

Empowered consumers

Consumers make a large number of decisions every day. This affects everyday shopping just as much as the safe handling of their finances, their own living space, the right choice of insurance or mobile phone contracts, or an order on the internet.

Consumers must always compare products, get offers, and read and understand the fine print. The fast technological development and the diversity of the market mean that consumers have countless options at their disposal, giving them an important role in the market.

However, they need a lot of time, patience and, above all, knowledge about their rights and how to assert them.

Empowered consumers who inform themselves and make the right purchasing decisions are seen as the guiding principle of the European Union.

Who are the consumers?

There are different definitions here:

- ⇒ In the ecological sense, consumers are generally people who consume goods.
- ⇒ In the economic sense, consumers are natural persons who purchase and consume services and goods to satisfy their own needs.
- ⇒ In the legal sense, consumers are private persons (natural persons) who do business with a company without being a company themselves.

What is the real problem?

The very fast pace of economic and technological development leads to many opportunities but also major risks for consumers.

In addition, a private individual often has a certain “inferiority” (= lower rank) compared to a company. The legislator assumes that companies are in part far “superior” to consumers in business and legal transactions because of their economic experience and know-how.

In Austria, consumers are protected against this imbalance by the Konsumentenschutzgesetz (KSchG).

Konsumentenschutzgesetz

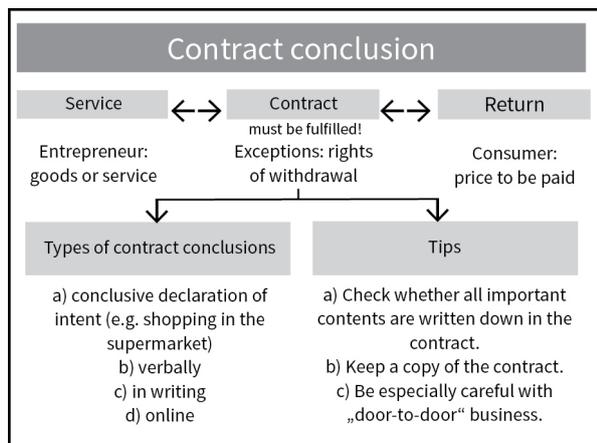
The Konsumentenschutzgesetz (KSchG) serves to protect consumers and forms the legal basis for businesses between consumers and companies.

It is a federal law that came into force in 1979. It has been revised and updated several times since then, on the one hand because of practical needs and on the other hand because of changes of EU guidelines.

In total, it is divided into three sections. The first part deals with special provisions, such as ...

- ⇒ the right of withdrawal,
- ⇒ the warranty and the guarantee in a contract,
- ⇒ the transparency of the general terms and conditions (T&Cs),
- ⇒ the cost estimate,
- ⇒ and special types of contracts (contracts for work, deposits, home contracts ...).

The second section deals with collective actions and the third section adds auxiliary conditions for things such as brokerage contracts or travel events.



Content taken from picture: sozialministerium/fridrich/oegwm

T&C – general terms and conditions - often called “fine print”

Larger companies such as banks, insurance companies, furniture stores, or electronics retail store chains usually use pre-formulated contract terms. These are called general terms and conditions (T&C).

Since they are typically difficult to read, they are also referred to as the “fine print”. They clarify legal relationships with customers.

Depending on the industry, the general terms and conditions describe terms of delivery or house rules, or other similar terms. For the T&C to be valid, it is enough if they are agreed upon implicitly by the parties. In other words: It is enough to expect that there are T&C.

The T&C contain important provisions, such as conditions of payment, cancellation options, limitation of the obligation to perform a contract, or price change options. Therefore, one should always read the “fine print” before signing.

However, they are often difficult or incomprehensible because they are legally complex formulations. If anything is unclear, you should ask the business partner directly and have the answer confirmed in writing or seek help from a consumer protection organization.

It is also possible that not all provisions in the T&C are legal.

Here, consumer protection organizations such as the Verein für Konsumenteninformation (<https://konsument.at>), the Arbeiterkammer (www.arbeiterkammer.at), the Internet-Ombudsstelle (www.ombudsstelle.at), or the Federal Ministry of Social Affairs, Health, Care and Consumer Protection (www.sozialministerium.at) can help.

Many contract conclusions

During a consumer’s life, many different types of contracts play a role. For example, these can be leasing-, rental-, service-, insurance-, or employment contracts. The most common type of contract, however, is the sales contract. We make contracts almost every day. In many businesses, these contracts and their execution run well. However, there can also be great problems around contracts.

Who may conclude contracts? Legal capacity

- ⇒ Children under the age of 7 do not have legal capacity. They can only buy small things such as candy.
- ⇒ Children and young people between the ages of 7 to 14 are considered underage and have limited legal capacity. They are allowed to make minor transactions that are normal for their age, such as buying books, CDs, etc.
- ⇒ Young people between the ages of 14 to 18 are considered responsible minors and have limited legal capacity. They can freely use the money they received as gifts or earned themselves – e.g., pocket money, income of an apprenticeship – as long as this does not put their livelihood into danger. However, the risk lies with the company.
- ⇒ At the age of 18, a person is of full age and therefore has full legal capacity.



Special features of the sharing economy

The legal situation is different outside the KSchG, in contracts between two companies, but also between two private persons. For example, this affects warranty claims.

The sharing economy partly operates in areas that are not clearly regulated because the involved parties interact in many different ways. They may or may not be profit-oriented. They may be entrepreneurs or consumers. They may meet each other individually or deal as individuals with many market players. Finally, they may also be providers or demanders.

cf. AK-Steiermark (2013). Ökonomie des Teilens. p. 4f. https://media.arbeiterkammer.at/stmk/Sharing_Economy_2013_barrierefrei.pdf, 26.06.2018

Especially for teenagers and young adults, models of the sharing economy are attractive, but not always transparent and comprehensible. However, responsible minors (young people between 14 and 18) who are very interested in sharing models are often navigating uncertain waters because of their limited legal capacity. Many sharing portals exclude participation by under-18s from the very beginning in their T&Cs. For this reason, it is recommended to read the T&Cs carefully before using the portals.

If, for example, a 16-year-old girl wants to exchange or sell her clothes that have become too small, there is also the additional question of the owner of these goods. In principle, minors may only consume, give away, or sell goods if they received them at their free disposal. However, if the goods are only intended for use (e.g., clothes, books, games, sports equipment), they are not at their free disposal and may not be sold. Thus, the 16-year-old girl would not be allowed to exchange or sell the clothes without the consent of her legal guardians.

Private sales

Transactions between private persons are especially often done via online flea markets (e.g., spock.at, willhaben.at, flohmarkt.at). The sharing idea of sustainability and sensible further use/reuse is in the foreground.

Transactions between private persons are not regulated by the KSchG. Sellers can therefore exclude the warranty, for example, by a note in the product description.

If, however, promised, or supposedly warranted characteristics are missing, the seller is liable even if the warranty is excluded (e.g., The TV was described as new and functioning perfectly. When first connected, the device is defective and cannot be switched on.). Nevertheless, caution is advised in the virtual and anonymous world.

Tips for buying/selling online

- Keep emails and screenshots of the sales offer.
- Describe items as well, accurately, and honestly as possible.
- Do not promise features that have not been fully verified.
- Do not transfer money in advance.
- Question obviously too cheap offers especially critically.
- Do not transfer money via Western Union.

Notes
