



# Consumer protection in the Czech Republic



Unlock Your Potential

2016

# Index:

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# INTRODUCTION

This publication depicts most important selected consumer rights and corresponding obligations of entrepreneurs according to legal regulation effective as of August 1 2016.

Compared to the first edition from 2014, the publication has been greatly extended, since the amending of legislation that occurred in the mentioned period led to extension of consumer rights.

Important news is the introduction of alternative dispute resolution for consumer disputes effective since February 1 2016, which is described in Section 10.

For disputes with foreign vendors from EU countries, consumers can, since February 15 2016, use the so called electronic platform for cross-border dispute resolution, which is introduced to reader in Section 10.3.

The new definition of prohibited unfair business practices cannot be omitted in the consumer protection act, which is described in Section 3.2, or new consumer rights in case of buying goods at infamous demonstration events, which the reader will find in Section 4.6.

Completely new information is added in Section 6 in connection with the adoption of the new act on consumer credit, which will, from December 1 2016, strengthen the rights of consumers both in the case of conventional consumer credits, and in the case of mortgage credits. Some additional information has been added to Section 8, dealing with telecommunications services, and Section 9, dealing with energy supply.

# 1 CONSUMER AND ENTREPRENEUR

In order for the customer to exercise his consumer rights, he has to fulfill the definition of a consumer according to the civil code, or alternatively the definition as stated in the consumer protection law (law no. 634/1992 Sb. on consumer protection)

**A consumer is any individual, who strikes a deal with an entrepreneur, or deals with him in other ways, which do not directly pertain to the consumer's area of entrepreneurial activity or occupation.**

**A consumer contract**, according to customer protection legislation, **is defined** as an arrangement, where one party is the consumer, and the other the entrepreneur. Individuals claiming an appropriate entrepreneurial certification, as well as individuals carrying out entrepreneurial practices without a license are both considered as an entrepreneur in this case.

A customer is considered a consumer, if he buys goods or orders services for personal needs (e.g. if he buys an electric appliance, clothes, shoes, food, a gift for his friends or family, orders construction repair for his flat, mowing the lawn in front of his family house).

A transaction of goods and/or services between two consumers or entrepreneurs **is not considered a consumer contract**

An individual, who buys goods for his business or other profitable enterprise (on a company ID) is not considered a consumer.

## Examples:

*If a consumer sells a product to another consumer, for example on an internet-based auction portal, internet bazaar, craigslist, through a classified ad or personally (for example between neighbors) as a one-time sale or irregularly (e.g. selling an old version of product after buying a new one, old clothes, basically selling anything the consumer doesn't need for financial gain), this doesn't constitute a consumer contract and the legal arrangement between both sides is guided by general regulations pertaining to purchase contracts (the customer will have less rights in cases of warranty claims, etc.).*

*However, if the selling party, for example on an internet portal, presents itself as a consumer, but from the character and amount of its sales it is clearly deducible, that he is in fact an entrepreneur (e.g. when he supplies several mobile phones into his selling portfolio each day), he is considered as such and the consumer has stronger customer rights, corresponding to the consumer contract legislation.*

*Furthermore, if an entrepreneur buys goods for use in his business effort, for example through an internet shop, this does not constitute a consumer contract, and the buyer cannot therefore exercise rights derived from consumer contract legislation (unless the store owner grants him this right)*



# 2 CONSUMER CONTRACTS

## 2.1 Varying consumer rights according to type of sale

It is necessary to differentiate, if the consumer purchases goods or services:

- a) in a **common (brick and mortar) store**, or
- b) if he closes the deal through **long range communication devices** (i.e. without the physical presence of both parties), or
- c) if he closes the deal **outside of usual commercial premises**.

Consumer rights differ, in accordance with the place where the consumer facilitates the purchase.

**A common store is considered to be** not just your usual brick and mortar store, but also permanent sales booths and stalls in shopping malls (provided the customers approach these booths by themselves, as opposed to being roped in by salespeople), farmers markets, sales expos and so on.

Concerning purchases in common stores, the customer has less rights than in the case of long range sales or sales outside commercial premises. That's because in a common store the consumer usually does not feel rushed and has the possibility to examine or even try out the product, compare prices and quality of the product with the competition without the need to decide immediately, as is the case during showcase presentations or street vending.

When completing a purchase in a common store, the consumer does not have the right to withdraw from the contract within a 14 day period, without stating a reason.



Goods bought in a common store, that do not have defects for which the customer can make claims (and if need be even withdraw from the contract), cannot be returned without stating a reason for their return, unless the salesman willingly grants this right to the customer (the terms and conditions of such a return are then determined by the selling party).

A contract closed through **long range communication devices** is for example a contract facilitated through the use of internet, by phone, teleshopping, a contract realized through the sending of an order form from a catalogue and so on. The most important point here is, how the contract was closed, not how the goods were accepted.

### Example:

*If a customer orders goods online, and subsequently picks them up in a brick and mortar store, he has rights corresponding to a contract closed online.*

**Contracts closed outside of commercial premises are**, for example contracts entered into with door to door salesmen, street vendors or contracts closed at showcase presentations.

Contracts, which were closed in premises usual for the entrepreneur's business can also fall into this category, provided that these contracts have been closed immediately after **the entrepreneur addressed the consumer** outside of these premises.

### Example:

*A sales representative unexpectedly stops the consumer on the street and subsequently leads him to his office, which is located nearby, where he closes a deal with the customer. In this case, the contract falls into the category of **contracts closed outside of commercial premises**, and the customer has more rights.*

Contracts closed outside of commercial premises, also include **tours and tours organized by the entrepreneur for the purpose of advertising and selling goods** or rendering services (despite the fact, that the entrepreneur may have his place of business registered at the place of the showcase presentation and regardless whether the contract is closed at or during the showcase presentation, or later, for example in the place of business of the entrepreneur)

**Timesharing**, or consumer contracts, wherein the consumer gains the right to use lodging facilities for accommodation and eventual other services for more than one time period, if the contract is closed for a period longer than one year, or alternatively he participates in an exchange system relating to timesharing, is specified in the civil code § 1852 through § 1867. This legislation will not be used for standard contracts relating to tours or accommodation.

*A consumer enters into a contract for ten years to have a rented apartment by the sea every first week in July, along with a deck-chair and a parasol on the adjacent beach.*

## 2.2 The content of consumer contracts

Regardless of the manner of sale, legislation states that all consumer contracts cannot be less favorable to the consumer than is defined by law.

Rights that are guaranteed by law cannot be limited by contract.

### Example:

*If the consumer buys something from an online store, whose terms and conditions state, that there can be no returns, or warranty claims on its products, this contradicts the law, and is therefore invalid. Even if the consumer agrees to the terms and conditions, this doesn't prevent him from exercising his right for a warranty claim later.*

All information must be conveyed to the consumer in a clear and understandable fashion, in the language in which the contract is drawn.

If the contract can be interpreted in various ways, the **interpretation most**

**favorable to the consumer** will be used.

**Forbidden arrangements**, are those, which constitute an imbalance of rights and responsibilities to the detriment of the consumer.

**The entrepreneur may not demand another payment from the consumer, without his agreement**, other than the one about which the consumer has been informed prior to the finalizing of the contract, and on which they agreed in the contract.

The contract has to entail information conveyed to the consumer prior to its completion, unless the two parties agree otherwise.

The Entrepreneur has informational responsibilities as stated by law. He has to convey information to the customer, prior to the purchase.

**The entrepreneur has to convey information** as clarified in §1811 civil code (e.g. information about himself,

his goods, prices, possible payment means and costs, deliveries, warranty claims, contract duration and its termination, digital content function and its compatibility with hardware and software) **sufficiently in advance before closing the deal.**

If the transaction in question is a **sale using means of long range communication devices or outside of usual commercial premises**, the civil code states in §1820 additional informational duties for the entrepreneur, which he has to convey to the consumer sufficiently in advance prior to finalizing the contract (e.g. phone call charges, if they are different than regular rates, information on the right to withdraw from the contract, information about the existence, manner of and conditions of extrajudicial settlements of consumer complaints, including the information whether it is possible register the complaint at a state regulatory authority.

**When finalizing contracts online** (unless the contract is finalized by the

use of e-mail) the entrepreneur has to convey to the consumer information stated in §1826 of the civil code, as for example *the language in which the contract can be finalized, individual technical steps leading to finalizing the contract including means of correcting data already filled in etc.*

**If the contract is finalized by means of telephone**, the entrepreneur has to convey information about himself and the reason for his call at the beginning of the conversation.

If the entrepreneur delivers **goods or services to the consumer without him ordering**, the consumer does not have to return delivered goods or services at his own cost, or in any other way notify the entrepreneur.

**Example:**  
*The consumer receives a gift in the mail, which was not ordered by him/her, along with an appeal to pay up or return the gift, the consumer can keep the item, without having to pay the stated price.*

## 3 TERMS AND CONDITIONS OF SALES AND FORBIDDEN BUSINESS PRACTICES



### 3.1 Sales terms and conditions and additional clauses

Upon entering into a contract with larger institutions, such as banks, insurance companies, telephone operators, energy suppliers and so on, the contract usually comes with terms and conditions, whose content the customer cannot influence.

The civil code then clearly states, that, for the protection of the weaker party, **terms and conditions, which the other side could not have reasonably expected** (e.g. *unreasonably high contract fines*), are deemed invalid, unless the customer specifically accepted them.

If there is reasonable cause to expect the need for subsequent changes of terms and conditions, the contract can

state, that the entrepreneur may be able to change them in a reasonable manner. The way in which the consumer will be notified of this change has to also be agreed upon, as well as the fact that the consumer may withdraw from the contract without sanctions within a notice period long enough for the consumer to procure similar services from a different supplier.

Terms and conditions along with additional contract clauses are considered valid, provided the **consumer has been acquainted with their meaning.**

The consumer has to understand contract clauses and terms and conditions. The entrepreneur has to explain the meaning of the regulations to the consumer.

If the contract contains a clause, which **can be read only with special difficulty**, or a clause which is **unintelligible** for the average individual, this clause is valid only in the case, that it is not inconvenient for the consumer, or when the meaning of it has been sufficiently explained to him.

If the contract contains a clause, that is especially disadvantageous to the consumer, without valid reasoning, and especially in cases, where the clause differs significantly from usual conditions in similar contracts, this clause is considered invalid.

**Example:**  
*A contract with a mobile operator contains a clause, which states, that if the consumer doesn't pay his phone bill on time, he has to give up his mobile tel-*

*ephone, which he had before entering into this contract, to the operator. Such a clause would then be invalid.*

Also invalid is any contract, in which one party takes advantage of distress, inexperience, feeble-mindedness, agitation or carelessness of the other party and promises fulfilment, whose **property value is in gross imbalance to mutual fulfilment.** (e.g. a loan with extremely high interest).



### 3.2 Unfair business practices

The consumer protection law forbids the usage of unfair business practices when offering or selling goods and services.

**An unfair business practice is considered,** if the actions of the entrepreneur concerning the consumer are in contrast to requirements of business expertise and if these actions are able to considerably alter the consumer's actions in such a way, that he would make a decision, which he would not have made under normal circumstances.

Unfair business practices are especially considered as those which are **misleading and aggressive.** If an entrepreneur uses unfair business practices, it is a possible to appeal to **The Czech Trade Inspection Authority.**

### Misleading actions and misleading omissions

**Misleading action** is, if a vendor provides false information to the consumer, which leads or may lead the customer to a decision regarding the purchase which would not happen otherwise. Misleading also is, if a business practice containing truthful information in any way misleads or is likely to mislead the consumer, influencing their decisions regarding the purchase.

#### Examples of misleading actions:

*A vendor claims before a customer that goods offered are usually sold twice as expensive elsewhere, although it is not true.*

*A vendor claims before a customer that a lamp offered will heal a number of diseases, although it is a common light with no such effects.*

*A vendor claims before a customer that food offered comes from the Czech Republic, although it is from another country.*

*A vendor claims before a customer that if they do not order paid regular servicing of a product purchased directly from the vendor, they lose the chance to reclaim the product within the statutory period.*

*A vendor claims before a customer that goods are branded, even though it is secondary manufacturing.*

**Misleading omission** is, if a vendor omits important information that, in this case, a consumer needs for a decision regarding the purchase, which causes or is likely to cause the consumer to take a decision on this purchase which would not happen otherwise. Misleading omission also is, if a seller provides important information in an unclear, unintelligible or ambiguous way, or at the wrong time in relation to circumstances.

If not already apparent from the context, important information in the case of an offer for purchase is:

- a) main characteristics of the product or service to the extent appropriate to the medium and the nature of the product or service,
- b) address and identity of a seller or a person acting on behalf of the seller,
- c) price inclusive of taxes, fees and other similar monetary payments, or where the nature of a product or service imply that the price cannot

be reasonably calculated in advance, a method of its calculation, and possibly all additional payments for shipping or delivery, or if such payments cannot be reasonably determined in advance, the fact that such additional payments can be charged additionally to the price

d) arrangements for payment, delivery, performance and complaint handling,

e) right of withdrawal from contract or termination of obligation, if such rights exist, and conditions of their application,

f) other information relating to particular types of services – e.g. provision of consumer credit (see Section 6) or selling of tours (see Section 7).

A seller is obliged to duly inform a consumer about the characteristics of products sold or the nature of services provided, about the way of use and maintenance of the product and the dangers resulting from improper

use or maintenance, as well as risks associated with a service provided. If it is necessary in relation to the nature of a product, the manner and period of its use, a seller is obliged to ensure that this information is contained in enclosed instructions and to make them understandable. A seller cannot be absolved from the mentioned obligations by pointing out that the required or correct information was not provided by a manufacturer, importer or supplier. These obligations, however, do not apply to cases where it concerns obvious or generally known facts.

Essential obligations include the duty of ensuring that their **products are visibly and comprehensibly marked** by producer's trademark or that of the importer or supplier. If it is necessary in view of the type of product, name of product, information about weight, amount, size or shape and other information must be visibly displayed too. It is also important that information about the main materials be displayed.

Not fulfilling any of these obligations is considered an unfair business practice.

**If it is necessary to act with regards to special instructions, when using the product**, especially if instructions must be followed according to the manual, the seller is obliged to acquaint the consumer with the rules, unless the rules are generally known.

The vendor is obliged to inform the consumer about the price of products or services, in compliance with Price Regulations and Regulations of the European Community. This information must be **clearly written with the price of products or services**.

**The vendor is obliged to properly inform the consumer about the range, condition and way of application of the law of defective performance together with information about where consumer can complain.**

**Examples:**  
*An example of unfair business practice is so-called **bait advertising**, when the entrepreneur offers to buy products or services for a particular price without ensuring that there will be enough goods in the store, often with the purpose of attracting more customers. Similarly in some second-hand car dealers there could be advertisements for a car in good condition for a good price, although it has already been sold, and the dealer does not have similar cars for sale.*

*Similarly, some real estate agencies, in order to lure prospective buyers to their services, advertise inexpensive flats for sale or rent, which they will never allow a customer to see because of various fictional excuses (e.g. that the owner is abroad, etc.). In addition, they offer the flats at going prices which are available to the customer.*

*Another example of an unfair business practice is when the vendor untruthfully claims that products will be sold only for a particular period of time or for*

*a particular period of time if some conditions will be met or if he untruthfully claims he intends to end the business or move the premises with the intention of pressuring customers to make an immediate decision.*

*Another forbidden practice, which can be often seen on promotional events, is when the vendor provides incorrect information about the possibility of getting a similar product or service with not as good conditions as the usual market conditions.*

### 3.2.1 A business practice is considered aggressive

A business practice is considered aggressive, if considering all the circumstances, the seller annoys, forces (including the use of force or inappropriate behavior) and limits the customer's ability to decide freely.

An aggressive business practice also includes being contacted by the entrepreneur even though you have rejected him once already.

**A business practice is**, according to Annex n.2 of the Law of consumer protection, **always considered aggressive and therefore banned if the entrepreneur:**

- a)** makes an impression that the consumer cannot leave the premises or the place of sale or offering a product without signing a contract,
- b)** personally visits consumer in his place of residence, even though consumer has asked him to leave his residence and not to come back, with the exception of claiming debts in a way that accords with the law.
- c)** repeatedly makes unsolicited proposals to the customer via phone, fax, e-mail, or other means of distance communication, with the exception of claiming debts in a way which accords with the law.
- d)** requests the consumer to submit papers, which are irrelevant when applying the rights ensuing from the insuring contract or when he does not respond to correspondence in order to discourage the consumer from applying rights ensuing from the contract

**e)** by means of advertising directly encourages children to buy an offered product or service or to make an adult person buy this product or service

**f)** requires from the consumer an immediate or delayed payment for the product or services, that were given to the consumer, even though the consumer did not order them, or if the entrepreneur requires the return or deposit of the unwanted products, only if it is not a substitute delivery according to a contract

**g)** proclaims that if the consumer will not buy the product or service, the consumer's job, existence or establishment will be endangered

**h)** they create false impression that a consumer has won or will win prize or other prize, provided they will act in a certain way, although in fact, no prize or other similar prize exists, or in order to win the prize or other similar prize, the consumer must pay money or expenses incur to them.

### 3.3 Other duties of the seller

There are many more duties of the seller in the consumer protection law that the consumer might demand. For example:

- *The duty to sell products with the right weight, ratio or amount, in the prescribed, approved or usual quality, for the right price.*
- *Properly inform the consumer in the Czech language about the attributes and ways of using the sold products.*
- *Point out the possible defects of the product if the product is on sale for a lower price because of those defects. The seller is also required to sell these products separately.*

- *If the transaction is being held outside of the usual place of business (instead of the usual butcher's, the transaction is being held at a farmers' market) the seller must inform the buyer where he can file a complaint*
- *If it is possible, the seller must show the buyer the product, if the buyer demands it*
- *If the service is not given right away, the seller must give the consumer a document, stating that the transaction was successful*
- *If the buyer wants to receive a proof of purchase, the seller must give it to him.*

- *in connection with a contract, not to use a phone line for communication with a consumer, which would mean charging higher prices to the consumer than the going price of calls,*
- *not to offer or store goods infringing intellectual property rights,*
- *inform the customer about the possibilities of alternative dispute resolution (see Section 10).*



# 4 SALES OVER THE INTERNET (THROUGH LONG DISTANCE COMMUNICATION) AND SALES OUTSIDE THE USUAL PLACE OF BUSINESS

If the consumer decides to buy something over the internet, it is in his best interest to check who runs the internet store (the name of the seller, address, make sure that the owner is not in any kind of trouble with the government or law). Valuable information can also be found on the internet, where past buyers write reviews about their past experience with a certain internet sale.

Paying before you receive the product is recommended only if the buyer is certain that he is buying from a reliable seller.

If the customer pays for the product, but does not receive it and the seller is not communicating with him, the customer is allowed to search the internet for other customers that have similar

problems and they may together put forward a complaint or join an already existing complaint and demand a refund. Alternatively, he may sign up his demand for insolvency proceedings (if the seller got himself into some kind of financial crisis). In some cases banks and providers of commercial and market portals can return the payment, provided the consumer makes a complaint in an agreed time limit.



## 4.1 The right to back out of the contract without giving a reason

Backing out of a contract is possible within a maximum 14 days after the contract has been signed over long distance or outside of the usual place of business.

In cases of contracts that were signed over long distance or in unusual places of business, the consumer has (not counting the following exceptions) **the right to back out of the contract without giving a valid reason within a maximum of 14 days.**

**If the contract is not a contract of sale,** the deadline starts when the contract is signed

**In case of a contract of sale,** the deadline starts the day the consumer picks up the product (for example, picking up the product at a post office)

**In contracts whose subjects are a variety of products or different parts of a product** (for example, the consumer orders a set of dishes, which will be delivered to him separately), the deadline starts when the consumer receives the last part.

On the other hand, in contracts the subject of which is a repeated delivery of the same product (for example, the consumer gets his pack of vitamins once every month), the deadline starts when the consumer receives his first delivery.

If the consumer wishes to step out of the contract, **the deadline is cancelled, provided the consumer sends the seller an announcement that he is stepping out of the contract.** While according to legislation effective until December 31 2013, it was necessary to deliver the withdrawal notice directly to the seller, when dealing with contracts

finalized since January 1 2014, the customer only needs to prove that he sent the withdrawal notice before the deadline (by means of postal stamps on the sent letter, for example). It is therefore appropriate, for the consumer to have some evidence of timely withdrawal (e.g. a copy of a sent e-mail, post-office documentation etc.).

**Example:**  
*The customer of an internet shop on April 4 2014 ordered a product, which was delivered to his home address on the April 8 2014. From that day the 14-day withdrawal period starts and there is a chance to step out of the contract. If the consumer wishes to step out of the contract, he must send out his notification no later than April 22 2014.*

**The entrepreneur is obliged to inform the consumer about his right to step out of the contract. If the entrepreneur does not inform the consumer about this option, the deadline is extended to 1 year.** That means that the consumer can step out of the contract 1 year and 14 days after

the deadline started. If the consumer is instructed about his right to step out of the contract during this prolonged deadline, a new deadline starts on the day of his being instructed about his right. The new deadline lasts 14 days.

**Example:**  
*The consumer has bought a notebook online and received it from the postal services on April 3 2014, without him being informed by the salesman beforehand about his right to withdraw from the contract (for example, in the terms and conditions of the online store). In such a case, the withdrawal deadline ends on April 17 2015. If however, the salesman realizes his mistake and informs the customer about his rights after the fact, on June 9 2014, the withdrawal deadline then ends on the June 23 2014.*

It is possible to step out of the contract that was agreed over the internet even before receiving the product. But it is necessary to let the entrepreneur know. Not accepting the product or not picking it up from the post office is not sufficient.

Otherwise, the entrepreneur could demand financial compensation from the consumer (because of the cost of keeping the product in storage, for example)

To limit the possible future risks, it is **advisable to step out of the contract in writing**, even in cases where legal provisions do not demand it.

A sample form for stepping out of a contract will be determined by government regulation No. 363/2013. Its provision to the consumer belongs to his informational duties that the entrepreneur must fulfill before a contract over long distance or outside of the usual place of business is signed.

If the entrepreneur makes it possible for the consumers to step out of the contract by filling out a form on his website, the entrepreneur will, without any delay, inform the consumer in text form when the form has been received by the entrepreneur.

**Text form** as a form of a document is in some cases defined in the civil code

as the easiest method of communication between the consumer and the entrepreneur, so that all the important information would not have to be sent in writing (on paper). Text form is preserved, if the information that is being given can be saved and opened repeatedly (for example, the entrepreneur sends a file in a normal format by e-mail to the consumer, or he gives the consumer a CD with the file saved on it. The consumer can then repeatedly open these files on his PC.)

**Example:**

*If a contract is being signed by electronic means, the consumer has the right to demand the contract with the general terms and conditions in text form from the entrepreneur (for example, the entrepreneur gives the consumer the right to download the terms and conditions in a pdf format or he will send it by e-mail.)*



#### 4.2 Return of goods and the purchase price after the withdrawal, transportation costs

If the **consumer** steps out of the contract, he should **send or give back in person the products that he purchased from the entrepreneur, without any unnecessary delay, within a deadline of no longer than 14 days.**

**The entrepreneur is required to repay**, without any unnecessary delay, **any sum that the entrepreneur received for the returned product, including the delivery cost**, within 14 days of withdrawal by the consumer. **All these steps must be taken in the same way as the consumer took when buying this product.**

The entrepreneur will return all the received funds to the consumer by other means, only if the consumer agrees to this and it does not incur additional costs to the consumer. But **the entrepreneur does not have to return the received funds until the consumer**

**returns the product in person**, or until he proves that the product has been returned.

If the consumer chose a means of transportation of his ordered product other than the cheapest one, the entrepreneur will return the delivery cost for the cheapest delivery that the entrepreneur has to offer.

If the consumer decides to return the product without giving a reason within a period of no longer than 14 days, the consumer has the right to demand a full repayment of the product from the entrepreneur, including the delivery cost. The consumer will, however have to pay the postage for returning the product

The seller bears the costs of returning the goods, if the seller, before signing the contract, did not inform the consumer (for example, in the terms and conditions) about the fact that the consumer has to pay the cost of returning the product. The seller will also have to pay for the return of the prod-

uct if the contract has been signed outside the usual place of business and if the product has been delivered to the consumer at the time of signing the contract, and the product is not suitable to be sent back to the seller through a post office.

**Examples:**

*Example no. 1: : If the consumer pays for the product with a bank transfer, the entrepreneur has to return the funds in the same way, unless the consumer agrees to another way of receiving his refund.*

*Example no. 2: The consumer ordered a mobile phone for the price of 2,999 CZK. The seller had 2 ways of delivery to offer – through the Czech post office for 99 CZK or by a private company for 129 CZK. The consumer chose the more expensive one, so the consumer paid 3,128 CZK altogether. When the product was delivered, the consumer found out that the product did not suit his needs, so he stepped out of the contract without giving a reason, the unused product was put back in the*

*box and the consumer sent the product through a post office back to the seller, the consumer paid 89 CZK for the post office delivery. The seller was then obliged to pay back 2,999 CZK for the mobile phone and another 99 (because that is the price of the cheapest way of delivery that the seller had to offer), so the consumer got 3,098 CZK from the seller.*

*Example no. 3: The consumer was visited in his home by a salesperson and the consumer bought a mattress for 49,900 CZK from the salesperson, and the mattress was immediately left in the consumer's home. If the consumer decides to step out of the contract no longer than 14 days after receiving the mattress, he has the right to not only get his money back, but he can also demand that the salesperson should take the mattress back himself.*

After receiving the returned product, the seller has the right to check the product if it has been damaged or used so much, that the quality of the product has lowered.

If the consumer is using the product within the deadline of 14 days after stepping out of the contract and then returns the product, the consumer can pay the expenses, that exist because the product was used too much, thus reducing its quality.

The entrepreneur can only demand money from the consumer, because the product's quality was reduced, only if the entrepreneur told the consumer, before signing a contract, about the fact, that the consumer would have to pay for the products lowered quality if returned.

The consumer should always properly pack the product he wants to return, and choose a suitable way of transporting the product, otherwise the consumer may be liable for the damage that was done to the product during its transportation.

On the other hand, if the product was damaged on the way to the buyer, the seller is liable for damage to the product.

In order to prevent further disputes with the entrepreneur, it is advisable, for the consumer to check the goods immediately after receiving them, to find any possible defects, and upon finding any, to specify them in the goods hand-over protocol, which the deliveryman hands him to sign, and also to communicate his complaints to the selling party as soon as possible.

If the consumer tries out the goods in the usual manner, without there being any signs of wear and tear, he is entitled to a full refund, amounting to the buying price, and the entrepreneur cannot bill the consumer for any service charges in relation to the handling of the claim or their inspection.

**Examples:**

*If the consumer receives a shirt from an online shop, he can unpack it, try it on, see if it fits him, and consequently, if it doesn't satisfy him, he can pack it up again and return it in its original state to the entrepreneur, who is then obliged to return the paid amount to the consumer.*

*The full amount doesn't have to be returned, if for example, the consumer were to wear the shirt all day, and in so doing cause wear and tear or spillage, or in some way tailored it etc. Even in this case, the entrepreneur cannot fully refuse withdrawal from the contract on the part of the consumer. He can, however, demand that the consumer compensate for general expenses, associated with the restoration of the given product to its original state, or the amount which makes up the difference in the selling values of the shirt in its original condition and the used condition (seeing that he has to sell this shirt in its used state). The reduction of value must be appropriate and the amount is subject to discussion. If the parties do not reach an agreement, they can, for example, choose one of the extrajudicial ways of resolving the dispute.*

*Similarly, if the consumer buys a camera, for example, he can try out its functions after unpacking, but he cannot, however, use it for a week on holiday, otherwise he may not receive the full amount from the entrepreneur.*

### 4.3 Contracts, without the possibility of withdrawal without stating a reason

The civil code classifies other types of contracts, apart from the ones already stated, from which the consumer cannot withdraw without giving a reason why, even though they were finalized by means of long-range communication devices, or outside of the usual commercial premises. These concern for example:

- Deliveries of goods or services, whose prices depend on the fluctuations of the financial market independently of the will of the entrepreneur, and which can fluctuate even during the withdrawal period (e.g. gold)
- Delivery of goods, that were tailored according to the wishes of the consumer (e.g. the consumer had bought trousers which he had shortened, he had his name engraved on his newly bought notebook),
- Deliveries of perishable goods (e.g. groceries, that go bad easily),

- Deliveries of goods, that were upon delivery irretrievably mixed with other goods (e.g. the customer bought some coal or wood for fuel and had it dumped on a pile, where he already had some, without the possibility of distinguishing the newly bought coal/wood from that already there.),

- Deliveries of goods enclosed in a package, which the consumer opened, and which cannot be returned due to hygienic reasons (e.g. antiperspirant, lipstick),

- Deliveries of audio or video recordings or computer programs, if the customer opened their original packaging (e.g. CD, DVD)

- Deliveries of newspapers, magazines or periodicals

- Accommodation, transportation, gastronomy, or free time usage, if the entrepreneur offers these services at a certain time (e.g. a telephonic reservation for a concrete time and appointment at a hairdresser),

- The delivery of digital content, if it has not been provided on a physical medium and has been delivered with previous express consent of the consumer before the expiration of the withdrawal deadline and the entrepreneur conveyed to the consumer prior to entering into the contract, that in such a case he has no right to withdraw from the contract (e.g. an antiviral program, which the consumer downloads from the internet, using a given password).

Be wary of goods, which due to hygienic reasons cannot be used by another customer. Such goods cannot be returned without stating a reason.

**The above stated regulations concerning withdrawal will also not be used for contracts listed in § 1840 of the civil code as these are governed by special legislation – e.g. providing social and healthcare services, renting a flat, gambling, wagers, games, lotteries, construction of a new building, home deliveries of food and beverages, transportation tickets, contracts finalized by means of a vending machine etc.**

#### 4.4 Withdrawal from contracts for services rendered

**It is possible to buy not only goods, but also services,** by means of long distance communication or by contracts closed outside of usual business premises.

##### Examples:

*The consumer orders gardening services at an online gardening store, for regular upkeep of his garden in front of his family house.*

*A sales representative shows up at the consumer's house and enters into contract with him, concerning energies, internet services, telecommunication services and so on.*

**Even if the customer is persuaded by the sales representative to sign the contract,** without him reading it comprehensively and weighing his options properly, all may not yet be lost. In these cases, the consumer has the right to withdraw from the contract without stating a reason within the

14 day deadline period, starting from the day the service has been ordered.

When entering into service contracts, it is necessary for the consumer to consider, whether he wants the service to start right away, or after the 14 day withdrawal deadline.

**If the entrepreneur, acknowledging expressly stated consumer consent, started providing the service before the aforementioned deadline had passed** (e.g. the garden workers arrive, at the customer's request, the very next day after the order had been placed), the outcome depends on whether the entrepreneur informed the consumer prior to closing the deal, that in such a case he will not have the right of withdrawal. If he did inform him, the consumer's right to withdraw is forfeit the moment the service starts being provided. If he didn't inform the consumer, the right of withdrawal is not ruled out completely but the consumer is however obliged to refund the entrepreneur for the proportionate

amount of services already rendered, which should amount to the usual market value of the given service (e.g. *the customer will pay for one mowing of the lawn, that happened before he withdrew from the contract*).

**Special legislation** further increases customer's rights concerning several types of services (e.g. energy providing, telecommunication services), and that applies to not only contracts finalized long distance or outside usual premises, but also to services provided in usual business premises (see chapters 8 and 9)

#### 4.5 Long range financial service contracts

If the consumer enters into contract concerning financial services (i.e. he opens a new bank account, negotiates a loan or insurance, or exchanges currency) by means of long range communication devices (i.e. online or by phone), the civil code provides him with further protection, according to special legislation § 1841 to § 1851, than if he were to, say, go to the bank personally.

Apart from a plethora of informational duties, which the entrepreneur has to fulfill, the consumer has a **right to withdraw from the contract**, specifically within the **14 day deadline**, from the finalization of the contract, or from the moment of conveying the required information, if they were communicated after the deal had been finalized. **Life insurance contracts or supplemental pension insurance contracts** are covered by a **30 day deadline**, starting from the moment the customer was informed about the finalization of the contract. If the entrepreneur provides the customer with false information, the customer then has the right to withdraw from the contract for a period of up to 3 months, starting from the moment he learned about this, or when he could and should have.

**It is impossible to withdraw from contracts:**

- Concerning financial services dependent on financial market fluctuations independent of the will of the provider (e.g. *buying stock*),
- Concerning travel insurance, baggage insurance or any similar short term insurances with the insurance time shorter than one month.

It is impossible to withdraw from an insurance contract, which covers less than a month.

If the consumer withdraws from the contract, the entrepreneur may demand **the payment equaling to the proportionate amount of services rendered**, and even then only in the case, that the consumer was informed beforehand and that he agreed with the provision of the services before the deadline for withdrawal is up. Similarly, the entrepreneur, 30 days at the latest after the withdrawal, **has to return all funds**, which he accepted from the consumer upon the basis of the contract.



#### 4.6 Consumer protection concerning showcase presentations and the sale of package tours, consumer ombudsman

Seeing as showcase presentations and retail tours have been, in the past, known for their **repeated violations of consumer rights** (e.g. using aggressive sales techniques to impose overpriced goods on the customers), there has been a strengthening of consumer rights in this area.

In addition to customer rights, as already stated for sales outside of usual commercial premises, (e.g. *the right to information from the salesman, the right to withdraw from the contract within the 14 day deadline*), the consumer protection law establishes another obligation for the entrepreneur, namely for him to clearly and intelligibly state, on each **invitation card**, where and when the action will take place, how long it will last, what products and services will be offered and also information about the organizer and sales staff. Invitations must

also include a price at which products or services will actually be offered at the organized event. These data must be then sent (along with a copy of the invitation) to the **Czech Sales Inspection**, no later than 10 working days before the date of the stated event.

If the customer, despite the above stated risks, decides to visit such an event, it is necessary for him to thoroughly consider the purchase of such goods and go through all the documents before he signs them.



The seller shall, during the event or during the next 7 days after the conclusion of the contract, neither seek nor accept financial amount corresponding to the purchase price of the product or service. The seller shall not accept even part of the payment, deposit or other form of charge. Regardless of whether the purchase price was paid or not, the consumer has the option to withdraw from the contract without giving any reason within 14 days.

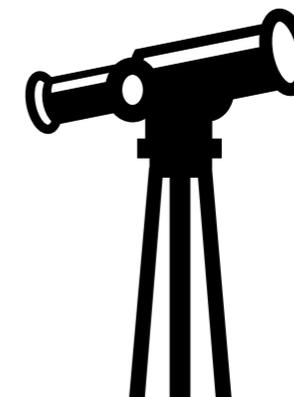
## 5 WARRANTY CLAIMS IN STORES

If the purchased product exhibits any defects, the customer has the right to claim warranty, regardless whether it was bought long range, outside of usual sales premises or in an ordinary store.

Goods can be claimed regardless of the way they were bought.

**Consumer rights are determined according to when he bought the goods:**

- **Rights concerning faults of goods bought before December 31 2013** are determined by law no. **40/1964 Sb.** (the old civil code).
- **Rights concerning faults of goods bought since January 1 2014** are determined by law no. **89/2012 Sb.** (the new civil code).



**Ways of handling the claim** (deadlines, confirmations etc.) are specified by law no. **634/1992 Sb.**, on consumer protection.

The legal interpretations concerning claims in this publication are based on the civil code valid since January 1 2014 (law no. 89/2012 Sb.), while, at the same time, we point out the most important differences between the earlier and current legislation.

#### 5.1 Responsibility of the salesman for the quality of goods upon handover to the customer and deadline for exercising rights concerning defective goods

According to legislation effective from January 1 2014, **the salesman's responsibility to the buyer is**, that at the time, when the buyer was taking over the goods:

- a) the item has the properties, which both parties agreed upon, or, if there is no agreement, such properties that the seller or manufacturer described or which the buyer expected given the nature of the goods and based upon the advertisement
- b) the item is fit for the purpose, which the seller states is its function, or to which the item of this kind is normally used,
- c) the item fits or corresponds in quality or execution to a prearranged

sample or model, provided the quality or execution has been determined according to a given sample or model.

d) The amount, measurement or weight of the item corresponds to given information

e) The item complies with legal requirements

If the item doesn't fulfill these above stated characteristics, it may be considered faulty.

**If the fault asserts itself in the course of six months after purchase,** the assumption is that the goods in question were already faulty on purchase. If the seller were to disagree with this assertion, he has to prove the opposite, i.e. *e.g., that the fault was caused by the consumer through misused handling of the goods.* Thus the burden of evidence in these first six months is on the seller (entrepreneur).

After the six months have passed, the burden of evidence passes to the consumer, who then has to prove to the seller (*e.g. by means of expert opinion*),

that he is responsible for the fault.

It is possible to claim for most goods for up to 24 months after handover, provided the reason for the claim is based on a fault of the product.

**The buyer is entitled to claim goods within these time limits:**

- **24 months** – faults, that arise in new consumer goods,

- When selling used goods, it is possible to settle on shortening the time limit from 24 months, to up to **12 months,**

- **5 years** – in the cases of hidden faults of constructions connected to the ground through solid foundations. Uvedené lhůty pro reklamaci zboží nemohou být zkráceny, a to ani dohodou.

**The above given time limits for claims cannot be shortened, not even by agreement.**

**It is necessary to inform the seller of the fault, as soon as it is found.**

**The law giving time limits cannot be interchanged with the durability of the goods, and common wear and tear is not considered a fault.**

A fault is not the same as wear and tear.

Several types of goods (*for example groceries, fodder, cosmetics*) may be subject to different time limits than the ones given above, in conjunction with special legislation, if there is another time limit stated, such as an **expiry date** (*on the packaging, say*) or, for perishable goods, the **time, during which the item can be used** (*e.g. expiry date on the packaging of a yoghurt*)

**As for items that were sold as already used** these can't be claimed for faults corresponding to usage or wear and tear, which were already in place when the sale took place.

**Items, that were sold for a lesser**

**price,** because they (although new) already had a fault in place before the sale, cannot be claimed for those faults, for which the price has been decreased. The seller is obliged to advise the buyer, that the item has a fault, and specify the nature of it, if it is not already evident from the nature of the sale. Other faults can be claimed in the normal way.

If the consumer requests, **the seller is obliged to issue a written confirmation of purchase (warranty card),** specifying the rights the customer is due, if the given item were to prove faulty.

The seller will state his identification on the **warranty card,** and, if necessary, explain to the consumer in a clear and concise manner the content, scope, requirements and duration of his responsibilities, and how to exercise the rights resulting from them.

Provided the nature of the item does not prevent it, the written confirmation **may be replaced by a document of**

**purchase** (sales slip) containing stated information.

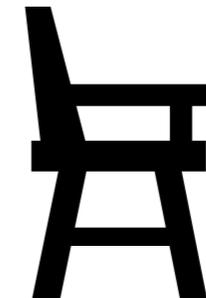
**The seller's responsibilities pertaining to possible faults of the item, must be at least the same, if not bigger, in scope, as specified by the manufacturer** (*i.e. if the manufacturer states a 3 year warranty, the seller is obliged to provide this service to the customer*).

## 5.2 Defective performance rights

Interpretations on which rights pertaining to which faults, may be applied by the consumer towards the seller, slightly differ at the present time in certain areas. In general, if a dispute arises between the consumer and the seller, the authority legally authorized to decide in such matters, is the court.

In general, if a fault arises, for which the seller is responsible, **the consumer may,** (in accordance with § 2169 of the civil code), depending on the nature of the fault **demand** one or any of these rights:

- **Repair of the goods,**
- **Exchange of the goods,**
- **A discount off the price of the goods,**
- **Withdrawal from the contract** (refund of purchase price).



During the course of handling the fault claim, these solutions may occur: repair of the item, exchange of the item, discount off the price, or a refund of the purchase price.

**1.** If the fault may be easily removed, the customer has the right to a **repair of the item**.

**2. An exchange is possible if** it is not disproportionate to the nature of the fault. A request may be considered disproportionate, if, for example, the customer were to request an exchange of the item in the case, when the fault may be removed without further delay. (E.g. a simple replacement of a screw or a different part of a used bicycle, its adjustment, the sewing of a fallen off button on a shirt etc.).

If the fault relates to only a part of the item, the consumer may demand an exchange of the said part.

For goods bought before December 31 2013 the old civil code states, that in the case of an exchange of old

goods for new, this then results in the start of a new warranty deadline, the new civil code, valid since January 1 2014 does not define this to be so.

**3.** If it is not possible to remove the fault by repair or exchange, the consumer **may withdraw** from the contract and demand a refund of the purchase price.

**4. The right to choose the delivery of a new item, the exchange of its parts or withdrawal from the contract** also belongs to the consumer also in these cases:

- **The seller did not remove the fault during the legally defined time limit** (see chapter 5.4) or,

- If the consumer may not use the item properly, due to **repeated occurrences of the fault** after repair, or due to a **higher number of faults**.

A repeated occurrence is usually considered, when the same fault appears for the third time, a higher number

of faults than equals three or more faults, which occur simultaneously and prevent the consumer from using the item in its intended manner.

**5. The buyer has a right to a proportionate discount**, concerning goods bought after January 1 2014, in these cases:

- If he does not withdraw from the contract or if he does not exercise his right to have a new item delivered free of faults, or to have parts of the old one exchanged, or the whole item repaired,

- In such cases, where the seller cannot deliver him a new item without faults, exchange its parts or repair the item, or if the seller does not fulfill his obligations in a sufficiently timely manner, or



- **If the removal of the fault (i.e. repair or exchange) were to cause considerable difficulties for the consumer**

If the purchase price of the goods has not yet been paid, the buyer does not have to pay a part of the purchase price appropriate to his right of discount, until the fault has been removed.

**Example:**

*If it is proven, during a claim for a fault of the item, that the seller is responsible for the said fault, and that the removal of such a fault would cause significant difficulties for the customer (for example, if the consumer only has one pair of winter shoes, and snow has just fallen), the consumer may ask for an appropriate discount of the said item instead of repair, and try to repair the item himself, or have it repaired somewhere else, where it will be done faster. In such cases, however, the fault, to which the discount has been applied, cannot be claimed again if it reappears. The seller also is not held responsible for any possible faults created due to the consumer's unprofessional repair attempts. It is still possible to claim*

*other unrelated faults, if they appear.*

**6.** Concerning items sold for a **lesser price, due to having defects, or already used items**, the buyer has a **right to an appropriate discount instead of the right of exchange**.

**7.** Apart from rights concerning defects of goods, consumers can **also claim damages**, if these arise.

**Example:**

*If the consumer buys a refrigerator, which suddenly stops freezing, and groceries get spoilt as a result, or if it starts to deliver electric shocks and causes damages or harm to the consumer's health, the consumer may, apart from claiming for the fridge (requests for repair, exchange and so on) claim compensation for incurred damages, provided he does so within a three year time period, according to general provision § 2894 and following of the civil code. If the damage exceeds an amount of 500 EUR, he can also exercise rights stemming from provisions § 2939 to § 2943 concerning damages caused due to a defect in the product.*

## 5.3 Quality guarantee

**It is necessary to differentiate the above stated law giving responsibilities of the seller concerning defective performance** (for which the term guarantee is no longer commonly used) **from the so-called quality guarantee, which the seller provides voluntarily to the customer beyond the legal requirements.**

The seller may offer quality guarantee to the customer on top of legally required defective performance rights.

**A quality guarantee ensures** that the item will, during a determined time period, be fit to use for its intended purpose or that it will retain its normal qualities. Stating a quality guarantee in an advertisement or on the packaging has the same effect. A guarantee may also pertain to a single part of the item. The seller is not held responsible for faults, which the customer created himself.

**The guarantee starts** the moment the item is delivered to the buyer; if the item was sent according to the contract, it starts from the arrival of the item to its destination. If the item in question is to be installed or started by someone other than the seller, the guarantee starts the day the item is to start functioning, provided the buyer ordered such installation three weeks after taking over the item at the latest, and provided the necessary cooperation in a swift and dutiful manner. (e.g. a customer buys a gas boiler, which will then be installed in his house by a gas worker).

If the contract and guarantee statement list **different guarantee times**, or if there are conflicting guarantees on the packaging and in the warranty card, the longer one is regarded as the valid one. If, on the other hand, the two parties agree to a different guarantee time, than the one stated on the packaging as shelf life, the contractual agreement takes precedence.

## 5.4 Exercising and handling (warranty) claims

**Warranty laws apply to the salesperson** who is accountable for the selling of the product. However, if there is a **different person, assigned for repairs**, and specified as such on the warranty sheet, and if this person is located in a place nearer to the buyer, the buyer may apply for his claim to the person, assigned for repair of the product. This person will then conduct the repair in the warranty period agreed upon by the buyer and seller during the sale of the product.

### Example:

*A consumer bought a mobile phone in Prague, which, after several months of use, has started showing signs of failure, for which the salesman is responsible. The summary of warranty services, which has been included with the phone, lists a service shop in Hradec Králové, where the consumer lives. The consumer may also, if he so wishes, apply for his claim to this service shop, which can ascertain the failure and, if it is possible, also repair*

*the device. If it became clear, for example, that the failure is unrepairable and therefore the product (which the service shop does not have in stock) has to be replaced, or if the service shop did not properly handle the claim, the customer may then file his claim with the salesperson, who is responsible for the subsequent handling of the warranty claim.*

The consumer must present the product to the seller, inform him about the nature of the defect or malfunction, and where the law gives the consumer a choice between multiple options (e.g. repair or exchange of the product), he must also determine the way he would like his claim to be handled. The chosen option cannot be changed without the consent of the seller. This of course does not apply, if the customer asked for the repair of a product, that turns out to be irreparable, or is not repaired in time.

**The claimant may prove his purchase** (i.e. that he purchased given goods from this seller, and when this exchange took place) in any verifiable way (e.g. a war-

ranty sheet, sales slip, evidence of internet purchase and so on)

Purchase of goods without a receipt does not have to benefit the consumer, because in the case of defective goods, it is difficult to prove to the seller, that the given product was indeed bought from him.

With the exception of cases where another person is assigned for the repair, the **seller is bound to accept the claim in any of his places of business**, where accepting the claim is possible, with regard to the selection of sold goods and/or provided services. Alternatively he can also accept the claim in his seat of business. There has to be an employee authorized to deal with warranty claims, present in the place of business, **during the whole period of business hours**.

### Example:

*If a business firm has a chain of sports stores and a chain of restaurants spread out through the Czech Republic, and the consumer buys, let's say*

*a swimsuit in one of these sports shops during a trip to Třeboň, he may file a claim even after his return to Brno, provided he does so in a sports shop, seeing as he probably would not be successful in a restaurant.*

*It is necessary to distinguish such cases as the one above from franchising, which corresponds to several stores of the same brand, which are owned by various entrepreneurs. In such cases, the product can be claimed only in the stores belonging to the same owner.*

**The seller (alternatively a guaranteed service shop) is obliged to give the consumer, after receiving the product that is being claimed, a written confirmation, which has to include**

- When the consumer made the claim
- What its content is
- What form of claim the consumer wants

When making a claim, the consumer has the right to receive a written confirmation about the fact, that the seller received the claim and that it is being worked on.

After the end of the claim process, the seller has a duty to send the consumer **a confirmation, which must include:**

- A date and the way the claim was executed
- A confirmation about the possible repair and how long it will take

If the claim was rejected, the customer has the right to ask for a **written document**, which **explains why the claim was rejected**. The customer can use this document as evidence in court, if the customer does not agree with the way the claim was rejected.

The seller or his verified employee, are **obliged to decide what they will do with the claim immediately. In a more complex situation they have 3 days. The claim (including the removal of the defect) must be done, without any unnecessary delay, no later than 30 days after the claim went to effect**, as long as the seller and the customer do not agree to a longer deadline.

If some of these duties are broken, it is possible to turn to the Czech Commercial Inspectorate to investigate these unfulfilled duties.

If the customer found out about the defect legitimately, the deadline given by the law, that makes it possible for the customer to complain, **has not started**, but only for the time, that the customer was not able to use the product.

If the claim is legitimate, the customer has **the right to receive financial compensation**, for all the funds that were used to make the claim, only if the claim was put forth no later than 1 month after the end of the deadline, in which it is possible to make a claim.

#### Example:

*If it is possible to send the claimed product through the post office, the funds that were used during this are possible to get back in the form of the compensation. This also applies if the product must be delivered back in person (public transport, customer's car,*

*not a taxi). If the product cannot be delivered back (a gas boiler, for example), the seller will come to the customer's house and take it back at his own cost.*

#### The specifications of claims for defects in the product

While making a claim because of a defect, one can notice several specifications:

- Contrary to a change in the law, which is in effect until the December 31 2013, the current civil code does not distinguish between different deadlines for
- Defects of a product are needed to be pointed out to the maker, without any unnecessary delay, after the customer discovered them, no later than 2 years after the product has been delivered, or no longer than 5 years, if the defect is connected to a structure

#### 5.5 The specifications of claims for defects in a work

While making a claim because of a defect, several stipulations can be noted:

- Contrary to a change in the law, which is in effect until the January 31 2013, the current civil code **does not distinguish between different deadlines** for making it possible to complain about the defects (on the one hand) and the repair and adjustments of the work (on the other hand)
- Defects in a work need to be **pointed out to the maker, without any unnecessary delay**, after the customer discovered them, **no later than 2 years after the work has been made**, or no longer than **5 years, if the defect is connected to a structure**
- **A work is considered defective, if it does not correspond to the contract**

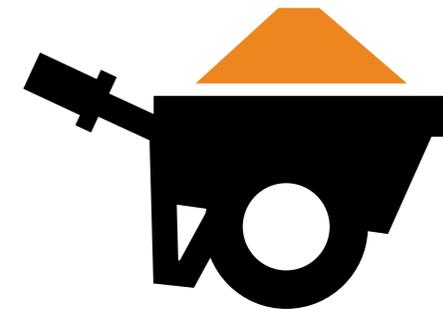
- Not every **item, that is being made**, is considered work (the essential factor, that distinguishes, whether the contract can be interpreted as a contract for work is simply this: If the value of the work put into the item is more than the value of the material, or if the prevalent part of the material was supplied by the customer it is considered to be a work contract; in other cases it is considered to be a contract of purchase; **repair, maintenance and construction** are always considered to be contracts for work)

- **The rights of the customer concerning a defect in work applies likewise to the provisions of a contract of purchase**

- **The customer is not entitled to request a replacement product**, if the subject of the work due to its nature cannot be returned to the maker (e.g. the customer cannot exchange a house built on his land for another.)

- the customer also does not has the right to refuse to accept a structure because of minor defects, which themselves or even in combination do not prevent the structure from being used without any major problems.

- Defects in structures can now be applied not only to the contractor, but also to his subcontractors, and the person who supplied the construction documentation, or who supervised the construction, to the extent that they are responsible for any construction defects.



# 6 CONSUMER LOANS

For consumer credit, it is necessary to distinguish:

1. **when it was taken out** (whether by November 30 2016 or subsequently since December 1 2016),

2. **whether it is a common consumer credit** (taken out for example for new home furnishings) **or housing credit** (usually associated with a lien on property).

The existing legislation in the **Act No. 145/2010 Coll.** on Consumer Credit granted increased protection to consumers only in case of common consumer credits, and only for those that were in the amount of 5,000 CZK to 1,880,000 CZK. **The new Act No. 257/2016 Coll.** repeal these limits as of December 1 2016, and gives consumers more rights not only for ordinary consumer credits, but also for new housing credits. Significant is,

when a credit was taken out.

For consumer credits taken out by November 30 2016, the terms in Section 6.1. apply.

For credits taken out from December 1 2016, the more advantageous terms in Section 6.2. apply. These rules may also apply for credits taken out earlier, if a change in contract occurs after December 12 2016.

## 6.1 Consumer credits under contracts concluded by November 30 2016

Annual percentage rate (**APR**) is a beneficial factor in determining the suitability of a loan. Unlike the interest rate, it gives the consumer a clearer picture about how much he will have to pay above the borrowed amount per year. In calculating APR, not only is the due amount plus interest taken into account, but other payments as well, for example fees pertaining to formation of the contract, fees for maintaining a loan account, insurance and more. The APR therefore, is in most cases larger than the interest rates would have you believe.

The contract legally binding the consumer loan **has to be in writing**, and has to contain certain **legally defined requirements**, such as the total amount and duration of the consumer loan, the conditions for withdrawing

funds, APR including all fees pertaining to the consumer loan, the loan interest rate, the amount and due date of each installment, information about the rights of avoidance and about the right to a premature loan repayment, including information on procedures in the case of contract termination.

If the contract is not in writing, does not contain the law defined requisites, or at least one copy of the contract had not been provided to the consumer, and the consumer objects to this fact in the presence of the loan provider, the consumer loan's interest rate is considered to be that of the **discount rate of the Czech National Bank** valid at the time of the formation of the contract, and the agreements on other payments pertaining to the consumer loan are invalid. The discount rate is more convenient for the consumer, since it is usually lower than the agreed upon interest rate.

The consumer has to have an opportunity to study the conditions pertaining to the contract in advance.

The consumer has a right to be provided with all the available information pertaining to the contract (in written form, or in the form of other permanent data carriers) with **sufficient time for a thorough acquaintance with the conditions, and possibly, a consultation, prior to entering into the contract**. This contract has also then to be thoroughly studied, in order to determine if it contains everything that has been agreed.

The loan provider is also obliged to assess the consumer's **ability to service the loan**. If it is found that the consumer is not able to pay off the loan, the loan cannot be extended. Any contracts signed, would be then considered null and void. The loan provider must provide information about the refusal to sign the contract to the consumer free of charge.

If the consumer were to find out, that the loan deal he struck is unsuitable for him, he may **withdraw from the deal without a stated reason, provided he does so within a 14 day time period**. The time period starts at the moment of entering into the contract, or from the moment the provider communicated the legal information to the consumer, if that happened later. The withdrawal from the contract has to be sent on the last day of the time limit at the latest.

The consumer may withdraw from a consumer loan contract without stating a reason within a time period of 14 days from the finalization of the contract.

After withdrawing, the consumer is obliged to, without delay and no more than 30 days after sending the withdrawal, pay the loaned amount plus interest in an amount equal to the one the provider would be entitled to, had the withdrawal not happened, more specifically for the time period from the day the consumer loan started to the day the borrowed amount was repaid.

**The consumer is also entitled to withdraw from a consumer loan, arranged for an indefinite time period,** effective immediately, unless a length of notice has been agreed upon. The provider cannot charge the consumer during the notice and it cannot be longer than 1 month.

**The consumer is also permitted to partly or fully repay the loan at any time during its duration.** In such a case the consumer has a right to an abatement of charges pertaining to the consumer loan, consisting of the amount of interest and other expenses, which the consumer would be bound to pay, provided he did not pay his loan off prematurely. The provider has a right to be recompensed only in conjunction with necessary and objectively justified expenses that accrued in direct connection to premature acquittal (the amount of compensation cannot exceed 1% of the prematurely paid part of the loan, provided the time between the acquittal and agreed final date of the consumer loan is longer than one year, in other cases, it may not exceed 0.5%).

**If the loan contract is preceded by a contract about loan brokerage,** it also has to be finalized in writing and the consumer may without reason and sanction withdraw from it no later than 14 days after he entered into it (provided that during this time, the consumer loan has not yet been finalized). The consumer has to be advised about this in the contract. If the consumer has to pay for brokering the loan, it has to be explicitly stated in the contract. If any of these requirements are not fulfilled, the contract is considered invalid.

**If the loan is provided to the consumer** (be it by a salesman, or by a credit company) **exclusively in order to buy a specific product or service** (e.g. a consumer buys a personal automobile and agrees with the car salesman to finance it with a consumer loan), then in the case of the consumer withdrawing from the contract of purchase (e.g. in an online store without stating a reason within the 14 day deadline or when claiming for a fault),

he is entitled to cancel the consumer loan used to finance the said purchase without any penalties. The consumer must however, inform the provider of the loan about his withdrawal.

The loan collateral must be in a balanced ratio in respect to the size of the loan.

**A bill or a check cannot be used** to pay off a consumer loan, or to use as collateral, and the collateral may not be in an obvious disparity with regard to the size of the loan (e.g. when providing a consumer loan for 7 000 CZK, the provider cannot demand the consumer's family house worth 4,000,000 CZK as collateral).

Offering, brokering or negotiating consumer loans through telephone lines with higher than normal charges is also forbidden.

**Supervision of compliance with the obligations** is performed by the **Czech National Bank** (if a credit is provided

by a bank) and also the **Czech Trade Inspection Authority** (for credits provided by non-bank entities by November 30 2016).

#### **Consumer and mortgage credits from December 1 2016.**

As already mentioned above, if a consumer takes out a credit, not only the consumer one, but now even for housing, after December 1 2016, they will have more rights than before. Also, penalties for consumers for late instalments will be lower after this date.

The advantages of the new legislation for consumers compared with the previous one include, for example:

- higher consumer protection also applies to housing credits,
- protection against usurers also applies to small loans of up to 5,000 CZK,
- consumers will be able to pay a housing credit off early under more favourable terms,
- penalties for late instalments will be restricted,
- before selling property due to default on a credit, the creditor shall provide the consumer an additional period of six months to repay the credit,
- only entities verified by the Czech National Bank will be able to be creditors,
- for credits taken out in foreign currency, it will be easier to transfer to the Czech currency, if the development of exchange rates significantly increases the redemption amount,
- it will not be possible to state arbitrary clauses in contracts excluding the right of consumers to turn to court in case of dispute.

The new legislation limits the sanctions that a consumer must pay if late with paying instalments on a consumer credit. Contractual penalties in its sum will not be able to exceed half of the total amount of a consumer credit owed and also **will not be able to be greater than the sum of 200,000 CZK**. The amount of **a contractual penalty shall also not be higher than 0.1% per day** of the amount, regarding which a consumer is in arrears.

**Amount of arrear interests shall not exceed the legal amount**, which, at the time of this publication, is 8.05% per annum. A creditor may require further well spent costs incurred in connection with consumer's arrears.

All of this will apply to consumer credits regardless of a loan amount.

In the event that a creditor has pledged the consumer's property, it must newly be possible to provide the consumer six months to pay up the owed credit before its selling.

**Example:**

*If a consumer previously borrowed the amount of 4,000 CZK, the aforementioned protection under the act on consumer credit did not apply to them. If a consumer borrowed 20,000 CZK, they were protected by law, however, if a credit contract for example expressly stated that there was a one-time contractual fine of 5,000 CZK for late payment and 0.5% of the amount owed per day, it was true that if the consumer was late with a payment for example for 120 days, they had to pay a penalty of 17,000 CZK. Now, contractual penalties can be no more than 50% of the amount owed, which means in this case 10,000 CZK at most.*

**A consumer is entitled to repay a consumer credit totally or partially at any time during the duration of the consumer credit.** In such case, the consumer has the right to reduce the total cost of the consumer credit by the amount of interest and other costs, which would the consumer be required to pay when the early repayment of the consumer credit would not occur. **However, in case of an early repayment of a consumer credit, the creditor has the right to reimbursement of well spent costs** incurred in connection with the early repayment.

**The amount of costs charged to a consumer shall not be higher than 1% of the early repayment,** should the period between the early repayment and the agreed termination of the consumer credit exceed one year. If this period is shorter than one year, the creditor may not charge reimbursement higher than 0.5% from the early repayment of the consumer credit. **The amount of mentioned costs must not at the same time be higher than the interests** paid by the consumer, if they would not repay the credit early.

A consumer still has **the right to withdraw from a consumer credit contract (or a contract of its intermediation) in writing within 14 days** from the conclusion of the contract without giving any reason and without penalties (if it is not a housing credit).

Even under the new rules, the basic indicator of favourableness (costliness) of credits remains the **APR** (see Section 6.1).

Creditors will have to much more carefully than before examine the ability of a consumer to repay the provided credit with their income within the agreed time. If a person, who was to be expected to be unable to repay the debt, is granted a credit, the invalidity of the contract can be brought forward. The debtor will then be required to repay the creditor the negotiated amount borrowed without agreed interests at a time proportionate to their capabilities.

**Under the new legislation, a consumer can also save if they decide to prematurely repay a housing credit:**

**Within one month before the anniversary date of the conclusion of the contract,** it will be able to repay up to 25 percent of the total credit amount without penalty.

**It will also be possible to pay off a mortgage without penalties in difficult situations,** such as death, disability or long-term illness of the debtor or their spouse or partner, if this fact leads to a significant reduction in the consumer's ability to repay the consumer credit.

**A creditor will not be able to demand the costs for early repayment,** for example even if the early repayment was made within three months after the creditor informed the consumer of the new interest rate after the fixation of the interest, or if the credit is paid up from the payment protection insurance .

**It will be able to make a one-time repayment of the entire remaining amount owed in case of a sale of a property** (e.g. in a divorce), if a credit contract would have been valid for at least two years. A bank will, in this case, be able to demand reimbursement corresponding to the maximum of 1% of the outstanding amount owed, however, only up to the amount of 50,000 CZK.

In other cases, banks and other providers of housing credits will be able to apply costs incurred to them in connection with early repayment of a credit, and these costs will have to be properly expressed in numbers to a consumer.

**Also, the amount of information a consumer will be entitled to have is extended** in connection with a conclusion of credit agreements (e.g. information about the amount of commissions for mortgage credit intermediary).

Supervision of the financial market with credits will be exclusively provided by **the Czech National Bank**.

**Contracts concluded with a consumer will no longer be able to contain arbitration clauses**, disputes will then be able to resolve only before court, or with some form of alternative dispute resolution (see Section 10).



# 7 TOURS AND TRANSPORT AGREEMENTS

## 7.1 Contract and confirmation of a tour

With a contract for a tour, the organizer is obliged to prepare a pre-prepared package of tourism services for the customer, which is arranged either for a period longer than 24 hours or includes an overnight stay, **and contains at least two of the following transactions:**

- a) accommodation,
- b) transport,
- c) other tourist services that are not a part of transport or accommodation and that are accounting for a significant proportion of the offered services (e.g. cultural programs, guided city tour).

The contract for a tour does not have to be in writing, but the consumer has the right to receive a written confirmation of the tour.

Contract for a tour does not need to be in writing. However, **a written confirmation** of the trip is needed and this confirmation must be given to the customer by the organizer after the contract is signed, or sometime after it. Confirmation may not be necessary, if the contract is concluded in writing and if it contains all the particulars required to confirm the trip. Along with the confirmation of the tour, the organizer is obliged to give the customer a **proof of their insurance**. If the agreement and the confirmation differ in some parts, only the things that are beneficial for the customer are valid.

Included among the requirements are, in particular an indication of acknowledgment of the parties to the contract, the definition of a travel agent or a tour reference to the catalog, if it is available to the customer, the price of the trip including a payment time schedule, and drawing the customer's attention to his rights, and the financial cost to the customer, if he decides to step out of the contract (without a valid reason.) If the tour includes services, that are not included in the total price of the tour, the organizer will also provide information about how much these services cost in the confirmation of tour. If accommodation is a part of the tour, the organizer is required to include this information in the confirmation of the tour: the place where the customer will be staying, tourist categories, how well the place of accommodation is equipped and other characteristics. The organizer will also say what means of

transport they will use, together with an itinerary and what food is provided, if there is any.

The organizer may also clarify a condition in the confirmation, that **the tour will take place only if a certain number of participants are signed up** (including a timeframe, when at the latest he will inform the customer of such a cancellation). The confirmation may also state the conditions, which the participants have to fulfill (such as age or health condition in the cases of more physically demanding tours)

If it is clarified in the contract, **the organizer can, in an agreed fashion, raise the cost of the tour**, under the circumstances, that up to 21 days before the start of the trip, these factors incur a price rise:

- a) transportation costs including fuel prices, or
- b) costs associated with transportation, such as airport, ferry or other fees included in the price of the trip, or

- c) the Czech crown exchange rate, used as a measure for setting the price of the tour, provided it rises more than 10 % on average.

If however, the organizer were to inform the customer (i.e. sent a notice) later than the 21st day before departure, the organizer would have to bear the increase of the costs himself.

## 7.2 Stepping out of a contract for a tour

If some external factors force the organizer to change some conditions of the tour, **the customer has the right to step out of the contract if he does not find these conditions acceptable**. The deadline for stepping out of the contract is given by the organizer and cannot be shorter than 5 days and the deadline must end before the day the tour starts. Otherwise it is considered that the customer accepts these new conditions.

If the customer steps out of the contract, because the organizer changed the tour before it started, or if the organizer cancels the tour for a reason other than the customer not fulfilling his obligations, the organizer will, if possible, offer the customer another comparable tour. The customer can choose whether to accept the other tour, or not. If the two sides agree to these terms and if the tour is of a higher quality, the organizer does not have the right to demand more money from

the customer. If the quality of the new tour is lower than the original tour, the organizer will have to pay the customer the difference of these two tours.

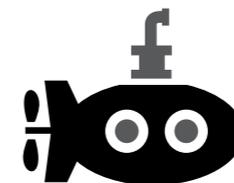
As a customer, you always have the right to step out of the contract, but you must respect the arrangements in the contract.

In general, **the customer can always step out of the contract before the start of the tour**. But if the customer steps out of the contract for a certain reason, other than the organizer not fulfilling his obligations, **the customer must pay a fine to the organizer** in the amount that was stated in the contract or in the confirmation of the tour. The customer also has to pay a fine if the organizer steps out of the contract, because the customer did not fulfill his obligations (for example, the customer did not pay for the tour or make an advanced payment within a specified deadline)

**The organizer can step out of the contract only if the tour has been**

**cancelled or if the customer has not fulfilled his obligations.**

If the organizer cancels the tour in a time limit shorter than 20 days before the start of the tour, he is bound to pay a **fine of 10%** of the original price of the tour and he is also bound to pay for any damage incurred to the customer. But if the customer is, for example, warned about the possibility of the tour being cancelled because of a low number of people on the tour, or if the tour is cancelled due to extraordinary circumstances (for example, a volcano eruption or an earthquake near to the place of destination), the organizer does not have to pay a 10% fine.



## 7.3 Shortcomings of a tour

**The customer is bound to point out any shortcomings in the tour** to the organizer (or a person that negotiated the contract) **without any undue delay, at the latest 1 month after the tour has ended**.

Refund for a tour must be paid within 1 month after the tour has ended.

If the tour does not meet the arranged or usual characteristics, **the organizer is bound to remove any shortcomings immediately**. If the organizer does not remove the shortcomings within a deadline, given by the customer, the customer can solve these problems by himself with all expenses paid by the organizer.

The guideline for calculating a discount on a tour which had defects, can be the so called Frankfurt Table of discounts, which can be found for example at [www.evropskyspotrebitel.cz](http://www.evropskyspotrebitel.cz).

**Example:**

*If the organizer does not arrange a taxi that would get the customer from the airport to his hotel, where the customer is supposed to stay, the customer can call his own taxi and all expenses will be paid by the organizer.*

If the tour encounters **serious shortcomings, that make the tour unbearable**, the organizer is obliged to arrange transport to the place of original departure, or to a different arranged place. If the tour can continue, although with a lower quality than how it was written in the contract, the organizer is obliged to return money to the customer (the customer gets a discount). On the other hand, if the organizer arranges a continuation of the tour with a higher quality with higher expenses, all these expenses are paid by the organizer.

If the organizer does not fulfill his obligations, he is responsible to the customer for any **damage not only to property**, but from the January 1 2014 also for the fact, **that he caused damage to the customer's holiday** (i.e. a "loss of enjoyment of the holiday").

### 7.4 Air transportation

If the consumer leaves from an airport, that is in the territory of a state of the EU (or even some other states), or if the airline is from the EU, the rights of the passengers are covered by **regulations of the European parliament and board No 261/2004**.

If the carrier cancels the flight, expects a delay longer than 2 hours or refuses to let a passenger onto a plane, the passengers has a right to receive **written information about his rights**.

**If the flight is cancelled**, the carrier must provide the passenger with a **redirected** flight (provide transport of the same quality as quickly as possible) and also the **necessary care** (for

example, the carrier must provide food to the passenger, or also accommodation, if the passenger has to wait for his next flight overnight, also a telephone or an e-mail)

If the passenger does not agree with the redirected flight, he has **the right to get back his money for the plane ticket**, and if the cancelation of the flight is not announced in advance, the passenger also has the right to **receive financial compensation** of around 2500 – 600 euros depending on the length of the flight. The carrier does not have to pay this financial compensation if the flight was cancelled due to natural circumstances (for example, bad weather). These compensations can be reduced by half if the passenger got a redirected flight that will reach the passenger's original destination with a delay of not longer than 2 - 4 hours (depending on the length of the flight)

The same procedure follows if the passenger has a valid reserved ticket, the flight is not cancelled but the passenger **is prohibited from entering the**

**plane** (for example, due to capacity reasons), without the passenger being to blame (for example, if the passenger arrived at the airport under the influence of alcohol or if the passenger arrived at the airport very late)

The same procedure follows if **the flight is delayed**. The passenger has the right to financial compensation if the flight was delayed by more than 3 hours and the plane was not delayed due to circumstances, that the carrier could not have overcome. The passenger can cancel his flight and demand a refund for the plane ticket, without any financial penalties, if the flight has been delayed by more than 5 hours.

If the consumer does not receive his **luggage** after arrival at his destination, or if the luggage is damaged, or parts of its contents are missing, it is suitable to ask for a protocol about this situation.

When luggage gets lost or gets damaged, it is appropriate to ask immediately for a protocol at the airport.

If it takes **too long for luggage to get sent back to the owner** (not talking about circumstances, where the carrier could not have done anything), the owner can ask for financial compensation, no later than 21 days after receiving his luggage, for any damage that was done to him. It usually concerns products, that were necessary for the passenger, and that the passenger had to buy because of the loss of his luggage, for example, clothes or hygienic supplies.

In the case of **damaged luggage or when some of its contents are missing**, the claim for financial compensation has to be sent in writing no longer than 7 days after receiving the luggage.

Luggage is considered as lost, if it is not found within 21 days. If the **luggage has been damaged or lost**, the passenger has the right to claim financial compensation within a stated time limit. If the value of the luggage is very high, the passenger needs to pay a small fee to the carrier, so that

the carrier can take responsibility for the luggage.

The passenger also has some of these rights in cases of a **delayed bus, train or ship**.

More information about passenger rights for international transportation can be found for example, at the **European Consumer Center** (or on its internet site <http://www.evropskyspotrebitel.cz> and this site can also help the consumer in finding a way to resolve an already existing problem)



# 8 TELECOMMUNICATION SERVICES

## 8.1 Complaints for electronic communication services

As in buying products, when buying services it is possible to make complaints. For electronic communication this usually applies to the use of **mobile phones or landlines, cable TV or internet service providers.**

Legislation can be found in **law no. 127/2005 Sb.** concerning electronic communication.

Complaints can be made about the **quality of provided services** as well as **the way of billing.**

**The complaint must be made** immediately, at the latest within two months of the defective provision of the service (or from the billing of the service). The provider is **obligated to settle a claim within a month** – if the provider is from abroad, the period is two months.

Unless the parties agree otherwise, a service provider is obliged, in the event the statement for services is to the detriment of a consumer, to **refund the consumer the difference in price** in a manner and within time limits set by general conditions of a service, but not later than **one month after the settlement of the complaint.**

**If a service could be used only partially, or it could not be used at all due to a defect** of a technical or operational nature on the part of the service provider, the provider is obliged to correct the defect and proportionally reduce the price or, after an agreement with the consumer, ensure the provision of the service in an alternative manner. After fulfilling these obligations, the service provider is not obliged to compensate users of the service damages to them resulting from an interruption of the service.

Making a claim has no suspensive effect i.e. when customer makes complaints about the bill he has to pay for it unless he agrees with provider otherwise. If the required sum is paid and the complaint is found justified, consumer has the right to get the overpayment back in a month after settling a claim unless he agrees with the provider otherwise.

Even when you make a complaint about billing, it is necessary to pay it. A refund will be made after the claim is settled.

If the consumer is convinced that the provider has not settled the claim correctly, he can appeal to the **Czech Telecommunication Office with an objection against settling the complaint within one month at the latest** from receiving settlement of the complaint or from the day of the end of the contract.

Even the filing of this objection has no suspensive effect to obligation to pay the disputed invoice, in justified cases, however, it is possible to ask the Czech Telecommunications Office to acknowledge the suspensive effect (the consumer then do not have to pay the disputed amount until the matter is decided).

If the consumer is successful in the dispute, the Czech Telecommunication Office may also acknowledge the **damages** that incurred in resolving the dispute (e.g. consumer's representation by a lawyer in proceedings before the Czech Telecommunication Office will then be paid by the mobile operator).

The consumer's submission to the Czech Telecommunication Office must include information about:

- who are parties of the dispute
- what is the substance of the dispute,
- what the consumer demands

The submission includes an obligation to pay for the relevant administrative fee.

**Deadline for issuing a decision is 90 days**, and it may be extended in particularly complex cases. The consumer has the right to file a so called appeal as a remedy against the decision within 15 days from the date of notification of this decision, which is decided by the Chairman of the Czech Telecommunication Office. The decision is further reviewable by court as well.

### Contacts:

address: Sokolovská 219, Prague 9  
mailing address: PO Box 02,  
225 02 Prague 025  
e-mail: podatelna@ctu.cz

## 8.2 Complaints about postal services

Even defects in postal services can be complained about. A method of claim, including information about where and at what intervals the claim can be made, are a mandatory part of the **postal terms and conditions** of each postal service provider.

If a postal service provider does not grant the claim or fails to settle it in a timely manner, the sender or the addressee can contact the Czech Telecommunication Office with a petition to initiate proceedings on the objection to the complaint handling. Such **proceedings can begin within one month** from the date of receipt of the handling of the complaint or the date on which the complaint should have been handled.

Proceedings are charged an administrative fee of 100 CZK. Similarly as with telephone services, the Czech Telecommunication Office will acknowledge the party that was fully successful in the matter to be reimbursed the costs required for the exercise or protection of rights against the party that was unsuccessful.

### 8.3 Consumer's right to end the contract for electronic communication early

Even when the customer is committed to pay for services for an exact time period according to the contract, **he can end the contract**. As a penalty for this the provider can ask the consumer to pay one fifth of the monthly fees outstanding to the end of the agreed time period, and an additional payment for a device lent to consumer.

The provider of mobile services is limited by the fee which the provider can require for the consumer's early termination of a contract.

#### 8.3.1

##### Example:

*A consumer concluded a contract for 24 months with a telephone operator with a monthly fee of 500 CZK. For this he was allowed to buy a mobile phone for half of the price. If the consumer decides to end the contract after two*

*months, the provider can require a maximum of 2,200 CZK, - (i.e. 1/5 of 22 times 500) and then an additional payment for the mobile phone.*

If a service provider substantially changes terms and conditions to the detriment of a consumer during a contract period, the consumer can terminate the contract without penalty effective to the date of such amendment.

If the contract was concluded for a definite period which is always extended when the consumer does not terminate the extension in advance, the operator is obligated to inform the consumer about the possibility of ending the contract, 3 months in advance at the earliest or at the latest one month in advance.



## 9 ENERGY SUPPLY

Consumer protection in energy supply, for example, electricity or gas, is determined by the **law No. 458/2000 Sb, - energy law**.

If the consumer has problems with energy supply, it is necessary to make a claim to the energy supplier, with whom the consumer signed a contract. If the supplier does not follow certain law regulations, or if the rights of the consumer are being overlooked, it is possible to file an application for investigation to the **Energy Regulatory Office**, which is a supervisory authority in this area and in certain limited cases, it can also deal with disputes between suppliers and customers.

The Energy Regulatory Office can be approached in writing in, for example, the following cases:

- when a consumer has trouble connecting to a supply point,
- when there are complications in the

process of changing a supplier due to suppliers,

- if a supplier does not accept a contract termination, withdrawal from a contract or other termination of a contractual relationship,
  - if a supplier demands an unjustified penalty from a consumer,
  - if a supplier does not communicate with a consumer,
  - if a supplier does not handle a billing complaint properly, if a consumer has a suspicion of unfair business practices of a supplier,
  - if a consumer is not sure who is their supplier, or does not know whether a change of supplier has taken place.
- More information can be found on the website: [www.eru.cz](http://www.eru.cz).

Other contacts of the Energy Regulatory Office:

Partyzánská 1/7, 170 00 Prague 7,  
Masarykovo náměstí 5, 586 01 Jihlava,  
e-mail: [podatelna@eru.cz](mailto:podatelna@eru.cz), [eru@eru.cz](mailto:eru@eru.cz)

A common problem which consumers currently face are unfavourable terms of energy supply, to which they were persuaded in connection with changing an energy supplier.

If a customer **concluded a contract remotely or outside business premises** (e.g. with a vendor who contacted them by phone or who came to their home, or who stopped them in the street and persuaded them to change energy supplier) and the consumer will later change mind, they **may withdraw from the contract** not only within 14 days from its conclusion, as is usual in some other cases, but the contract may also be terminated without penalty **within an extended deadline of 15 days from the commencement of supply** of electricity or gas. All this is true regardless of whether the contract was concluded for a definite or indefinite period. The termination notice deadline is preserved if demonstrably sent by the consumer at

least on the last day. The notice period is 15 days and begins on the first day of the month following the receipt of the notice.

A customer has **right of withdrawal** without penalty also in the case **a supplier changes a price of electricity or gas, no later than the tenth day before the effect of price increase**, all assuming that the consumer was informed by the supplier about the planned price increase and the possibility of withdrawal at least 30 days before the price increase in a manner agreed in the contract. The withdrawal is effective (the contract is cancelled) on the last day of the calendar month in which the withdrawal was delivered to the relevant energy supplier, unless the customer determines a later date of effect of the withdrawal.

If the consumer was not timely informed about the planned price increase and the possibility of withdrawal, they may withdraw from the contract without penalty **within 3 months from the date of the price increase or other changes in terms and conditions**.

**In the event a consumer decides to change gas or electricity supplier**, they must first find out whether the current contract is for a fixed term (and when this period ends) or indefinite term (including the length of the notice period). If the consumer is not sure, they have the option to seek this information from the existing supplier, who is obliged to provide it. In the event the consumer terminates their existing contract by switching to another supplier before the end of the period they have committed to purchase energy from the existing supplier, they run the risk of a fine amounting to several thousand CZK from the existing supplier.

It is also necessary to acquaint with the new contract, terms and conditions and related price lists before they are signed. Otherwise, the consumer runs the risk to pay even higher price to the new supplier than to the existing one, or to commit to purchasing energy for excessive periods, or to pay high penalties. Cost of energy consumption can be increased by, for example, so called activation fees, which some energy suppliers charge at the start of supply.

**It is necessary to particularly focus on the following in the contract or terms and conditions before signing:**

- duration of the new contract, whether it is for a fixed or indefinite period, what is the notice period,
- enumeration of contractual penalties and fees,
- full and valid price list for the particular year,
- whether a supplier change is charged,
- method and possibilities of termination of the contractual relationship with the new supplier in case of dissatisfaction with the services provided,
- what other services the supplier offers, what is the access to them (branches, phone, web) and how are they charged.

One of the good references may be considered logging of the vendor to the Code of Ethics for Traders in the Energy Industries, which can be found on the website of the Energy Regulatory Office, where a calculator for easy comparison of the quotes of different suppliers can also be found.

# 10 ALTERNATIVE DISPUTE RESOLUTION

## 10.1 Alternative dispute resolution before the Czech Trade Inspection Authority

**The Czech Trade Inspection Authority** (hereinafter as the "CTIA") works not only as a supervisory authority, but **from February 1 2016** also as an **entity for alternative dispute resolution**, to which consumers can turn if they have a dispute with a vendor from the Czech Republic, which could not be resolved in any other way. The CTIA in this case does not act as a supervisory authority, but as an entity, which should help a consumer and an entrepreneur to reach an agreement by providing non-binding qualified legal advice to both parties. If a dispute is not resolved with the help of the CTIA and no agreement is reached, any of the parties of the dispute can go to court, as it was before.

### Did you know that...

From February 1 2016, the CTIA functions as an entity that helps consumers resolve disputes out of court?

### Benefits of alternative dispute resolution before the CTIA:

Possibility of resolving the dispute out of court before the CTIA **is a new right, but not responsibility of a consumer**. If a consumer fails to resolve a dispute directly with a vendor, the consumer may, of course, approach court without having solved the dispute out of court before the CTIA. In such case, however, the consumer runs the risk that in case of failure, in addition to court fees, they will also pay the vendor costs of the lawyer or other related costs.

In contrast, **the alternative dispute resolution before the CTIA is free**, should be faster than traditional court proceedings, there is no need of a lawyer (but it is not ruled out), communication takes place mostly in written form (it is possible to agree on e-mail communication with the CTIA), petition can be filed simply by filling out a form on the CTIA website. If any expenses occur to a consumer or a vendor during proceedings (e.g. the cost of a lawyer), each party bears them on their own (i.e. it is not necessary to pay the other party's expenses in case of failure). Therefore, if a dispute arises between a consumer and a vendor, **this form of dispute resolution can be initially recommended, and only in case of failure, the possibility of legal proceedings is to be considered**.

### Did you know that...

Alternative dispute resolution before the CTIA is free of charge unlike court proceedings?

#### 10.1.1 Methods of initiation of alternative dispute resolution before the CTIA

##### Consumer may initiate alternative dispute resolution before the CTIA as follows:

- by filling an online form on the website [www.adr.coi.cz](http://www.adr.coi.cz)
- in writing (pre-printed or custom form)
- orally on record at the CTIA contact points
- other methods (e-mail, fax), which are necessary to be subsequently confirmed in writing



**1.** The easiest way to file a petition for initiation of proceedings is the **filling and sending of the electronic form available on the website**

[www.adr.coi.cz](http://www.adr.coi.cz). Given that the form must be duly electronically signed but most consumers do not have data mailbox nor a recognized electronic signature, the CTIA allows to print a confirmation of the petition on their website (generated in the online form after its completion and sending), which the consumer will sign and send within 10 days to the CTIA.

**2. The petition form** can be picked up **in a paper form as well** at one of the CTIA contact points.

**3.** A consumer can also make a custom petition **in writing**, and in this case, the petition must include at least:

- a) identification information of the consumer** (first name, surname, permanent address, in case of interest in electronic communication also an e-mail address) **and the merchant** (business name, address and

RN for legal persons, or first name, surname, place of business and RN for self-employed natural persons – the customer should find the information in the terms and conditions of the seller, on their website or in store),

- b) complete and understandable description of decisive facts** (i.e. why is the consumer in dispute with the vendor),

- c) indication of what the consumer seeks** (e.g. repair of claimed goods, reimbursement of the amount corresponding to the purchase price in case of withdrawal from the contract concluded on the Internet within 14 days, etc.),

- d) date on which the consumer exercised their right**, which is the subject of the dispute, with the seller for the first time (i.e. the date when the consumer first informed the vendor that they complain about the product because it is defective),

- e) statement that the matter was not decided in court, no arbitral award has been issued and there is no agreement of the parties**

within an out-of-court settlement of the consumer dispute **and that no judicial, arbitration or out-of-court proceedings were initiated in the matter,**

- f) date and signature of the consumer.**

**4.** In exceptional cases, it is possible to file a petition at the CTIA contact points also **verbally on record.**

**5. Other ways** are allowed as well – such as fax or e-mail. In such cases, however, the petition must be confirmed by a written submission sent to the CTIA within 10 days .

**It is necessary to enclose evidence of the fact that the consumer failed to resolve the dispute directly with the vendor,** as well as other documents proving the facts the consumer claims, to the petition.



##### Example:

*As proof of their claims, a consumer may, for example, use a copy of the receipt, order confirmation of goods in an online store, copy of the complaints e-mail or letter the consumer send to the vendor, copy of the complaints record form, the record form on the handling or rejection of the complaint, or further evidence of communication between the consumer and the vendor in the matter of the complaint or withdrawal from the contract concluded on the internet.*

##### Reasons for rejection of the petition by the CTIA:

**If the petition does not contain some of the required particulars,** or if not accompanied by the necessary documents, the CTIA will ask the consumer to supplement them within 15 days. After unsuccessful expiry, the CTIA will reject the petition.

The CTIA may reject the petition if **the dispute does not fall within the substantive scope,** i.e. if it were

a dispute which falls within the scope of the Financial Arbiter, the Czech Telecommunication Office or Energy Regulatory Office – see the following sections). Alternative dispute resolution before the CTIA also does not apply in the case of disputes arising from health services (e.g. a dispute of a patient and a doctor), services provided by public universities (e.g. a complaint of a student about non-admission to study at a university), or services of general non-economic nature (e.g. water supply from the municipal water supply).

### Did you know that...

It would be unsubstantial to submit a petition if the matter had already been decided in court, arbitral award was issued or proceedings were initiated before any of the courts, or if alternative dispute resolution had already been initiated or finished before the CTIA or other entity designated for this purpose by the Ministry of Industry and Trade. In such case, the CTIA would reject the petition.

**The CTIA will reject the petition even if it is obviously groundless,** i.e. in case the petition was filed by a consumer in the same matter again without the emergence of new facts, or if it is clear that the requirement of the consumer, which they seek from the entrepreneur, is obviously groundless, or if the consumer would seek to exploit their rights at the expense of the vendor (e.g. stating false information).

The CTIA informs consumers about the reasons for rejecting a petition usually within 15 days after the submission of the petition.

**Deadline for submission:**

**A period of one year from the moment a consumer has exercised their right with an entrepreneur for the first time** is determined for submitting a petition to resolve the dispute out of court before the CTIA. After the deadline, it is no longer possible to submit a petition, however, it is still possible to turn to court if the general

period of three years has not expired, which results from when a consumer first laid claim with the seller.

**Example:**  
*A consumer bought sport shoes in a store on March 7 2016. After several weeks of use, the customer found out that a sole peeled off, so he complained about the shoes on April 18 2016 (by which a two-year warranty period for filing a complaint was observed). The vendor closed the complaint proceedings on May 17 2016, concluding that the customer caused the defect by improper use, and therefore the claim is rejected. The customer does not agree with it, so he can try to continue to resolve the dispute out of court before the CTIA with a petition filed within 1 year from the claim, i.e. till April 18 2017. If it is found that the consumer is in the right in proceedings before the CTIA but the vendor will not be willing to reach an agreement, the consumer can still lay their claims in court.*

**10.1.2 Course of alternative dispute resolution**

If the CTIA does not refuse a petition to begin proceedings for any of the above reasons, it will inform the vendor, with whom the consumer is in dispute, about the petition filed by the consumer, and the vendor is obliged to comment on it within 15 working days. The CTIA will examine this statement, or additionally ask one of the parties to complete the claim, and on the basis of the collected data and all found facts, the CTIA will then try to lead both sides to reach an amicable solution by providing qualified legal advice. Legal assessment by the CTIA is, however, not legally binding and may be different from that of a possible subsequent court decision. The length of proceedings should not exceed 90 days. In particularly complex cases, the deadline for handling the matter by the CTIA may be extended to up to 180 days.

**Example:**  
*A consumer bought a kitchen blender from an online store. After receipt of the product, he used it a few times, during which he found it does not suit him, and so he returned it in a two-week period without giving a reason, expecting the vendor will refund him the full purchase price. The vendor, however, refused to acknowledge the withdrawal with a reference that the kitchen appliance is already clearly worn, scuffed and stained from fruit. In case of alternative dispute resolution, both parties should realize that based on legal advice by the CTIA, it is wrong to believe that the law is fully on their side. The consumer has, in this case, the right to withdraw from the contract and the vendor must accept it, but if the consumer was using the product more than it would have been possible in a brick and mortar store and he wore it down to such an extent that the vendor will not be able to sell it as new, the vendor is entitled to reasonable compensation corresponding to the reduction in the value of the product. The subject of the agreement concluded*

*by the parties before the CTIA would then be a recognition of the above claims and agreement on the amount of compensation (or the amount of the part of the purchase price, by which the consumer will be returned lower amount).*

**A consumer has** (unlike a vendor) **the right to take their filing** any time during the proceedings **back**, and by doing so, the alternative dispute resolution before the CTIA is discontinued.

**Example:**  
*A consumer bought shoes for her son in a brick and mortar store. When she came home and tried the footwear on her child, she found it unsuitable, and so she immediately went to return the shoes to the store, expecting that she will be refunded the amount corresponding to the purchase price. However, the seller refused to take the shoes back. The consumer therefore turned to the CTIA for alternative dispute resolution. In such case, the CTIA may, if deemed appropriate, even before the call for statement of the seller, provide*

*the consumer with information that the right to withdraw from the contract without giving any reason is only possible in case of distance sales (e.g. via the Internet), outside usual retail premises (e.g. door to door sales, promotional events), or if a seller promises superior right to withdraw in their terms and conditions or other comparable document or advertising, even though the contract of sale was concluded in a brick and mortar store. The consumer, after having verified that the seller does not offer such right and it is not possible to agree with the seller otherwise, may take her petition for resolving the matter before the CTIA back during the proceedings without fearing consequences of a penalty or fees.*

**Did you know that...**

It is possible to negotiate during alternative dispute resolution before the CTIA in Czech or Slovak language. In justified cases, the CTIA may also allow negotiations in English.

### 10.1.3 Methods of ending alternative dispute resolution

Alternative dispute resolution before the CTIA may end with:

- a written agreement with the entrepreneur
- expiration of 90 days (in case of extension up to 180 days) from the petition, unless the parties agree in the meantime
- withdrawal of the petition by the consumer
- rejection of the petition by the CTIA
- death of either party or the dissolution of the company of the vendor

Ideally, proceedings should result in **a written agreement** between the consumer and the vendor. Subject to an agreement concluded before the CTIA should be the recognition of the claims of the consumer (or portions thereof), or the entrepreneur as well

(e.g. if the consumer wore down the product before returning it in the two-week period in the case of purchase on the Internet and thereby caused damage to the entrepreneur – see the example above). If either party fails to fulfil its obligation within the term agreed in the contract (e.g. the vendor fails to provide the consumer with promised discounts corresponding to the defect of goods, will not return the amount corresponding to the purchase price in case of a recognized withdrawal by the consumer), the other party may go to court. The contract concluded is not directly enforceable (i.e. seizure cannot be ordered immediately), but it is possible to seek judgement on the performance of an obligation in court without need for complicated evidence.

**If the consumer and the vendor do not agree on an amicable settlement, the proceedings before the CTIA ends after a period of 90 days** since the initiation of proceedings (or up to 180 days if it has been extended by the CTIA – see above). If found ex-

pedient, the CTIA will provide the parties of the dispute together with the notice of termination of the dispute also **a non-binding legal opinion on the subject of the dispute. Subsequently, the consumer and the vendor must decide what other dispute resolution procedure they will choose** (e.g. legal proceedings).

Alternative dispute resolution can also end with **unilateral declaration of the consumer to terminate the participation** in the dispute resolution (e.g. if the consumer finds out that on the basis of preliminary legal assessment of the matter by the CTIA, their claim is unfounded – see above).

Proceedings may also be closed by **rejecting the consumer's petition** (see above) or **due to death of either party, or if the vendor's company ceased to exist**, which, however, does not exclude the application of rights to a legal successors (e.g. heirs) in court.

### 10.2 Alternative dispute resolution with the assistance of professional chambers and consumer organizations

#### Did you know that...

Consumer disputes are not only disputes arising from the sale of goods, but also disputes in the provision of services, such as treatment at a dentist or solicitor's services provided to a consumer.

The Ministry of Industry and Trade (more information can be found on the website [www.mpo.cz](http://www.mpo.cz)) will be able to gradually authorize other entities than the CTIA with alternative dispute resolution. These entities may include **professional chambers with mandatory membership or consumer organizations** at their request and that will prove fulfilment of all prerequisites for this activity. Proceedings before such entities will proceed similarly as before the CTIA, i.e. according to the rules, which were described in the previous section.

In this context, if any entity turns to a consumer with an offer to help resolve a dispute with a vendor or service provider, the consumer is recommended to always check whether it is really an entity authorized by the Ministry of Industry, and if it is not, then if it is a free service or not (a free initiative to resolve a dispute can be submitted for example at [www.vasestiznosti.cz](http://www.vasestiznosti.cz)). Otherwise, it can be a paid service for which the rules for alternative dispute resolution do not apply as it follows its own rules agreed between the provider of such service and the consumer (e.g. legal expenses insurance).

### 10.3 Alternative dispute resolution of cross-border disputes

#### Did you know that...

...disputes with foreign vendors within the EU can be, since February 15 2016, addressed simply and for free online?

If a consumer buys goods online (purchase in a brick and mortar store excluded) in another EU Member State, for example a Czech consumer in a German online store, and if they get in connection with it into a dispute with the foreign vendor (e.g. concerning a complaint about goods), they may use a new system of alternative dispute resolution of cross-border disputes since February 15 2016. The European Commission has set up a website for this purpose, which can be found at: <http://ec.europa.eu/consumers>.

After opening this page, the consumer chooses what official language of the EU, including Czech, they want to see the website in, and can even contact

the foreign vendor with their claim in this language by completing an electronic form and attaching documents proving their claim (e.g. confirmation of the order and payment of goods that had not been delivered).

The online platform will send the completed data to the vendor, who can immediately offer an amicable solution of the dispute to the consumer. If the entrepreneur does not propose an amicable solution or if no agreement occurs between the parties, it is up to the parties of the dispute to agree on an entity that will help them solve the dispute, which must happen within 30 days. The entity for the dispute resolution can be selected from a list provided on this website, which mainly includes European consumer centres in individual Member States (you can choose the entity from the country of the consumer or the vendor, but also from another EU country, if it is trusted by both parties).

Once the parties agree on an entity for the dispute resolution, all data are

automatically forwarded to it. The entity usually has 90 days to assess the matter, within which it may request more information or data from the consumer or the entrepreneur. Subsequently, it will communicate its non-binding opinion on the matter to the parties, and it depends on both parties whether they will come to an agreement. If the vendor does not provide any assistance, information about possible further progress can be found on the above mentioned website, or it is possible to turn to the European Consumer Centre for advice.

## 10.4 The European Consumer Centre

### The European Consumer Centre provides consumers mainly with:

- free information and advice on consumer rights in EU countries, Norway and Iceland.
- free assistance in dealing with their complaints about the quality of purchased goods and services or on the behavior of professionals in those countries.
- in the event of a dispute, assists in the search for an amicable solution to the dispute with a trader, or it serves as a place of contact for free of charge assistance to consumers for extrajudicial solutions for their disputes with traders in those countries.

### Example:

*If a Czech consumer buys a product in a German internet shop, and that product is somehow damaged or not functioning, the Czech consumer can turn to the European Consumer Center for help.*

*The European Consumer Center cannot deal with situations, where the seller is not an entrepreneur, but a physical entity, or if the seller is from the Czech Republic or from another state, which is not under the influence of the European Consumer Center (for example, the USA)*

## 10.5 Financial Arbitrator, Czech Telecommunications Office and Energy Regulatory Office

**Financial Arbitrator is a governmental authority for out-of-court resolutions of certain disputes in the financial market.** The Arbitrator decides disputes in proceedings initiated on the proposal of a consumer, namely against financial institutions such as banks, including building societies, non-bank providers of payment services or credits, life insurance companies, investment companies or investment funds, securities dealers and exchange traders.

Proceedings before the Financial Arbitrator are **free**. The costs that incur to the consumer or the opposing financial institution in the proceedings are borne by each party. The consumer does not need to be represented by a lawyer in the proceedings.

### The consumer can turn to the Financial Arbitrator for example in disputes:

- with a bank over the correctness or timeliness of a posted payment, illegally charged fee, failure to get money from an ATM, misuse of a payment card by a third party to withdraw cash from ATM or purchases at a vendor, etc.,
- with a creditor over a withdrawal from a credit contract or a fee for early repayment of a credit,
- with a building society over a validity of a cancellation or termination of a contract on building savings, validity of unilateral changes to a contract on building savings, amount of paid state aid,
- with an insurance company or insurance broker in disputes arising from provision or brokering of life insurance,
- with an exchange trader over a fee for conducting currency exchange,
- with an investment company or investment fund over a value of a share certificate, fee charged in connection with purchase / sale / exchange of a share certificate.

**Petition can be filed on the website:** <http://www.finarbitr.cz>, by mail or at the Office of the Financial Arbitrator at Legerova 1581/69, 110 00 Prague 1. The petition must include how the financial institution harmed the consumer, what has the Financial Arbitrator decide about and what conditions are considered for the amicable settlement of the dispute. The Financial Arbitrator is not bound by the petition and may help the complainant to modify the petition during the proceedings. The Financial Arbitrator always primarily strives for amicable settlement of the dispute.

**Other contacts:** tel.: 257 042 070, e-mail: [arbitr@finarbitr.cz](mailto:arbitr@finarbitr.cz)

Objections can be filed against the decision of the Financial Arbitrator, which will be decided by the Financial Arbitrator. Financial Arbitrator's decision is further reviewed by court – after the decision on the objections, either party may refer the decision of the Financial Arbitrator for revision to court that will re-examine the whole

case, and if it is needed, substitute the decision of the Financial Arbitrator with its own decision. Unless a legal action is filed against the decision of the Financial Arbitrator in court, the effective decision of the Financial Arbitrator is as binding as the decision of court.

**The Financial Arbitrator cannot arbitrate disputes**, which do not fall within the Arbitrator's scope, i.e. disputes between two consumers, disputes between two financial institutions, disputes arising from business credit, disputes not related to financial services, etc. The Arbitrator's scope also does not include disputes concerning non-life loans (i.e. property insurance, car insurance, third-party insurance, accident insurance, etc.). The Financial Arbitrator also cannot decide if the case was decided by court, or if court proceedings have been initiated, or if the case was decided by an adjudicator, or if arbitration proceedings have been initiated.

The following subjects also operate as alternative dispute resolution entities between consumers and entrepreneurs:

- **Czech Telecommunication Office** (see Section 8) and
- **Energy Regulatory Office** (see Section 9).

# 11 OTHER SELECTED AREAS AND MEANS OF CONSUMER PROTECTION

## 11.1 Czech Trade Inspectorate and other supervisory bodies

The **Czech Trade Inspectorate (CTI)** is a government authority that carries out the control and supervision of legal entities and individuals that sell or supply goods and services to the market, unless under special laws such supervision is exercised by another administrative authority.

**CTI supervises, for example:**

- compliance of conditions set to ensure the quality of goods (excluding food), including their health status or conditions of storage,
- whether products placed on the market comply with the relevant technical requirements, and have a specified label and are safe.
- whether the products, that are on the market correspond to the technical requirements, whether they have a proper label and are safe

*In addition to financial sanctions for breaking the relevant regulations, the CTI also bans products, which do not meet the requirements set out in the legal regulations.*

*CTI also checks, whether the entrepreneurs correctly inform the consumers about their rights, whether they meet the given deadlines for refunds, and give the consumers confirmations in advance about the way complaints are being dealt with, and so on.*

*Supervision of the quality of food products is dealt with the **State Agricultural Inspectorate**.*

*Supervision of the health status of food from animals is dealt with by the **State Veterinary Administration**.*





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Od roku 2014 GLE o.p.s. realizuje projekt Poradenství a osvětová činnost pro spotřebitele, který podporuje Ministerstvo průmyslu a obchodu v rámci státní dotační politiky vůči NNO pro jednotlivé roky v oblasti Ochrany spotřebitele.

V projektu jsme zprovoznili nové webové stránky [www.skolaspotrebitele.cz](http://www.skolaspotrebitele.cz), kde mohou spotřebitelé pokládat dotazy online.

Dále poskytujeme telefonickou poradnu v pondělí a ve středu na telefonním čísle **+420 272 047 707**.

**Všechny služby projektu jsou poskytovány zdarma.**



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