

ACT

of 2 March 2000

on the protection of certain consumer rights and on the liability for damage caused by a dangerous product

Chapter I

Contracts concluded away from business premises

Article 1

1. The entrepreneur who proposes to the consumer the conclusion of a contract away from the business premises should, prior to the conclusion of a contract, present the document confirming that he is conducting business activity and his identity card. In the case of contracts concluded on behalf of the entrepreneur the person concluding a contract should additionally present the document proving her full powers.
2. The business premises shall be understood as a place intended for servicing general public and designated in conformity with the provisions on economic activity.
3. The provisions of the present Chapter shall also apply to the contract concluded in the result of collecting consumers' offers organised away from business premises, at the occasion of the entrepreneur's or person's acting on his behalf visit to the consumer workplace, his domicile or another place of private stay.

Article 2

1. The consumer who concluded the contract away from the entrepreneur's business premises may withdraw from it without giving reasons by way of an appropriate written statement, within the period of ten days from the conclusion of the contract.
2. The reservation that consumer is allowed to withdraw from the contract against determined remuneration (compensation) shall be inadmissible.
3. In the case of withdrawal, the contract shall be considered null and void and the consumer shall be free from any obligations. What parties rendered each other shall be returned unchanged, unless the change has been necessary under the limits of usual management. Where the consumer have effected any prepayment, the statutory interest rates are applicable from the date when prepayment was effected.

Article 3

1. The person concluding a contract with the consumer away from business premises should prior to its conclusion inform the consumer in writing about his right to withdrawal from the contract in the period referred to in Article 2 section 1, and hand over the specimen

of the statement on withdrawal including indication of her name and first name (name), domicile (premises); this person is also obliged to hand to the consumer a written confirmation that the contract is concluded, its date, kind and subject of performance and price.

2. The consumer, upon a request of the entrepreneur, shall confirm in writing that he is informed about the right to withdrawal from a contract and have received a specimen of the statement about withdrawal.

Article 4

Where the consumer is not informed in writing on the right of withdrawal from the contract, the lapse of the period referred to in Article 2 section 1 shall not start. In such a case the consumer may withdraw from the contract within 10 days from the date he receives information about the right of withdrawal. Nevertheless the consumer shall not be entitled to withdraw from the contract after three months since its execution.

Article 5

The provisions on the contracts concluded with consumers away from business premises shall not apply to the following :

- 1) contracts having permanent or periodic character, concluded based on the sales offer or recalling publications, advertising, price-lists and another information addressed to the general public or individuals, where consumer is able to get previously acquainted with the content of the offer or information, in the absence of another party to the contract, and at the same time this offer or information and the contract reserve the consumer the right of withdrawal from the contract within ten days from its conclusion,
- 2) sales of foodstuffs delivered recurrently by the salesman to the consumer's household, 3) contracts universally concluded in small current matters of everyday life where the value of the subject of a contract does not exceed the equivalent of 10 EURO, 4) contracts related to construction works, 5) contracts concerning real property, with the exception of repair services,
- 6) contracts concerning insurance, including membership to open pension funds, and reinsurance,
- 7) contracts for securities or membership units of fiduciary and investment funds (investment services).

Chapter II

Contracts concluded at a distance

Article 6

1. The consumer contracts concluded without simultaneous presence of both parties, by way of a use of means of communication at a distance, in particular order form without the address or addressed, serial letter, press advertising with a printed order form, catalogue, telephone, radio, television, automatic calling machine, videophone, videotext, electronic mail, facsimile machine, shall be considered distance contracts, provided that the party to the

contract with the consumer is the entrepreneur who organised in such a way his business activity.

2. The proposal to conclude the contract in a form of an offer, invitation to offer or order, or to start negotiations should univocally and clearly indicate the intention of the person making such proposal to conclude the contract.

3. Making use of videophone, facsimile machine, electronic mail, automatic calling machine and telephone in order to propose the conclusion of a contract may be done only upon the prior consent of the consumer.

Article 7

1. The consumer who concluded the distance contract may withdraw from it without giving reasons, by way of an appropriate written statement, within the period of ten days from the conclusion of the contract as determined in Article 10 section 1.

2. The reservation that consumer is allowed to withdraw from the contract against determined remuneration (compensation) shall not be admitted.

3. In the case of withdrawal, the contract shall be considered null and void and the consumer shall be free from any obligations. What parties rendered each other shall be returned unchanged, unless the change have been necessary within the limits of usual management. Where the consumer have effected any advanced payments, the statutory interest rates shall be applicable from the date when prepayment was effected.

Article 8

1. The contract for permanent or periodic performance may be concluded for determined or undetermined period of time.

2. The contract concluded for period exceeding one year shall be considered, after the lapse of this period, the contract concluded for undetermined period.

3. Where the period of the contract duration is not determined, each party may withdraw from it without giving reasons at one month notice, unless the parties reserved a shorter notice.

Article 9

1. The consumer should be informed, by making use of any means of communication at a distance, and latest at the moment of making an offer to conclude the contract, about:

- 1) first name and surname (trade name) and the domicile (premises) of the entrepreneur and about the body which registered his business activity as well as about the number under which he was registered,
- 2) relevant characteristics of the performance and its subject matter,
- 3) price or remuneration covering all its components, in particular customs duties and

taxes,

4) payment conditions for price or remuneration,

5) costs, time limit and mode of delivery.

6) right of withdrawal from the contract within 10 days period of time, including indication of exemptions referred to in Article 10 section 3,

7) costs resulting from using means of communication at a distance, where they are calculated differently then according to normal tariff,

8) period for which the offer or information on price or on remuneration remains binding,

9) minimum duration for which the contract for permanent or periodic services may be concluded,

10) place and procedures for lodging complaints,

11) right of withdrawal from the contract referred to in Article 8 section 3.

2. Information referred to in section 1 above should be formulated in unequivocal and in a way clear and easy to read.

3. The entrepreneur is obliged to confirm to the consumer in writing the information referred to in section 1, not later as at the moment of starting the performance.

4. The obligation referred to in section 3 above shall not apply in relation to the single services which by themselves are provided by means of distance communication and which are billed by natural or legal person, who within the structure of her undertaking makes available at least one distance communication facility, accessible to the consumer and entrepreneur (communication facility operator), nevertheless with the exemption of information referred to in section 1 item 1.

Article 10

1. The ten days period when a consumer may withdraw from the contract shall

commence as of the date on which product is delivered, and in the case of the contract related to providing services, as of the date on which the contract is concluded.

2. In the case where confirmation of the information referred to in Article 9 section 1 is deficient, the period when the consumer may withdraw from the contract shall be established for three months from the day of receipt of product or for the contract for providing services from the day it is concluded. However, if the consumer receives the confirmation after the course of this period has begun, the period shall be abbreviated to ten days from that date.

3. Unless the parties has agreed otherwise, the right of withdrawal from the distance contract shall not be vested in the consumer in the following cases:

1) provision of services if performance started with the consumer's consent before the end of the period referred to in Article 7 section 1,

2) contracts concerning audio and video recordings as well as recorded on computer software carriers, once the original packing is removed by the consumer,

3) contracts concerning performance which price or remuneration depends solely on price fluctuations on the financial market,

4) performance with characteristics specified by the consumer in his order or directly connected with his person,

- 5) performance which by reason of its nature cannot be returned or which subject is susceptible to quick deterioration,
- 6) supply of press,
- 7) services in the field of games of chance and betting.

Article 11

1. The contract may not impose on the consumer the obligation to pay the price or remuneration before the performance is rendered.
2. The contract should indicate location and conditions for lodging complaints which do not cause excessive difficulties or costs for the consumer.

Article 12

1. Unless the parties have stipulated otherwise, the entrepreneur should execute the contract concluded at a distance in the time limit not exceeding thirty days since the consumer have declared his willingness to conclude the contract.
2. Where the entrepreneur is not able to fulfil his obligation due to the fact that its subject is not available, he should without delay, however not later than within thirty days since contract conclusion, inform the consumer and refund the full amount of the money the latter has paid.
3. In the case where the entrepreneur is not able to fulfil the obligation because of even transitory impossibility to provide performance with characteristics ordered by the consumer, the entrepreneur may, if such reservation is included to the contract, release himself from this obligation by way of providing a substitute performance of equivalent quality and destination against the same price or remuneration, at the same time informing the consumer in writing about his right to refuse this service and withdraw from the contract by returning the object at the entrepreneur's cost.
4. In the case stipulated in section 3, the consumer shall have the right of withdrawal from the contract in a manner and under conditions stipulated in Article 7. The return of the object shall be at the charge of the entrepreneur.

Article 13

1. In the case of the consumer withdrawal from the contract, the entrepreneur shall be obliged to certify in writing the return of the performance.
2. Where the performance of the consumer is to be fulfilled with use of credit or loan granted by the entrepreneur or where the contract foresees use of the credit granted based on the agreement between the creditor and the entrepreneur, the withdrawal from the distance contract shall be effective also with respect to the credit or loan contract concluded by the consumer.

Article 14

The consumer may request, at the charge of the entrepreneur, the invalidation of the payment effected by a payment card where such card was inappropriately used in performance of the distance contract. It is without prejudice to the obligation to remedy the consumer for incurred damage.

Article 15

Performance unsolicited by the consumer shall be effected on the entrepreneur's risk and shall not impose any obligation on the consumer.

Article 16

1. The provisions on distance contracts shall not apply to the following contracts:

- 1) making use of vending machines,
- 2) making use of another automatic machines located in commercial premises,
- 3) concerning capital investments,
- 4) concerning insurance, including membership to open pension funds and reinsurance, 5) connected with banking operations and such activities performed by co-operative saving-crediting accounts, 6) pensions,
- 7) concerning financial operations with a fixed time limit and options,
- 8) concluded with the telecommunications operators involving use of public payphones,
- 9) pertaining real estate, rental exempted,
- 10) auction sales.

2. The provisions of Articles 9, 10 and 12 section 1 shall not apply to:

- 1) sales of foodstuffs supplied recurrently by the seller to the customer's household or his workplace,
- 2) provision, within strictly defined period of time, of services in the scope of accommodation, transport, leisure and catering business: in the case of the outdoor leisure events the entrepreneur may reserve also an exemption from the obligation to inform about the inability to perform the service referred to in Article 12 section 2, however only in the circumstances stipulated in the contract.

Article 17

The rights of the consumer stipulated in Articles 1 to 16 may not be exempted or limited by way of a contract, even where foreign law was chosen.

Chapter III

Changes to the existing regulations

Article 18

The Act of 23 April 1964 – Civil Code shall be amended as follows:

1) Article 384 shall read as follows:

“**Article 384. § 1.** The contract form set up by one of the parties, in particular general contract terms, contract specimens, rules and regulations shall be binding for the other party to the contract solely if presented at contract conclusion.

§ 2. Where the use of standard form is customary for such kind of relations, it shall be binding also in the case the other party could easily get acquainted with its content. However, it does not apply to the contracts concluded with the participation of consumers, with the exception of contracts universally concluded in small, current everyday matters.

§ 3. Every person who enters a contract with the entrepreneur for purposes which are not directly related to the business activity shall be considered as consumer.”

2) after Article 384 the following Article 384 shall be inserted:

“**Article 384¹.** The standard form delivered within duration of contractual relationship of permanent character shall be binding for the other party provided that provisions of Article 384 are observed and the party did not terminate the contract at the nearest termination date.”

3) Article 385 shall read as follows:

“**Article 385. § 1.** Where the content of the contract is contradictory to the standard form, the parties shall be bound by the contract.

§ 2. The standard contract form should be formulated in an unequivocal and comprehensive way. The ambiguous provisions shall be interpreted to the benefit of the consumer.”

4) Articles 385¹ and 385² shall have the following wording:

“**Article 385¹. § 1.** The provisions of the contract concluded with the consumer which have not been individually agreed upon shall not be binding if contrary to good practices they set up consumer’s rights and obligations in a way flagrantly infringing his interest (unfair contract terms). It does not apply to the provisions defining main obligations of the parties, including price or remuneration, if they were formulated in an unequivocal way.

§ 2. Where the provision of a contract pursuant to § 1 is not binding on the consumer, the parties are bound in the remaining scope of the contract.

§ 3. The provisions of the contract on which the consumer has no real impact are considered as not agreed upon individually. In particular it regards provisions resulting from the standard contract form proposed to the consumer by the contracting party.

§ 4. The burden of proof that the provision have been agreed individually lies with the party invoking it.

Article 385². The assessment whether the provisions of the contract are in conformity with good practices shall be done as of the date of contract conclusion, taking into account its contents, circumstances of its conclusion and considering another contracts related to the contract including provisions subject to the assessment.”

5) After Article 385² the following Articles 385³ and 385⁴ shall be inserted:

“**Article 385³**. In the case of doubt, the following provisions shall be deemed unfair contract terms which are, in particular:

- 1) excluding or limiting the liability to consumer for personal damage,
- 2) excluding or significantly limiting the liability with regard to the consumer for non-performance or inadequate performances of the obligation,
- 3) excluding or significantly limiting the deduction of consumer’s liability from the liability of another party,
- 4) stipulating provisions with which the consumer have not been not able to get acquainted before the conclusion of the contract,
- 5) enabling the contracting party of consumer to transfer rights and obligations under the contract without the customer’s consent,
- 6) making the conclusion of the contract conditional upon the consumer’s commitment to conclude in the future further contracts of a similar kind,
- 7) making the conclusion, content or performance of the contract conditional on conclusion of another contract, not having a direct relation to the contract containing provisions subject to assessment,
- 8) making the performance of the obligation conditional upon circumstances dependent solely on the will of the contracting party of the consumer,
- 9) vesting the consumer’s contracting party with the rights to make a binding interpretation of the contract,
- 10)authorising the consumer’s contracting party to alter unilaterally the contract without valid reason specified in this contract,
- 11)granting only the customer’s contracting party the right to assess the conformity of the fulfilled obligation with the contract,
- 12)exempting the obligation to refund to the customer the payment effected for the performance not or only partial delivered where the customer withdraws from the conclusion of the contract or from its performance,
- 13)providing for forfeiture of the right to request the return of consumer’s performance effected prior to the contracting party’s performance, where both parties terminate, dissolve or withdraw from the contract,
- 14)depriving solely the consumer of the right to dissolve the contract, withdraw from it or terminate it,
- 15)reserving for the consumer’s contracting party the right to terminate the contract concluded for indeterminate period of time, without indicating important reasons and without adequate notice,
- 16)imposing upon the consumer alone the obligation to pay the agreed amount in the case of

- withdrawing from the conclusion or performance of the contract,
- 17) imposing upon the consumer who fails to fulfil his obligation or withdraws from the contract a flagrantly exorbitant fine or compensation,
 - 18) providing for the contract of fixed duration to be extended unless the consumer indicates otherwise, where the deadline for consumer statement is fixed for unreasonably short period,
 - 19) giving only to the consumer's contracting party the unilateral right to alter important characteristics of the performance, without valid reasons,
 - 20) stipulating for the consumer's contracting party the right to determine or increase the price or remuneration after the contract was concluded, without giving the consumer the right of withdrawal from the contract,
 - 21) making the responsibility of the consumer's contracting party conditional upon fulfilment of the obligations by persons, with the intermediary of which the consumer's contracting party concludes the contract or which assist him in fulfilling his obligation, or making this responsibility conditional to excessively burdensome for the consumer formalities,
 - 22) providing for the consumer obligation to perform his obligation despite non-performance or inadequate performance of his contracting party,
 - 23) excluding jurisdiction of the Polish courts or subjecting the case to arbitration of the Polish or foreign court of conciliation or another body, or imposing the court which by the law is not competent locally.

Article 385⁴. § 1. Contracts between entrepreneurs using different standard contract forms shall not include such provisions of standard forms which are contrary to each other.

§ 2. The contract shall not be concluded where after receiving an offer the party immediately informs that has no intention to conclude a contract upon conditions stipulated in § 1."

6) After Title IV, book three, the following Title VI¹ shall be inserted:

"**Title VI¹.** The liability for damage caused by a dangerous product.

Article 449¹. § 1. Who, within the scope of his business activity (the producer), manufactures a dangerous product, shall be liable for the damage caused by this product to anybody.

§ 2. The product means a movable thing, even when connected with another thing. Also animals and energy shall be considered products.

§ 3. Dangerous is the product not ensuring the safety which may be expected taking into consideration its normal use. Whether the product is safe depends on circumstances existing when the product is put into circulation, in particular on the way it is presented and on the information on its properties supplied to the consumer. The product may not be considered dangerous based only on the fact, that a similar improved product is subsequently put into circulation.

Article 449². The producer shall be liable for the damage to the property only where damaged or destroyed thing belongs to things intended for personal use and was used mainly as such by

the injured person.

Article 449³. § 1. The producer shall not be liable for the damage caused by dangerous product where he does not put the product into circulation or the product is put into circulation out of the course of his business activity.

§ 2. The producer also shall not be liable where dangerous properties of the product appear after it is put into circulation, unless they resulted from reason previously inherent in the product. He shall also not be liable where the state of science and technology at the time when he put the product into circulation precluded foreseeing its dangerous properties, or such properties resulted from the legal provisions.

Article 449⁴. It is assumed that the dangerous product which caused the damage was manufactured and put into circulation within the course of the producer's business activity.

Article 449⁵. § 1. The manufacturer of material, raw material or component of the product shall be liable as its producer, unless the damage is due solely to the defective design of the product or to producer's instructions.

§ 2. Any person who by labelling the product with her name, trade mark or another differentiating mark identifies herself as the producer, shall be liable as the producer. The same liability shall be borne by whoever in the course of his business activity puts into circulation the product of foreign origin (the importer).

§ 3. The producer and persons referred to in paragraphs above shall be liable jointly and severally.

§ 4. Where the producer or person stipulated in § 2 cannot be identified, the liability shall be borne by the person who in the course of her business activity sells a dangerous product, unless within one month from the information about damage she indicates to the injured person the name and address of the producer or of the person stipulated in § 2, and in the case of imported product, the name and address of the importer.

§ 5. Where the seller is unable to indicate the producer or persons referred to in § 4, he shall be relieved from the liability by indicating the person from which he has purchased the product.

Article 449⁶. Where for the injury caused by the product also a third party is liable, the liability of this party and of the persons listed in preceding Articles shall be joint and several. The provisions of Article 441§ 2 and 3 shall apply, respectively.

Article 449⁷. § 1. The compensation for damage to the property shall not include defects of the product itself nor benefits the injured person could have obtained in connection with its use.

§ 2. The compensation by virtue of Article 449¹ shall not apply where a damage to the property does not exceed the amount in zloties equivalent to 500 EURO.

Article 449⁸. The claim for compensation of a damage caused by a dangerous product shall expire with the lapse of three years from the date when the injured person have acquired information about the damage and about the person liable for its redress. However, in every case the claim shall expire after lapse of ten years from putting the product into circulation.

Article 449⁹. The liability for damage caused by a dangerous product may not be exempted or limited.

Article 449¹⁰. The provisions on the liability for dangerous product are without prejudice to the liability for damages pursuant to general provisions, liability for damages caused by non-performance or inadequate performance of an obligation, or liability by virtue of warranty for defects and quality guarantee.

Article 449¹¹. The liability defined by the provisions of the present Title may not be exempted or limited by way of an agreement, even if the foreign law have been chosen to govern the contract.”

7) After Article 555 the following Article 555¹ shall be inserted:

“**Article 555¹.** The Council of Minister shall, by way of a regulation, define detailed conditions for conclusion and execution of the sales contracts between entrepreneurs and consumers, taking into consideration the protection of consumers’ interests against the activities of entrepreneurs which are contrary to good practice.”

Article 19

The Act of 17 November 1964 – the Code of Civil Proceedings shall be amended as follows:

1) in Article 111 § 1 item 6 the full stop shall be replaced by the semicolon and the following item 7 shall be inserted:

“7) the party applying for recognition of the contract terms as unfair.”,

2) in Article 479¹ § 2 item 3 the full stop shall be replaced by the coma and the following item 4 shall be inserted:

“4) against the entrepreneurs for assessment of contract terms as unfair (prohibited).”

3) after chapter 2 section IV, Title VIII book one, part one the following chapter 3 shall be inserted:

“Chapter 3

Proceedings in the cases for assessment of the provisions of standard contract form as prohibited.

Article 479³⁶. In the cases of assessment of the provisions of the standard contract form as being prohibited the competent forum shall be the Warsaw Provincial Court – the Antimonopoly Court.

Article 479³⁷. In the cases assessed by virtue of provisions of the present Chapter, the provisions of Articles 479¹² and 479¹³ shall not apply.

Article 479³⁸. The complaint in cases examined pursuant to the provisions of the present Chapter may be lodged by every person who, in conformity with the defendant's offer, could conclude with him the contract including provisions which are subject to the assessment of being prohibited as requested by the citation. The complaint may be also lodged by social organisation which statutory tasks include protection of consumer interest, by district (municipal) consumer advocate and by the President of the Office for Competition and Consumer Protection.

Article 479³⁹. The request to assess a standard contract form as prohibited may be lodged also when the defendant have relinquished to use it where from this relinquishment six months have not elapsed.

Article 479⁴⁰. The relinquishment by the defendant of the use of the standard contract form after the complaint have been instituted shall have no impact on the course of proceedings.

Article 479⁴¹. In cases of assessment of the provisions of a standard contract form as being prohibited, the court may not pronounce a verdict solely by way of admitting the complaint. Coming to terms shall also be inadmissible.

Article 479⁴². § 1. Where the complaint have been admitted, the court in the verdict sentence shall list the content of provisions of the standard contract form considered prohibited and shall ban their use.

§ 2. The verdict of the second instance may be subject to the cassation of the Supreme Court.

Article 479⁴³. The legally valid verdict shall be effective in relation to third parties from the moment the prohibited provision have been entered to the register referred to in Article 479⁴⁵ § 2.

Article 479⁴⁴. § 1. The court shall order promulgation of the legally valid verdict in the Judiciary and Economic Monitor.

§ 2. The cost of the verdict promulgation referred to in § 1 shall be accounted to the costs of the proceedings.

Article 479⁴⁵. § 1. The court shall send the duplicate of the legally valid verdict to the President of the Office for Competition and Consumer Protection.

§ 2. The President of the Office for Competition and Consumer Protection shall keep, based

on verdicts referred to in § 1, the register of provisions in standard contract forms assessed to be prohibited.

§ 3. The register referred to in § 2 shall be public.

§ 4. The Council of Ministers shall define, by way of a regulation, the specimen of the register of provisions in standard contract forms assessed to be prohibited.

Article 20

In the Act of 20 May 1971 – the Misdemeanour Code after Article 138 the following Articles 138a and 138b shall be inserted:

“Article 138a. § 1. The person concluding a contract away from the business premises, who does not present to the consumer a document confirming that she is conducting business activity or her identity card, shall be liable to a fine.

§ 2. The person concluding away from the business premises a contract on behalf of the third party, who in addition does not present the document confirming her full powers, shall be liable to the same fine.

Article 138b. § 1. The person obligated by the court verdict to relinquish the use or to recall the recommendation to apply general contract terms or a standard contract form , who fails to meet this obligation by including to the contract unfair contract terms, shall be liable to a fine.

§ 2. Where the court verdict referred to in § 1 applies to the entrepreneur who is not a natural person, the liability stipulated in § 1 shall apply to the person managing the undertaking or the person entitled to conclusion of contract with consumers.

Article 21

The provisions of Articles 1–17 and 18 items 1 – 5 shall apply to the contracts which have been concluded prior to but not executed as of the date the present Act comes into force.

Article 22

The provisions of the Civil Code on the liability for damage caused by a dangerous product shall not apply where the product have been put into domestic circulation prior to the entry into force of the present Act.

Article 23

Until the regulation referred to in Article 18 item 7 is issued, the regulation entered before its entry into force by virtue of Article 384 of the Civil Code shall be binding, however for the period not exceeding two years.

Article 24

The present Act shall come into force three months after its promulgation.

PRESIDENT OF THE REPUBLIC OF POLAND

A. Kwaśniewski

