

Ministerio de Justicia



REVISED TEX OF THE GENERAL LAW FOR THE
PROTECTION OF CONSUMERS AND USERS

Colección: Traducciones del derecho español

Edita:

Ministerio de Justicia- Secretaría General Técnica

NIPO: 051-11-023-1

Traducción realizada por: LINGUASERVE

Maquetación: Subdirección General de Documentación y Publicaciones

"El presente texto es una traducción de un original en castellano que no tiene carácter oficial en el sentido previsto por el apartado 1º) artículo 6 Real Decreto 2555/1977, de 27 de agosto, por el que se aprueba el Reglamento de la Oficina de Interpretación de Lenguas del Ministerio de Asuntos Exteriores y de Cooperación"

**ROYAL LEGISLATIVE DECREE 1/2007, OF 16 NOVEMBER 2007, APPROVING THE REVISED TEXT OF THE
GENERAL LAW FOR THE PROTECTION OF CONSUMERS AND USERS AND OTHER
SUPPLEMENTARY LAWS**

(Official State Gazette no. 287, of 30 November 2007; with corrections in Official State Gazette No. 38, of 13 February 2008)

I

This Royal Legislative Decree complies with the stipulation contained in the fifth final provision of Law 44/2006 of 29 December 2006 on Improving the Protection of Consumers and Users, authorising the Government, in the period of 12 months, to revise in a single text General Law 26/1984 of 19 July 1984 for the Protection of Consumers and Users, and the rules transposing the European Union Directives issued on matters of consumer protection, which affect the aspects regulated in this law, adjusting, clarifying and harmonising the legal texts requiring revision.

Consideration was given to the list contained in the annex to Directive 98/27/EC of the European Parliament and Council of 19 May 1998 on injunctions for the protection of consumer and user interests, which identifies the European Union provisions on matters of consumer protection, and, consequently, the transposition laws, which must be examined in terms of their suitability for incorporation into the revised text.

Once the annex to the aforementioned Directive was analysed, the revised text of the General Law for the Protection of Consumers and Users and other supplementary laws were expanded to include the laws transposing the European Union Directives on matters of consumer protection, which affect contractual aspects regulated by General Law 26/1984 of 19 July 1984 for the Protection of Consumers and Users, and which establish the legal regime for certain forms of consumer contracting, namely distance contracts and contracts concluded outside business premises.

The regulation on guarantees and the sale of consumer goods constitutes a transposition of the European Union Directive which affects the scope of guarantees governed by the General Law for the Protection of Consumers and Users, which is also included in the revised text.

The revised text also incorporates the regulation on package travel, as this is a law transposing a European Union Directive which is integrated into the Community acquis on consumer protection, and establishes a specific judicial regime for consumer contracts not affected by national rules on the tourism industry.

Furthermore, the revised text includes the regulation on civil liability for damages caused by defective products, transposing the European Union Directive affecting certain essential aspects regulated by the General Law for the Protection of Consumers and Users, and which, as is unanimously recognised in doctrine and case law, requires the clarification and harmonisation of its respective regulations to ensure that they are properly integrated in relation to each other, overcoming apparent contradictions.

However, other laws transposing the EU directives mentioned in the annex to Directive 98/27/EC implement a wide variety of judicial regimes which regulate specific sector areas that are remote from the basic focus of consumer and user protection.

Such is the case of the laws governing the information society and e-commerce services, the rules on television broadcasting and Law 29/2006 of 26 July 2006 on Guarantees and the Rational Use of Medicines and Health Products.

Law 7/1995 of 23 March 1995 on Consumer Credit, although it contains a specific regulation on consumer contracts, it is not incorporated into the revised text in consideration of its specific effect on the financial environment. Such circumstances determine that the prescriptions of the Law on Consumer Credit be completed both through the general rules contained in General Law 26/1984 of 19 July 1984 for the Protection of Consumers and Users, and

through the rules regulating financial services, in particular those referring to the obligations of credit institutions in relation to customer information, advertising and the transparency of transactions.

As such, it is considered that the regulation on consumer credit is more harmoniously integrated into this group of financial provisions. This decision contributed to the incorporation into internal judicial legislation of Directive 2002/65/EC of the European Parliament and Council of 23 September 2002 concerning the distance marketing of consumer financial services whereby Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC were amended through Law 22/2007 of 11 July 2007 on the distance marketing of consumer financial services.

The particular regime established by Law 42/1998 of 15 December on the rights of use of time-share properties for tourist use and taxation regulations, which transposed Directive 94/47/EC of the European Parliament and Council of 26 October 1994 into internal judicial legislation, it also advises against its inclusion in the revised text of the General Law for the Protection of Consumers and Users and other supplementary laws, given its unquestionable influence on the spheres of registry and taxation, which fall outside the basic focus of consumer protection.

Neither is General Law 34/1998 of 11 November 1998 on Advertising included in the revised text, given that its subjective sphere of application also includes relations between entrepreneurs and its content is pending revision as a result of Directive 2005/29/EC of the European Parliament and Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market, which must be incorporated into our judicial legislation.

Finally, the regulatory standards transposing directives issued on consumer protection, such as those relating to the exhibition of prices, labelling, presentation and advertising of food products, etc. are not included in the revised text of the General Law for the Protection of Consumers and Users and other supplementary laws, given the declaration of the Spanish Council of State that the delegation of legislative powers does not authorise the incorporation of regulatory provisions into the revised text, nor for legal provisions to be lowered in status, excluding them from the revision.

Consequently, compliance with the mandate contained in the fifth final provision of Law 44/2006 of 29 December 2006 on Improving the Protection of Consumers and Users, required that the revised text of the General Law for the Protection of Consumers and Users and other supplementary laws incorporate General Law 26/1984 of 19 July 1984 for the Protection of Consumers and Users, Law 26/1991 of 21 November 1991 concerning contracts concluded away from business premises; the regulation issued on consumer protection in Law 47/2002 of 19 December 2002 on the reform of the Law on Regulation of the Retail Trade, in order to transpose the Directive on distance contracts into the Spanish judicial regime; Law 23/2003 of 10 July 2003 relating to Guarantees in the Sale of Consumer Goods, Law 22/1994 of 6 June 1994 on Civil Liability for Damages Caused by Defective Products and Law 21/1995 of 6 July 1995 on Package Travel.

II

The revised text of the General Law for the Protection of Consumers and Users and other supplementary laws are structured in four books.

Book I is divided into five titles. Title I relates to general provisions and incorporates a definition of the scope of application of General Law 26/1984 of 19 June 1984 for the Protection of Consumers and Users and a list of concepts used repeatedly therein, ensuring greater clarity in the drafting, avoiding unnecessary repetitions and bridging the gaps identified in doctrine. The rights of consumers and users and the basic legislation in this regard are also regulated in this Title.

Book I Title II contains the regulation on the right of representation, consultation and participation, and includes the basic judicial regime of consumer and user associations, adopted in the regulatory amendment introduced by the Law on Improving the Protection of Consumers and Users.

Book I Title III incorporates regulations on matters of institutional cooperation, with special relevance to the protection of consumers and users, taking the competences of the Autonomous Communities and local authorities into consideration. The regulation of the Consumer Sector Conference, incorporated into the General Law for the Protection of Consumers and Users through the amendment made in the Law on Improving the Protection of Consumers and Users and the specific provisions on institutional cooperation in matters of training and quality control, is also included in a specific Title.

As a result, the provisions of this Title are founded on the principle of cooperation, in relation to which the Constitutional Court, in judgement STC 13/2007, FJ 7, among others, stated that «the techniques of cooperation and collaboration are characteristics inherent to the composite structure of the State of Autonomies» (judgement STC 13/1992 of 6 February, F.7; similarly, judgements STC 132/1996 of 22 July F.6, and STC 109/1998, of 21 May, F.14), and that the principle of cooperation «does not need to be justified in specific statutory or constitutional precepts» (judgement STC 141/1993 of 22 April, F.6.ñ; likewise STC 194/2004 of 4 November, F.9) that «the respective exercise of competences shared between the State and the Autonomous Communities must prevail» (judgement STC 13/1988 of 4 February, F.2; also, STC 102/1995 of 26 June, F. 31).

Constitutional Court judgement 15/1989, of 26 January 1989, and the judicial regime in force take into account the competences assumed by Autonomous Communities and local authorities in matters of consumer protection and call for the adjustment and clarification of many of the provisions contained in General Law 26/1984 of 19 July 1984 for the Protection of Consumers and Users, and which are now incorporated into Book I, Titles I and III.

In particular, the obligations imposed on state-owned television, radio and media have been limited, with such obligations now placed under the organisational authority of the General Central Government Administration.

Moreover, taking into account the competences of local authorities in matters of consumer and user protection, and without prejudice to the participation of the association of more established local authorities in the Consumer Sector Conference, as envisaged under Article 5.8 of Law 30/1992 of 26 November 1992 on the Legal Regime of Public Administrations and Common Administrative Procedure, institutional cooperation is expressly created between the General Central Government Administration and the local authorities through the most widely established association.

Title IV contains provisions on matters of sanctioning procedure, infringements and sanctions.

Title V, the last in the book, includes articles on consumer access to justice and, in particular, it incorporates the regulation on injunctions in the event of conduct contrary to regulations contained in the revised text of the General Law for the Protection of Consumers and Users and other supplementary laws, and the Consumer Arbitration System.

The regulation on the Consumer Arbitration System contained in Title V, Chapter II, incorporates important amendments introduced by the Law on Improving the Protection of Consumers and Users, into the judicial regime of this effective mechanism for the extrajudicial settlement of conflicts.

In accordance with the adopted regulation, arbitration submission agreements are directed to the time that the consumer can correctly evaluate the implications of the decision which, in the majority of cases, he or she is obliged to adopt, and from which the dispute arises. This increases user protection from arbitration methods that are not always lawful, and guarantees against the prior relinquishment of legally recognised rights. This rule is completed by the determination of the nullity of the agreements signed, contravening it in application of the provisions of the General Law for the Protection of Consumers and Users concerning the inalienable nature of the consumer rights recognised by law. The classification of infringements of consumer rights is clearly deduced from Article 49.1 k), which describes non-compliance with the requirements, obligations and prohibitions established in this Law and its Implementation Rules.

The articles further include the clarification of points introduced under the aforementioned Law 44/2006 of 29 December 2006 concerning the regulatory determination of cases in which claims might be brought before the National Consumer Arbitration Board in respect of the judgements of regional arbitration boards regarding the acceptance or rejection of applications for arbitration, and the establishment in the regulatory standard of circumstances in which a single arbitrator shall act in the administration of consumer arbitration.

Book II, which governs private legal relations, is structured in five Titles. Title I contains the general provisions of consumer contracts, following the regime contained under General Law 26/1984 for the Protection of Consumers and Users, and establishes the general regime for the right to withdrawal from contracts providing for such a right, in accordance with the legal provisions included in the revised text of the General Law for the Protection of Consumers and Users and other supplementary laws.

This Title incorporates the provisions introduced under the Law on Improving the Protection of Consumers, in matters of consumer contracts.

In order to prevent the imposition of onerous or disproportionate obstacles to the exercise of the consumer rights recognised in the contract, and in line with the provisions of Directive 2005/29/EEC of the European Parliament and Council of 11 May 2005 concerning unfair commercial practices, which prohibits non-contractual obstacles to the exercise of such rights, which must be transposed as such into our judicial regime, this law prohibits contractual terms that establish such limitations and, in particular, the imposition of time periods of excessive duration and limitations that exclude or hinder the consumer's right to bring the contract to an end.

In continuing or successive performance contracts for the provision and supply of goods and services, practices have been observed which are obstructive to the consumer's right to bring such contracts to an end. To prevent these practices, reforms are introduced so that the procedure may be clearly established, both in the pre-contract information stage and in the effective contract formalisation, by which the consumer may exercise this right and ensure that the right can be exercised as contracted, without sanctions or charges.

These rules are completed through two provisions. On the one hand, the contract is drawn up in accordance with objective good faith, following the interpretation and integration rules of the Civil Code and the requirements of fair competition. This strengthens the contractual position of the consumer and clearly establishes in law the interpretation maintained in advanced doctrine and case law in article 1258 of the Civil Code.

On the other hand, it is established as necessary that the obligatory pre-contract information be freely provided to the consumer without additional costs. The object of this provision is to prevent injurious practices, whereby compliance with the legal obligations entrepreneurs not only means extra costs for consumers, but also additional payment to the operator through the use of new technologies. New technologies which also enable the free provision of the minimum information required, as is already foreseen in some spheres of economic activity.

Title II establishes the judicial regime for contractual terms not individually negotiated and unfair terms, in accordance with the provisions contained in General Law 26/1984 of 19 July 1984 for the Protection of Consumers and Users.

The amendments introduced by the Law on Improving the Protection of Consumers and Users, in matters of unfair terms and practices, are included in this Title. This is also the case as regards the strengthening consumer protection in the acquisition of residential property, specifying the unfairness of terms that pass on costs that are incumbent on the professional, such as taxes for which the person liable is the vendor, or expenses arising from the connection of utilities to the property. The purpose is to prevent non-negotiated clauses which transfer these expenses to the consumer.

Provisions are also incorporated which aim to provide greater clarity when calculating contract prices, preventing invoicing for services that have not been effectively rendered.

Also in contractual matters, the equivalence of non-negotiated contract clauses and practices without express consent is clarified, with identical implications for users, as well as in the area of sanctions.

Titles III and IV are respectively intended to regulate distance contracts and contracts concluded away from business premises, in respect of consumers.

The revised text incorporates provisions intended to regulate legal relations with consumers in distance contracts for goods and services, as contained in Law 7/1996 of 15 January 1996 on the Regulation of the Retail Trade, amended by Law 47/2002 of 19 December 2002 on the reform of Law 7/1996 on the Regulation of the Retail Trade, in order to transpose Directive 97/7/EC in respect of distance contracts into the Spanish judicial regime, and to adapt the Law to various European Union Directives.

As a consequence of this revision, the regulation on distance contracts contained in Law 7/1996 of 15 January 1996 remains in force for the regulation of entrepreneurial relations.

The revised text also incorporates the regulation contained in Law 26/1991 of 21 November 1991 concerning contracts concluded away from business premises.

Title V, the last in Book II, regulates the system of after-sales services and guarantees, harmoniously integrating the regime of guarantees envisaged in the General Law for the Protection of Consumers and Users and the regulation contained in Law 23/2003 of 10 July 2003 on Guarantees in the Sale of Consumer Goods.

Book III harmonises the system on civil liability for damages caused by defective products, set forth in Law 22/1994 of 6 July 1994, and the provisions on liability contained in Chapter VIII of General Law 26/1984 of 19 July 1984 for the Protection of Consumers and Users.

This book is divided into three Titles. Title I, which contains general provisions on matters of civil liability for damages caused by defective goods and services; Title II, which regulates civil liability arising from defective products; and Title III, which regulates civil liability for damages caused by other goods and services.

Finally, Book IV incorporates specific regulations on package travel. This book is divided into two Titles, the first on general provisions and the second on contract termination and liabilities.

The revised text of the General Law for the Protection of Consumers and Users and other supplementary laws has three transitional provisions, guaranteeing that there are no alterations to the transitional arrangements in respect of warranties, maintaining the transitional arrangements on goods that must be considered long-lasting goods, and determining the inapplicability of Law 22/1994 of 6 July 1994 in respect of products that may still be on the market having been placed in circulation prior to 8 July 1994.

There are three final provisions, enabling the Government to modify the quantities established in the revised text of the General Law for the Protection of Consumers and Users and other supplementary laws and for the Implementation Rules for the provisions of the law, while maintaining the applicability of the regulatory regime regarding infringements and sanctions under the terms provided in the General Law for the Protection of Consumers and Users.

The Government's authority to issue regulations within the scope of its jurisdiction, conferred in the second final provision, includes those matters in which the State has exclusive competence and, in exceptional instances, those relating to the laws set forth in paragraph 2 of the first final disposition of the royal legislative decree in circumstances in which according to constitutional doctrine and where the exceptional nature thereof is announced by the Constitutional Court, the recourse to regulation to establish basic laws is justified.

In accordance with this doctrine, the invocation of this «exceptional dispensation» of the sufficiency of regulatory status (judgement STC 69/1988, 194/2004) is only justified under certain circumstances. These include; «when it is an essential accessory to guarantee the minimum common denominator established in the basic laws» (including judgements STC 25/1983, STC 32/1983 and STC 48/1988); «when, due to the nature of the matter, it is a necessary accessory for ensuring the achievement of the objective aim for which the state competence has responsibility» or lastly, «when the formal law is not the ideal instrument with which to exhaustively govern all the basic aspects of the matter due to the 'markedly technical character or temporary or changing nature' of the same» (STC 131/1996).

Thus, although it is constitutionally acceptable to recognise the Government's legal authority to complement basic laws through regulatory provisions, this possibility remains limited to circumstances in which this authority is constitutionally acceptable in accordance with the doctrine of the Constitutional Court.

III

The revised text of the General Law for the Protection of Consumers and Users and other supplementary laws are also intended to bring national legislation on consumer protection closer to European Union legislation, including with regard to the terminology used. It was therefore decided to use the terms 'consumer', 'user' and 'entrepreneur'.

The concepts of consumer and user are brought into line with European Union terminology, whilst respecting the particular features of the Spanish judicial regime in relation to 'legal persons'.

Consumers and users, as defined by law, are individuals or legal persons acting in a sphere that falls outside entrepreneurial or professional activity. This is to say, they participate in consumer relations for private purposes,

contracting goods and services as final recipients without direct or indirect involvement in the processes of production, marketing or provision to third parties.

The definitions of entrepreneur, producer, product and supplier are also included in order to standardise the terminology used in the text. The definitions of entrepreneur, producer and product are those contained in the laws subject which are revised. The concept of 'supplier' refers to any entrepreneur that supplies or distributes products on the market, and is distinguished from the vendor who, though not defined, is referred to in civil legislation as a participant in a contract of sale, in the case of this law, acting in the context of his or her professional activity.

Furthermore, the references to competent public authorities and the inclusion in the revised text of rules regarding contracts for which administrative control is attributed to sector administrations other than those with jurisdiction over consumer affairs, have no effect in terms of conferring or modifying the administrative competences conferred by the applicable state or regional legislation.

The revised text does not pre-judge which public administrations may be competent in relation to the matters contained therein, and is aware that consumer protection is a multidisciplinary field in which various administrations converge. In each case, the competent public administrations shall be those that are granted jurisdiction on the grounds of the matter, fully respecting the organisational independence of the various authorities involved, particularly in matters relating to health and tourism.

IV

In drawing up the revised text of the General Law for the Protection of Consumers and Users and other supplementary laws, hearings were given to the Council of Consumers and Users and to the most representative business organisations. The opinions of the Autonomous Communities, the Spanish Federation of Municipalities and Provinces and the Spanish Economic and Social Council were also taken into consideration.

Consequently, at the suggestion of the Minister of Health and Consumer Affairs and the Minister of Justice, in accordance with the Council of State and subject to the deliberation of the government cabinet at its meeting of 16 November 2007, the following is decreed:

Sole article. Approval of the revised text of the General Law for the Protection of Consumers and Users and other supplementary laws.

Approval is granted to the revised text of the General Law for the Protection of Consumers and Users, incorporating the provisions of General Law 26/1984 of 19 July 1984 for the Protection of Consumers and Users; the regulations on contracts concluded away from business premises and distance contracts in respect of consumers and users; the provisions on guarantees in the sale of consumer goods; the regulations on civil liability for damages caused by defective products; and the regulations on package travel.

Sole repealing provision. Repeal of regulations.

The following provisions are repealed:

1. Articles 48 and 65.1 n) and ñ) and the first additional provision of Law 7/1996 of 15 January 1996 on the Regulation of the Retail Trade. Also repealed, in the sole final provision of Law 7/1996 of 15 January 1996, are the references made to Article 48 and the first additional provision in the first paragraph and the whole of the final paragraph.
2. General Law 26/1984 of 19 July 1984 for the Protection of Consumers and Users.
3. Law 26/1991 of 21 November 1991 concerning Contracts Concluded away from Business Premises.
4. Law 22/1994 of 6 July 1994 on Civil Liability for Damages Caused by Defective Products.
5. Law 21/1995 of 6 July 1995 regulating Package Travel.

6. Law 23/2003 of 10 July 2003 on Guarantees in the Sale of Consumer Goods.

Final provision one. Jurisdiction.

1. Book I, Title I, Chapter I, in which the scope of application is defined, and Article 10, are fundamental in relation to the precepts of paragraph 2 of this provision, and are issued regarding the use of the State's exclusive competences in relation to the provisions of paragraph 3.

2. Articles 8, 9, 17.1, 18, 23. 1 and 3, 25 and 26; Book I, Title I, Chapters III and V and Book I, Title IV are fundamental and are issued pursuant to the State competences described in Article 149.1 sections 1, 13 and 16 of the Spanish Constitution.

3. Book I, Title V and Article 24, Books II, III and IV, the transitional provisions and the final provisions are issued on the grounds of the exclusive State competences in matters of civil, procedural and commercial legislation, in accordance with Article 149.1 sections 6 and 8 of the Spanish Constitution.

4. The remaining precepts of Book I, Title II shall be applicable to consumer and user associations with State competence.

Final provision two. Entry into force.

This royal legislative decree and the revised text it approves shall enter force on the day following their publication in the Official State Gazette.

REVISED TEXT OF THE GENERAL LAW FOR THE PROTECTION OF CONSUMERS AND USERS AND OTHER SUPPLEMENTARY LAWS

BOOK I

General provisions

TITLE I

Scope of application and basic consumer rights

CHAPTER I

Scope of application

Article 1. General principles.

On implementing Article 51.1 and 2 of the Constitution which, in accordance with Article 53.3 of the same, are a guiding principle regarding judicial legislation, the purpose of this law is to establish the judicial regime for the protection of consumers and users within the scope of State competences.

In all cases, the protection of consumers and users shall take place within the context of the economic system designed in Articles 38 and 128 of the Constitution and subject to the provisions established under Article 139.

Article 2. Scope of application.

This law shall be applicable to the relations between consumers or users and entrepreneurs.

Article 3. General concepts of consumer and user.

For the purposes of this law, and without prejudice to the express provisions of Books III and IV, consumers and users are natural or legal persons acting in a sphere that falls outside entrepreneurial or professional activity.

Article 4. Concept of entrepreneur.

For the purposes of this law, entrepreneurs are considered to be those natural or legal persons acting in the context of their entrepreneurial or professional activity, whether this be public or private.

Article 5. Concept of producer.

Without prejudice to the provisions of Article 138 and for the purposes of this law, producers are considered to be goods manufacturers, service providers, intermediaries thereof, or importers of goods or services into the territory of the European Union, as are persons presenting themselves as such by providing their name, trademark or other identifying feature along with the goods or services, whether on the container, wrapping or any other protective or presentational component.

Article 6. Concept of product.

Without prejudice to the provisions of Article 136 and for the purposes of this law, products are all movable goods in accordance with the text of Article 335 of the Civil Code.

Article 7. Concept of supplier.

For the purposes of this law, a supplier is an entrepreneur that supplies or distributes products on the market, irrespective of the entitlement or contract by virtue of which such distribution is carried out.

CHAPTER II

Basic consumer rights

article 8. Basic consumer rights. The basic rights of consumers and users are:

- a) Protection against risks that may affect their health or safety.
- b) Protection of their legitimate economic and social interests; especially from unfair commercial practices and the inclusion of unfair terms in contracts¹.
- c) Compensation for damages and redress for harm suffered.
- d) Correct information regarding different goods or services, and education and the transmission of knowledge as to their adequate use, consumption or enjoyment.
- e) Consultation hearing, participation in the process of drawing up the general provisions that affect them directly and representation of their interests, through legally established associations, groups, federations or confederations of consumers and users.
- f) Protection of their rights through effective procedures, especially in situations of inferiority, subordination or lack of a proper defence.

Article 9. Commonly used goods and services.

Public authorities shall give priority to the protection of consumer and user rights when these bear a direct relation to goods or services that are of common, ordinary and general use or consumption.

Article 10. Inalienability of the recognised rights of consumers and users.

The prior relinquishment of the consumer rights recognised by this law is null and void, as are acts carried out through the abuse of law, in accordance with the provisions of Article 6 of the Civil Code.

¹ Paragraph worded in accordance with Law 29/2009 of 30 December 2009 (Official State Gazette No. 315, of 31 December), amending the Legal Regime on Unfair Competition and Advertising to Improve Consumer and User Protection.

CHAPTER III

Protection of health and safety

Article 11. General duty of safety.

1. Goods or services placed on the market must be safe.
2. Goods or services are considered to be safe when, in conditions of use that are normal or reasonably foreseeable, duration included, they present no risk whatsoever to personal health or safety, or only present those minimum risks compatible with use and considered acceptable within a high level of personal health and safety protection.

Article 12. Information to consumers and users regarding risks of goods or services.

1. Entrepreneurs shall inform consumers and users, via the appropriate means, of any risks that may possibly arise from the foreseeable use of the goods or services, considering their nature, characteristics, duration and the persons for whom they are intended, in accordance with the provisions of Article 18 and the applicable regulatory standards.
2. Chemical products and any items that may contain hazardous substances shall be packaged with the necessary safety guarantees and shall carry the appropriate warnings regarding risk of use in a prominent place.

Article 13. Other specific obligations for the protection of consumer health and safety.

Any entrepreneur involved in placing goods and services at the disposal of consumers and users shall be obliged, within the limits of his or her respective activity, to respect the following rules:

- a) The ban on holding or storing products that are not permitted or banned under regulations, in premises or facilities used for the production, processing, storage or transport of food or drink.
- b) The maintenance of necessary controls so that goods that are potentially unsafe, that contain hazardous substances, or that are subject to traceability obligations, can be easily checked in terms of their origin, distribution, destination and use.
- c) The ban on the door-to-door selling of food and drink, without prejudice to the distribution or supply of food and drink acquired or ordered by consumers and users at commercial establishments authorised to sell to the public, or to the regime authorising direct door-to-door sales that have traditionally been practised in certain areas of Spain.
- d) Compliance with the regulations established by local authorities or, if any, the Autonomous Communities, in respect of the circumstances, methods and conditions in which the street vending of food and drink may be carried out.
- e) The ban on the supply of goods lacking the compulsory safety marks or the minimum information identifying the party responsible for the goods.
- f) The obligation to remove, suspend or recover from the consumer or user any goods or services that do not meet the necessary conditions or requirements, or which represent a foreseeable risk to personal health or safety on any other grounds.
- g) The ban on importing products that do not comply with this law and the provisions implemented herein.
- h) The requirements for the control of manufactured products that may affect the physical safety of persons, paying due attention to repair and maintenance services in this respect.
- i) The ban on using ingredients, materials and other components that may generate risks to personal health and safety. In particular, the ban on using such materials or components in the construction of residential property and public premises.

Article 14. Goods and services regulations.

1. Insofar as is necessary to ensure the health and safety of consumers and users, the regulations governing different goods and services shall determine:

- a) Concepts, definitions, nature, characteristics and classifications.
- b) Conditions and requirements for facilities and the qualified personnel that should attend them.
- c) Typical manufacturing, distribution and marketing procedures or processes, whether permitted, banned or subject to previous authorisation.
- d) Specific rules on labelling, presentation and advertising.
- e) Essential safety requirements, including those relating to composition and quality.
- f) Official methods for analysis, sample-taking, quality control and inspection.
- g) guarantees, liabilities, infringements and sanctions.
- h) The authorisation, registration and review system.

2. To ensure the health-and-safety protection of consumers and users, the competent public authorities shall be able to establish appropriate regulatory measures in respect of the production and marketing of goods and services, with particular regard to their control, monitoring and inspection.

Article 15. Administrative procedures.

1. In the event of situations of risk to the health and safety of consumers and users, the competent public authorities shall be able to adopt such measures as are necessary and appropriate to neutralise the risk, including direct intervention regarding items and the direct obliging of persons. In such circumstances, expenses shall be met by parties whose conduct gives rise to them, irrespective of the sanctions, if any, that may be imposed. Such expenses and sanctions shall be levied through an administrative enforcement procedure.

2. Taking into account the nature and seriousness of the detected risks, Public Administrations shall be able to inform affected consumers and users through the most suitable channels under the circumstances, of any existing irregularities or risks in the goods or services concerned, as well as the adopted measures, if any, and the appropriate precautions both for protecting against the risk and for obtaining assistance in eliminating the causes of said risk.

3. Those responsible for coordinating the national information exchange systems, integrated into European alert systems, shall pass on any communications they may receive from the Customs authorities when, according to the information provided therein, the products or services subject to alerts come from third countries.

Article 16. Extraordinary measures in emergencies and situations of necessity.

In exceptional circumstances, in situations of extreme seriousness that may lead to indiscriminate attacks on the health and safety of consumers and users in more than one Autonomous Community, the Government shall, for such duration as is necessary to end the situation, be able to establish a body with the active participation of the affected Autonomous Communities, which shall assume the administrative powers entrusted to it in order to ensure the health and safety of individuals, their economic and social interests, redress for harm suffered, the enforcement of liabilities and the publication of results.

CHAPTER IV

Right to information, training and education

Article 17. Information, training and education of consumers and users.

1. Within the scope of their respective competences, the public authorities shall promote the education and training of consumers and users, shall ensure that they have access to the information needed to effectively exercise their rights, and shall take care to provide them with comprehensible information as to the proper use and consumption of the goods and services placed at their disposal on the market.

2. The state owned social communication media shall assign non/advertising programmes and spaces to informing and educating consumers and users. Depending on their content and purpose, these programmes and spaces shall enable access to or involvement in representative consumer and user associations and other interested groups or sectors, as agreed with said media.

Article 18. Labelling and presentation of goods and services.

1. The labelling and presentation of goods and services, and the methods used to do so, shall not be misleading to the consumer or user, especially:

- a) With regard to the characteristics of the goods or services, particularly as to their nature, identity, qualities, composition, quantity, duration, origin or source and method of manufacturing or procurement.
- b) Claiming that the goods or services have effects or properties which they do not possess.
- c) Suggesting that the goods or services possess certain qualities, when all similar goods and services possess the same characteristics.

2. Without prejudice to the specific requirements established in regulations, all goods and services placed at the disposal of consumers and users shall include, be accompanied by or, in the last instance, allow in a clear and comprehensible manner, truthful, effective and sufficient information regarding the essential characteristics, with particular regard to the following:

- a) Name and full address of the producer.
- b) Nature, composition and purpose.
- c) Quality, quantity, normal or trade name or category, if any.
- d) Date of production, supply or batch, where required by regulations, recommended use-by date or expiry date.
- e) Instructions or directions for correct use or consumption, warnings and foreseeable risks.

3. Without prejudice to the exceptions provided legally or in regulations, the compulsory directions on the labelling and presentation of goods and services marketed in Spain shall be provided at least in Spanish, the official language of the State.

4. ²

² Paragraph deleted by Law 29/2009 of 30 December 2009 (Official State Gazette No. 315, of 31 December), amending the Legal Regime on Unfair Competition and Advertising to Improve Consumer and User Protection.

CHAPTER V

Protection of the legitimate economic interests of consumers and users

Article 19. General principle and commercial practices

1. The legitimate economic and social interests of consumers and users shall be respected under the terms established herein, also applying such provisions as may be relevant in respect of civil, commercial and other European, national and regional laws.

2. Without prejudice to the provisions of the following paragraphs, for the protection of the legitimate economic and social interests of consumers and users, the commercial practices of entrepreneurs directed at these groups are subject to the provisions of this law, the Law on Unfair Competition and the Law on the Regulation of the Retail Trade.

For these purposes, business-to-consumer and user commercial practices are considered to be all commercial acts, omission, conduct, manifestations or communications, including advertising and marketing, directly relating to the promotion, sale or supply of goods or services to consumers or users, irrespective of whether these take place, during or after a commercial transaction.

Contractual relations are not considered commercial practices and are governed in accordance with the provisions of Article 59.

3. The provisions of the preceding paragraph do not prevent the application of:

- a) Rules regulating commercial practices that may affect the health or safety of consumers or users, including practices relating to the safety of goods and services.
- b) Rules regarding the certification and degree of purity of objects manufactured using precious metals.

4. The rules established by this law in matters of commercial practice and those that govern commercial practices in respect of medicines, labelling, presentation and product advertising, display of prices, use of time-share properties, consumer credit, distance marketing of financial services intended for consumers and users, e-commerce, collective investment in transferable securities, rules of conduct in matters of investment services, public offerings, insurance quotations and securities listings, including mediation, and any other rules governing specific aspects of unfair commercial practices envisaged in European Union laws, shall prevail in the event of a dispute regarding legislation of a general nature applicable to unfair commercial practices.

5. In terms of commercial practices relating to financial services and real property, legal requirements or regulations may be established which offer a greater degree of protection to consumers and users³.

Article 20. Necessary information in the commercial supply of goods and services.

1. Commercial practices which include information on the characteristics and prices of goods or services, in a manner appropriate to the means of communication employed, thereby enabling consumers or users to take a decision on whether to contract them, shall contain the following minimum information, if not already clear from the context:

- a) Name, registered name and full address of the entrepreneur responsible for the product offered and, as appropriate, the name, registered name and full address of the entrepreneur on behalf of whom the former is acting.
- b) The essential characteristics of the goods or services, in a manner appropriate to their nature and the means of communication used.
- c) The full, final price, including taxes, with a breakdown of the total containing any increases or discounts that may be applicable to the product supplied and any additional expenses that may be passed on to the consumer or user.

³ Article worded in accordance with Law 29/2009 of 30 December (Official State Gazette no. 315, of 31 December), amending the Legal Regime on Unfair Competition and Advertising to Improve Consumer and User Protection.

In other cases in which the price of product offered cannot be agreed upon exactly due to the nature of the goods or services, information shall be given as to the basis for calculation, which will allow the consumer or user to check the price. Likewise, when the additional expenses that are passed on to the consumer or user cannot be calculated in advance for objective reasons, information shall be provided to the effect that there are additional expenses, along with an estimated amount in this regard, if known.

- d) Payment procedures, contract delivery and completion periods and the claims processing system, where separated from the requirements of professional diligence, understood as such in the definition in Article 4.1 of the Law on Unfair Competition.
- e) The existence of the right to withdrawal, if applicable.

2. Non-compliance with the provision of the preceding paragraph, or the provisions referred to in Article 19.4, shall be considered in all cases as unfair and deceptive practice, under the same terms as described in Article 21.2 of the Law on Unfair Competition⁴.

Article 21. System of verification and customer services.

1. The system of verification, claims, guarantees and the possibility of rejection or return as established in the contracts shall make it possible for the consumer or user to be assured of the nature, characteristics, conditions, usefulness and purpose of the goods or services; to be able to make effective claims in the event of errors, defects or deterioration; to be able to enforce guarantees in respect of the quality or performance level offered, and to obtain a fair full or partial refund of the market price of the goods or services, in the event of non-compliance or defective compliance.

The refund of the price of the product shall be total in the event that the product is not in conformity with the contract, under the terms envisaged in Book II, Title V.

2. The information and customer services offices made available by businesses to consumers shall ensure that records are kept of the latter's complaints and claims. If such services make use of telephone or email in carrying out their functions, they shall ensure a direct personal service to customers, over and above the additional possibility of using other technical means at their disposal.

3. In any event, and with full respect for the provisions of the preceding paragraphs, service providers shall place information at the disposal of consumers and users with regard to the postal address, telephone number and fax number or email address via which consumers and users, regardless of their place of residence, may file complaints and claims or request information regarding the service supplied or contracted. Service providers shall give their legal address if this is not the same as their usual mailing address.

Service providers shall respond to claims received within the briefest possible period of time, always within a maximum period of one month following the submission of the claim. In the event that the claim is not satisfactorily resolved within this period, service providers adhering to a system for the out-of-court settlement of conflicts shall provide the user with access to this system where the latter meets the requirements provided in Commission Recommendation 98/257/EC of 30 March on the principles applicable to bodies responsible for out-of-court settlement of consumer disputes, and Commission Recommendation 2001/310/EC of 4 April 2001 on the principles for out-of-court bodies involved in the consensual resolution of consumer disputes, or other regulations that may be applicable and as such have been notified to the European Union network of national bodies for the extra-judicial settlement of consumer disputes.

4. The entrepreneurs referred to in the preceding paragraph, those that may adhere to codes of conduct, including those drafted at European level, and those that are members of professional bodies or associations that offer extrajudicial systems for the settlement of conflicts, and who meet the preliminary requirements outlined in the preceding paragraph, shall state, when making a detailed offer of their services, the extrajudicial system for the settlement of conflicts that they offer to consumers and users, along with the manner of obtaining information on its characteristics, and the means by which this extrajudicial system can be accessed⁵.

⁴ Article worded in accordance with Law 29/2009 of 30 December (Official State Gazette No. 315, of 31 December).

⁵ Paragraphs 3 and 4 added by Law 25/2009 of 22 December 2009 (Official State Gazette No. 308, of 23 December), amending various Laws for the Adaptation thereof to the Law on Freedom of Access to Service Activities and their practice.

TITLE II

Right of representation, consultation and participation and the judicial regime of consumer and user associations

CHAPTER I

Basic judicial regime of consumer and user associations

Article 22. Object.

The object of this title is to adopt, in accordance with the provisions of Article 1.3 of Organic Law 1/2002 of 22 March 2002 regulating the Right of Association, the basic regime of consumer associations and the specific regulations to which national consumer and user associations shall remain subject.

Article 23. Concept and aims.

1. Consumer and user associations are non-profit organisations established in accordance with the legislative provisions on associations, which meet the specific requirements demanded in this law and its implementation rules, and in any regional legislation that may be applicable in this regard, with the aim of protecting the legitimate interests and rights of consumers, including their information, training and education, whether of a general nature or in relation to specific goods or services.

Consumer and user associations also include entities established by consumers in keeping with legislation on cooperatives, which respect the basic requirements of this law and which have aims necessarily including the education and training of their members, and which are obliged to set up a fund for this purpose, according to their specific legislation.

2. Consumer and user associations shall be able to join unions, federations or confederations which share the same aims and comply with the specific requirements demanded herein.

3. Consumer and user associations must act to achieve their aims independently of market operators and public authorities, without such independence being diminished by the receiving of subsidies or other public resources granted on the basis of criteria of objectivity.

Article 24. Legitimation of consumer and user associations.

1. Only consumer and user associations established under the provisions of this title, and of the regional legislation applicable to them, are authorised to act in the name and representation of the general interests of consumers and users.

Associations or cooperatives that do not meet the requirements described in this title or in applicable regional legislation shall only be able to represent the interests of their members or of the association, but not the general, collective and diffuse interests of consumers.

2. For the purposes of the provisions set forth in Article 11.3 of the Law of Civil Procedure, the representative consumer and user associations that form part of the Council of Consumers and Users shall be considered lawful, except where the geographical scope of the dispute basically affects an Autonomous Community, in which case they will be subject to its specific legislation.

Article 25. Exclusive use of the term ‘consumer and user association’.

Organisations are prohibited from using the terms ‘consumer’ and ‘user’ and the designation ‘consumer and user association’ or any similar expression that may be misleading or confusing as to their nature or legitimacy in

defending the rights and interests of consumers and users, unless they meet the requirements set forth herein, or in the regional legislation that may be applicable to them.

Article 26. Loss of status as a consumer and user association.

Consumer and user associations that breach any of the prohibitions set forth in legislation applicable to them shall, without exception, lose their status as a consumer and user association for a period of not less than five years following the cessation of such circumstances.

CHAPTER II

Independence and transparency of consumer and user associations

Article 27. Independence requirements.

Specifically and in compliance with the duty of independence, in particular, consumer associations shall not:

- a) Include profit-making legal persons as members.
- b) Receive economic or financial assistance from companies or groups of companies that supply goods or services to consumers or users.

Contributions made in accordance with the transparency conditions established herein and in regulatory standards, which do not undermine the independence of the association and which are the result of cooperation agreements as regulated in this chapter, shall not be considered as financial assistance.

- c) Engage in commercial communications in respect of goods and services.

For these purposes, commercial communication is considered as any act, conduct or expression, including advertising, which is other than purely informative and which is directly related to the promotion or sale of goods and services.

- d) Authorise the use of their name, image or any other representative sign in the commercial advertising carried out by market operators, or fail to carry out actions intended to prevent such use upon learning of this conduct.

Trading companies in which consumer associations have shareholdings under the terms set forth in the following article, are not considered market operators for these purposes.

- e) Engage in activities other than the protection of consumers' or users' interests, except under the terms of Article 23.1, second paragraph.
- f) Fail to comply with the transparency obligations set forth under Articles 29 to 31 inclusive.
- g) Act with manifest recklessness, from a legal perspective, as an organisation or through its legal representatives.
- h) Fail to comply with any other obligation imposed on consumer and user associations, legally or in regulations.

Article 28. Shareholdings in trading companies.

1. Consumer associations shall be able to have shareholdings in trading companies, provided that these meet the following requirements:

- a) That their sole corporate purpose is the development of specifically defined educational activities that serve the aims of information, training and the protection of consumers and users.

- b) That their share capital corresponds completely to consumer associations that meet the requirements set forth in the legislation applicable to them, and the profits of which are distributed only among the consumer associations that hold the share capital.

These trading companies are subject to the prohibitions set forth in the preceding article and to the obligation of filing their accounts, which under all circumstances must keep to the regulations that are applicable thereto depending on their nature, with the National Consumer Institute, in accordance with the provisions of Article 31.

2. Consumer associations holding share capital under the terms set forth in this title shall be responsible for the compliance of these trading companies with the provisions thereof, failure in respect of which may result in the loss of their status as consumer associations.

Article 29. Definition of collaboration framework with market operators.

1. Consumer and user associations shall define, in their Articles of association or by agreement adopted in general assembly, and with full respect for the provisions of this law, the legitimate framework for their collaboration with market operators in any activity sector, in defence of consumer rights and fair competition, as well as the cases in which collaboration agreements may be signed with market operators, and the scope and method for implementing these agreements.

2. General Assembly agreements or the Articles of Association, in which this collaboration framework is established between market operators and national associations, shall be submitted to the National Consumer Institute and to the Secretariat of the Council of Consumers and Users.

Article 30. Cooperation agreements.

Cooperation agreements, whether of temporary or indefinite duration, between consumer associations and companies, groups or associations of companies, foundations or non-profit organisations shall meet the following requirements:

- a) They have the sole purpose of carrying out specific projects on information, training and the protection of consumer and user rights, improving their position in the market.
- b) They respect the principles of independence and transparency.
- c) These consist of carrying out actions, works, studies or publications of general interest to consumers and users.
- d) They are submitted, along with their amendments, extensions or claims, to the National Consumer Institute and to the Secretariat of the Council of Consumers and Users.

Article 31. Filing of annual accounts.

Consumer and user associations' annual accounts shall be filed with the National Consumer Institute within a period of one month from the day following their approval by the relevant statutory bodies.

These accounts, consisting of a Balance Sheet, Profit & Loss Account and Annual Report, shall be prepared in accordance with the adaptation rules of the General Accounting Plan for non-profit entities, approved by Article 1 of Royal Decree 776/1998 of 30 April 1998.

Article 32. Publicity of information filed by consumer and user associations.

- 1. The information filed by consumer and user associations, to which the preceding articles refer, shall be public.
- 2. In due form it shall be possible to establish additional requirements, conditions and time limits for filing and accessing obligations, as regulated in this chapter.

CHAPTER III

State register of consumer and user associations

Article 33. State Register of Consumer and User Associations.

1. Nationwide consumer and user associations, and any others that do not carry out their functions principally at Autonomous Community level, shall be registered in the State Register of Consumer and User Associations, which is managed by the National Consumer Institute.

These consumer and user associations shall state their registration entry number after their name.

2. Compliance with the requirements set forth in chapters I and II of this title shall be an essential condition for registration in the State Register of Consumer and User Associations.

Notwithstanding the provision of the foregoing paragraph, minimum requirements shall be established in regulations, in terms of territorial implementation, member numbers and activity programmes to be carried out. Consumer and user associations must give proof that it satisfies these requirements in order to be entered in the State Register of Consumer and User Associations.

Article 34. Registration requirements check.

The National Consumer Institute may ask consumer and user associations applying for registration in the State Register of Consumer and User Associations, as well as those already registered in this register to provide such documentation and information as is necessary to verify compliance with and continued satisfaction of the requirements set forth in this title.

They are also able, acting alone or by contracting an independent external agency, to carry out audits of accounts for such purposes.

Article 35. Exclusion from the State Register of Consumer and User Associations.

1. Any action carried out by consumer and user associations registered in the State Register of Consumer and User Associations, where prohibited under Articles 23.3, 27 and 28, shall give rise to their exclusion from said register, subject to the completion of the administrative procedure envisaged in accordance with regulations.

2. Exclusion from the State Register of Consumer and User Associations shall entail the loss of this status for a period of not less than five years from the date of exclusion, without prejudice to the maintenance of their legal status in keeping with the general legislation on associations and cooperatives.

Article 36. Cooperation with regional registers.

1. For the sole purposes of public openness, information may appear in the State Register of Consumer and User Associations regarding consumer associations registered in registers that may be created in the Autonomous Communities for such ends.

2. The National Consumer Institute shall cooperate with the Autonomous Communities so that the information referred to in the preceding paragraph appears in the State Register of Consumer and User Associations, and shall provide them with information on the consumer associations registered therein which are nationwide in scope or which do not carry out their functions at Autonomous Community level.

CHAPTER IV

Representation and consultation

Article 37. Rights of consumer and user associations.

Nationwide consumer and user associations above Autonomous Community level, legally established and registered in the State Register of Consumer and User Associations, shall have the right to the following, under the terms determined legally or in regulations:

- a) To be declared of public utility.
- b) To receive public subsidies and incentives.
- c) To represent its members as a consumer and user association and to carry out the relevant activities in defence of the said members, of the association, or of the general, collective or diffuse interests of consumers and users.
- d) To enjoy the right to free legal assistance in the manner envisaged under Law 1/1996 of 10 January 1996 on Free Legal Assistance.
- e) To join the Council of Consumers and Users, under the terms determined in regulations.

Article 38. Council of Consumers and Users.

1. As a national body for the consultation and institutional representation of consumers and users, through its organisations, the Council of Consumers and Users is made up of the most representative nationwide consumer and user associations in view of their territorial implementation, member numbers, background in the field of consumer protection and activity programmes being carried out.

The composition and functions of the Council of Consumers and Users shall be determined according to regulations.

2. The Government shall encourage cooperation between the Council of Consumers and Users, the consumer associations comprising it, and business organisations.

3. The Council of Consumers and Users shall coordinate mechanisms for cooperation with the consumer consultation and representation bodies established by the Autonomous Communities. The Council of Consumers and Users, through the mechanisms it provides, shall be able to collaborate with the respective consultative bodies to prepare the rulings requested of them in hearings.

Article 39. Consultation hearing in the process of drawing up provisions of a general nature.

1. The Council of Consumers and Users shall be consulted as part of the procedure for drawing up provisions of a general nature, with nationwide scope, relating to matters directly affecting consumers and users.

2. Consultation with the Council shall be mandatory in the following cases:

- a) Regulations in application of this law.
- b) Regulations on goods and services for use and consumption.
- c) Organisation of the internal market and market discipline.
- d) Prices and rates for services, insofar as they directly affect consumers or users, and are legally subject to the control of public administrations.

e) General terms of contracts or contract models regulated or authorised by the public authorities for services of general interest or provided to consumers by public companies.

f) Other cases in which the law so determines.

3. Business associations shall be consulted in the process of drawing up provisions of a general nature relating to matters that affect them directly.

This consultation hearing shall be mandatory in the circumstances described in paragraphs a), b), c) and f) of the preceding paragraph.

4. It shall be understood that the requirement of this hearing procedure is satisfied when the aforementioned associations are represented on the collegiate bodies involved in drafting the provision. In the remainder of cases, notification or communication shall be addressed to the relevant business group or federation.

TITLE III

Institutional cooperation

CHAPTER I

Consumer sector conference

Article 40. Consumer Sector Conference.

1. The Consumer Sector Conference, chaired by the Minister of Health and Consumer Affairs and consisting of the Minister and the competent regional Ministers from the Autonomous Communities, is the State's highest body for institutional cooperation with the Autonomous Communities.

2. Without prejudice to the participation of the nationwide association of more established local authorities in the Consumer Sector Conference, in accordance with the provisions of Article 5.4 of Law 30/1992 of 26 November 1992, the Ministry of Health and Consumer Affairs shall promote institutional cooperation with local administrations through the said association, establishing permanent bodies for institutional cooperation where appropriate, in accordance with the provisions of regulation on the basis for local governance.

Article 41. Functions of the Consumer Sector Conference.

The functions of the Consumer Sector Conference are:

- a) To serve as a channel for cooperation, communication and information between the Autonomous Communities and the General Central Government Administration on consumer matters.
- b) To approve the common criteria for action and coordination, as well as proposals relating to policy in the sector.
- c) To approve joint programmes, projects and plans.
- d) To facilitate the involvement of the Autonomous Communities in European Union affairs in this field.
- e) To facilitate reciprocal information on consumer matters, to outline common statistics and to place obtained national statistical data at the disposal of the public.
- f) To cooperate in and promote national campaigns for inspection and control.
- g) To promote the enactment of suitable regulations in consumer matters, or the reform thereof, and to inform regulatory provisions in this area as appropriate.
- h) To establish criteria for action when a number of Autonomous Communities have jurisdiction.
- i) To plan the rational use of material resources that may be used jointly.
- j) To formulate a system for the training and continued improvement of personnel with specific tasks in consumer affairs.
- k) Any other functions conferred upon it by the legislation in force.

CHAPTER II

Institutional cooperation in matters of training and quality control

Article 42. Cooperation on training.

The Consumer Sector Conference and its institutional cooperation bodies may decide on measures intended to promote education and training in consumer matters, for:

- a) Educators.
- b) Personnel working for public administrations with competence in consumer affairs, especially those carrying out the functions of organisation, inspection, quality control and information.
- c) Personnel providing services to consumer and user associations and business organisations.
- d) Entrepreneurs carrying out their activities, directly or indirectly, in the consumer sphere.

Article 43. Cooperation on quality control.

Bodies in institutional cooperation with Autonomous Communities, with competence in this matter, may decide to carry out planned market-control campaigns or activities, directly or in collaboration with consumer and user associations, especially in relation to:

- a) Goods and services of common, ordinary and general use or consumption.
- b) Goods and services that have a high number of incidents in statistical or epidemiological studies.
- c) Goods or services for which a high number of claims are filed, or those in which, due to the type of claim, it may reasonably be assumed that there are situations that are particularly injurious to the rights of consumers or users, or which affect especially vulnerable groups.
- d) Goods or services subject to specific research programmes.
- e) Other goods or services in respect of which this decision is taken in light of their characteristics, particular complexity or any other relevant reason.

Article 44. Information regarding the quality of goods and services.

1. The competent public administrations shall be able to publish the results of market studies, campaigns and control activities that they have carried out.

2. Except for reasons of health and safety, the research centres of General Central Government Administration which are involved in the quality control of goods and services shall be able to disclose or authorise the disclosure of specific data concerning goods or services, obtained through studies, analyses or quality checks carried out, in circumstances where:

- a) There is express approval from the entrepreneur supplying the relevant goods or services.
- b) The results obtained have served as a basis for the imposition of a final administrative sanction.
- c) The results obtained show defects or faults which exceed the tolerance indices or margins established in regulations, and where the checks were carried out as a safeguard for the parties concerned, or where these have relinquished the same.

d) The data disclosed show results concerning the composition, quality, presentation or similar, which are within the tolerance indices or margins established in regulations.

3. Under the circumstances mentioned in paragraphs a), c) and d) of the preceding paragraph, before authorising the publication of study, test, analysis or quality control results, a hearing must be granted to the producers involved within a period of 10 days.

4. When data subject to possible disclosure has been obtained at the request of another public administration, the results shall not be published if expressly opposed by the latter.

Article 45. Other instruments for the control and promotion of quality of goods and services.

The Consumer Sector Conference and its institutional cooperation bodies may agree to:

a) The development of market-research programmes, through carrying out analyses on goods and services which meet the requirements established in the regulations on the execution of these analyses, which, in any case, must guarantee the rights of the parties affected.

b) The carrying out of a statistical analysis on the claims and complaints filed by consumers and users in Spanish territory.

c) The requirements that must be guaranteed by entrepreneurs deserving of national awards or signs of quality.

TITLE IV

Sanctioning authority

CHAPTER I

General provisions

Article 46. General principles.

1. On using their sanctioning authority, the competent public administrations shall penalise conduct classified as infringements of consumer and user protection, without prejudice to existing civil, criminal or other liabilities.

2. The hearing of a criminal case before the Courts of Justice shall lead to the suspension of any administrative proceedings that may have been initiated on the same factual grounds and, if any, of the administrative proceedings imposing the sanction. Administrative measures that may have been adopted to safeguard personal health and safety shall be maintained for so long as the judicial authority should pronounce in this regard.

Under no circumstances shall a dual sanction take place on the same grounds and in accordance with the same public interests, although other liabilities shall be enforced where they derive from other facts or infringements.

Article 47. Competent authorities.

1. The competent Spanish administrations shall, in each case, sanction infringements of consumer and user protection committed in Spanish territory, regardless of the nationality, address or location of the establishments of the responsible party.

2. Infringements shall be considered to be committed in any of the places where actions or omissions constituting infringements occur and, except in the event of infringements relating to requirements of establishments, installations or personnel, in all places in which injuries or risks to the interests of the consumers and users protected by the sanctioning law are apparent.

3. Authorities with competence over consumer affairs shall likewise sanction conducts classified as infringements of consumer protection by entrepreneurs in sectors that have specific regulations, and unfair commercial practices in respect of consumers or users⁶.

Article 48. Restoration of situations altered by infringement and compensation for damages.

In accordance with the provisions of Article 130.2 of Law 30/1992 of 26 November 1992 on the Legal Regime of Public Administrations and the Common Administrative Procedure, in sanctioning procedures the offender may be required to restore the situation altered by the infringement to its original state and, as appropriate, to compensate for proven damages caused to the consumer, these being determined by the body with competence for imposing the sanction, which shall notify the offender so that the same may proceed to its satisfaction within the period of one month, failing which there would be no obstacle to legal action in the courts.

⁶ Paragraph worded in accordance with Law 29/2009 of 30 December 2009 (Official State Gazette no. 315, of 31 December) amending the Legal Regime on Unfair Competition and Advertising to Improve Consumer and User Protection.

CHAPTER II

Infringements and sanctions

Article 49. Infringements in matters of consumer protection.

1. The following are infringements in matters of consumer protection:

- a) Non-compliance with the requirements, terms, obligations or prohibitions in respect of public health.
- b) Actions or omissions causing risks or actual damages to the health and safety of consumers and users, whether consciously or deliberately, or through the abandonment of the diligence and precautions required by the activity, service or facility concerned.
- c) Non-compliance with or transgression of the pre-requisites specifically drawn up by the competent authorities for specific situations, with the aim of preventing contamination and other harmful conduct and circumstances that can be seriously damaging to public health.
- d) Alteration, adulteration or fraud in respect of goods and services intended for consumption, through the addition or subtraction of any substance or component, the alteration of composition or quality, non-compliance with the conditions inherent to its nature or the guarantee, mending or repair of long-lasting products and in general any situation giving rise to deception or confusion or which prevent the recognition of the true nature of the goods or services.
- e) Non-compliance with the regulatory standards on prices, the unjustified imposition of conditions on unsolicited services, minimum amounts or any other type of illicit intervention or action that entails an increase in prices or trade margins.
- f) Non-compliance with the rules relating to the registration, standardisation, labelling, packaging and advertising of goods and services.
- g) Non-compliance with safety provisions insofar as this affects or may represent a risk to consumers and users.
- h) The obstruction or refusal to supply data or to facilitate the functions of information, monitoring or inspection.
- i) The inclusion of unfair terms in contracts.
- j) Unjustified limitations or demands on the consumer's right to bring continuing or successive performance contracts to an end, obstruction of the exercise of said consumer right through the agreed procedure, failure to make such provision, or failure to notify the user of the procedure for withdrawal from the service.
- k) The refusal to satisfy the claims of the consumer or user, regardless of nationality or place of residence, when such satisfaction is within the power of the entrepreneur, as well as any form of discrimination in respect of such claims, and this does not reduce the possibility of establishing differences in access conditions where directly justified by objective criteria⁷.
- l) The use of unfair commercial practices in respect of consumers or users.
- m) Discriminatory conduct regarding access to goods and the provision of services, especially those described as such in Organic Law 3/2007 of 22 March 2007 on the Effective Equality of Women and Men.
- n) Non-compliance with the requirements, obligations or prohibitions established in this law or the provisions thereof, under the terms envisaged in the applicable regional legislation⁸.

⁷ Section added by Law 25/2009 of 22 December 2009 (Official State Gazette no. 308, of 23 December), with the previous section k) becoming section l).

⁸ Section l) drafted and sections m) and n) added in accordance with Law 29/2009 of 30 December 2009 (Official State Gazette No. 315, of 31 December), amending the Legal Regime on Unfair Competition and Advertising to Improve Consumer and User Protection.

2. The following are infringements of consumer protection in distance and off-premises contracts:

- a) Non-compliance with the established regime in matters of contracts concluded away from business premises.
- b) Non-compliance with the obligations imposed in the regulations on distance contracts in respect of the information and documentation that must be provided to consumers and users, completion deadlines and the refund of amounts paid, the sending of unsolicited material to consumers and users in the hope of collecting payment, and the use of communication technologies requiring the express prior consent or the absence of objection on the part of the consumer or user, when the relevant circumstance does not exist.

Article 50. Seriousness of infringements.

1. Public administrations may define infringements as slight, serious or very serious, considering the criteria of risk to health, market position of the offender, amount of profit obtained, degree of intent, seriousness of the social disturbance caused, general extent of the infringement and repeat offences.

2. Infringements defined in paragraph 2 of the preceding article shall be considered, in all cases, as serious infringements, becoming very serious in the event of repeat offences and where the invoiced amount to which the infringement refers is in excess of 601,012.10 euros.

Article 51. Sanctions.

1. Infringements in matters of consumer and user protection, provided for herein, shall be sanctioned by the competent public administrations through fines in accordance with the following scale:

- a) Minor infringements: up to 3,005.06 euros.
- b) Serious infringements: between 3,005.07 euros and 15,025.30 euros, with the amount which might exceed this up to five times the value of the goods or services subject to the infringement.
- c) Very serious infringements: between 15,025.31 and 601,012.10 euros, with the amount which might exceed this up to five times the value of the goods or services subject to the infringement.

2. In the event of very serious infringements, the competent public administration shall be able to decide upon the temporary closure of the establishment, facility or service, for a maximum period of five years. In such cases, the employment legislation relating to company obligations regarding workers shall be applicable.

3. The closure or shutdown of establishments, facilities or services which do not have the mandatory public health authorisations or records, or the suspension of operations until such time as the defects are rectified or the requirements satisfied in respect of public health, hygiene or safety, and the precautionary or definitive removal of goods or services from the market on the grounds of health and safety, are not considered to be sanctions.

Article 52. Accessory penalties.

The competent public administration shall be able to agree the following accessory sanctions for the infringements of consumer and user protection set forth herein:

- a) The seizure of merchandise that is adulterated, damaged, forged, fraudulent, unidentified or which may pose a risk to the consumer or user.

Offenders shall be liable for expenses resulting from the measures adopted in the above paragraph, including those arising from transport, distribution and destruction.

b) The announcement of the sanctions imposed, when these have been finalised in the administrative process, as well as the names and surnames or the company or registered names of the responsible individuals or legal persons, and the nature and type of infringement, provided that there are circumstances of risk to the health and safety of consumers and users, repeated infringements of a similar nature, or proven intent in the infringement.

TITLE V

Legal and extrajudicial proceedings for the protection of consumers and users

CHAPTER I

Injunctions

Article 53. Actions for injunctions.

Injunctions are aimed at obtaining a judgement that orders the defendant to cease from conduct and to prohibit the future repetition thereof. Suspension actions may also be brought to prohibit the practice of conduct concluded at the time the action is brought, if there is sufficient evidence pointing towards the immediate repetition of this conduct.

For the purposes of the provisions of this chapter, recommending the use of unfair terms is also considered as conduct contrary to this law in respect of unfair terms.

Article 54. Legitimation.

1. In the event of behaviour contrary to the provisions of this law in respect of unfair terms, contracts concluded away from business premises, distance selling, guarantees in the sale of products and package travel, the following shall be authorised to bring injunctions:

- a) The National Consumer Institute and the corresponding bodies or agencies of Autonomous Communities and local administrations with jurisdiction in matters of consumer protection.
- b) The consumer and user associations that meet the requirements established herein, or in regional legislation on matters of consumer and user protection, if any.
- c) The public prosecution service.
- d) Agencies in other Member States of the European Community established for the protection of the collective and diffuse interests of consumers and users, and which are authorised through their inclusion on the list published for such purposes in the Official Journal of the European Union.

Judges and Courts shall accept this list as proof of the capacity of the authorised agency to be a party, without prejudice to examination of whether the bringing of an action for discontinuance is legitimised by the aims of the agency and the interests of the affected parties.

2. The agencies cited in the previous paragraph shall be able to appear in court in the proceedings brought, if they deem it appropriate for the protection of the interests they represent.

3. Authorisation to bring an action for injunction in the event of conduct by entrepreneurs contrary to this law and detrimental to the collective or diffuse interests of consumers and users, shall be governed by the provisions of Article 11, paragraphs 2 and 3 of Law 1/2000 of 7 January 2000 on Civil Procedure.

The following are also authorised to bring actions for discontinuance:

- a) The National Consumer Institute and the corresponding bodies or agencies of Autonomous Communities and local administrations with competence in consumer protection matters.
- b) The public prosecution service.

Article 55. Actions for injunction in other Member States of the European Union.

1. The National Consumer Institute and the corresponding bodies or agencies of Autonomous Communities and local administrations with competence over the protection of consumers and users, when included on the list published in the Official Journal of the European Communities, shall be able to bring actions for injunction in other Member States of the European Community.

The Ministry of Justice shall notify the European Commission of each of the said agencies, along with their names and purpose, upon request by the latter, and shall serve notice to the National Consumer Institute.

2. Consumer and user associations participating in the Council of Consumers and Users, when included on the list published in the Official Journal of the European Communities, shall be able to bring actions for injunction in other Member States of the European Community and should apply to the National Consumer Institute to be included on the list.

The Ministry of Justice shall notify the European Commission of each of the said agencies, along with their names and purpose, at the request of the National Consumer Institute.

Article 56. Imprescriptibility of actions for injunction.

The actions for injunction envisaged in this title are imprescriptible, without prejudice to article 19, paragraph 2 of Law 7/1998 of 13 April 1998 on General Contractual Conditions, relating to the general terms contained in the Register of General Contractual Conditions.

CHAPTER II

Consumer arbitration system

Article 57. Consumer Arbitration System.

1. The Consumer Arbitration System is the extrajudicial system for the settlement of conflicts between consumers and users and entrepreneurs, through which the claims of consumers and users are settled, with no special formalities and in a manner that is binding and enforceable on both parties, provided that the conflict does not concern intoxication, injury, death or the existence of reasonable circumstantial evidence that an offence has been committed.

2. The organisation, management and administration of the Consumer Arbitration System and the procedure for the settlement of conflicts shall be established by the Government in regulations. Such regulations shall be able to provide for a decision in equity, unless the parties expressly opt for arbitration in law, the procedure by which electronic arbitration shall be administered, the cases in which claims are brought before the National Consumer Arbitration Board in respect of the judgements of regional arbitration boards regarding the acceptance or rejection of applications for arbitration, and cases in which a sole arbitrator shall act in the administration of consumer arbitration.

3. The arbitration bodies shall be made up of representatives from the business sectors concerned, consumer and user associations and public administrations.

4. Consumer arbitration agreements other than those stipulated in this article may only be agreed to once the material conflict or dispute between the contractual parties has arisen, except in cases of submission to institutional arbitration bodies created by laws or regulations for a sector or a specific eventuality.

Arbitration agreements negotiated in contravention of the provision of the preceding paragraph shall be null and void.

Article 58. Submission to the Consumer Arbitration System.

1. The submission of parties to the Consumer Arbitration System shall be voluntary and must be stated expressly in writing, via electronic media or in any other legally admissible form for providing evidence of the agreement.

2. Arbitration agreements and public offerings of adhesion to consumer arbitration, where made by those declared subject to bankruptcy proceedings, shall be invalid. For such purposes, the notice of commencement of bankruptcy proceedings shall be communicated to the body through which the agreement was drawn up, and to the National Consumer Arbitration Board, with the debtor subject to bankruptcy proceedings excluded from the Consumer Arbitration System, for all purposes, from this time.

BOOK II

Contracts and guarantees

TITLE I

Consumer and user contracts

CHAPTER I

General provisions

Article 59. Scope of application.

1. Consumer contracts are those drawn up between a consumer or a user and an entrepreneur.
2. Consumer and user contracts shall be governed, in respect of all that which is not expressly established herein or in special laws, by the legal provisions governing civil and commercial contracts.

Sector regulations on consumer contracts shall, in all cases, respect the minimum level of protection afforded by this law.

3. Consumer contracts which incorporate general contractual conditions are also subject to Law 7/1998 of 13 April 1998 on General Contractual Conditions.

Article 60. Pre-contract information.

1. Before contracting, the entrepreneur shall place relevant, truthful and sufficient information on the essential features of the contract adapted to the circumstances at the disposal of the consumer or user, with particular regard to the legal and financial terms and to the goods and services which are the subject of the contract.

2. For such purposes the obligations of information regarding the goods or services, as established in this and other applicable laws, shall be applicable, as will:

- a) The name, registered name and full address of the party responsible for the contractual offer and, as appropriate, the name, registered name and full address of the trader on behalf of whom said party is acting.
- b) The full price including taxes or budget, as appropriate. All information provided to the consumer in respect of the price of goods or services, including advertising, shall report the full, final price with a breakdown of the total containing any increases or discounts that may be applicable, expenses that may be passed on to the consumer or user and additional expenses for incidental services, financing or other similar payment terms.
- c) Date of delivery, execution of the contract and duration.
- d) Procedure at the consumer's disposal for terminating the contract.
- e) Guarantees offered.
- f) Language or languages in which the contract may be formalised, when in a language other than that in which the pre-contract information was provided.

g) Existence of the right to withdrawal from the contract which may be granted to the consumer or user, and the time period and manner in which it may be exercised.

h) The full address at which the consumer or user may file complaints and claims and, as appropriate, information regarding the extrajudicial system for the resolution of conflicts, envisaged under article 21.4⁹.

3. Pre-contract information shall be provided to the consumer free of charge.

Article 61. Inclusion of offer, promotion and advertising in the contract.

1. The offer, promotion and advertising of goods and services shall be in keeping with the nature, features, use or purpose thereof, and with the legal or financial terms of the contract.

2. The content of the offer, promotion or advertising, the features inherent to each of the goods and services, the legal and financial terms and the guarantees offered shall be enforceable by consumers and users, even when not appearing expressly in the signed contract or in the provided document or receipt, and must be taken into account when determining the principle of contractual compliance.

3. Notwithstanding the provision of the preceding paragraph, if the signed contract contains more beneficial clauses, these shall prevail over the content of the offer, promotion or advertising.

Article 62. Contracts.

1. When contracting consumers and users, their wish to enter into the contract or, as appropriate, to terminate the contract, should be unequivocally stated.

2. Terms which impose onerous or disproportionate obstacles to the exercise of recognised consumer rights are prohibited in consumer contracts.

3. In particular, in continuing or successive performance contracts for the supply of products or the provision of services, terms which establish excessive duration periods or limitations that exclude or hinder the consumer or user's right to terminate the contract, are prohibited.

Consumers and users may exercise their right to terminate the contract in the same way as they agreed, without incurring any kind of sanction or onerous or disproportionate burden, such as the loss of amounts paid in advance, the payment for services not actually provided, the unilateral execution of penalty clauses that may have been contractually established, or the setting of compensation that does not correspond to the damages actually caused.

4. Continuing or successive performance contracts for the supply of products or the provision of services should make express provision for the procedure by which the consumer or user may exercise his or her right to terminate the contract.

Article 63. Documentary confirmation of contractual arrangements.

1. In consumer and user contracts, receipts, copies or accrediting documents shall be provided, containing the essential terms of the operation, including the general contractual conditions accepted and signed by the consumer or user, when these are used in the contract.

2. With the exception of the legal provisions relating to contracts subject to the legal obligation to be drawn up in a public document, the formalisation of the contract shall be free of charge for the consumer when laws or regulations state that the latter must provide documentary evidence in writing or any other medium of an enduring nature.

⁹ Section added by Law 25/2009 of 22 December 2009 (Official State Gazette No. 308, of 23 December) amending several Laws for the Adaptation thereof to the Law on Freedom of Access to Service Activities and its Exercise.

Article 64. Additional documentation in property sale contracts.

In the event of houses being transferred for the first time following the entry into force of this law, the documentation envisaged in the Law on the Organisation of Building Construction or the applicable Autonomous Community law shall also be provided.

Article 65. Contract integration.

Consumer contracts shall be drawn up in favour of the consumers and users, in accordance with the principle of objective good faith, including in circumstances in which the relevant pre-contract information is omitted.

Article 66. Appearance in person of consumers and users.

In consumer contracts, consumers and users may not be obliged to appear in person to make collections, payments or similar procedures. In all cases it must be ensured that a record is kept of actions carried out.

Article 67. Connection points.

1. The rules on protection against unfair terms included in Articles 82 to 91 inclusive shall be applicable to consumers and users, regardless of the law chosen by the parties to govern the contract when the contract maintains a close relation to the territory of a Member State of the European Economic Area.

In particular, it shall be considered that there are close links when the entrepreneur carries out activities in one or several Member States of the European Economic Area, or directs such activities to one or several Member States through advertising or communication media, and the contract is included in the framework of these activities. In contracts relating to real property, it shall be considered that there are close links when properties are located in the territory of a Member State.

2. The rules on protection in matters of distance contracts and guarantees, respectively contained in Articles 92 to 106 inclusive, and Articles 114 to 126 inclusive, shall be applicable to consumers and users irrespective of the law chosen by the parties to govern the contract, when the contract maintains a close relation to the territory of a Member State of the European Economic Area.

In particular, it shall be considered that there are close links when goods must be used, rights exercised or services provided in one of the Member States of the European Union, where the contract has been fully or partially concluded in one of the Member States, if one of the parties is a citizen of a Member State of the European Union, or if the legal transaction presents any other similar close link or connection to the territory of the European Union.

CHAPTER II

Right to withdrawal

Article 68. Regime and content of the right to withdrawal.

1. The right to withdraw from a contract is the power of a consumer or user to render a signed contract void, notifying the other contracting party to such effect within the period established for the exercise of this right, with no requirement to justify this decision and not incurring a penalty of any kind.

Terms imposing penalties on consumers or users for exercising their right to withdrawal shall be legally null and void.

2. The consumer shall have the right to withdraw from the contract in the circumstances provided for in laws or regulations, and when this right is recognised in the offer, promotion or advertising or in the contract itself.

3. The right to withdrawal, legally conferred upon the consumer and user, shall be governed in the first instance by the legal provisions which establish this in each case and, failing this, by the provisions of this title.

Article 69. Obligation of notification regarding the right to withdrawal.

1. When the law confers the right to withdrawal to the consumer or user, the contracting entrepreneur must give written notice in the contract document, in a clear, comprehensible and accurate manner, of the right to withdraw from the contract and of the requisites and consequences of such action, including the methods by which received goods or services can be returned. The entrepreneur must also provide the consumer or user with a withdrawal document, clearly identified as such, stating the name and address of the person to whom it must be sent and the identifying details of the contract and contractors to which it refers.
2. It is the responsibility to the entrepreneur to prove compliance with the provision of the preceding paragraph.

Article 70. Formalities for exercising of the right to withdrawal.

The exercise of the right to withdrawal shall not be subject to any formality, it being sufficient that evidence is provided in any legally acceptable manner. In all cases this right shall be considered validly exercised by sending the withdrawal document or returning the products received.

Article 71. Time limit for exercising the right to withdrawal.

1. Consumers and users shall have a minimum period of seven working days to exercise the right to withdrawal. The consideration of working days shall be determined according to the law of the place in which the goods were delivered or services rendered in relation to the contract.
2. Provided that the entrepreneur has complied with the duty of information and documentation established under Article 69.1, the period to which the preceding paragraph refers shall be counted from the receipt of the contracted goods, or from the signing of the contract if this relates to the provision of services.
3. If the entrepreneur has not complied with the duty of information and documentation regarding the right to withdrawal, the period in which this right may be exercised shall be three months counting from the delivery of the contracted goods, or from the signing of the contract if this is related to the provision of services. If the duty of information and documentation is satisfied within the cited three-month period, the period envisaged by law for the exercise of the right to withdrawal shall be counted from such time.
4. In determining observance of the period for withdrawal, the date of issue of the declaration of withdrawal shall be taken into account.

Article 72. Evidence of exercise of the right to withdrawal.

It is the responsibility of the consumers or users to prove that they have exercised the right to withdrawal in accordance with the provisions of this chapter.

Article 73. Expenses linked to the right to withdrawal.

The exercise of the right to withdrawal shall imply no expense whatsoever for the consumer or user. For these purposes, the place of performance shall be considered to be that in which the consumer or user received the provision of goods or services.

Article 74. Consequences of exercising the right to withdrawal.

1. When the right to withdrawal has been exercised, the parties shall mutually return the contracted goods or services in accordance with the provisions of articles 1,303 and 1,308 of the Civil Code.
2. Consumers and users shall not have to refund any amounts as a result of the decrease in the value of the goods as a consequence of their nature or their use in accordance with the agreed terms, or due to the use of the service.

3. Consumers and users shall have the right to the refund of the necessary and useful expenses that may have been incurred in relation to the goods.

Article 75. Impossibility of returning the service provided to the consumer or user.

1. In the event that it is impossible for the consumer or user to return the contracted goods or services due to loss, destruction or other cause, this shall not deprive the consumer of the possibility of exercising the right to withdrawal.

In such cases, when the impossibility of return is attributable to consumers or users, these shall be liable for the market value of the goods or services at the time when the right to withdrawal was exercised, except when this value exceeds the purchase price, in which case the consumer or user shall be liable for the purchase price.

2. Should the entrepreneur have failed to comply with the duty of information and documentation regarding the right to withdrawal, the impossibility of return shall only be attributable to the consumer or user when the latter has failed in the diligence required of them in their own affairs.

Article 76. Return of sums received by the entrepreneur.

When the consumer or user has exercised the right to withdrawal, the entrepreneur shall be obliged to refund the sums paid by the consumer or user, without withholding expenses. The refund of these sums shall be made as soon as possible and, in all circumstances, within the maximum term of 30 days following withdrawal.

Should this period elapse and the consumer or user has not recovered the sum owed, they shall have the right to claim double this amount, without prejudice to being further compensated for damages caused which may exceed this amount.

The entrepreneur has the burden of proof regarding compliance in respect of this time limit.

Article 77. Withdrawal from a contract linked to the financing of the consumer or user.

In contracts for which the right to withdrawal is exercised, when the price to be paid by the consumer or user has been fully or partly financed through a loan granted by the contracting entrepreneur or a third party following agreement between the consumer or user and the contracting entrepreneur, the exercise of the right to withdrawal shall simultaneously entail the settlement of the loan with no penalty being incurred by the consumer or user.

Article 78. Proceedings for annulment or termination.

The failure to exercise the right to withdrawal within the established period shall not be an obstacle to the subsequent bringing of proceedings for the annulment or termination of the contract, where these are appropriate in accordance with the law.

Article 79. Contractual right to withdrawal.

In the absence of specific provisions in the offer, promotion or advertising or in the contract itself, the contractually recognised right to withdrawal shall meet with the provisions set forth in this title.

Consumers and users that exercise the contractually recognised right to withdrawal shall, under no circumstances, be under the obligation to compensate for damages or wear and tear in the goods, or for the use of the service, solely as a result of testing in order to make a decision on whether to acquire the same.

Under no circumstances shall entrepreneurs be able to demand advance payments or the furnishing of guarantees, including the acceptance of goods that guarantee possible compensation in the event that the right to withdrawal is exercised.

TITLE II

General conditions and unfair terms

CHAPTER I

Terms not individually negotiated

Article 80. Requirements of terms not individually negotiated.

1. Consumer contracts that use terms not individually negotiated, including those stipulated by public administrations and the agencies and companies that depend on them, must comply with the following requirements:

- a) Accuracy, clarity and simplicity in the wording, with the possibility of being directly understood, without references to texts or documents that have not been provided prior to or at the time of the conclusion of the contract, and to those which in all cases shall be expressly referred to in the contractual document.
- b) Accessibility and legibility, so that consumers and users are able to become acquainted with the existence and content of the contract prior to its signing.

Without prejudice to the provisions of Article 63.1, in cases of telephone or e-contracting with general conditions it shall be necessary to clearly state, in terms that establish the acceptance of each and every term of the contract in accordance with the regulations, with no need for a conventional signature. In such cases, proof of the contract agreed to shall be sent immediately in writing to the consumer or user unless there is express objection from the same, using any enduring medium appropriate for the technique of distance communication, in which all the terms of the contract are clearly stated. The burden of proof of compliance with this obligation shall fall upon the stipulating party.

The period for exercising the consumer's right to withdrawal from a telephone or e-contract with general conditions, under the circumstances established in regulations, shall be calculated in accordance with the provisions of Article 71.

- c) Good faith and fair balance between the rights and obligations of the parties, which, under all circumstances, excludes the use of unfair terms.

2. When individual actions are brought, the interpretation most favourable to the consumer shall prevail in the event of doubts over the meaning of a term.

Article 81. Approval and information.

1. Clauses, conditions or stipulations used by public companies or companies licensed to provide public services shall be subject to the approval and control of the competent public administrations, when this is stipulated as a valid requirement, independent of the consultation of the Council of Consumers and Users as provided for in this or other laws. The foregoing shall be without prejudice to compliance with the general provisions set forth herein.

2. In the professional exercise of their respective public functions, Notaries and Property and Commercial Registrars shall inform consumers and users in affairs inherent to their speciality and competence.

CHAPTER II

Unfair terms

Article 82. Concept of unfair terms.

1. Unfair terms shall be considered to be all those stipulations not individually negotiated and practices for which express consent has not been received, which, counter to the requirements of good faith, may cause a substantial imbalance of the rights and obligations of the parties resulting from the contract, to the detriment of the consumer and user.

2. The fact that certain parts of a clause or an isolated clause have been individually negotiated shall not exclude the application of the rules on unfair terms to the rest of the contract.

An entrepreneur who states that a certain term has been individually negotiated shall assume the burden of proof.

3. The unfairness of a term shall be seen in view of the nature of the goods or services to which the contract relates and considering all concurrent circumstances at the time the contract was signed, as well as all other terms of the contract or of another contract to which it is subordinated.

4. Notwithstanding the provisions of the preceding paragraphs, unfair terms shall include those which, in accordance with articles 85 to 90 inclusive:

- a) Bind the contract to the entrepreneur's will,
- b) Limit the rights of consumers and users,
- c) Establish a lack of reciprocity in the contract,
- d) Impose disproportionate guarantees on consumers and users or wrongfully impose the burden of proof upon them,
- e) Are disproportionate in relation to the execution and execution of the contract, or
- f) Contravene the rules on the applicable competence and law.

Article 83. Annulment of unfair terms and contract integration.

1. Unfair terms shall be legally null and void and shall be considered ineffective.

2. The part of the contract affected by the nullity shall be drawn up in keeping with the provisions of Article 1,258 of the Civil Code and the principle of objective good faith.

For these purposes, the Judge declaring the nullity of said terms shall draw up the contract and shall have moderating powers in respect of the rights and obligations of the parties, when the contract remains in force, and of the consequences of its ineffectiveness in the event of substantial damages to the consumer or user.

The Judge shall only be able to declare the ineffectiveness of the contract when the terms remaining in force establish an unfair situation in the position of the parties that cannot be rectified.

Article 84. Authorisation and registration of terms declared unfair.

Notaries and Property and Commercial Registrars, in the professional exercise of their respective public functions, shall neither authorise nor register contracts or legal transactions that seek to include terms that have been

declared null and void, due to unfairness, in judgements recorded in the Register of General Contractual Conditions.

Article 85. Unfair terms that bind the contract to the entrepreneur's will.

Terms that bind any aspect of the contract to the will of the entrepreneur shall be deemed unfair and include the following in all cases:

1. Terms that reserve an excessively long or insufficiently specified period for the entrepreneur to accept or reject a contractual offer, or to duly comply with the performance.
2. Terms that envisage the automatic extension of a fixed-term contract if the consumer or user does not express any objection, setting a deadline that does not effectively allow the consumer or user to express their wish not to extend the contract.
3. Terms that provide the entrepreneur with the power to unilaterally interpret or amend the contract, except, in the latter case, where there are valid grounds specified in the contract.

In financial services contracts, the provision of the foregoing paragraph shall be understood without prejudice to terms by which the entrepreneur reserves the power to modify, without prior notice, the interest rate owed by or to the consumer, or the amount for other expenses related to the financial services where these are adapted to an index, provided that such indices are legal and that the manner in which the rate varies is described, or in other cases with valid grounds, on the condition that the entrepreneur is obliged to communicate this to the other contracting parties as soon as possible and that the latter are able to immediately terminate the contract without incurring a penalty.

The terms of indefinite term financial services contracts may also be unilaterally amended for valid reasons stated therein, provided that the entrepreneur is obliged to inform the consumer or user with a reasonable period of notice and that the latter has the power to unilaterally terminate or rescind the contract as appropriate, without prior notice when there are valid grounds, and on condition that the entrepreneur informs the other contracting parties of this immediately.

4. Terms which authorise the entrepreneur to terminate a fixed term contract in advance, when the same power is not recognised for the consumer or user, or terms that authorise the entrepreneur to terminate indefinite term contracts within a disproportionately brief period, or without providing notice sufficiently in advance.

The provisions of this paragraph do not affect terms that may envisage the termination of the contract due to non-compliance or for serious reasons beyond the control of the parties, which may alter the circumstances that gave rise to the signing of the contract.

5. Terms that lead to consumers or users being unconditionally bound to the contract, even where the entrepreneur may not have complied with his or her obligations.
6. Terms that entail the imposition of a disproportionately high amount of compensation on consumers or users who do not comply with their obligations.
7. Terms that subject the consumer or user to a term in which performance depends solely on the will of the entrepreneur when a firm commitment has been demanded of the consumer or user.
8. Terms that entail the setting of delivery dates that are purely indicative and conditional on the will of the entrepreneur.
9. Terms that establish the exclusion or limitation of entrepreneurs' obligations to respect agreements or commitments taken on by their agents or representatives, or which make their commitments conditional upon compliance with certain formalities.
10. Terms that envisage stipulation of the price upon delivery of goods or services, or those that grant the entrepreneur the power to increase the final price in respect of that agreed, and there are no objective grounds in either case and

no recognition of the right of the consumer or user to terminate the contract if the final price is much greater than the price initially stipulated.

The provision of the foregoing paragraph shall be understood without prejudice to the adaptation of prices to an index, provided that such indices are legal and that the manner of price variation is explicitly described in the contract.

11. Terms that grant the entrepreneur the right to determine whether the goods or services are in keeping with the stipulations of the contract.

Article 86. Unfair terms that restrict basic consumer rights.

In all cases, unfair terms shall include those which limit or deprive consumers and users of the rights recognised in dispositive or mandatory provisions and, in particular, those stipulations which may provide for:

1. The inappropriate exclusion or limitation of the legal rights of consumers and users due to the total or partial non-compliance or the defective performance of the entrepreneur.

In particular, terms amending the laws on contract compliance in respect of the goods or service placed at the disposal of the consumer or user, to the detriment thereof, limiting the consumer or user's right to compensation for damages caused by lack of conformity.

2. The exclusion or limitation of the entrepreneur's liability in contract performance, for damages, death or injuries caused to the consumer or user due to an action or omission of the entrepreneur.

3. The entrepreneur's release from liability through the assignment of the contract to a third party, without the consent of the debtor, where this may reduce the guarantees of the latter.

4. The deprivation or restriction of the consumer or user as regards credit compensation powers, retention or allocation.

5. The limitation or exclusion of the consumer or user's power to terminate the contract due to the non-compliance of the entrepreneur.

6. The imposition of waivers on the delivery of documents accrediting the transaction.

7. The imposition of any other waiver or limitation on the rights of consumers or users.

Article 87. Unfair terms due to lack of reciprocity.

Unfair terms shall include those which determine a lack of reciprocity in the contract, contrary to good faith and to the detriment of the consumer or user and, in particular:

1. The imposition of obligations on the consumer and user to comply with all duties and considerations, even when the entrepreneur does not comply with his own.

2. The withholding of amounts paid by the consumer or user due to withdrawal, without providing for compensation of with an equivalent amount in the event of the entrepreneur's withdrawal.

3. The authorisation of the entrepreneur to terminate the contract at his or her discretion, when the same power is not recognised for the consumer or user.

4. The possibility of the entrepreneur keeping amounts paid for performance not yet out into effect when it is the entrepreneur who is responsible for terminating the contract.

5. Stipulations providing for the rounding up of time consumed, the price of goods or services, or any other stipulation that envisages payment for products or services that have not actually been used or consumed.

In sectors in which the commencement of the service entails a cost to companies or professionals that is inextricably linked but not passed on in the price, the separate billing for such costs shall not be considered unfair, where these take into account the service actually rendered.

6. Stipulations that impose onerous or undue obstacles to the exercise of the consumer rights recognised in the contract, particularly in continuing or successive performance contracts for the provision of services, the imposition of excessive time frames, the waiving of consumer's right to put an end to these contracts, the establishment of limitations that exclude or prevent the exercise of this right, and the hindrance of the exercise of this right through the agreed procedure. This is also the case with stipulations that provide for the imposition of formalities other than those envisaged for contracting, stipulations that allow for the loss of amounts paid in advance, payment for services not actually provided, which provide the entrepreneur with the power to unilaterally enforce the penalty clauses which may have been contractually agreed to, or which establish a level of compensation that does not correspond to the damages actually caused.

Article 88. Unfair terms regarding guarantees.

Under all circumstances, unfair terms shall be considered to include:

1. The imposition of guarantees that are disproportionate to the risk assumed.

Such disproportion shall not be considered to exist in respect of financing contracts or contracts negotiated by financial institutions in compliance with their specific regulations.

2. The imposition of the burden of proof, to the detriment of the consumer or user, in cases where it should fall upon the other contracting party.

3. The imposition on the consumer of the burden of proof for the entrepreneur's total or partial non-compliance with the obligations imposed by specific regulations in the field of distance financial services.

Article 89. Unfair terms affecting the completion and execution of the contract.

The following shall be considered unfair terms under all circumstances:

1. Acknowledgements of receipt or declarations of conformity based on fictitious events, and declarations that consumers or users adhere to terms which they have not had the opportunity to truly take into account before the signing of the contract.

2. The transfer to the consumer or user of the financial consequences of administrative or management errors which are not attributable to the same.

3. The imposition of documentation and handling charges on the consumer, when these are legally the responsibility of the entrepreneur. In particular, in property sales contracts:

- a) The stipulation that the consumer must bear expenses deriving from the preparation of entitlements, which by their nature are incumbent on the entrepreneur (new construction, horizontal property, mortgages to finance construction, or the division and cancellation thereof).
- b) The stipulation that forces the consumer to assume the mortgage of the entrepreneur or which imposes penalties in the event of failure to do so.
- c) The stipulations that forces consumers to pay taxes for which the person liable is the entrepreneur.
- d) The stipulation that forces consumers to pay expenses arising from the connection of utilities to the property, when the property must be delivered ready for occupancy.

4. The imposition of unsolicited supplementary or incidental goods or services on the consumer or user.

5. Price increases for incidental services, financing, deferments, surcharges, compensation or penalties that do not correspond to the additional services which may be accepted or rejected in each case, stated with due clarity or separately.

6. The express refusal to comply with the obligations or duties incumbent on the entrepreneur, with automatic referral to administrative or judicial claims proceedings.

7. The imposition of loan terms and conditions which exceed the limits for current account overdrafts contained in Article 19.4 of Law 7/1995 of 23 March 1995 on Consumer Credit.

8. The provision for agreements that waive or make settlements in respect of the consumer's right to choose a competent notary according to the law in order to authorise the public document in which the contract must initially or subsequently be formalised.

Article 90. Unfair terms relating to applicable law and competence.

Terms that establish the following shall also be deemed unfair:

1. Submission to arbitration other than consumer arbitration, except where this involves institutional arbitration bodies created by law for a specific circumstance or sector.

2. Provision for express agreement to submit to a Judge or Court other than that which has jurisdiction over the consumer or user's address, place of performance of the obligation, or such place as the asset is located in cases pertaining to real property.

3. Submission of the contract to foreign law regarding the place in which the consumer or user issues a business declaration or where the entrepreneur carries out activities aimed at promoting contracts of the same or similar nature.

Article 91. Contracts relating to securities, financial instruments and currencies.

Unfair terms referring to the unilateral amendment of contracts, the early termination of indefinite term contracts and price increases for goods and services, shall not be applied to contracts relating to securities, irrespective of their form of representation, financial instruments and other goods and services with prices linked to quotations, stock-market indices or financial market rates which the entrepreneur does not control. Neither shall they be applicable to currency trading, travellers cheques or international money orders.

TITLE III

Distance contracts

CHAPTER I

General provisions

Article 92. Concept of distance contracts.

1. The provisions of this title shall govern contracts signed with consumers and users in the context of an entrepreneurial activity, in which the contracting parties are not physically present at the same time, and provided that the offer and acceptance of this contract take place solely through a distance communication technique and as part of a remote contracting system arranged by the entrepreneur.

The validity and effectiveness of contracts relating to real property assets shall also be conditional on compliance with the requirements imposed by specific legislation in this regard.

2. Distance-communication techniques are considered to include: forms, with or without a specific recipient; standard letters; press advertising with an order coupon; catalogues; telephone with or without human operators, as in the case of automated calls and audiotext; radio; videophone; videotext with keyboard or touchscreen, whether through a computer or television screen; email; fax and television.

Article 93. Exceptions.

1. The regulations established in this title shall not apply to:

- a) Sales concluded through vending machines or automated commercial premises.
- b) Sales concluded in auctions, except those carried out electronically.
- c) Financial services contracts.
- d) Contracts signed with telecommunications operators due to the use of public telephones.
- e) Contracts signed for the construction of real property.

2. The provisions of Articles 96.1 and 2, on commercial communications; 97, on pre-contract information; 98, on the written confirmation of information; 101, on the right of withdrawal and 103, on execution and payment, shall not apply to:

- a) Contracts to supply foodstuffs, beverages or other commonly consumed household products supplied to the consumer or user's home address, residence or workplace by entrepreneurs who make frequent and regular visits.
- b) Contracts to supply accommodation, transport, meals or leisure services, when the entrepreneur undertakes to conclude the contract to provide such services by a certain date or within a specific period.

Article 94. Commercial communications and e-contracting.

In commercial communications via email or other methods of electronic communication, and in the distance contracting of goods and services through electronic media, specific regulations on information society services and e-commerce shall apply in addition to the provisions set forth in this title.

When the provisions of this title are in contradiction with the content of the specific regulations on information society services and e-commerce, the latter shall prevail.

Article 95. Intermediary services.

The operators of distance communication techniques, these being considered as those individual, legal, public or private persons that own the distance-communication techniques used by entrepreneurs, are obliged to endeavour, insofar as they are able, to ensure that entrepreneurs respect the rights conferred on consumers and users in this title, and comply with the obligations imposed on them herein.

The provisions of the foregoing paragraph shall not be enforceable on the providers of intermediary information society services, who will be governed by specific regulatory provisions on information society services and e-commerce.

Article 96. Commercial communications.

1. All commercial communications shall unequivocally state their nature as such.
2. In the case of telephone communications, the identity of the entrepreneur and the commercial purpose of the call shall be clearly and explicitly specified at the beginning of any conversation with consumers or users.
3. The use by the entrepreneur of communications techniques consisting of an automated call system without human intervention, or telefax, shall require the express prior consent of the consumer or user.
4. In all cases, the provisions in force on the protection of minors and respect for privacy shall be complied with. Where personal data originating from publicly accessible sources are used to carry out commercial communications, the recipient shall be provided with the information indicated in the Organic Law on the Protection of Personal Data, and shall have the opportunity to object to receiving said communications.

CHAPTER II

Pre-contract information and contracts

Article 97. Pre-contract information.

1. Before commencing the contracting procedure, the entrepreneur shall supply the truthful and sufficient information envisaged under article 60 to the consumer or user, in good time, along with
 - a) The cost of using the distance communication technique where this is calculated using a basis other than the basic rate.
 - b) The essential characteristics of the goods or services.
 - c) Delivery and transport costs, if any.
 - d) The validity period of the offer and the price and, if any, the absence of the right of withdrawal in the circumstances envisaged under article 102.
 - e) The minimum duration of the contract, where appropriate, in the case of contracts to supply goods or services intended for their permanent or repeated execution.
 - f) The circumstances and conditions in which the entrepreneur may supply goods or services of equivalent price and quality to replace those requested by the consumer or user, where there is a wish to provide for such an eventuality.

g) The form of payment and methods of delivery or execution.

h) As appropriate, a statement regarding whether the entrepreneur has access or adheres to any extrajudicial procedure for the settlement of conflicts.

2. The information contained in the preceding paragraph, the commercial purpose of which must be beyond doubt, shall be provided to consumers and users in a clear and unequivocal manner using any technique suited to the communications medium employed, and shall respect the principles of good faith in commercial transactions and protection of those who are unable to enter into contracts.

Article 98. Written confirmation of information.

1. Before the contract is completed, the following information must be provided to the consumer or user in the language used in the contract proposal or, as appropriate, the language chosen for contracting:

a) The information set forth in the preceding article.

b) The address of the establishment belonging to the entrepreneur where consumers and users may file their claims.

c) Information relating to technical assistance services or other after sales services and to any existing guarantees.

d) Conditions for the termination of the contract, where the contract is concluded for an indefinite term or a duration in excess of one year.

2. The information referred to in the preceding paragraph shall be provided in writing or, save for the express objection of the consumer or user, in any medium of enduring nature suited to the distance communication technique employed.

3. The provisions of this article shall not be enforceable on contracts relating to services which are only rendered once, the execution of which uses a distance communication technique, and in respect of which billing is carried out by the operator of the communication technique. Nevertheless, consumers and users shall, under all circumstances, be in a position to know the geographical address of the establishment of the entrepreneur at which they may file their claims.

Article 99. Necessity of express consent.

1. Under no circumstances shall the failure to respond to the distance contract offer be considered as acceptance of the same.

2. Should the entrepreneur supply goods or services to the consumer or user without their explicit acceptance of the offer, the provisions of the following article shall be applied.

Article 100. Prohibition of unrequested shipments.

1. The supply goods or services to consumers and users who have not ordered them, where such supplies include any kind of request for payment, is prohibited.

In such cases, and without prejudice to the infringement which this represents, consumers or users receiving such goods or services shall be under no obligation to return them, and neither shall the price of the goods or services be demanded from them.

In the event that it is decided to return the goods or services, there shall be no compensation for any damage or depreciation that these may have suffered.

2. The provisions of the second paragraph of the preceding section shall not be applicable where it is clearly evident to the consumer or user that the shipment has been sent in error, the burden of proof in such instances being incumbent on the entrepreneur.

In such cases consumers and users shall have the right to compensation for any costs or damages that they may have incurred.

CHAPTER III

Right of withdrawal

Article 101. Right of withdrawal.

1. Consumers or users who enter into distance contracts shall have the right to withdraw from the contract in accordance with the provisions of Title I, Chapter II of this book, although, in this type of contract, the entrepreneur shall be able to demand that the consumer or user bear the direct cost of returning the goods or services.
2. Terms imposing penalties on the consumer for exercising his or her right of withdrawal, or for waiving this right, shall be legally null and void.

Article 102. Exceptions to the right of withdrawal.

Save for agreement to the contrary, the provisions of the preceding article shall not be applicable to the following contracts:

- a) Contracts to supply goods the price of which is dependent on fluctuations in the financial market which cannot be controlled by the entrepreneur.
- b) Contracts to supply products prepared in accordance with the specifications of the consumer and user, those which are clearly customised, or which cannot be returned or may deteriorate or rapidly reach their expiry date due to their nature.
- c) Contracts to supply sound or video recordings, disks or computer programmes that may have been unsealed by the consumer or user, as well as computer files supplied electronically and which may be downloaded or copied immediately for permanent use.
- d) Contracts to supply daily newspapers, magazines and periodical publications.
- e) Contracts to render services, the performance of which has already begun, with the consumer or user's agreement, before the end of the seven working day period.
- f) Contracts for betting services and lotteries.

CHAPTER IV

Contract execution

Article 103. Execution and payment.

Except where the parties have agreed otherwise, the entrepreneur shall carry out the order within the period of 30 days at the latest from the day on which the consumer or user gave consent to enter into the contract.

Article 104. Failure to execute the contract.

In the event that the contract is not executed by the entrepreneur because the contracted goods or services are not available, consumers and users shall be informed of this lack of availability and shall be able to recover the sums paid as soon as possible, in all cases within a maximum period of 30 days.

In the event that the entrepreneur does not make this payment within the stated period, consumers and users shall be able to demand a payment of double the sum owed, without prejudice to their right to be compensated for damages incurred, where these exceed this amount.

Article 105. Replacement of contracted goods or services.

If the contracted goods or services are unavailable, when the consumer or user had been expressly informed of such an eventuality, the entrepreneur shall be able to supply goods or services with similar characteristics and equal or superior quality, at the same price.

In this case, consumers and users shall be able to exercise their rights of withdrawal and termination under the same terms as would apply to the goods or services originally requested, without the direct costs of returning these goods or services being enforceable on them.

Article 106. Card payments.

1. When the total purchase amount has been wrongfully or fraudulently debited using the number of a payment card, the cardholder consumer or user may demand the immediate cancellation of the charge. In such cases, the relevant entries for debiting and re-crediting the accounts of the entrepreneur and of the cardholder consumer or user shall be carried out within the shortest possible time.

2. However, if the card purchase is actually made by the consumer or user, and the requirement of return the goods or services is not the result of exercising the right of withdrawal or of termination, then the consumer or user shall be obliged to compensate the entrepreneur for damages caused as a consequence of this cancellation.

TITLE IV

Contracts concluded away from business premises

CHAPTER I

Scope of application

Article 107. Scope of application.

1. The provisions of this title shall be applicable to the following consumer contracts:

- a) Contracts concluded away from the entrepreneur's business premises, whether concluded by the entrepreneur in person or by a third party acting on his or her behalf.
- b) Contracts concluded in the consumer or user's residence, the residence of another consumer or user, or in the workplace, unless the visit of the entrepreneur or representative thereof has been expressly requested by the consumer or user and takes place after the time fixed by the consumer has passed, or, failing this, where a reasonable time has passed considering the nature of the contract and its price, and the visit takes place in accordance with the purpose established previously.
- c) Contracts concluded on public transport.

2. Contract offers issued by consumers or users in any of the circumstances envisaged in the preceding paragraph shall likewise be subject to the provisions of this title.

3. Without prejudice to the provisions set forth in article 10 and to the inalienable nature of the consumer rights recognised in this title, contractual terms which are more advantageous to the consumers or user shall be valid.

4. Public administrations, within the scope of their competences, shall be able to regulate the authorisations to which entrepreneurs carrying out sale transactions away from their premises must remain subject.

Article 108. Excluded contracts.

Notwithstanding the provisions of the preceding article, this title shall not apply to:

- a) Distance contracts for which the provisions of Title III of this book are applicable, or electronic commercial communications.
- b) Contracts for which the total payment to be met by the consumer or user is less than €48.08.

For these purposes, total payment shall be considered the sum of each of the payments corresponding to contracts concluded by the consumer or user through any of the actions or in any of the circumstances referred to in the preceding paragraph.

- c) Contracts relating to the construction, sale and leasing of real property, or contracts pertaining to any other rights over such property.
- d) Insurance contracts.
- e) Contracts pertaining to transferable securities.
- f) Contracts documented by a notary.

g) Contracts relating to foodstuffs, beverages and other common consumable household products, supplied by entrepreneurs making frequent and regular visits for such purposes.

h) Those contracts in which the following three circumstances coincide:

1. Where drawn up on the basis of a catalogue that the consumer or user has had the opportunity to consult in the absence of the entrepreneur or representative thereof.
2. Where the contract provides for continued contact between the entrepreneur and consumer or user in respect of the transaction taking place or another subsequent transaction.
3. Where the catalogue and the contract clearly state the consumer or user's right to withdraw from the contract during a period which must be a minimum of seven calendar days or which establishes, in the same way, the consumer or user's right to return the products within a period equal to that stated above, which shall be counted from the date of receipt.

Article 109. Evidence.

All contracts and offers concluded away from business premises shall be considered subject to the provisions of this title, it being the responsibility of the entrepreneur to provide evidence to the contrary.

CHAPTER II

Contracting

Article 110. Right of withdrawal.

In contracts concluded away from business premises, consumers and users shall have the right to withdraw from the contract, in accordance with the provisions of Title I, Chapter II of this book.

Notwithstanding the foregoing, the period in which the right of withdrawal may be exercised shall be seven calendar days commencing from the date on which the withdrawal document is received, if this is subsequent to the delivery of the contracted product, or to the signing of the contract if this relates to the provision of services.

Article 111. Right of withdrawal and contract documentation.

1. Contracts or contract offers included within the scope of application of this title shall be formalised in writing in two copies, be accompanied by a withdrawal document and dated and signed by hand, by the consumer or user. It is the responsibility of the entrepreneur to prove compliance with the obligations to which this article refers.
2. The contract document must contain, in clear lettering and immediately above the space reserved for the consumer or user's signature, a clear, comprehensible and accurate reference to the latter's right to withdraw from the contract and the requisites and consequences of exercising this right.
3. Once the contract is signed, the entrepreneur or individual acting on the entrepreneur's behalf shall give one of the copies to the consumer or user, together with the withdrawal document.

Article 112. Consequences of non-compliance.

Contracts concluded or offers made in infringement of the requirements established under articles 69.1 and 111 may be cancelled at the request of the consumer or user.

Under no circumstances may the cause of nullity be invoked by the entrepreneur, save where non-compliance is exclusively that of the consumer or user.

Article 113. Joint and several liability.

In compliance with the obligations established under this title, the represented entrepreneurs shall be held jointly and severally liable with commission agents, attorneys or agents who may have acted on their own behalf.

TITLE V

Guarantees and after-sales services

CHAPTER I

General provisions on the guaranteeing of consumer products

Article 114. General principles.

The vendor is obliged to deliver products which conform to the contract to the consumer or user, and shall be liable before the consumer for any lack of conformity that may exist at the time the product is delivered.

Article 115. Scope of application.

1. The scope of application of this title includes contracts for the sale and purchase of products and contracts to supply products which must be produced or manufactured.

2. The provisions of this title shall not be applicable to products acquired through court ordered sale, to water or gas when not packaged for sale in a defined volume or in specific quantities, or to electricity.

Neither shall it be applicable to second-hand products acquired at administrative auction which may be attended in person by consumers and users.

Article 116. Conformity of products with the contract.

1. Save for evidence to the contrary, it shall be understood that products conform to the contract provided that they comply with all the requirements set forth hereafter, unless any of the requirements is not applicable due to the circumstances of the case:

- a) They meet the description drawn up by the vendor and possess the product qualities presented to the consumer or user in the form of a sample or model.
- b) They are suitable for the uses for which products of the same type are usually intended.
- c) They are suitable for any special use requested by the consumer or user, where the vendor was informed of this at the time the contract was concluded, provided that the latter admitted that the product is suitable for such use.
- d) They display the typical quality and features of a product of this type which consumers and users have good reason to expect, taking into account the nature of the product and, if any, the public statements made by the vendor, producer or representative thereof, regarding specific features of the product, especially in the advertising or labelling. Vendors shall be under no obligations as a result of such public statements if they can prove that they were not aware or could not reasonably be expected to know of the statement in question, that the said statement had been corrected by the time the contract was concluded, or that such a statement could not have influenced the decision to purchase the product.

2. Lack of conformity resulting from the incorrect installation of the product shall be deemed equivalent to lack of product conformity when installation is included in the contract of sale or supply regulated by Article 115.1 and has been carried out by the vendor or under the responsibility thereof, or by the consumer or user when the defective installation is due to an error in the installation instructions.

3. There shall be no liability for lack of conformity which the consumer or user was aware of, or which they could not have reasonably ignored at the time the contract was concluded, or which originates from the materials provided by the consumer or user.

Article 117. Incompatibility of legal actions.

The bringing of actions, as provided for in this title, shall be incompatible with the bringing of actions for compensation for hidden defects in the contract of sale.

In all cases, consumers and users shall have the right, in accordance with civil and commercial legislation, to be compensated for damages arising from a lack of conformity.

CHAPTER II

Vendor liability and consumer rights

Article 118. Vendor liability and consumer rights.

Consumers and users have the right to have the product repaired or replaced, to a reduction in price, or to the termination of the contract, in accordance with the provisions of this title.

Article 119. Repair and replacement of the product.

1. Should the product not conform to the contract, consumers and users may choose between demanding the repair or the replacement of the product, unless either of these two options is objectively impossible or disproportionate. Both parties shall abide by the chosen action from such time as the consumer or user informs the vendor thereof. The decision of the consumer or user shall be considered without prejudice to the provisions of the following article regarding circumstances in which repair or replacement fail to make the product conform to the contract.

2. Forms of remedy which, in comparison to the other, impose unreasonable costs on the vendor, shall be considered undue, taking into account the value that the product would have if there was no lack of conformity, the importance of the lack of conformity and whether the alternative form of remedy could be implemented without causing major inconvenience to the consumer or user.

In order to determine whether the costs are unreasonable, the expenses corresponding to one form of remedy must also be considerably higher than the expenses corresponding to the other form of remedy.

Article 120. Judicial regime for the repair or replacement of the product.

Repair and replacement shall comply with the following rules:

a) They shall be free of charge for the consumer and user. This includes the necessary expenses incurred to rectify the lack of conformity of the product with the contract, especially shipping expenses and costs relating to labour and materials.

b) They must be carried out within a reasonable period and without major inconveniences to the consumer or user, taking into account the nature of the products and the purpose for which the consumer or user intended them.

c) Repair shall entail the suspension of the calculation of periods referred to under Article 123. The suspension period shall commence once the consumer or user has placed the product at the disposal of the vendor, and shall conclude with the delivery of the repaired product to the consumer or user. During the six months following the

delivery of the repaired product, the vendor shall be liable for the lack of conformity which gave rise to the repair. For this purpose, any defects that occur in the product and which have the same origin as those that were originally apparent shall be considered as the same lack of conformity.

d) Following the repair and delivery of the product, if the product continues to fail to conform to the contract, the consumer or user shall be able to demand the replacement of the product, save where this option is undue, the reduction in price, or the termination of the contract under the terms set forth in this chapter.

e) The periods referred to under Article 123, between the consumers or users exercising their option and the delivery of the new product, shall be suspended in the event of replacement. Article 123.1, second paragraph, shall be applicable to the replacement product in all cases.

f) If the replacement does not bring the product into conformity with the contract, consumers and users shall be able to demand that the product be repaired, save where this option is disproportionate, that the price be reduced or the contract terminated under the terms set forth in this chapter.

g) Consumers and users shall not be able to demand replacement where the products involved are non-fungible or second-hand.

Article 121. Price reduction and contract termination.

Price reduction and contract termination shall be applicable, at the choice of the consumer or user, when the latter is unable to demand repair or replacement and in cases where these have not taken place within a reasonable period of time and do not cause major problems for the consumer or user. Contract termination shall not be possible where the lack of conformity is minor.

Article 122. Criteria for price reduction.

Price reductions shall be proportional to the difference between the value the product would have had at the time of delivery if it had conformed with the contract, and the value of the product actually delivered at said time.

CHAPTER III

Exercise of rights by the consumer or user

Article 123. Time limits.

1. The vendor shall be liable for any lack of conformity appearing within a two-year period following delivery. As regards second-hand products, vendors and consumers shall be able to agree to a shorter period, which shall be not less than one year following delivery.

Save for evidence to the contrary, it shall be presumed that any lack of conformity appearing within six months following the delivery of the product, whether new or second-hand, already existed when the item was delivered, except where this presumption is incompatible with the nature of the product or of the lack of conformity.

2. Save for evidence to the contrary, delivery shall be deemed to have been made on the date appearing on the invoice or receipt, or on the corresponding delivery note where delivery subsequently takes place.

3. Vendors are obliged to provide documentary evidence of the delivery of the product to consumers or users exercising their right to repair or replacement, stating the delivery date and the lack of conformity leading to the exercise of this right.

Similarly, the vendor shall provide the consumer or user with documentary proof of delivery, stating the date of the delivery and the repair carried out, if any, along with the repaired or replacement product¹⁰.

4. Actions to demand compliance with the provisions of Chapter II of this title must be brought within three years of the delivery of the product.

5. Consumers and users shall inform the vendor of the lack of conformity within a two-month period after becoming aware of this. Failure to comply with this time limit shall not entail the loss of the relevant right to compensation, although consumers and users are nevertheless liable for damages actually caused by the delay in communication.

Save for evidence to the contrary, it shall be understood that this information is communicated by the consumer or user within the established period.

Article 124. Actions against the producer.

When contacting the vendor due to a lack of conformity of the product with the contract is impossible or results in an excessive burden on the consumer or user, claims shall be brought directly to the producer for the purpose of obtaining the replacement or repair of the product.

Generally and without prejudice to the liability of the producer ceasing, for the purposes of this title and under the same terms and conditions as those established for the vendor, the producer shall be liable for lack of conformity relating to the origin, identity or suitability of the products, in accordance with the nature and purpose thereof, and the rules by which they are regulated.

Those who may be liable to consumers or users shall have the period of one year in which to make claims from the party responsible for the lack of conformity. This period shall be calculated from the time at which rectification is carried out.

CHAPTER IV

Additional commercial guarantee, documentary obligations and after-sales services

Article 125. Additional commercial guarantees.

1. Commercial guarantees may be offered additionally and voluntarily and shall be binding on whosoever appears as guarantor under the conditions established in the guarantee document and in the relevant advertising.

2. Commercial guarantees must be drafted in Spanish as a minimum and, at the request of the consumer or user, in writing or any other durable medium that is directly available and accessible to the consumer or user and suitable for the communication technique employed.

3. The commercial guarantee shall necessarily set out:

- a) The goods or services to which the commercial guarantee relates.
- b) The name and address of the guarantor.
- c) That the commercial guarantee does not affect the legal rights or the consumer or user in the event of the lack of conformity of the contracted products.

¹⁰ Paragraph 3 added, with paragraphs 3 and 4 becoming 4 and 5, in accordance with Law 29/2009 of 30 December 2009 (Official State Gazette No. 315, of 31 December), amending the Legal Regime on Unfair Competition and Advertising to Improve Consumer and User Protection.

d) The rights, in addition to legal rights, that are conferred on consumers and users as holders of the guarantee.

e) The term of duration of the guarantee and its territorial scope.

f) The channels available to consumers and users for making claims.

4. The period in which claims may be made to demand compliance with the provisions of the additional commercial guarantee shall expire six months after the end of the guarantee period.

Article 126. Long-lasting products.

For long-lasting products, commercial guarantees shall in all cases be delivered to the consumer or user in writing or in any other durable medium acceptable by these, containing the minimum provisions described under the preceding article. They shall expressly state the rights hereby conferred on consumers and users in the event of lack of conformity with the contract and that these are independent of, and compatible with, the commercial guarantee.

Article 127. After-sales services and repairs.

1. As regards long-lasting products, consumers and users shall have the right to a suitable technical service and to the existence of spare parts for a minimum period of five years following the date on which the product ceases to be manufactured.

2. It remains prohibited to increase the price of spare parts when using them in repairs or to charge amounts in excess of the average estimated costs in each sector for labour, shipping or visiting. Invoices shall clearly differentiate between the different items. The price list of spare parts shall be available to the public.

3. The right to recover products delivered by the consumer or user to the entrepreneur for repair, and actions relating to this right, must be brought within three years following delivery. The details that must be recorded by the entrepreneur when an item is delivered to the same for repair, and the ways of giving proof of this delivery, shall be established in regulations.

BOOK III

Civil liability for defective goods or services

TITLE I

General provisions on matters of liability

CHAPTER I

General provisions

Article 128. Compensation for damages.

All injured parties have the right to be compensated under the terms set forth in this Book for damages caused by goods or services.

The actions recognised in this book do not affect the injured party's other rights to be compensated for damages, including pain and suffering, as a consequence of contractual liability, on the grounds of the lack of conformity of goods or services or any other cause of non-performance or defective performance of the contract, or of any non-contractual liability which may apply.

Article 129. Scope of protection.

1. The liability regime set forth in this book includes personal injury, including death, and damage to property, provided that these might affect goods or services which are objectively intended for private use or consumption, and have been utilised mainly as such by the injured party.

2. This book shall not be applicable to redress for damages caused by nuclear accidents, provided that such damages are covered by international agreements ratified by the Member States of the European Union.

Article 130. Ineffectiveness of liability limitation or release clauses.

The civil liability limitation or release clauses set forth in this book shall be ineffective in respect of the injured party.

Article 131. Insurance.

The Government, subject to hearings with interested parties and consumer and user associations, shall be able to establish a mandatory system of insurance for civil liabilities resulting from the damages caused by defective goods or services, and a guarantee fund which fully or partly covers damages consisting of death, poisoning and personal injury.

CHAPTER II

Liability

Article 132. Joint and several liability.

Persons liable for the same damage through the application of this book shall be jointly and severally liable as regards the injured parties. Those who may be liable to the injured party shall have the right to claim for recovery from other parties liable, depending on their involvement in causing the damages.

Article 133. Third-party intervention.

Liability as provided for in this book shall not be reduced when damages are caused jointly as a result of a defect in the goods or services and the intervention of a third party. Nevertheless, persons who pay compensation shall be able to claim such part from the third party as corresponds to their involvement in causing the damages.

Article 134. Delayed compensation payments.

1. The beneficiary of compensation has the right to a payment by way of redress for contractual and non contractual damages incurred during the time between the court's ruling on liability and the actual payment.
2. This payment shall be determined according to the provisions of the Law on Civil Procedure.

TITLE II

Specific provisions on matters of liability

CHAPTER I

Damages caused by defective products

Article 135. General principle.

Producers shall be liable for damages caused by defects in the products that they manufacture or import.

Article 136. Legal concept of product.

For the purposes of this chapter, product shall mean any movable asset, even when this is combined or incorporated into another movable or immovable asset, as well as gas and electricity.

Article 137. Legal concept of defective product.

1. Defective product shall mean any product which does not provide the safety that it could legitimately be expected to provide, taking all circumstances into account, especially the presentation of the product, its reasonable foreseeable use and the time when it was placed on the market.
2. Products are defective in all cases in which they do not provide the safety normally provided by other models in the same series.
3. A product shall not be considered defective solely due to the fact that an improved version of the product is put onto the market.

Article 138. Legal concept of producer.

1. For the purposes of this chapter, as well as the definition under Article 5, producers shall the manufacturers or importers into the European Union of:

- a) Finished products.
- b) Any components that are built into a finished product.
- c) Raw materials.

2. If the producer cannot be identified, the product supplier shall be considered as such, unless the injured party can state the identity of the producer or such person as supplied or provided them with the said product, within the period of three months. The same rule shall be applicable to imported products, where the product does not give the name of the importer, even when the name of the manufacturer is stated.

Article 139. Evidence.

Injured parties seeking redress for damages incurred shall have to prove the defect, the damage and the causal relationship these.

Article 140. Causes of release from liability.

1. Producers shall not be liable if it can be proved:

- a) That they did not put the product into circulation.
- b) That, given the circumstances of the case, it may be presumed that the defect did not exist when they put the product into circulation.
- c) That the product was not manufactured for sale or any other form of distribution with an economic purpose, nor was it manufactured, imported, supplied or distributed within the context of a professional or entrepreneurial activity.
- d) That the defect is due to the fact that the product was made in accordance with existing mandatory rules.
- e) That the state of the scientific and technical knowledge at the time the product entered into circulation meant that the existence of the defect could not be perceived.

2. The producer of a built-in part of a finished product shall not be held liable if it can be proved that the defect is attributable to the design of the product into which it was incorporated, or to the instructions given by the manufacturer of this product.

3. In the case of medicines, foods or foodstuffs intended for human consumption, the persons liable, in accordance with this chapter, shall not invoke paragraph 1 e) as cause for release.

Article 141. Liability limit.

The civil liability of the producer for damages caused by defective products shall comply with the following rules:

- a) A release of 390.66 euros shall be deducted from the amount of compensation for damage to property.
- b) The producer's overall civil liability for death and personal injuries caused by identical products with the same defect shall be limited to the sum of 63,106,270.96 euros.

Article 142. Damages to the defective product.

Property damages to the product itself cannot be indemnified according to the provisions of this chapter. Such damages shall give the injured party the right to compensation in accordance with civil and commercial legislation.

Article 143. Period of prescription.

1. Actions for the recovery of damages, as provided for in this chapter, must be brought within three years, counting from the date the damages were incurred by the injured party, whether due to the product defect or for the damage that this defect caused, provided that this was known to the party liable for the damages. Actions seeking the payment of compensation from all other parties liable for damages must be brought within one year, counting from the date of compensation payment.

2. The interruption of the period of prescription shall be governed by the provisions of the Civil Code.

Article 144. Extinction of liability.

The recognised rights of the injured party, described in this chapter, shall expire after a period of ten years counting from the date on which the specific product that caused the damage was put into circulation, unless the relevant judicial proceedings are initiated within this period.

Article 145. Culpability of the injured party.

The liability provided for in this chapter may be reduced or removed depending on the circumstances of the case, if the damage is caused jointly by a product defect and the fault of the injured party or of another individual who shall be civilly liable for said damage.

Article 146. Supplier liability.

Suppliers of defective products shall be liable, as if they were producers, where they have supplied a product in the knowledge of the existence of the defect. In this case, the supplier shall be able to bring an action for recovery against the producer.

CHAPTER II

Damages caused by other goods and services

Article 147. General liability regime.

Service providers shall be responsible for damages caused to consumers and users, except where they can prove that they have complied with the demands and requirements established in regulations and with all other care and diligence required by the nature of the service.

Article 148. Special liability regime.

Liability shall apply where damages result from the correct use of services which due to their inherent nature or because of the established regulations, they must include a guarantee of certain levels of effectiveness or safety, determined in objective conditions, and undergo technical, professional or systematic quality controls before reaching the consumer or user in the proper condition.

In all cases, healthcare services, repair and maintenance services for household electrical appliances, lifts and motor vehicles, property renovation and repair services, electricity and gas inspection, installation and similar services, and those relating to means of transport, shall be considered subject to this regime.

Without prejudice to other established legal provisions, the liabilities deriving from this article shall be limited to the sum of 3,005,060.52 euros.

Article 149. Liability for damages arising from residential property.

The liability regime established under the preceding article shall be applicable to those who construct or market residential properties in the context of an entrepreneurial activity, where damages caused by defects in the property are not covered by a specific legal regime.

BOOK IV

Package travel

TITLE I

General provisions

CHAPTER I

Scope of application

Article 150. Scope of application.

1. This book shall be applicable to the offering, contracting and execution of package travel, holidays and tours as defined in the following article.
2. The separate billing of several components of the same package shall not absolve the organiser or retailer from the obligations established in this book.

Article 151. Definitions.

1. For the purposes of this book:

- a) Package shall mean a prior combination of at least two of the following components when sold or offered for sale at an inclusive price, where the service covers a period in excess of 24 hours or includes an overnight stay.

The components referred to in the above paragraph are as follows:

- i) transport,
- ii) accommodation,
- iii) other tourist services not ancillary to transport or accommodation and accounting for a significant proportion of the package.
- b) Organiser shall mean the natural or legal person who organises packages, other than occasionally, and sells or offers them for sale, either directly or through a retailer.
- c) Retailer shall mean the natural or legal person who sells or offers for sale the package proposed by an organiser.
- d) Principal contractor shall mean the natural or legal person that purchases or undertakes to purchase the package.
- e) Beneficiary shall mean the natural or legal person on behalf of whom the principal contractor undertakes to purchase the package.
- f) Transferee shall mean the natural person to whom the package is transferred by the principal contractor or other beneficiary.
- g) Consumer or user shall mean any person to whom the status of principal contractor, beneficiary or transferee is applicable.

h) Contract shall mean the agreement linking the consumer to the organiser or retailer.

2. For the purposes of this Book, organisers and retailers shall be considered as travel agencies in accordance with administrative regulations.

CHAPTER II

Pre-contract information and contract formalisation

Article 152. Package trip programme and proposal.

1. The retailer or, possibly, the organiser shall place an informative brochure or programme at the disposal of the consumer or user, which shall contain the proposal for the package trip in writing and which must include clear, comprehensible and accurate information in respect of the following points:

- a) Destinations and means of transport, mentioning the characteristics and categories thereof.
- b) Travel schedule, itinerary and duration.
- c) List of accommodation establishments, indicating type, location, category or degree of comfort, main features and tourist classification and approval in countries which have official classification systems.
- d) The number of meals which will be served and, where appropriate, whether beverages or certain types of beverages are not included in the meals planned.
- e) Information of a general nature regarding the terms and conditions applicable to nationals of European Union Member States in respect of passports, visas and the necessary healthcare formalities for travel and stay.
- f) Full final price of the package, including taxes, and a price estimate for the optional excursions. Information and price, if known, in respect of additional expenses for services included in the package that must be assumed by the consumer and which are not paid by the organiser or retailer.
- g) The amount or percentage of the price that must be paid in advance and the payment schedule for the part of the price not covered by the advance instalment, as well as the financing conditions which may be offered, if any.
- h) Whether a minimum number of individuals are required for the package trip to go ahead, in which case, the deadline by which the consumer or user will be informed in the event of cancellation.
- i) Terms applicable to possible liabilities, cancellations and other travel conditions.
- j) The name and address of the package organiser, and its legal representation in Spain, if any.
- k) Any other relevant information regarding the features of the travel package on offer.

Article 153. Binding nature of the programme-proposal.

The information contained in the programme-proposal shall be binding on the package organiser and retailer, save where any of the following circumstances exists:

- a) Where changes in said information have been clearly communicated in writing to the consumer or user prior to the signing of the contract and where such an eventuality has been mentioned specifically in the programme-proposal.
- b) Where amendments are made subsequently, subject to agreement in writing between the contracting parties.

Article 154. Contract form and content.

1. The package-travel contract shall be drawn up in writing and shall contain terms which, depending on the features of the proposal to which the contract relates, make reference to the following points:

- a) Travel destination(s).
- b) Where periods of stay are involved, the relevant periods, with dates.
- c) The means, characteristics and categories of transport to be used.
- d) The dates, times and points of departure and return.
- e) Where the package includes accommodation, its location, its tourist category and its main features, its tourist classification and approval in countries which have official classification systems, and the number of meals to be served.
- f) Minimum number of persons required for the package to go ahead and, if so, the deadline for informing the consumer or user in the event of cancellation, which must take place at least ten days prior to the planned departure date.
- g) The itinerary.
- h) Visits, excursions or other services which are included in the total price agreed for the package.
- i) The name and address of the organiser, the retailer and, where appropriate, the insurer.
- j) The price of the package, with a breakdown of arrangement costs, as well as a statement of the possibility of price revisions as envisaged under Article 157 and of possible taxes chargeable for contracted services, where these are not included in the price of the package.
- k) Cancellation costs, if these exist and can be reasonably worked out beforehand, with the due breakdown. The fact that such expenses may be passed on, provided that they have actually been incurred and cannot be reasonably calculated beforehand.
- l) Payment methods and financing schedule and conditions, if any.
- m) Any special requirements that the consumer or user may have communicated to the organiser or retailer, and which have been accepted.
- n) The obligation of the consumer or user to inform the organiser, retailer or provider of the relevant service, as appropriate, in writing or any other form for recording such information, of any non-compliance in the performance of the contract.
- ñ) The period of prescription for actions established under Article 164, in which consumers and users may bring claims concerning non-performance or defective performance of the contract.
- o) The period in which consumers and users shall be able to request the confirmation of their reservations.

2. Consumers and users shall be informed of the content of the contractual terms in advance of the signing of the contract, and shall receive a copy once this has been formalised.

3. The description of the package communicated to the consumer or user by the retailer or organiser, as appropriate, as well as its price and all other conditions applicable to the contract, shall be truthful and verifiable under the terms set forth in Articles 18 and 60.

CHAPTER III

Other consumer and user rights

Article 155. Reservation transfer.

1. The principal contractor or beneficiary shall be able to transfer their package reservation, free of charge, to any person who meets all the conditions for the same.
2. The transfer shall be communicated in writing to the retailer or organiser, if any, with a minimum of 15 days prior to departure, unless the parties agree to a shorter period in the contract.
3. The person transferring his package reservation and the transferee shall be jointly and severally liable to the retailer or organiser, as appropriate, where these are parties to the contract, for the payment of the balance of the price, as well as for justified additional costs which may be incurred as a result of this transfer.

Article 156. Additional information on the package trip.

1. Package retailers or organisers, as appropriate, shall provide the following information to the consumers and users with whom they have entered into contracts, in writing or any other way of recording information, and with due notice prior to departure:
 - a) The times and places of connections and stopovers, as well as a statement of the class in which the traveller will be seated when using the intended means of transport.
 - b) The name, address and telephone number of the representation of the organiser or retailer at each destination or, failing this, those of the local organisations that can help consumers and users in the event of difficulties. Where these representations and organisations do not exist, consumers and users shall in all cases be provided with an emergency telephone number or any other information that will enable them to contact the organiser or retailer.
 - c) In cases where minors are travelling or staying abroad, information which enables direct contact to be established with these minors or with those responsible for their in situ stay during the trip.
 - d) In accordance with the prevailing legislation regulating private insurance, information on the option of the consumer or user to take out an insurance policy to cover cancellation costs, or the cost of assistance including repatriation or return to the point of departure, in the event of accident, illness or death.
2. The information contained in the preceding paragraph shall be provided when the reservations are confirmed, at the very latest.

CHAPTER IV

Contract amendment

Article 157. Revision of prices.

1. The prices fixed in the contract shall not be revised, save where expressly established with the possibility of upward and downward revision, and where the specific means of calculation are defined for such purposes.
2. Price revision shall only take place in order to incorporate variations in the price of transport, including the cost of fuel, fees and taxes relating to certain services and the exchange rates applied to the organised package.

3. Price increases effected within the 20 days immediately preceding the travel departure date shall be null and void.

Article 158. Contract amendment.

1. In the event that the organiser is obliged to significantly change any essential component of the contract prior to departure, the consumer or user shall be informed of the fact immediately.

2. In such circumstances, save where the parties agree otherwise in terms negotiated individually, consumers and users may decide between terminating the contract incurring no penalty or accepting an amendment to the contract specifying the variations introduced and their effect on the price.

Consumers and users must communicate their decision to the retailer or, where necessary, the organiser, within three days of receiving notification of the amendment to which this article refers.

In the event that the consumer or user does not communicate this decision within the period stated, it shall be understood that the chosen option involves contract termination without penalty.

TITLE II

Provisions relating to contract termination and liabilities

CHAPTER I

Contract termination or cancellation

Article 159. Contract termination due to causes not attributable to the organiser or cancellation of the trip.

1. In the event that the consumer or user chooses to terminate the contract pursuant to the provisions of paragraph 2 of the preceding article, or if the organiser cancels the package prior to the agreed departure date, due to any cause not attributable to the consumer or user, the latter shall have the right, from the time in which the contract is terminated, to the reimbursement of all amounts paid in accordance with the contract, or to another package trip of equivalent or superior quality, provided that the organiser or retailer is able to offer this.

In the event that the offered travel package is of inferior quality, the organiser or retailer shall refund the price difference to the consumer or user, provided that this is appropriate considering the amounts already reimbursed, in accordance with the contract.

In all cases, consumers and users shall be able to demand that the entrepreneur refund all amounts spent in accordance with the terms and conditions set forth under Article 76. In this case the period shall be counted from the time that the consumers or users communicate their decision to terminate the contract, or from when the circumstances came about which caused the cancellation.

2. The same right, as provided for under the preceding number, shall apply to consumers and users that do not obtain confirmation of the reservation under the terms stipulated in the contract.

3. In the above circumstances, organisers and retailers shall be responsible for paying compensation to the consumer or user which, in such a case, would apply due to non-performance of the contract, and which under no circumstances shall be inferior to 5 percent of the total price of the contracted package, if the aforementioned non-performance occurs between 2 months and 15 days prior to the departure date; 10 percent if it takes place between 15 and 3 days previously, and 25 percent in the event that non-performance occurs in the previous 48 hours.

4. There shall be no obligation to indemnify in the following circumstances:

- a) When cancellation is due to fewer than the required number of persons signing up for the package, and this is communicated in writing to the consumer and user before the deadline established for such purposes in the contract, and which shall be a minimum of 10 days prior to the planned departure date.
- b) When the cancellation of the trip, save in the event of overbooking, is due to reasons of force majeure, these being understood as abnormal and unforeseeable circumstances beyond the control of the party invoking them, the consequences of which could not have been avoided despite having acted with all due diligence.

Article 160. Contract termination by the consumer or user.

Consumers and users shall at all times be able to render requested or contracted services null and void, with the right to the refund of any sums paid, but shall indemnify the organiser or retailer for the amounts indicated hereafter, save where this is a result of force majeure:

- a) Payment shall be made for management expenses, cancellation costs, if any, and a penalty equivalent to 5 percent of the total amount of the package, if cancellation occurs between 10 and 15 days prior to the

travel departure date; 15 percent between 3 and 10 days, and 25 percent within the 48 hours prior to departure.

In the event of failure to turn up for departure, the consumer or user is obliged to pay the full price of the package, including any outstanding amounts except as otherwise agreed by the parties.

- b) In the event that the package is subject to special financial terms for contracting, such as plane or ship chartering, or special fares, cancellation costs shall be established in accordance with the conditions agreed between the parties.

CHAPTER II

Non-compliance, liability and guarantees

Article 161. Consequences of non-provision of services.

1. In the event that following departure the organiser does not or realises that it is not able to supply a substantial proportion of the services envisaged in the contract, the organiser shall adopt appropriate solutions to enable the continuation of the organised travel package, without charging any price supplement to the consumer or user and, where appropriate, paying the difference between the services envisaged and those supplied to the consumer or user. Where the consumer or user continues to travel using the solutions offered by the organiser, this shall be considered as tacit acceptance of the said proposals.

2. If the solutions adopted by the organiser are non-viable or the consumer or user does not accept them on reasonable grounds, the organiser shall provide the consumer or user, free of charge, with a means of transport equivalent to the one used in travel, to return to the departure point or to any other destination agreed to by both parties, without prejudice to any compensation that may apply.

3. In the event of a complaint, the retailer or organiser, as appropriate, shall act with diligence to find the appropriate solutions.

Article 162. Liability of organisers and retailers.

1. Package organisers and retailers shall be liable to the consumer or user, depending on the obligations of their respective areas of responsibility for managing the package, for correct compliance with obligations deriving from the contract, independently of whether these must be performed by themselves or by other service providers, and without prejudice to organiser or retailer's right to bring proceedings against said service providers.

All entrepreneurs parties to the contract, whether organisers or retailers, regardless of type and relations between them, shall be jointly and severally liable to the consumer, without prejudice to the right of recovery of the party liable to the consumer or user and to whom the non-performance or defective performance of the contract may be attributed according to their area of responsibility for managing the package.

2. Package organisers and retailers shall also be liable for damages suffered by consumers and users as a consequence of failure to execute or unsatisfactory execution of the contract.

This liability shall cease in the event of any of the following circumstances:

- a) Where the defects observed in the execution of the contract are attributable to the consumer or user.
- b) Where said defects are attributable to a third party not involved in providing the services envisaged in the contract and are of an unforeseeable or insurmountable nature.
- c) Where said defects are due to reasons of force majeure, these being understood as abnormal and unforeseeable circumstances beyond the control of the party citing them, the consequences of which could not have been avoided despite having acted with all due diligence.

- d) Where the defects are due to an event that the retailer or organiser, if any, could neither foresee nor overcome, despite having acted with all due diligence.

In the event of release from liability due to the occurrence of one of the circumstances set forth under paragraphs b), c) and d), organisers and retailers party to the contract shall still be obliged to provide the necessary assistance to consumers and users who find themselves in difficulties.

3. Compensation for damages, where these are the result of failure to execute or unsatisfactory execution of the services/features included in the package, shall be limited in keeping with the provisions of international agreements governing such services/features.

4. Exceptions to the provisions of paragraphs 1 and 2 of this article shall not be established in contractual terms.

Article 163. Guarantee of contractual liability.

Package organisers and retailers shall be obliged to furnish and permanently maintain a bond under the terms determined by the competent tourism administration, in order to take responsibility for compliance with obligations deriving from the rendering of their services to parties contracting packages, and in particular, for reimbursing deposited funds and compensation for the costs of repatriation in the event of insolvency or bankruptcy.

The bond shall be subject to compliance with the obligations deriving from:

- a) The final decision of the court on the economic liabilities of the organisers and retailers resulting from an action brought by the end consumer or user.
- b) Decision announced by the consumer arbitration boards or institutional arbitration bodies created by law for a specific scenario or sector, subject to the voluntary submission of the parties.

In the event that the bond is enforced, it shall be repaid within a 15-day period, until its original total is covered again.

Article 164. Period of prescription.

Actions deriving from the rights recognised in this book must be brought within a two-year period of prescription.

Article 165. Sanctioning regime.

The regime on infringements and sanctions set forth under Book I, Title IV, Chapter II shall not be applicable to the provisions of this Book, which are subject to the application of specific legislation in this matter, issued by the public administrations with competence in the field of tourism.

TRANSITIONAL PROVISIONS

First. Commercial guarantee.

1. The provisions of this law in respect of the additional commercial guarantee shall not be applicable to products put into circulation before 11 September 2003.

2. Notwithstanding the provisions of the preceding paragraph, the producer, or failing this, the vendor, shall provide the consumer or user with a guarantee, drawn up in writing, in which the guarantee holder is ensured of the following, in relation to long lasting goods put into circulation prior to said date:

- a) The free repair of original defects and flaws and damage caused thereby.
- b) In the event that the item is not repaired satisfactorily and is not in perfect condition to meet the use it was intended for, the guarantee holder shall have the right to the replacement of the acquired item with another which has identical features, or to the refund of the price paid.

3. The guarantee document referred to in the preceding paragraph shall have the following minimum content:

- a) The item guaranteed.
- b) The guarantor.
- c) The guarantee holder.
- d) The rights of the guarantee holder.
- e) The guarantee period, which under no circumstances shall be inferior to six months following the delivery date, save where the nature of the goods prevents this, and without prejudice to the legal or regulatory provisions on specific goods or services.

Two. Long lasting products.

While long-lasting products remain undefined by the Government, such products shall be considered to be those listed in Annex II of Royal Decree 1507/2000 of 1 September 2000, which updates the catalogues of products and services of common, ordinary and generalised use or consumption and of goods of a durable nature, for the purposes of the provisions set forth in Article 2 paragraph 2 and Article 11 paragraphs 2 and 5 respectively of the General Law for the Protection of Consumers and Users and concomitant regulations.

Three. Civil liability for damages caused by defective products put into circulation prior to 8 July 1994.

The rules contained in Book III, Title II, Chapter I of this law shall not be applicable to civil liability arising from damages caused by products put into circulation before 8 July 1994.

This liability shall be governed by the rules of Chapter II of this title, with the following additional rules:

1. In general and without prejudice to that which may be more favourable to the consumer or user, by virtue of other provisions or conventional agreements, the following criteria shall be valid in matters of liability:

- a) Producers and suppliers of products to consumers or users shall be liable for the origin, identity and suitability thereof, in accordance with their nature and purpose, and the laws which regulate them.
- b) Holders of bulk products shall be liable for them, without prejudice to the possibility of identifying and proving the liability of the previous holder or supplier.

c) As regards products which are labelled and packaged in closed containers with an intact seal, the firm or company with its registered name displayed on the label, packaging or advertising shall be liable. They may be released from this liability by proving forgery or incorrect handling by third parties, who shall then be liable.

2. In all cases, the liability regime set forth under Article 148 shall be applicable to foodstuffs, cosmetics, hygiene, cleaning, specialised and pharmaceutical products, gas, electricity, motor vehicles, toys and products aimed at children.

3. In the event that various individuals contribute towards causing damages, they shall be jointly and severally liable to the injured parties. Whosoever pays the injured party shall have the right to recovery from the other liable parties, depending on their involvement in causing the damages.

FINAL PROVISIONS

First. Modification of quantities.

The Government is authorised to modify the quantities established by this law. The quantities referred to in Articles 51 and 148 shall be modified taking into account the variations of consumer price indices and those envisaged under Article 141 to adapt them to the periodic reviews of European Union regulations.

Two. Issue of regulations.

The Government is empowered to issue specific provisions for the application of this law, in matters within its competence. In particular, the Government shall define the long lasting products referred to in Article 126.

Three. Applicability of the regulatory regime in matters of infringements and sanctions.

Royal Decree 1945/1983 of 22 June 1983, regulating infringements and sanctions in matters of consumer protection and agro-food production, shall be applicable for the purposes of the provisions of Book I, Title IV, Chapter I of this law, without prejudice to subsequent amendments or adaptations by the Government.

