implemented correctly, the regulations should provide protection for both the trader and the customer. There are 3 sets of legislation that apply to most e-commerce websites:

- 1.) The Electronic Commerce Regulations came into force in August 2002. It applies to any business that:
 - Sells goods or services to businesses or consumers on the internet, or by email, or Standard Messaging Service (SMS)
 - Advertises on the internet, or by email or SMS
 - Convey or store electronic content for customers or provide access to a communications network.
- 2.) Distance Selling Regulations 2000. If you operate a Business-to-consumer website, you will need to comply with these regulations. They are designed to protect customers who are not physically present with the seller at the time of a purchase.
- 3.) Privacy and Electronic Communications Regulations, Dec 2003. These regulations cover email marketing, use of personnel data and implementation of cookies on a website. This regulation encompasses the Data Protection Act.

The above regulations are applicable to most e-commerce websites.

If you advertise or sell services (rather than goods), you will also need to be aware of the Provision of Services Regulations 2009 Act. We've included a chapter on this later in the document.

Depending on your business, there may be other laws and regulations that you need to comply with. For example, those offering or advertising financial services will need to operate within the rules of the FSA. If your e-commerce site sells medicine, alcohol, or other restricted products then there are further rules you should consider. We recommend you seek the advice of a lawyer in these situations.

3. Addressing your concerns

Over the next few pages you're going to be subjected to a number of laws, regulations and requirements relating to your website.

It's important that you don't become overwhelmed by the detail.

There are thousands of e-commerce websites that are operating within the law, thanks to the availability of professional shopping cart systems and comprehensive terms and conditions templates.

There are 4 simple steps to complying with e-commerce regulations:

- 1.) Read and understand the regulations that apply to you.
This e-book is a good starting point and we include lots of links to more detailed information. There's also some brilliant advice available from numerous government agencies such as Business Link and the ICO, as well as independent organisations such as the FSB (Federation of Small Businesses).
- 2.) If designing your website, recruit the services of an e-commerce web design team. They'll have experience of the regulations and ensure your shopping cart and payment services are configured in accordance with the law.
- 3.) Ensure you have comprehensive Terms and Conditions, and a Privacy Policy custom-made for your website. There are several online companies providing standard templates. www.e-termsandconditions.com provides personalised templates based on your business. Or contact a legal adviser who can write bespoke Terms and Conditions suitable for your website.
- 4.) Offer great customer service. Many of the requirements listed in this e-book not only comply with regulations, but should also be applied because they make good business sense. A Forrester survey suggests 80% of people will look for a Privacy Policy before registering on a site. Offer a professional service and the customers will trust you.

4. Electronic Commerce Regulations

Introduction: The Electronic Commerce Regulations came into force in August 2002. They implement the European E-Commerce Directive, ensuring that electronic contracts are legally binding and enforceable throughout Europe:

Application: These regulations apply to any business that (a) sells goods or services to businesses or consumers on the internet, by email or SMS, (b) advertises on the internet, by email or SMS and/or (c) conveys or stores electronic content for customers.

Further Information: [Business Link Website](#)

These regulations identify specific information about your business that you must make available to people who visit your e-commerce website. It also sets down guidelines regarding advertising and promotions.

We've simplified the regulations into a checklist. In most cases, there's an obvious place in your website to display the information. Most requirements will be handled by your Terms and Conditions or shopping cart system.

Recommended Web-Page	Regulation / Requirement	Your Website
Terms & Conditions	Company Information: <ul style="list-style-type: none">You need to include your company name, a UK geographic address and an email address where people can contact you.If you are registered for VAT you should display the VAT number.Include details of your company registration. For example, your Companies House registration number and registered office if you are a limited company.	
Terms & Conditions	Membership of Professional Bodies: <ul style="list-style-type: none">If you are registered with any professional body (e.g. Chartered surveyor member of RICS), include your professional title, the body and any registration/membership numbers.Also check if these membership bodies require you to display any additional information such as a link back to a website	
Terms & Conditions	Details of any code of practice to which you subscribe <ul style="list-style-type: none">Although not essential in law, it's always a good idea to sign up to schemes that give customers confidence when shopping on your site.	
Shopping Cart	Description of goods and services being sold <ul style="list-style-type: none">Ensure you provide a good description against each product or service. It's not only a requirement under the regulations, but also a valuable sales tool.	
Shopping Cart	Pricing Information <ul style="list-style-type: none">You must provide clear pricing information on individual product pages and during the checkout process. If you sell to the trade and display your prices without VAT, you must make that clear. If you charge delivery fees, and they vary from country to country you must inform the customer on the relevant pages. If import or customs duty is payable, you should clearly state whether you or (usually) the customer is responsible for those taxes.	
Shopping Cart	Special Offers <ul style="list-style-type: none">If your products or services are on special offer, you must state how long the offer will last.	
Shopping Cart	Product Availability <ul style="list-style-type: none">You must let your customers know whether the goods are in stock or not.	

Shopping Cart	Delivery and dispatch details <ul style="list-style-type: none"> You should include full information about your deliveries and the time they will take. You could create a specific 'delivery information' page, with details of couriers used, pricing, delivery times, e.t.c Most shopping cart systems already include a way of displaying this information. 	
Shopping Cart	Correction of Mistakes <ul style="list-style-type: none"> You must make sure that your website allows customers to go back and correct any mistakes made in their order before the order is placed. 	
Shopping Cart	Confirmation of Order <ul style="list-style-type: none"> Once a customer has placed an order electronically, you must acknowledge receipt without undue delay. 	

Additional Notes:

- (1) You must also comply with part of the Companies Act 2006, which requires that all companies in the UK must clearly state the company registration number, place of registration, registered office address and, if the company is being wound up you should also mention that, on all of your websites. You may wish to display this information on both the contact page and within the Terms and Conditions / legal page.

This rule also applies to any electronic communications sent out by your company.

5. Privacy and Electronic Communications Regulation

Introduction: E-marketing activities are regulated by the Privacy and Electronic Communications Regulations that came into force in December 2003. The Privacy and Electronic Communications Regulations superseded the Telecommunications (Data Protection and Privacy) Regulations. The new regulations were introduced to legislate against unsolicited emails commonly referred to as spam.

Application: These regulations apply to any business involved in e-marketing (e.g. sending marketing material by email or SMS).

Further Information: [Business Link Website](#) or the [ICO Website](#)

The main purpose of this regulation is to regulate the sending of unsolicited emails. When running your e-commerce website you will likely be sending two categories of email:

- 1.) Emails directly related to a transaction or action on the website. This includes sending a confirmation email when someone registers or makes a purchase from your site, delivery notifications e.t.c.
- 2.) E-Marketing activities where you are promoting products, services or special offers from your own website or on-behalf of a third party.

The Privacy and Electronic Communications Regulations apply to those emails in category 2.

Recommended Web-Page	Regulation / Requirement	Your Website
User Registration Page	Opt-in for email marketing <ul style="list-style-type: none">• As part of the new user registration process, you should ask people (by way of a checkbox) whether they want to receive newsletters and promotional/marketing material by email. This is known as 'Opt-In'.• Although not stated in the regulations, we strongly recommend that the checkbox is not ticked by default. In this way, there is no confusion as to whether someone opted-in by accident or provided their consent	
All Emails	Email Content <ul style="list-style-type: none">• The regulations prohibit you sending direct marketing communications by email where the identity of the person who sent it, is disguised or concealed.• All emails should also clearly state a valid address where recipients can 'opt-out' or unsubscribe from the emails.• In most cases, marketing emails should only be sent to those people who have given their consent by 'opt-in'. However: the regulations do allow you to send marketing emails to existing customers where the email content promotes products or services similar to those already purchased by that customer.	
Emails	Promoting Special Offers <ul style="list-style-type: none">• When promoting a special offer, you must state when it expires and what conditions must be met to qualify for the promotion.	
Privacy Policy	Unsubscribe <ul style="list-style-type: none">• We recommend your Privacy Policy includes instructions on how people can unsubscribe from your marketing emails.• A popular method is to create an 'unsubscribe@' email address that people can use.• Important: Ensure that any requests to unsubscribe are acted upon quickly, ideally within 5 working days or sooner.	

Privacy Policy	Cookies <ul style="list-style-type: none">• If your website install or updates 'cookies' on the visitor's computer, you must provide details in your Privacy Policy.• You must state how these cookies are used, and whether your visitor can choose to disable cookies on your website.• The above also applies to any cookies that may be installed by third party services running on your website. Most analytic tools (e.g. Google Analytics) and 3rd party shopping carts install cookies as part of their operation.	
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Additional Notes:

- 1.) All public and private organisations are legally obliged to protect any personal information they hold. As an e-commerce website, you may be required to "notify with the ICO". I.e. register your company with the Information Commissioner's Office.
We recommend you visit the [ICO website](#) for more information

6. Distance Selling Regulations 2000

Introduction: The Distance Selling Regulations 2000 are designed to protect customers who are not physically present with the seller at the time of purchase. They cover purchases made via email and the internet, together with telephone and mail order.

Application: These regulations will apply to all B2C (Business to Consumer) e-commerce websites. The act does not apply to Business-2-Business contracts or auctions.

Further Information: [OFT guide for small businesses.](#)

Under the Distance Selling Regulations Act 2000, consumers have the following rights:

Recommended Web-Page	Regulation / Requirement	Your Website
Terms and Conditions And shopping-cart	Supplier Detail and Terms of the Transaction <ul style="list-style-type: none"> Where a transaction has been completed, the consumer has the rights to details in writing about the supplier and the terms of the transaction. This is usually achieved by: <ol style="list-style-type: none"> Sending an email confirming the details of the transaction. Ensuring your website Terms and Conditions are accessible during and after the transaction. 	
Shopping Cart	Written Confirmation of the order <ul style="list-style-type: none"> As above. All shopping carts are capable of sending an email to the customer once a transaction has been completed. Ensure the email contains details of the product or service purchased, price and delivery details. 	
Terms and Conditions	Cooling off period <ul style="list-style-type: none"> Consumers have a cooling-off period of seven working days in which to cancel the contract, starting from when the goods are received, without having to give a reason. If no details of the cooling-off period have been given by the supplier to the consumer, it is extended to three months.. You – as the supplier – have the rights to set reasonable conditions for the cooling off periods. Most e-commerce websites require that – in the event of the contract/purchase being cancelled – that the goods are returned unopened. There are some exceptions to the cooling-off period including: <ol style="list-style-type: none"> contracts for the provision of accommodation, transport, catering or leisure services, where these services are supplied on a specific date or for a specific period the sale of customised goods or perishable goods sealed audio or video recordings, or software, which has been opened sales by auction For a full list, refer to the OFT guide for small businesses. 	
Terms and Conditions	Cancellation <ul style="list-style-type: none"> The right to withdraw can be exercised by the consumer even after the goods have been delivered, or the services have been provided. The consumer is entitled to receive a full refund for a cancelled contract within 30 days. As above, you can specify terms and conditions relating to the cancellation including how they should contact you. However, these must not conflict with any part of the distance selling regulations. 	
Terms and Conditions	Further Information <ul style="list-style-type: none"> You must provide consumers with clear guidance on their cancellation rights, after-sales service, guarantees and your company's complaints procedure policy. 	

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| | <ul style="list-style-type: none">• Ensure that your Terms and Conditions are regularly reviewed and updated to reflect any changes in your company's processes or organization. | |
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Additional Notes:

7. Provision of Services Regulations 2009

Introduction: The Provision of Services Regulations removed many of the barriers to the international trade in services with the aim of making it easier for individuals and businesses to provide services to, or from, anywhere in the European Economic Area (EEA).

Application: These regulations will apply to all companies offering services.

Further Information: [BIS guide to the Provision of Services Regulations](#)

Most requirements under the Provision of Services Regulations act are already covered under the Electronic Commerce Act. i.e the requirement to provide your business name, legal status, contact details e.t.c.

If you are providing services, then you will also need to include the following:

- Details of any terms, conditions and after-sales guarantees
- The price (where it is pre-determined) and details of the service to be provided
- Details of any professional indemnity insurance and contact details for the insurance company (if applicable)

8. A quick look at other laws:

Issues to consider when selling online

In addition to the regulations covered above, you should also consider the following:

- **Data Protection Act** - you should comply with this legislation, which imposes conditions on both data processors and controllers.
- **Intellectual property** - issues such as copyright and trade marks should be considered, not just for items displayed on your site, but also within any metatags.
- **Consumer protection legislation** - legislation such as the Unfair Contract Terms Act 1977, the Unfair Terms and Consumer Contracts Regulations 1999 and the Consumer Protection from Unfair Trading Regulations 2008 apply equally to goods sold over the internet. Some of this protection is also extended to business purchasers under the Business Protection from Misleading Marketing Regulations 2008.
- **Security** - be aware that selling online will necessitate the passing of sensitive data and payment instructions. An online vendor could be liable for breaches of security on their site.
- **Exclusions on restricted goods** - some types of goods which are legal to sell in one jurisdiction may be prohibited in other jurisdictions.
- **Specific regulation** - specific industries may be regulated. This is particularly the case with premium-rate internet sites or those aimed at children. There may also be implications as a consequence of competition law. Check each potential market sector carefully.
- **Access agreement** - it is important to have terms and conditions governing the use of your website. These must be set out prior to the customer proceeding to purchase - commonly the customer must click on an 'I agree' button to proceed, indicating acceptance of the terms and conditions.
- **Consumer Protection** - The EU has established a minimum level of consumer protection for the purchase of goods in the single market.
 - It states that the supplier must sell goods that comply with their description, match the quality of samples or models, have the same quality and performance characteristics of such goods, and are fit for any purpose accepted by the supplier.
 - The consumer has two years from the delivery date to seek redress for faults demonstrably present at the time of delivery, in goods which should have lasted for this length of time.
- **Financial Services** – There are a whole series of regulations and laws concerning financial services. Always seek the legal advice of a suitably qualified lawyer if your website promotes, advertises or in any way involves financial services.
- **Legal Jurisdiction** – Your Terms and Conditions should clearly state which country's courts have jurisdiction in a dispute relating to your website, products or services.

9. About E-Terms

This free e-book is available from <http://www.e-termsandconditions.com/>

We are the UK's leading website for producing custom-made Terms and Conditions, and Privacy Policy documents for e-commerce websites.

By answering a set of simple questions, our automated system builds T&Cs tailored for your e-commerce website with the relevant clauses inserted or removed based on your responses.

Over 2000 companies have used our services to produce comprehensive legal documents for their website.

Our templates are reviewed quarterly to ensure they are compliant with the latest regulations.

We don't promise our Terms and Conditions are suitable for your business. We are available on live-chat via the website during working hours. If we don't believe our templates are suitable for your business, we will tell you. We're able to recommend legal advisers who can help you with your requirements.

With Thanks:

Parts of this document have been based on material from the following websites:

www.businesslink.gov.uk

www.berr.gov.uk

www.ico.gov.uk

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