

## ***Distance contract Act***

### **Articles 312b - 312 f of the German Civil Code**

Fernabsatzgesetz 27-06-2000

- § 312b Distance contracts
  1. Distance contracts are contracts for the delivery of goods or the supply of services which are concluded between a businessperson and a consumer exclusively by means of distance communication, unless the conclusion of the contract takes place otherwise than in the framework of a an organized distance sales or service-provision scheme.
  2. Means of distance communication are means of communication which can be used with a view to or in order to conclude a contract between a consumer and a businessperson without the simultaneous physical presence of the contracting parties, in particular, letters, catalogues, telephone calls, telefax, emails, and radio, television and media services.
  3. The provisions on distance contracts do not apply to contracts
    1. concerning distance learning (§ 1 of the Distance Learning Protection Act)
    2. concerning time-sharing of residential premises (§ 481),
    3. concerning financial services, in particular bank transactions, finance and investment services and insurances and their arrangement, except contracts for the arrangement of loans,
    4. concerning the transfer of immovable property or other immovable property rights, the creation, transfer and annulment of real rights in land or other immovable property rights, and the construction of buildings,
    5. concerning the delivery of foodstuffs, beverages or other goods intended for everyday consumption supplied to the home of the consumer, to his residence or to his workplace by regular roundsmen,
    6. concerning the provision of accommodation, transport, catering or leisure services, where the businessperson undertakes, when the contract is concluded, to provide these services on a specific date or within a precisely specified period, or
    7. which are concluded
      - a. by means of automatic vending machines or automated commercial premises, or

- b. with telecommunications operators through the use of public payphones in so far as they concern the use of those payphones.
- § 312c Information to be given to consumers in the case of distance contracts
    1. In good time prior to the conclusion of any distance contract, the consumer must be provided with the following information in a clear and comprehensible manner in any way appropriate to the means of distance communication used, of1. the details of the contract specified by the Regulation under Article 240 of the Introductory Act to the Civil Code and2. the commercial purpose of the contract.In the case of telephone communications, the identity of the businessperson and the commercial purpose of the call must be made explicitly clear at the beginning of any conversation with the consumer.
    2. The businessperson must inform the consumer in textual form of the information specified in the Regulation under Article 240 of the Introductory Act to the Civil Code to the extent specified therein and in the manner laid down therein, in good time, at the latest by the completion of performance of the contract or, where goods are concerned, at the latest at the time of delivery to the consumer.
    3. Subsection (2) above does not apply to services which are performed through the use of a means of distance communication, where they are supplied in one go and are invoiced by the operator of the means of distance communication. Nevertheless, the consumer must in all cases be able to obtain the geographical address of the place of business of the businessperson to which he may address any complaints.
    4. More extensive restrictions of the use of means of telecommunication and more extensive duties to provide information on the basis of other provisions are unaffected.
  - § 312d Right of revocation and return in distance contracts
    1. In the case of a distance contract the consumer has a right of revocation under § 355. In the case of contracts for the delivery of goods, the consumer may be granted a right of return under § 356 instead of the right of revocation.
    2. In derogation from § 355 (2), sentence 1, the revocation period does not commence before the duties to provide information in accordance with § 312c (1) and (2) have been fulfilled; in the case of the delivery of goods not before the day on which they reach the recipient; in the case of a recurring deliveries of goods of the same kind, not before the day on which the first instalment reaches the recipient; and in the case of services, not before the day on which the contract is concluded. § 355 (2), sentence 2, does not apply.
    3. In the case of a service, the right of revocation also expires if the businessperson has begun to provide the service with the express consent of the consumer before the end of the revocation period or if the consumer himself has occasioned this.
    4. Save where otherwise provided, there is no right of revocation in the case of

distance contracts

1. for the delivery of goods made to the consumer's specifications or clearly personalized or which, by reason of their nature, cannot be returned or are liable to deteriorate or expire rapidly or where the recommended period for their consumption would be exceeded,
2. for the delivery of audio or video recordings or of software which were unsealed by the consumer,
3. for the delivery of newspapers, periodicals and magazines,
4. for gaming and lottery services, or
5. concluded by way of auction (§ 156).

- § 312e Duties in electronic business transactions

1. If a businessperson uses a television or media service for the purpose of concluding a contract for the delivery of goods or the supply of services (electronic contract), he must
  1. provide the customer with appropriate, effective and accessible technical means allowing the customer to identify and correct input errors, prior to sending his order,
  2. in good time before the sending of his order, communicate to the customer clearly and comprehensibly the information specified in the Regulation under Article 241 of the Introductory Act to the Civil Code,
  3. acknowledge to the customer the receipt of his order without undue delay and by electronic means, and
  4. enable the customer to retrieve and save in reproducible form the conditions of the contract including standard business terms incorporated in it upon conclusion of the contract.

The order and the acknowledgement of receipt within the meaning of sentence 1, No. 3 are deemed to be received when the parties to whom they are addressed are able to access them in normal circumstances.

2. Subsection (1), sentence 1, No. 1 to 3 does not apply if the contract is concluded exclusively by personal communication. Subsection (1) sentence 1, No 1 to 3 and sentence 2 does not apply if otherwise agreed in a contract between parties who are not consumers.
3. More extensive duties to provide information pursuant to other provisions are unaffected. If the customer is entitled to a right of revocation under § 355, the revocation period does not begin, in derogation from § 355 (2), sentence 1, until the duties laid down in subsection (1), sentence 1, have been performed.

- § 312f Contrary agreements Save where otherwise provided, no derogation from the provisions of this sub-title may be made to the detriment of the consumer or customer. The provisions of this sub-title apply, save where otherwise provided, even if they are circumvented by other arrangements