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Rights and obligations arising under contract law, including late payment interests

Heruntergeladen am 30.06.2025

<https://fimportal.de/xzufi-services/102837988/B100019>

Modul	Sachverhalt
Leistungsschlüssel	99154054000000
Leistungsbezeichnung I	Rights and obligations arising under contract law, including late payment interests
Leistungsbezeichnung II	Rights and obligations under contract law, including late payment interests
Typisierung	11 - SDG: Allgemeine Rechte und Pflichten
Quellredaktion	Bund
Freigabestatus Katalog	unbestimmter Freigabestatus
Freigabestatus Bibliothek	unbestimmter Freigabestatus
Begriffe im Kontext	
Leistungstyp	Leistungsobjekt
Leistungsgruppierung	SDG allgemeine Rechte und Pflichten (154)
Verrichtungskennung	
SDG-Informationsbereich	Rechte und Pflichten aufgrund des Vertragsrechts,

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	einschließlich Verzugszinsen
Lagen Portalverbund	Beschwerden und Petitionen (2140200), Mahnwesen (2140400), Rechtsmittel im Verwaltungsverfahren (2140500)
Einheitlicher Ansprechpartner	Nein
Fachlich freigegeben am	12.12.2022
Fachlich freigegeben durch	Federal Ministry for Economic Affairs and Climate Action
Handlungsgrundlage	<ul style="list-style-type: none"> • Conformity with the contract in the case of digital products: Sections 327d to 327h of the German Civil Code (BGB) • Directive (EU) 2019/770 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the supply of digital content and digital services (Text with EEA relevance) • Default of the debtor: Section 286 of the German Civil Code (BGB) https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019L0770 https://eur-lex.europa.eu/legal-content/DE/TXT/?uri=CELEX%3A32019L0770 https://dejure.org/gesetze/BGB/286.html https://jura-online.de/blog/2022/01/13/neues-kaufrecht-und-vertrag-uber-digitale-produkte-die-wichtigsten-klausurrelevanten-anderungen-teil-4-4/#:~:text=3.-,Vertragsm%C3%A4%C3%9Figkeit%20digitaler%20Produkte,%20%C2%A7%C2%A7%20327d%20%E2%80%93%20327h%20BGB,bereitzustellen%20(%C2%A7%20327d%20BGB) https://jura-online.de/blog/2022/01/13/neues-kaufrecht-und-vertrag-uber-digitale-produkte-die-wichtigsten-klausurrelevanten-anderungen-teil-4-4/#:~:text=3.-,Vertragsm%C3%A4%C3%9Figkeit%20digitaler%20Produkte,%20%C2%A7%C2%A7%20327d%20%E2%80%93%20327h%20BGB,bereitzustellen%20(%C2%A7%20327d%20BGB) https://dejure.org/gesetze/BGB/286.html#:~:text=(3)%201Der%20Schuldner%20einer,Folgen%20in%20der%20Rechnung%20oder

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Teaser

This section provides information on your rights and obligations with regard to setting up, running and closing a business, with particular regard to contract law and late-payment interest.

Volltext

B2B and B2C sales in contract law

Undertakings that wish to create general terms and conditions (GTCs) for their contracts with business partners or end consumers must adhere to a number of criteria. Unlike other contractual agreements, general terms and conditions are not negotiated between the contracting parties. Instead, one contracting party presents the GTCs as an integral part of the agreement. For this reason, GTCs are governed by strict rules protecting the party that is subject to the GTCs. The legislator has established rules in the German Civil Code (BGB), which must be observed when applying GTCs.

- If the GTCs are used in relation to end consumers, strict consumer protection rules apply.
- Where GTCs are used in relation to undertakings, the protective provisions are not quite as strict.

Contract law rules at national level on the provision of digital content and digital services

The transposition into German law of the Digital Content Directive (Directive (EU) 2019/770) introduced new rules at national level for all consumer contracts. Regardless of the type of contract, these rules relate to the provision of:

- digital content such as software and e-books
- digital services such as video streaming and social networks

Undertakings are required to provide non-defective performance. In addition to the right to subsequent performance and the right to terminate a contract, consumers have the right to a price reduction in the event of a defect in a digital product. Subsequent performance means rectifying the defect, for example by repairing the digital product or providing a new one.

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Besides this, consumers can lodge claims for compensation and reimbursement of expenses. A minimum warranty period of 2 years is provided.

Furthermore, undertakings are required to provide updates, i.e. functional and security updates. The rules must be applied both when consumers pay for digital products and when they provide personal data in addition to or in place of payment.

The new rules apply in particular to:

- databases
- cloud services
- platform offerings
- social media
- web applications
- media downloads, such as e-books
- digital television services
- number-independent interpersonal communications services, such as e-mail or messenger services
- physical data carriers that are exclusively used as digital content carriers, such as DVDs, CDs, USB sticks and memory cards
- the provision of certain electronic files when 3D-printing goods

The new provisions also apply to bundle contracts, which include further contractual content in addition to the provision of digital products. These could include the provision of non-digital services, for example. Generally speaking, however, the new provisions only apply to the digital part of the contract.

In addition, website providers must always observe particular obligations to provide information. In this context, it is irrelevant whether the website is only for presentation purposes or whether there is an integrated ordering system. The following information must be provided:

- the full name of the provider, or the name of the company
- the postal address of the provider - specifying a PO box and/or an email address is not sufficient

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- for legal entities, such as a limited liability company (GmbH), a limited liability entrepreneurial company (UG), a stock corporation (AG), a cooperative society (Genossenschaft) or an association (Verein): the legal form of the undertaking and the name of the authorised representative
- the full name and address of the person responsible for the content of journalistic and editorial offerings
- the VAT identification number (USt.-ID-Nr.), if there is one
- information on the competent supervisory authority, if the activity carried out requires official approval, such as in the case of estate agents and property developers
- an email address plus an additional means of communication that enables consumers to make contact quickly, such as a telephone or fax number, an online chat function or an electronic contact form
- the competent commercial register, register of partnerships, register of cooperatives or register of associations, including the registration number, if entered onto such a register
- for an AG, a partnership limited by shares (KGaA) or a GmbH that is in the course of being wound up or liquidated, the following information
- in the case of services rendered in the exercise of a regulated profession, the professional body, the legal professional title and the state in which the professional title was awarded, in addition to professional rules and where these can be accessed
- the business identification number, if there is one

If you offer products for consumers in your web shop, further mandatory legal provisions apply. On your website, you must provide information about:

- the main characteristics of the goods or service
- the time and the manner of the formation of the contract
- if the contract concerns continuing obligations, the minimum duration of the contract, if the contract relates to a continuing or regularly recurring service
- any delivery limitations or conditions under which a service that is equivalent in quality and price may be provided

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- the total price of the goods or service, including all associated price components and all taxes included by the company; or
- if no exact price can be given, the basis for calculating the price, enabling the consumer to verify the price
- in the case of goods being dispatched, the exact amount of the shipping costs
- any further taxes or costs that are not paid or invoiced by the company, e.g. information about a paid program that is not operated by the company and is needed to display the retrieved information
- specific details with regard to payment and delivery or, in the case of a service, with regard to performance
- the existence (or not) and the expiry of the right of withdrawal and the conditions, deadlines and procedures for exercising the right of withdrawal by means of a withdrawal policy and a template withdrawal form. In addition, this information must be provided to the consumer on a permanent data medium no later than when the goods are delivered. This could be e.g. by email in the order confirmation, or on a piece of paper accompanying the delivery.
- any specific additional usage charges for distance communication in connection with the initiation and performance of the contract, where these exceed the usual costs
- the duration of limited-term offers
- the individual technical steps leading to conclusion of the contract
- whether the text of the contract is saved by the online retailer after the contract is concluded, and whether it is accessible to the customer
- the languages in which the contract may be concluded
- if the online trade is subject to codes of conduct, information about these and their electronic accessibility
- the possibility of online mediation via a clickable link
- for companies that employ at least 11 people: the willingness to participate, or not to participate, in consumer mediation

The correct location for the information is the ordering page. You must provide the information to consumers in a clear, understandable and prominent way. This is

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best achieved with the help of a structured ordering process and the use of:

- general terms and conditions
- withdrawal policy
- withdrawal form

Special rules - other off-premises sales

If a contract is concluded off premises i.e. not in a retail store, such as through door-to-door sales or at the workplace, consumers are at a greater risk of being caught off guard. For this reason, the law provides for special protective measures in these situations.

Before concluding the contract, you, as the company, must provide certain information. This includes:

- the main properties of the goods or services
- your identity and contact information
- the total price of the goods and services, including all taxes and duties and any additional costs, such as freight, delivery or shipping costs
- the payment, delivery and performance conditions and, if applicable, the duration of the contract and the termination conditions
- if applicable, the existing right of withdrawal and, in particular, the withdrawal deadline and the legal consequences associated with withdrawal

For contracts concluded off premises, consumers generally have a 14-day cooling-off period (Section 312g(1) BGB). The withdrawal can be announced informally, including verbally, or by telephone or email.

Sales in business premises

The obligations to provide information also apply to brick-and-mortar retail, i.e. purchases in physical shops. There is no statutory right of withdrawal in this situation. Consumers have a right of withdrawal in the following cases:

- payment in instalments was agreed when the contract was concluded

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- the contract of sale is linked to a credit agreement
- assistance with financing is granted - for example, in a lease contract with a purchase obligation, or if a mobile phone with a contract is sold for more than EUR 200 less than what it would cost without a contract.
- items belonging together, such as the volumes of a reference work, are delivered over time and are to be paid in instalments
- customers receive regular delivery of the same kind of item, e.g. a newspaper or magazine subscription
- the contract provides for the regular purchase of goods, e.g. a book club. However, the purchase price in these cases must be more than EUR 200 and be credited over more than 3 months.

Assistance and training on contractual obligations

The Chambers of Commerce and Industry (IHKs) provide information throughout Germany; see Information and publications.

Contract types for the delivery of digital content

Contracts for downloading or real-time loading, i.e. streaming, of digital content are usually distance contracts. For this reason, the provisions applicable to these contracts usually apply, as do the special provisions for e-commerce contracts.

However, there are some special considerations. These relate both to the downloading and streaming of films, music files and other digital content on the internet, and to the downloading of apps for smartphones and tablets.

In the case of distance contracts, consumers have the right to withdraw from the contract without needing to state a reason for doing so. They generally have 14 days to do this. Where digital content is purchased, this period begins upon conclusion of the contract. However, if the company has not informed the consumer of the right of withdrawal, this period is extended by a further 12 months.

In this regard, it should be noted that to prevent

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consumers from simply using digital content and then withdrawing from the contract as many times as they wish, there is a special feature for streaming and downloading: the right of withdrawal expires as soon as the company has started the performance of the contract. In the case of streaming portals, this is as soon as the stream begins and/or the consumer is granted access to the content. In the case of downloading digital content, the right of withdrawal expires when the downloading process starts.

You must inform consumers in advance of this special provision concerning the right of withdrawal.

Liability for defects in digital products or services sold

A defect is present if a product does not meet the standard agreed upon, or if it is unsuitable for ordinary use. Digital goods can therefore also be defective. If this defect already existed on handover, consumers have so-called warranty rights.

You are required to repair defects in digital goods, or to provide the customers with defect-free files. If you do not do this, the customers have the right to a reduced purchase price or to withdraw from the sales contract.

Relevant information on delayed payments

If payment is not made on a contract or the customer does not pay upon conclusion of the contract, it is important that the creditor, i.e. the company, put the debtor in default. Debtors are in default if they do not pay in response to a formal notice from the creditor. A formal notice should be sent to the debtor in writing by registered post with acknowledgement of receipt. The formal notice should contain an explicit payment request, preferably stating a precise date by which the payment must be made.

As soon as the debtor is in default, the creditor is entitled to charge late-payment interest. If the debtor is a consumer, you can charge the debtor interest of 5 percentage points above the European Central Banks

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current base rate.

In addition to direct legal action, the order for payment procedure is a way of asserting a monetary claim through the courts. As this is a simplified procedure, the order for payment procedure is very practical. It enables access to the courts for everyone. The order for payment application must be submitted in writing to the competent local court on the officially application form. The application form is available in stationery shops. In addition, there is the option to submit an order for payment application electronically via <https://www.online-mahntrag.de/>.

An alternative to the order for payment procedure is to engage a debt collection agency. The term debt collection comes from the banking world. It means the recovery of money for amounts receivable, for example in the case of due promissory notes and invoices. The following link lists affiliated debt collection agencies that could help in the collection of amounts receivable in the event of default:
<https://www.inkasso.de/mitgliederliste>.
<https://www.online-mahntrag.de/>
<https://inkasso.de/mitgliederliste>
<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019L0770>
<https://www.online-mahntrag.de/>
<https://inkasso.de/mitgliederliste>
<https://eur-lex.europa.eu/legal-content/DE/TXT/?uri=CELEX%3A32019L0770>

Erforderliche Unterlagen
Voraussetzungen
Kosten
Verfahrensablauf
Bearbeitungsdauer
Frist
**weiterführende
Informationen**

Information and publications:

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- Information on general terms and conditions on the business start-up portal (Existenzgründungsportal) of the Federal Ministry for Economic Affairs and Climate Action (Bundesministerium für Wirtschaft und Klimaschutz, BMWK)
- Information on warranties, guarantees and product liability on the business start-up portal (Existenzgründungsportal) of the Federal Ministry for Economic Affairs and Climate Action
- PRACTICAL ASSISTANCE: Enforcing claims for download on the business start-up portal (Existenzgründungsportal) of the Federal Ministry for Economic Affairs and Climate Action
<https://existenzgruender.de/SharedDocs/Downloads/DE/Praxishilfen/PRAXISHILFE-Forderungen-durchsetzen.html>
<https://existenzgruender.de/DE/Unternehmen-fuehren/Recht-Vertraege/Gewaehrleistung-Garantie-Produkthaftung/inhalt.html>
<https://existenzgruender.de/EN/Home/inhalt.html>
<https://existenzgruender.de/DE/Unternehmen-fuehren/Recht-Vertraege/Allgemeine-Geschaeftsbedingungen/inhalt.html>

Hinweise

Rechtsbehelf

Kurztext

Ansprechpunkt

Zuständige Stelle

Formulare

Ursprungsportal

Rights and obligations arising under contract law, including late payment interests, Rechte und Pflichten aufgrund des Vertragsrechts, einschließlich Verzugszinsen