

THE STRENGTH OF YOUR RIGHTS

APPLICABLE LEGISLATION



TRANSPARENCY
PORTAL

Professional Direct Sales

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THE STRENGTH OF YOUR RIGHTS - APPLICABLE LEGISLATION

INTRODUCTION

The contracting system for our products is founded on genuine transparency, that is, **"on your trust"** in acquiring directly, clearly and accessibly the product you have chosen.

For this purpose, the **Transparency Protocol** has previously informed you of this sales process from the central perspective of **"your basic rights as a CUSTOMER"**.

In this section, you will find very important additional information, as we explain "where your basic rights originate from", that is, the regulations that recognise, regulate and guarantee them.

For your better understanding, these regulations are presented in **"a fully systematised and selected manner"**, considering both the origin of the regulations (European or national) and the level of protection required, including, furthermore, a selective compilation of the most relevant case law concerning the configuration of your rights. **All of this is provided with the commitment to continuously update the information and the selection criteria we offer you.**

Ultimately, a section that contributes to the **"culture of transparency"** as a means to better understand the fundamental aspects that determine your rights.

Next, we present a selected list of the main regulatory texts you should consider in your capacity as a consumer.

Remember, in any case, that the Transparency Protocol also serves as a guide for the proper treatment and application of your rights.

1. -HIGHEST LEVEL LEGISLATION

The highest recognition of your rights, that is, with the highest legal rank, is set out in **Article 38 of the Charter of Fundamental Rights of the European Union and article 51 of the Spanish Constitution.**

The aforementioned Charter states that the policies of the European Union **"shall ensure a high level of consumer protection"**. Article 51 of the Constitution, within the guiding principles of social and economic policy, emphasises that public authorities must guarantee the rights of consumers **"through effective procedures"** which, among other areas of application, include **"the protection of their legitimate economic interests and their right to information"**.

The **Transparency Protocol** addresses both the requirement for this high level of protection and serves as an effective tool to provide better information about your rights.

2. -EUROPEAN LEGISLATION: THE CONFIGURATION OF YOUR RIGHTS

Spain is a member of the European Union. Therefore, the framework of your current rights primarily derives from the **"European Directives and Regulations"**.

The most relevant texts to bear in mind are the following.

2.1- COUNCIL DIRECTIVE 93/13/EEC of 5 April 1993 (the basic framework)

It is a fundamental text for the protection of your rights as a consumer. From the scope of application of its **"Articles 3, 4 and 5"**, the case law of the Court of Justice of the European Union (CJEU) has established the entire **"current system for controlling unfairness in general terms and conditions"**, either due to lack of transparency (contract comprehensibility) or due to the contractual imbalance arising from the general terms.

As selected information, you should take the following into account.

- Within the scope of this Directive, according to the European Commission's own Communication (2019/C323/04), the case law of the CJEU requires the application of **"substantial transparency in pre-contractual information"**, in the following terms:

*" [...] The Court has drawn from Articles 4(2) and 5, sometimes referring also to Recital 20 and the Annex to the UCTD, in particular Points 1(i) and (j), transparency standards, including information requirements, which go beyond the aspects referred to above. In that respect, the Court also uses the term 'substantive transparency requirements' " (176). **According to the Court, transparency requires more than contract terms being formally and grammatically intelligible and implies that consumers must be able to evaluate the economic consequences of a contract term or contract** (177): "44. As regards the requirement of transparency of contractual terms, as is clear from Article 4(2) of Directive 93/13, the Court has ruled that that requirement, also repeated in Article 5 thereof, cannot be reduced merely to their being formally and grammatically intelligible, but that, to the contrary, since the system of protection introduced by Directive 93/13 **is based on the idea that the consumer is in a position of weakness vis-à-vis the seller or supplier, in particular as regards his level of knowledge, that requirement of plain and intelligible drafting of contractual terms and, therefore, the requirement of transparency laid down by the directive must be understood in a broad sense [...]"** (178). "45. Therefore, the requirement that a contractual term must be drafted in plain intelligible language is to be understood as requiring also that the contract should set out transparently the specific functioning of the mechanism to which the relevant term relates and the relationship between that mechanism and that provided for by other contractual terms, so that that consumer is in a position to evaluate, on the basis of clear, intelligible criteria, the economic consequences for him which derive from it [...]" (179)"*

This broad understanding of transparency entails that sellers and suppliers have to provide clear information to consumers on contract terms and their implications/consequences before the conclusion of the contract. *The Court has repeatedly emphasised the importance of such information so that consumers can understand the extent of their rights and obligations under the contract before being bound by it. The Court (180) has stated that ‘[...] it is settled case-law that information, before concluding a contract, on the terms of the contract and the consequences of concluding it, is of fundamental importance for a consumer. It is on the basis of that information in particular that he decides whether he wishes to be bound by the terms previously drawn up by the seller or supplier [...] (181).’*

In this context, the following CJEU judgments are essential reading:

i. Judgment of the Court of Justice of 21 December 2016, Case C-154/15 and others (paragraphs 48 and 49)

ii. Judgment of the Court of Justice of 20 September 2017, Case C-186/16 (paragraphs 44, 45 and 46)

- Within Spanish case law, and in line with this requirement for substantial transparency, the following Supreme Court judgments are exemplary.

i. Supreme Court Judgment 464/2014, of 8 September (Legal Ground Two, paragraphs 6, 7 and 8):

" [...] **6. Characterisation of transparency control.** *Within the framework of the specific and differentiated causal estimate and effectiveness regime that governs the phenomenon of general conditions of contracting, as previously noted, transparency control, as the core expression of the principle of real transparency in serial contracting and, by extension, in the general development of inclusion control (Article 5 of Directive 93/13, Articles 5.5 and 7.b of the Law on General Terms and Conditions of Contract, and Article 80.1(a) of the recast text of the General Law for the Defence of Consumers and Users), is characterised as a legality control primarily aimed at verifying that the pre-formulated contractual clause directly refers to the real, not merely formal, comprehensibility of the basic aspects of the contract within the framework of the pre-formulated regulation, so that the consumer and user knows and understands the legal consequences which, according to the product or service offered, fall upon them, both regarding the onerousness or financial sacrifice that the concluded contract actually entails for the consumer and to the legal position they assume in relation to the essential aspects deriving from the object and performance of the contract (Supreme Court Judgment of 26 May 2014, no. 86/2014).*

7. Basis. *In accordance with the above characterisation, it should be noted that, within the scope of Contract Law, particularly in this method of contracting, the transparency control responds to a prior and special contractual duty of transparency on the part of the drafter, which must be reflected in the genuine*

comprehensibility of the basic aspects of the contract that regulate the general conditions. True to the nature and function of this phenomenon, as well as to its peculiar causal estimate and effectiveness regime, the transparency control is objectively applied to the compliance by the drafter with this special duty of genuine comprehensibility during the course of the commercial offer and its corresponding serial regulation. It is understood, therefore, that this legality or suitability control established for this purpose, outside the paradigm of negotiated contracts and thus beyond the scope derived from defects, does not seek to assess the validity of the consent given, nor its interpretation, both of which are irrelevant to the validity and effectiveness of the phenomenon itself, as well as to the application of the said control. Rather, it concerns the materialisation or fulfilment of this duty of transparency within the regulation provided. Judgments of the Court of Justice of the European Union dated 21 February 2013, C-427/11, and 14 March 2013, C-415/11, as well as the Supreme Court Judgment of 26 May 2014 (No. 86/2014). An extreme assessment that, as has already been noted, neither excludes nor replaces the mere sector-specific 'formal or documentary transparency' required for the validity and lawfulness of the use of the aforementioned clause in serial contracting.

8. **Scope.** In accordance with the foregoing, it must be concluded that transparency control, as an integral part of the general control of abusiveness, cannot be reduced or equated to a mere interpretative criterion or comparison regarding the clarity or grammatical intelligibility of the wording used, whether in its general or sector-specific consideration, **but rather requires an internal assessment of the regulations provided to verify the inclusion of precise and comprehensible criteria so that the consumer and user can directly evaluate the economic and legal consequences that primarily arise for them from the contractual regulations offered.** This is the scope which, in full harmony with the case law doctrine set out by this Chamber, is contemplated for these purposes by the recent Judgment of the Court of Justice of the European Union, dated 30 April 2014, C-26/13, declaring, among other points, that: "Article 4(2) of Directive 93/13 must be interpreted as meaning that, as regards a contractual term such as that at issue in the main proceedings, the requirement that a contractual term must be drafted in plain intelligible language is to be understood as requiring not only that the relevant term should be grammatically intelligible to the consumer, but also that the contract should set out transparently the specific functioning of the mechanism of conversion for the foreign currency to which the relevant term refers and the relationship between that mechanism and that provided for by other contractual terms relating to the advance of the loan, so that that consumer is in a position to evaluate, on the basis of clear, intelligible criteria, the economic consequences for him which derive from it".

ii) **Supreme Court Judgment 247/2019, of 6 May** (Legal Ground Two, paragraph 3):

"[...] 3. The reason must be dismissed. In accordance with the case law of this chamber and the CJEU, including Supreme Court Judgments 241/2013, of 9 May; 464/2014, of 8 October; 593/2017, of 7 November; and 705/2015, of 23 December; and CJEU judgments of 30 April 2014 (Kásler case), 21 December 2016 (Gutiérrez Naranjo case), and 20 September 2017 (Ruxandra Paula Andricius and others case), **the duty of transparency requires that the consumer be provided "before the conclusion of the contract" with**

comprehensible information regarding the contractual terms and the consequences of entering into the contract. Thus, the purpose of transparency control is to ensure that the adhering party can easily understand both the economic burden that the concluded contract actually entails, i.e. the financial sacrifice made in exchange for the economic benefit sought, and its legal burden, meaning the clear definition of their legal position in relation to both the typical elements that shape the concluded contract and the allocation of the risks involved in its performance. regarding the contracted terms and the consequences of such execution. With respect to standard contract terms concerning essential elements of the contract, sufficient information is required to enable the consumer to make an informed decision to contract, fully aware of the financial and legal burden involved, without the need for a detailed and meticulous analysis of the contract. This excludes the possibility that the consumer's perceived financial burden under the contract may be increased through the inclusion of a standard term that meets the requirements for incorporation but whose legal or financial significance goes unnoticed by the consumer because it is given an inappropriately secondary treatment and the consumer is not provided with clear and adequate information on the legal and economic consequences of that clause in the structuring and execution of the contract.

Pre-contractual information is what really allows offers to be compared and a decision to be made to contract. A meaningful comparison between different offers cannot be made if, at the time of comparison, the consumer cannot have a real understanding of the economic and legal significance of one of the contracts being considered, because they were unable to comprehend the meaning of a specific clause—one that affects an essential element of the contract—in relation to the others, or the consequences that such a clause may have on the development of the contract. The margin relative to the reference index and the APR, which is in principle the decisive information regarding the price of the product used by the consumer to compare different offers and decide on one in particular, loses much of its relevance if a floor is established below which the interest cannot fall. Therefore, the pre-contractual information must clearly state the existence of that floor and its effect on the price of the contract, giving it the prominence it deserves".

2.2- DIRECTIVE (EU) 2023/2025 of the European Parliament and of the Council, of 18 October 2023, on credit agreements for consumers.

Although this Directive is not directly applicable to sales with deferred payment, as in our case, it is nevertheless the most recent Directive "**which regulates all the elements that make up the pre-contractual information and the basic rights to which you are entitled as a consumer**". For that reason, it is of interest (please consult it).

2.3- PROPOSAL FOR A NEW DIRECTIVE ON LIABILITY FOR DEFECTIVE PRODUCTS (approved by the European Parliament on 12 March 2024)

The new Directive on liability for damage caused by defective products, which is not yet in force (as it still requires final approval by the Council), represents a highly advanced text in the protection of your rights that you will undoubtedly need to consider, given that it is likely to come into effect soon.

This will require adapting our national legislation on this matter in important areas

such as facilitating the burden of proof, extending liability periods (product guarantee), and ensuring liability in cases involving non-EU products and services.

All these future or forthcoming modifications will be recorded and systematised in the Transparency Protocol, which will inform you clearly and precisely.

2.4- THE PROTECTION OF YOUR PERSONAL DATA AND THE NEW EUROPEAN FRAMEWORK

As we have explained in the Transparency Protocol, the protection of your personal data during the marketing process is of utmost importance for your rights as a CUSTOMER.

You should now be aware that the European Union has developed a completely new regulatory framework that advances in this direction: **"a real step forward"**.

This framework comprises four fundamental instruments:

- i) **Regulation (EU) 2016/679 of the European Parliament and of the Council, of 27 April 2016**, on the processing of personal data and free movement (GDPR).
- ii) **Regulation (EU) 2018/1807 of the European Parliament and of the Council, of 14 November 2018**, on the free flow of non-personal data within the European Union.
- iii) **Regulation (EU) 2022/868 of the European Parliament and of the Council, of 30 May 2022**, on European data governance.
- iv) **Regulation (EU) 2023/2854 of the European Parliament and of the Council, of 13 December 2023**, on fair access to and use of data (Data Act).

An entirely new framework which already includes significant case law from the CJEU, such as the **CJEU Judgment of 7 March 2023**, case C-634/21, concerning insolvency registers, and the **CJEU Judgment of 14 December 2023**, case C-340/21, relating to civil liability in matters of "data security breaches".

3. -NATIONAL LEGISLATION (SELECTED)

The principal national regulatory text applicable to our contracts is contained in **Royal Legislative Decree 1/2007, of 16 November, on the Recast Text of the General Law for the Defence of Consumers and Users**.

- **As a general rule**, the following articles of this text should be emphasised:

Article 8. Basic rights of consumers and users.

1. *The basic rights of consumers and users, including vulnerable consumers, are:*
 - a) *Protection against risks that may affect their health or safety.*
 - b) *Protection of their legitimate economic and social interests; in particular, protection against unfair commercial practices and the inclusion of abusive clauses in contracts.*
 - c) *Compensation for damages and redress for harm suffered.*
 - d) *Accurate information about the various goods or services in formats that ensure accessibility, along with education and awareness to facilitate understanding of their proper use, consumption or enjoyment, and to support optimal decision-making in their interests.*
 - e) *Consultation hearings, participation in the drafting process of general provisions that directly affect them, and representation of their interests through legally established associations, groups, federations or confederations of consumers and users.*
 - f) *The protection of their rights through effective procedures, particularly regarding vulnerable consumers.*

2. *The rights of vulnerable consumers will receive special attention, as established by regulations and the applicable sectoral legislation in each case. Public authorities will promote policies and actions aimed at guaranteeing your rights on equal terms, according to the specific situation of vulnerability you may be in, endeavouring to avoid, in any case, procedures that could hinder the exercise of those rights.*

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

1. *Commercial practices that, in a manner appropriate to the communication medium used, include information about the characteristics of the good or service and its price, enabling the consumer or user to make a decision about contracting, and provided that this cannot be clearly inferred from the context, must contain at least the following information:*

- a) *Name, business name and full address of the trader responsible for the commercial offer and, where applicable, the name, business name and full address of the trader on whose behalf they act.*
- b) *The essential characteristics of the good or service, presented appropriately according to its nature and the communication method used.*
- c) *The full final price, including taxes, detailing, where applicable, any increases or discounts applicable to the offer, as well as any additional charges passed on to the consumer or user.*

In other cases where, due to the nature of the good or service, the price cannot be precisely determined in the commercial offer, information must be provided on the calculation method that enables the consumer or user to verify the price. Likewise, when additional charges passed on to the consumer or user cannot be calculated in

advance for objective reasons, it must be stated that such charges exist and, if known, their estimated amount.

d) Payment procedures and the deadlines for delivery and contract execution, when they depart from the standards of professional diligence, understood as the level of competence and special care expected from a trader in accordance with honest market practices.

e) Where applicable, the existence of the right of withdrawal.

f) In the case of goods and services offered in online markets, whether the third party offering the good or service qualifies as a trader or not, according to their declaration to the online market provider.

2. *For the purposes of complying with the provisions of the previous section and without prejudice to any applicable sectoral legislation, the information required to be included in the commercial offer must be provided to consumers or users, especially when they are vulnerable consumers, in clear, understandable and truthful terms, and in a format that ensures accessibility, thereby guaranteeing proper understanding and enabling optimal decision-making in their interests.*

3. *Commercial practices that offer consumers and users the possibility to search for goods and services provided by different traders or consumers and users, based on a query in the form of a keyword, phrase, or other type of data entered, regardless of where the transactions are ultimately carried out, must include, in a specific section of the online interface that is easy to find and directly accessible from the page displaying the search results, the following information:*

a) General information regarding the main parameters that determine the ranking of goods and services presented to the consumer and user as a result of the search.

b) The relative importance of those parameters compared to others.

This section shall not apply to providers of online search engines, as defined in Article 2.6) of Regulation (EU) 2019/1150 of the European Parliament and of the Council, dated 20 June 2019, on promoting fairness and transparency for business users of online intermediation services.

4. *Commercial practices whereby a trader provides access to reviews from consumers and users about goods and services must include information on whether the trader guarantees that such published reviews were made by consumers and users who have actually used or purchased the good or service. For this purpose, the trader must provide clear information to consumers and users about how the reviews are processed.*

5. *The burden of proof regarding compliance with the information requirements established in this article shall rest with the trader.*

6. *Failure to comply with the provisions of the preceding sections shall be regarded as an unfair misleading practice within the meaning of Article 7 of Law 3/1991, of 10 January, on Unfair Competition.*

Article 21. Verification system and customer service.

1. *The verification, claims, guarantee, and possibility of waiver or return system established in the contracts must enable the consumer and user to be assured of the nature, characteristics, conditions, and purpose or usefulness of the good or service; to be able to claim effectively in the event of error, defect, or deterioration; to enforce the quality guarantees or level of service offered, and to obtain a fair refund of the market price of the good or service, in whole or in part, in cases of non-compliance or defective performance.*

The refund of the product price must be total in the event of lack of conformity of the product with the contract, as provided in Title V of Book II.

2. *The offices and information and customer services provided by companies to the consumer and user must ensure that they receive confirmation of their complaints and claims, by issuing an identification code and a written receipt, either on paper or another durable medium. If such services use telephone or electronic means to perform their functions, they must guarantee direct personal attention, beyond the possibility of complementarily using other technical means at their disposal.*

The offices and information and customer service departments shall be designed using methods and media that adhere to the principles of universal accessibility and, where appropriate, alternative means to ensure access.

Customer services must be clearly distinguished from other company activities, with the explicit prohibition of using this service for the dissemination of any form of commercial communication.

If the trader provides consumers and users with a telephone line to communicate regarding the executed contract, using this line must not cost the consumer or user more than a call to a standard geographic landline or mobile number.

If, as stated above, a special-rate telephone line is used that incurs a cost for the consumer or user, the trader must provide the consumer, alongside information about this special-rate line and on equal terms, with details of an alternative geographic or mobile number.

Nevertheless, for basic services of general interest, the companies providing them must always offer a free consumer helpline. For these purposes, services regarded as basic services of general interest shall include the supply of water, gas, electricity, financial and insurance services, postal services, air, rail and road transport, health protection, sanitation and waste management, as well as those determined by law.

3. *In all cases, and with full respect for the provisions of the preceding sections, traders shall provide consumers and users with information on the postal address, telephone number, fax number where applicable, and email address at which the consumer and user, regardless of their place of residence, may submit complaints and claims or request information about the goods or services offered or contracted. Traders shall also provide their registered address if it differs from the usual correspondence address. Traders must respond to claims received as promptly as possible and, in any event, within a maximum term of one month from the date the claim was submitted.*

4. If the trader has not satisfactorily resolved a claim submitted directly by a consumer, the consumer may refer the matter to an alternative dispute resolution body notified to the European Commission, in accordance with the law incorporating Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes into Spanish law.

Traders shall facilitate access to such bodies, providing consumers with the information required under Article 41 of that law.

Article 60. Pre-contractual information.

1. Before the consumer and user becomes bound by a contract and the corresponding offer, the trader must provide clear, understandable and accessible information that is relevant, truthful and sufficient regarding the main characteristics of the contract, particularly its legal and financial conditions.

Without prejudice to any applicable sectoral legislation, the terms in which such information is provided, especially when dealing with vulnerable consumers, must be clear, comprehensible, truthful and sufficient, and presented in an easily accessible format, ensuring, where appropriate, the necessary assistance to guarantee proper understanding and enable optimal decision-making in their interests.

2. The obligations to provide information about goods or services established in this regulation and any others that may apply will be relevant, and, in addition:

a) The main characteristics of the goods or services, as appropriate to the medium used and to the goods or services.

b) The identity of the trader, including the company name, trade name, full address, telephone number, and, where applicable, the trader on whose behalf they act.

c) The total price, including all taxes and fees. If, due to the nature of the goods or services, the price cannot reasonably be calculated in advance or is subject to a quotation, the method by which the price is determined, as well as all additional costs for transport, delivery or postage; or, if such costs cannot reasonably be calculated in advance, the fact that such additional costs may need to be paid.

All information provided to the consumer and user regarding the price of goods or services, including advertising, shall state the total price, breaking down, where applicable, any increases or discounts that apply, costs passed on to the consumer and user, and any additional charges for ancillary services, financing, use of different payment methods, or other similar payment conditions.

d) The payment, delivery and execution procedures, and the date on which the trader undertakes to deliver the goods or perform the service.

e) In addition to a reminder of the existence of a legal guarantee of conformity for goods, digital content and digital services, the existence and conditions of after-sales services and commercial guarantees.

f) The duration of the contract, or, if the contract is of indefinite duration or is automatically extended, the conditions for termination. Furthermore, it must be

expressly stated whether there are commitments to remain or exclusive use of the services of a particular provider, as well as any penalties in the event of service termination.

g) The language or languages in which the contract may be formalised, where this is not the language in which the pre-contractual information was provided.

h) The existence of the right of withdrawal that may apply to the consumer and user, the period for exercising it, and the manner in which it may be exercised.

i) The functionality of goods with digital elements, digital content, and digital services, including applicable technical protection measures, such as, among others, protection through digital rights management or regional coding.

j) All relevant compatibility and interoperability of goods with digital elements, digital content, and digital services known to the trader or reasonably expected to be known, such as, among others, the operating system, the required version, or certain elements of physical media.

k) The procedure for handling complaints from consumers and users, as well as, where applicable, information about the out-of-court dispute resolution system provided for in Article 21.4.

3. *Section 1 shall also apply to contracts for the supply of water, gas or electricity – when not packaged for sale in a defined volume or specified quantities – heating through district systems, and digital content not provided on a tangible medium.*

4. *Pre-contractual information must be provided to the consumer and user free of charge and at least in Spanish; where applicable, at the request of either party, it must also be drafted in any of the other official languages of the place where the contract is concluded.*

5. *The burden of proof regarding compliance with the information requirements established in this article shall rest with the trader.*

Article 82. Definition of unfair terms.

1. *Any stipulations not individually negotiated, and any practices not expressly consented to, which, contrary to the requirements of good faith, cause a significant imbalance to the detriment of the consumer and user in the rights and obligations arising from the contract, shall be considered unfair terms.*

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

The trader who asserts that a particular clause has been individually negotiated shall bear the burden of proof.

3. *The unfair nature of a clause shall be assessed taking into account the nature of the goods or services subject to the contract, considering all the circumstances prevailing at the time of its conclusion, as well as all other clauses of the contract or of*

any other contract on which it depends.

4. Notwithstanding the provisions of the preceding paragraphs, clauses which, in accordance with Articles 85 to 90 inclusive, are unfair in any case:

- a) link the contract to the will of the trader,
- b) limit the rights of the consumer and user,
- c) determine the lack of reciprocity in the contract,
- d) impose disproportionate guarantees on the consumer and user or unduly place the burden of proof on them,
- e) be disproportionate in relation to the conclusion and execution of the contract, or
- f) contravene the rules on competition and applicable law.

- **Specifically, in accordance with the contract you enter into with us (outside commercial premises), the following articles of this text should be highlighted:**

Article 92. Scope of application.

1. Contracts concluded at a distance with consumers and users within the framework of an organised system of distance selling or provision of services, without the simultaneous physical presence of the trader and the consumer and user, and in which one or more distance communication techniques have been used exclusively up to the moment of the conclusion of the contract and in the conclusion itself, shall be governed by the provisions of this title.

Among others, the following are considered distance communication techniques: postal mail, the Internet, telephone, or fax.

2. The provisions of this title shall also apply to the following contracts entered into with consumers and users outside the business premises:

- a) Contracts entered into with the simultaneous physical presence of the trader and the consumer and user, in a place other than the trader's business premises.
- b) Contracts in which the consumer and user has made an offer under the same circumstances as those set out in letter a).
- c) Contracts entered into at the trader's business premises or by means of any distance communication method immediately after personal and individual contact with the consumer and user in a place other than the trader's business premises, with the simultaneous physical presence of the trader and the consumer and user.
- d) Contracts concluded during an excursion organised by the trader with the purpose of promoting and selling products or services to the consumer and user.

3. Without prejudice to the provisions of Article 10 and the non-waivable nature of the rights recognised to the consumer and user in this title, contractual clauses that are

more favourable to the consumer and user shall be valid.

4. *All contracts and offers concluded outside the commercial establishment are presumed to be subject to the provisions of this title, with the burden of proof to the contrary resting on the trader.*

Article 94. Commercial communications and electronic contracting.

In commercial communications by email or other electronic means and in distance contracting of goods or services by electronic means, in addition to the provisions of this title, the specific regulations on information society services and electronic commerce shall apply.

Where the provisions of this title conflict with the specific regulations on information society services and electronic commerce, the latter shall take precedence, except as provided in Article 97.7, second paragraph.

Article 95. Intermediation services in distance contracts.

Operators of distance communication techniques, understood as natural or legal persons, public or private, who own the distance communication techniques used by traders, are obliged to ensure, to the best of their ability and with due diligence, that these respect the rights recognised in this title for consumers and users and comply with the obligations imposed therein.

The provisions of the previous paragraph shall not be enforceable against providers of intermediation services of the information society, who shall be governed by the specific regulations on information society services and electronic commerce.

Article 96. Distance commercial communications.

1. *All distance commercial communications must clearly and unequivocally indicate their commercial nature.*

2. *In the case of telephone communications, the identity of the trader, or where appropriate, the identity of the person on whose behalf the call is made, must be explicitly and clearly stated at the start of any conversation with the consumer and user, along with the commercial purpose of the call. Under no circumstances shall telephone calls be made before 9 a.m. or after 9 p.m., nor on public holidays or at weekends.*

3. *The use by the trader of communication techniques involving an automated calling system without human intervention, or fax, requires the prior express consent of the consumer and user.*

The consumer and user shall have the right not to receive, without their consent, calls for commercial communication purposes made through systems other than those referred to in the previous section, where they have chosen not to appear in publicly available electronic communication directories, exercised the right for the data appearing therein not to be used for advertising or commercial prospecting purposes, or requested inclusion in the common files for exclusion from commercial communications regulated by personal data protection legislation.

4. The consumer and user shall have the right to object to receiving unwanted commercial offers by telephone, fax, or other equivalent means of communication. Within the framework of a pre-existing relationship, the consumer and user shall also have the right to object to receiving commercial communications by email or other equivalent electronic means of communication. Each commercial communication must inform the recipient of the simple and free means available to object to receiving them.

5. Where an unwanted commercial offer is made by telephone, the calls must originate from an identifiable telephone number. When the user receives the first commercial offer from the sender, they must be informed of their right both to object to receiving further offers and to obtain the reference number of that objection.

At the request of the consumer and user, the trader must provide a receipt confirming that the objection has been made, which must be sent as soon as possible and, in any case, within a maximum term of one month.

The sender must retain for at least one year the data relating to users who have exercised their right to object to receiving commercial offers, along with the reference number assigned to each, and must make this information available to the competent authorities.

6. In all cases, the current provisions regarding the protection of minors and respect for privacy must be observed. Where personal data is used for commercial communications without the consent of the data subject, the recipient shall be provided with the information set out in Article 30.2 of Organic Law 15/1999, of 13 December, on the Protection of Personal Data, and shall be given the opportunity to object to receiving such communications.

Article 97. Pre-contractual information for distance contracts and contracts concluded outside business premises.

1. Before the consumer and user is bound by any distance contract or contract concluded outside business premises, or any corresponding offer, the trader shall provide clear and comprehensible information, with particular attention to vulnerable consumers, to whom the information will be supplied in suitable, accessible, and understandable formats, as follows:

- a) The main characteristics of the goods or services, as appropriate to the medium used and the goods or services concerned.*
- b) The identity of the trader, including their trading name.*
- c) The full address of the trader's establishment, telephone number and email address. Furthermore, when the trader provides other online means of communication that ensure the consumer or user can maintain any form of written correspondence, including the date and time of such correspondence, with the trader on a durable medium, the information will also include details of those means.*

All these means of communication provided by the trader will enable the consumer or user to contact and communicate with the trader quickly and effectively. Where

appropriate, the trader will also provide the full address and identity of the trader on whose behalf they are acting.

d) If different from the address provided in accordance with letter c), the full address of the trader's registered office and, where applicable, that of the trader on whose behalf they act, to which the consumer or user may direct their complaints.

e) The total price of the goods or services, including taxes and fees, or, if the price cannot reasonably be calculated in advance due to the nature of the goods or services, the method by which the price is determined, as well as, where applicable, all additional costs for transport, delivery or postage and any other expenses; or, if such costs cannot reasonably be calculated in advance, the fact that such additional costs may be payable. In the case of a contract of indefinite duration or a contract that includes a subscription, the price will include the total costs per billing period. When such contracts are charged at a fixed rate, the total price shall also mean the total of the monthly costs. Where it is not reasonably possible to calculate the total cost in advance, the method by which the price is determined will be clearly specified.

f) Where applicable, that the price has been personalised on the basis of automated decision-making.

g) The cost of using distance communication techniques to conclude the contract, where such cost is calculated on a basis other than the basic rate.

h) The payment, delivery and performance procedures; the date on which the trader undertakes to deliver the goods or perform the services; and, where applicable, the trader's complaint handling system.

i) The language or languages in which the contract may be formalised, where this is not the language in which the pre-contractual information was provided.

j) Where there is a right of withdrawal, the conditions, time frame and procedures to exercise that right, as well as the model withdrawal form.

k) Where applicable, an indication that the consumer or user must bear the cost of returning the goods in the event of withdrawal and, for distance contracts, where the goods, due to their nature, cannot normally be returned by post, the cost of their return.

l) If the consumer or user exercises the right of withdrawal following a request under Article 98.8 or Article 99.3, information that in such cases the consumer or user must pay the trader reasonable costs in accordance with Article 108.3.

m) Where, under Article 103, the right of withdrawal does not apply, an indication that the consumer or user is not entitled to that right, or the circumstances in which they will lose it when it does apply.

n) A reminder of the existence of a legal guarantee of conformity for goods, digital content, or digital services.

ñ) Where applicable, the existence of after-sales assistance for the consumer and user, after-sales services, and commercial guarantees, as well as their conditions.

o) The existence of relevant codes of conduct and how to obtain copies of them, where appropriate. For this purpose, a code of conduct is understood as an agreement or set of rules not imposed by legal, regulatory, or administrative

provisions, which defines the behaviour of those traders who commit to comply with the code in relation to one or more commercial practices or economic sectors.

p) The duration of the contract, where applicable, or, if the contract is of indefinite duration or is automatically extended, the termination conditions.

q) Where applicable, the minimum duration of the obligations of the consumer or user arising from the contract.

r) Where applicable, the existence and conditions of deposits or other financial guarantees that the consumer or user must pay or provide at the request of the trader.

s) Where applicable, the functionality of goods with digital elements, digital content, or digital services, including any applicable technical protection measures.

t) Where applicable, all relevant compatibility and interoperability of goods with digital elements, digital content, or digital services known to the trader or reasonably expected to be known by them.

u) Where applicable, the possibility of resorting to an out-of-court dispute resolution mechanism to which the trader is subject, and the methods for accessing it.

2. *Section 1 shall also apply to contracts for the supply of water, gas, electricity – when not packaged for sale in a defined volume or specified quantities – heating through district systems, and digital content not supplied on a tangible medium.*

3. *In public auctions, the information referred to in paragraphs 1.b), c) and d) may be replaced by equivalent data from the auctioneer.*

4. *The information set out in paragraphs 1.j), k) and l) may be provided through the consumer or user withdrawal information document model established in letter A of Annex I. The trader shall have met the information requirements set out in paragraphs 1.j), k) and l) when such information has been correctly completed and provided.*

5. *The information referred to in section 1 shall form an integral part of the distance contract or contract concluded outside the business premises and shall not be altered unless the parties expressly agree otherwise. It shall be the trader's responsibility to prove the correct fulfilment of their information duties and, where applicable, the express agreement on the content of the information provided prior to the conclusion of the contract.*

6. *If the trader does not comply with the information requirements regarding additional expenses or other costs referred to in paragraph 1.e), or regarding the costs of returning goods referred to in paragraph 1.k), the consumer or user shall not be obliged to pay such expenses or costs.*

7. *The information requirements established in this chapter shall be understood as additional to those set out in Law 17/2009, of 23 November, on free access to service activities and their exercise, and in Law 34/2002, of 11 July, on information society services and electronic commerce.*

Without prejudice to the provisions of the preceding paragraph, if a general or sectoral

provision on the provision of services, including information society services and electronic commerce, relating to the content or manner in which information must be provided conflicts with any provision of this law, the provision of this law shall prevail, without prejudice to the fact that sectoral provisions shall prevail and be preferentially applicable regarding those aspects expressly provided for in the provisions of European Union law from which they derive.

8. *The burden of proof regarding compliance with the information requirements established in this article shall rest with the trader.*

Article 99. Formal requirements for contracts concluded outside the establishment.

1. *In contracts concluded outside the establishment, the trader shall provide the consumer and user with the information required in Article 97.1 on paper or, if they agree, on another durable medium. Such information must be legible and written at least in Spanish and, if requested by either party, must also be provided in any of the other official languages of the place where the contract is concluded, using clear and comprehensible terms.*

2. *The trader must provide the consumer and user with a signed copy of the contract or its confirmation on paper or, if agreed, on another durable medium, including, where applicable, confirmation of the prior express consent of the consumer and user and their acknowledgement of the loss of the right of withdrawal referred to in Article 103.m).*

3. *If a consumer or user wishes the provision of services or the supply of water, gas, electricity – when not packaged for sale in a limited volume or in specified quantities – or heating through urban systems to begin during the withdrawal period provided for in Article 104, and the contract imposes a payment obligation on the consumer or user, the trader shall require them to submit on a durable medium an express request to commence the contract, as well as a declaration that, once the trader has fully performed the contract, they will have lost their right of withdrawal.*

4. *It is the trader's responsibility to prove compliance with the obligations referred to in this article. The trader must adopt appropriate and effective measures to unequivocally identify the consumer and user with whom the contract is executed.*

Article 100. Consequences of non-compliance.

1. *A contract executed without the consumer and user having been provided with a copy of the executed contract or its confirmation, in accordance with Articles 98.7 and 99.2, may be annulled at the request of the consumer and user by way of action or exception.*

2. *Under no circumstances may the cause of nullity be invoked by the trader, except where the non-compliance is exclusively attributable to the consumer and user.*

3. *The trader shall bear the burden of proof regarding compliance with the provisions*

of this article.

Article 101. Requirement for express consent.

- 1. Under no circumstances shall failure to respond to the offer of contract be considered acceptance thereof.*
- 2. If the trader, without explicit acceptance from the consumer and user to whom the offer is addressed, supplies the offered good or service, the provisions of Article 66 quater shall apply.*

Article 102. Right of withdrawal.

- 1. Except for the exceptions provided in Article 103, the consumer or user shall have the right to withdraw from the contract within a period of fourteen calendar days without stating any reason and without incurring any costs other than those provided for in Articles 107.2 and 108.*

In the case of contracts concluded in the context of unsolicited visits made by the trader to the consumer's or user's home, or excursions organised by the trader with the aim or effect of promoting or selling goods or services, the withdrawal period shall be extended to thirty calendar days.

- 2. Clauses that impose a penalty on the consumer and user for exercising their right of withdrawal or for waiving it shall be null and void.*