



The Consumer as Buyer

Sales Contracts and Their Legal Framework

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1. Phases of Buying and Selling

ENGLISH

A sales contract is a legally binding agreement for the exchange of goods for money, following a similar process regardless of the item. Understanding the individual phases is crucial for consumers.

DEUTSCH

Ein Kaufvertrag ist eine rechtsverbindliche Vereinbarung über den Austausch von Gütern gegen Geld. Das Verständnis der einzelnen Phasen ist für Konsumenten entscheidend.



1.1 Initiation of the Sales Contract

Seller's Actions

Advertising (Anpreisung)

ENGLISH

Companies use advertising (flyers, TV ads) to draw attention to their products.

DEUTSCH

Unternehmen machen mit Anpreisungen (z.B. Flugblatt, TV-Werbung) auf ihre Produkte aufmerksam.



Disclaimer Clauses (Freizeichnungsklauseln)

Lack of binding intent is indicated by phrases like "While stocks last," "Non-binding," or "Prices subject to change."

Offer (Angebot)

**Binding Offer (Verbindliches Angebot)**

An offer that signals the seller's firm intention to sell. It is legally binding for the seller.

**Non-binding Offer (Unverbindliches Angebot)**

An offer that includes disclaimer clauses (e.g., "subject to change") and does not create a binding commitment.

Requirements for a Binding Offer

Element	English	German
1	Specific Seller	Bestimmter Verkäufer
2	Specific Buyer	Bestimmter Käufer
3	Quality (Product Type)	Qualität (Produktart)
4	Quantity	Menge (Quantität)
5	Price	Preis

Duration of Binding Offers

Type	Duration
With stated duration	Binding for the specified period
Verbal offers (no duration)	Binding for the duration of the conversation
Written offers - Mail	4-6 days (transport + reflection time)
Written offers - Email	Limited to delivery time (immediate)

Buyer's Actions**Inquiry (Anfrage)****ENGLISH**

General Inquiry: Customer wants an overview and general information (catalogs, price lists).

DEUTSCH

Allgemeine Anfrage: Der Kunde möchte einen Überblick sowie allgemeines Informationsmaterial bekommen.

Specific Inquiry: Customer has concrete wishes and wants targeted information about a product.

Spezielle Anfrage: Der Kunde hat konkrete Wünsche und möchte gezielte Informationen zu einem Produkt.



Remember

Inquiries are legally non-binding; the buyer incurs no legal obligation.

1.2 Conclusion of the Sales Contract



Concordant Declarations of Intent (Übereinstimmende Willenserklärung)

The sales contract is concluded when buyer and seller reach mutual agreement on all essential points.

Forms of Contract Conclusion

Form	Description	Examples
Verbal (Mündlich)	Common for everyday goods of low value	Ordering pizza, buying bread
Written (Schriftlich)	Customary for complex or high-value transactions	Property purchases, installment plans
Electronic (Elektronisch)	Via internet, effective on order confirmation	Online shops, email orders
Conclusive Action (Schlüssiges Handeln)	Actions indicating intent without explicit declaration	Placing goods on checkout conveyor



Mandatory Written Form (Zwingende Schriftform)

Required for: Property purchases (land, houses, apartments) and installment payment plans.

Legal Requirements for a Valid Sales Contract

#	Requirement	Description
1	Bilateralism (Zweiseitigkeit)	At least two contract partners must be involved
2	Concordant Intent	Both must agree on all essential conditions
3	Voluntariness (Freiwilligkeit)	No coercion, threats, or blackmail
4	Permissibility (Erlaubtheit)	Transaction must not violate any law
5	Possibility (Möglichkeit)	Subject must be possible (no time machines!)

6 **Capacity to Contract**

Minimum age and mental capability required

Capacity to Contract: Stages**Capacity to Contract (Geschäftsfähigkeit)**

The ability of a person to conclude valid contracts through their own actions, depending on age and mental state.

Stage	Age	Scope
Completely Incapable <i>Gänzlich geschäftsunfähig</i>	Under 7 years	Cannot conclude contracts. Exception: pocket money transactions
Limited Capacity <i>Beschränkt geschäftsfähig</i>	7 to under 14	Age-appropriate minor transactions; needs parental consent for others
Extended Limited <i>Erweitert beschränkt geschäftsfähig</i>	14 to under 18	Within pocket money or earned income; livelihood must not be endangered
Full Capacity <i>Voll geschäftsfähig</i>	18+ years	All permissible transactions; full rights and obligations

**Adult Representatives (Erwachsenenvertreter)**

Persons with mental illness or intellectual disability who cannot manage their affairs are represented by court-appointed representatives.

1.3 Fulfillment of the Sales Contract

ENGLISH

Seller's Obligation: Delivery of the product (defect-free) and invoicing.

Buyer's Obligation: Acceptance of the product and payment of the purchase price.

DEUTSCH

Verkäuferpflicht: Lieferung des Produkts (mangelfrei) und Rechnungslegung.

Käuferpflicht: Annahme des Produkts und Zahlung des Kaufpreises.

2. Contract Parties and Business Types



Contracts (Verträge)

Agreements about a specific transaction between two or more contracting parties. Associated with legal consequences.

Type	Parties	Characteristics	Example
C2C Consumer-to-Consumer	Private ↔ Private	Limited legal protection; warranties often excluded	Selling on eBay/Willhaben
B2C Business-to-Consumer	Company → Private	Strong consumer protection (KSchG, FAGG)	Supermarket, online shop
B2B Business-to-Business	Company ↔ Company	Less consumer protection; governed by UGB	Wholesaler to retailer

3. Applicable Laws



Freedom of Content (Inhaltsfreiheit)

Contract content can generally be freely determined, but various laws apply.

Law	Applies To	Purpose
ABGB <i>General Civil Code</i>	All contracts	Regulates capacity to contract, general contract law
KSchG <i>Consumer Protection Act</i>	B2C contracts	Protects consumers from unfair business practices
UGB <i>Commercial Code</i>	B2B contracts	Regulates business-to-business rights and obligations
ECG <i>E-Commerce Act</i>	Online sellers	Information obligations for websites
FAGG <i>Distance Contracts Act</i>	B2C outside premises	Distance and off-premises contract rules
DSGVO <i>GDPR</i>	All EU companies	Personal data protection



Usances (Usancen)

Rules and customs in business known to contracting parties and not renegotiated each time.

4. Other Important Contract Types

Contract Type	Performance (Leistung)	Consideration (Gegenleistung)
Sales Contract <i>Kaufvertrag</i>	Product	Purchase Price
Work Contract <i>Werkvertrag</i>	Work, Service	Fee for Work (Werklohn)
Rental Contract <i>Mietvertrag</i>	Leased object	Rent (Mietzins)
Employment Contract <i>Arbeitsvertrag</i>	Work performance	Wage, Salary
Loan Agreement <i>Kreditvertrag</i>	Money amount	Interest + Repayment
Insurance Contract <i>Versicherungsvertrag</i>	Insurance benefit	Premium

5. Distance Selling and E-Commerce



Distance Selling (Fernabsatz)

Contracting parties do not meet in person. All phases use remote communication means.



E-Commerce

A special form of distance selling where trade is concluded entirely via the Internet.

Risks in E-Commerce

Risk	Description
Fraud Risk (Betrugsgefahr)	Sellers can hide online and delete websites after receiving payment
No Product Inspection	Rely on images, descriptions, and reviews (which can be faked)

Data Misuse

Personal data or account details may be stolen by hackers

Seller's Obligations

1. Information Obligations (Informationspflichten)

Sellers must provide in the impressum:

- Name/company name and address
- Contact details (email, phone)
- Company registration number (Firmenbuchnummer)
- VAT identification number (UID-Nr.)

Before contract conclusion, inform about:

- Product characteristics and price (including taxes)
- Delivery and payment details
- Withdrawal rights (conditions, deadlines)
- Warranty rights and guarantees



EU Button Solution

The "Order now, subject to payment" button must clearly indicate that clicking concludes a sales contract.

2. Delivery Deadline

Delivery must occur within **30 days** after contract conclusion. If unable to fulfill, seller must inform buyer and refund payments.

Buyer's Tips for Safe Online Shopping

1. **Research the seller** – Is it a company or private seller?
2. **Choose certified EU shops** – Look for quality labels (guetezeichen.at)
3. **Read the AGB** – Reputable providers make them clear and accessible
4. **Save important documents** – Order confirmation and AGBs
5. **Beware of tempting offers** – "Free" often means hidden costs
6. **Avoid prepayment** – No leverage if product is defective
7. **Check total price** – Include shipping costs
8. **Look for https://** – Encrypted connection with lock symbol

**ID Austria**

Austria's qualified electronic signature system – use it for secure online identification and digital services.

6. Withdrawal Rights (Widerrufsrechte)



Key Rule

Once a valid contract is concluded, there is generally no going back! Both parties must fulfill their obligations.

General Rules for Contract Dissolution

Method	Description
Mutual Agreement <i>Einvernehmliche Auflösung</i>	Both parties agree to reverse the contract
Exchange <i>Umtausch</i>	Return product, select another. No legal right – must be agreed upon
Withdrawal <i>Rücktritt</i>	Only if: explicitly agreed, illegal contract, fraud, or seller delay
Cancellation <i>Stornierung</i>	Possible but usually incurs a cancellation fee

Special Withdrawal Rights



When Special Rights Apply

For contracts concluded
outside business premises
 (door-to-door, promotional trips) or exclusively via
distance selling
 (online shops).

Withdrawal Periods

Seller's Information	Buyer's Withdrawal Period
Seller informs about right of withdrawal	14 calendar days after contract or delivery

Seller does NOT inform

1 year + 14 calendar days

Exceptions – No Withdrawal Possible

- Home delivery of food (pizza)
- Custom-made products (tailored clothing, photo books)
- Opened software, CDs, DVDs
- Urgent repair work explicitly requested
- Leisure services (theater tickets, flight tickets)

7. Quality: Legal Components of a Sales Contract

Statutory Components



Fungible vs. Non-fungible Goods

Type	Characteristics	Quality Methods	Examples
Fungible <i>Vertretbar</i>	Interchangeable; quality evident from one piece	Samples, brands, types, standards	Mobile phones, new cars, clothing
Non-fungible <i>Nicht vertretbar</i>	Individually made; each piece unique	Inspection, description, illustration	Art, real estate, used cars

Methods of Quality Definition

Method	Description
Inspection (Besichtigung)	Buyer examines product directly. "As inspected" clause.
Description & Illustration	Text and images explain characteristics

Samples & Specimens	Small quantities to assess quality (Muster/Proben)
Brands & Types	Protected marks distinguishing products (Marken/Typen)
Standards (Normen)	Guidelines for standardization (ÖNORM, DIN)
Quality Classes	Products classified by criteria (Extra, 1, 2, 3)
Quality Labels (Gütezeichen)	Markings indicating quality (e.g., AMA)

Special Purchase Types

- Purchase by Specification (Spezifikationskauf)**

Quality roughly defined; buyer specifies details (quantity, dimensions) within a deadline.
- Purchase in Bulk (Kauf in Bausch und Bogen)**

Buyer takes entire goods at one price regardless of defects. Seller not liable for specific quality.

Purchase Type	Description	Return Right
Purchase by Sample <i>Kauf nach Probe/Muster</i>	Order based on sample; product must match	If doesn't match sample
Purchase on Approval <i>Kauf auf Probe</i>	Return within set period (conditional)	Yes, within period
Purchase for Testing <i>Kauf zur Probe</i>	Small quantity at low price to test	No