

Is the customer always right?

Information for retailers

Your legal rights and responsibilities when dealing with customers are set out in the Australian Consumer Law (ACL) and summarised here.

Misleading or deceptive conduct

You must not engage in conduct that could mislead customers about your products or services, such as the:

- standard, quality, value and price
- performance, characteristics, uses and benefits
- sponsorships or testimonials
- availability of repair facilities or spare parts
- country of origin
- consumer guarantees, warranties and conditions.

Unconscionable conduct

You must not act unconscionably, including:

- not giving customers time to read an agreement, ask questions or get advice
- using high-pressure sales tactics
- taking advantage of a customer's disability, financial difficulty, sickness, age, sex or illiteracy
- persuading a customer to sign a blank contract.

You must not engage in conduct that could mislead customers about products or services.

Unfair terms in consumer contracts

A consumer contract is an agreement between you and your customer for the supply of products or services.



It can be written or verbal and can be entered into by:

- signing a document
- agreement over the phone
- clicking an 'I agree' button on a web page.

Your contracts must comply with national laws about unfair contract terms and cannot include terms that allow you to:

- change the contract without notifying the customer
- avoid responsibility if things go wrong
- avoid liability for negligence
- solely determine if the contract has been breached
- impose fees and charges not related to costs incurred.

A term found to be unfair is treated as if it never existed.

Consumer guarantees, refunds and warranties

Consumer guarantees cover rights and responsibilities when there is a problem with products or services.

When supplying to customers, both you and the manufacturer guarantee that products:

- meet a level of quality and performance appropriate to their price
- match any description
- meet any other warranties (extra promises) such as the manufacturer's guarantee
- will be fit for any specified purpose
- will match any sample or demonstration model
- are yours to sell
- will not be repossessed from the customer.

You guarantee services you provide are:

- done with due care and skill, taking necessary care to avoid loss or damage when providing them
- done within a reasonable time depending on their nature
- fit for the purpose, including any products resulting from the service.

Manufacturers also guarantee that repair facilities and spare parts will be reasonably available.

The consumer guarantees also apply to the sale of discounted items, samples and seconds.

When to refund, repair or replace

If products you supply do not meet a consumer guarantee, you must fix the problem by providing a refund, repair, replacement or other 'remedy'.

The remedy depends on whether the problem is:

- major - it cannot be fixed, would take too long or is too difficult to fix. The customer can choose whether they return the product for a refund or exchange, or keep the product (you must then compensate them for any drop in value).
- minor - you must repair the product within a reasonable time, or provide a refund or exchange.

Refund signs

Signs and receipts outlining your refund policy must reflect customers' rights. Some signs are unlawful, such as:

- 'No refunds'
- 'No refunds after seven days'
- 'No refunds on sale items'
- 'Refunds on unworn items only'
- 'We only exchange, repair or give credit notes'.

Your returns policy

If you choose to have a returns policy, you can offer a remedy if the customer:

- simply changes their mind
- found the goods cheaper elsewhere
- complains about a fault they already knew of
- damaged the product by misusing it
- does not have proof of purchase, such as a receipt or credit card statement.

You must abide by your refund policy.

Resources

We aim to create a competitive, fair and safe trading environment for your business.

If you break the law, we can:

- impose a financial penalty (infringement notice)
- publicly name your business
- get injunctions to stop you trading
- make you publish corrective advertisements
- seek compensation and asset-freezing orders.

To help you comply, see our online information and guides on:

- consumer guarantees
- product safety
- unfair contract terms
- avoiding unfair business practices
- sales practices
- compliance and enforcement.

For more information, visit consumer.vic.gov.au/fairtrading

consumer.vic.gov.au

1300 55 81 81 (local call charge)



MyShopRights smartphone app:
consumer.vic.gov.au/myshoprights

MyShopRights provides instant advice on your refund, warranty and lay-by rights.

Services from Consumer Affairs Victoria are available regionally.

TIS - Translating & Interpreting Service **131 450**

TTY - Textphone or modern users only, ring the National Relay Service (NRS) on **133 677**, then quote **1300 55 81 81**.

Callers who use Speech to Speech Relay dial **1300 555 727**, then quote **1300 55 81 81**.