

Contracting with Consumers: Overview (Switzerland)

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A Practice Note for foreign counsel to those providing goods, services, or digital content directly to consumers in Switzerland. This Note provides an overview of how the laws of Switzerland regulate contracts with consumers for the sale of goods and the supply of services and digital content and includes consideration of key terms commonly included in consumer contracts.

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Laws and provisions governing consumer contracts in Switzerland give consumers rights and remedies that generally cannot be waived. In addition, contract terms between businesses and consumers must meet statutory requirements for transparency and fairness. Any terms and conditions for use with consumers must be drafted so that they reflect these rules. Otherwise, the terms will be unenforceable, and their use may be a breach of laws governing consumer contracts.

This Note discusses who qualifies as a consumer in Switzerland and looks at:

- The controls and limitations on those contracting with consumers, including those pertaining to key contract terms, such as delivery, quality of products, guarantees, and limitations of liability.
- Key compliance obligations for those contracting with consumers at each stage of the contractual process: pre-contract, contract formation, and post-contract assistance.

This Note does not deal with sector-specific legislation protecting consumers, for example, in the financial services, pharmaceutical, or travel markets, or with regulations governing advertising, marketing, packaging, or product liability and safety, if any. This Note also does not address the specific rules of tenant law.

When the Laws Regulating Contracts with Consumers Apply

Consumer Protection Legislation

In Switzerland, there is no dedicated legislation that specifically regulates contracts with consumers. Consumer law provisions are scattered across various laws. The general rules can be found in:

- The [Code of Obligations](#), which sets out the general rules for obligations and special rules governing the supply of goods and services, including digital content, and applies to both business to consumer and business to business contracts.
- The [Federal Act on Unfair Competition](#) (Unfair Competition Act), which prohibits unfair business practices, including unfair pricing, unfair sales tactics, and schemes that may harm consumers' interests.
- The [Swiss Civil Procedure Code](#) (Civil Procedure Code).
- The [Federal Act on Private International Law](#) (Private International Law Act).

Who Qualifies as a Consumer Under Swiss Law

There is no uniform definition for who qualifies as a consumer under Swiss law. Generally, only natural persons can be considered consumers (see Article 32, Civil Procedure Code and Article 8, Unfair Competition Act). The various provisions governing consumer rights suggest that only contracts for personal, non-commercial purposes are considered consumer contracts.

Legal entities acting for purposes outside their commercial activity are not consumers and cannot benefit from consumer protection regulations.

Within their framework, the Civil Procedure Code and Private International Law Act further restrict the definition of consumer contracts to contracts for the supply of goods or services for ordinary use.

Therefore, the central factors to determine whether a buyer is contracting as a consumer are:

- The purpose of a contract (that is, the buyer's intended use of the goods or services).
- The buyer's legal status (that is, whether the buyer is a natural person).

To ensure legal certainty, the presumed intended use of the product or services is relevant. What use would a professional supplier, acting in good faith, reasonably expect the product or service to be put to, considering the specific circumstances of the contract?

Status of the Supplier

Generally, there is no requirement for consumer law provisions to apply that the seller must be acting in the course of a business. However, the seller must offer the product during its professional or commercial activity for the specific consumer jurisdiction under the Civil Procedure Code to apply (Article 32, paragraph 2, Civil Procedure Code).

General Principles of the Laws Regulating Contracts with Consumers

Freedom of Contract

Freedom of contract, which allows the parties to freely determine the terms, participants, form, and content of their agreements is the basis for consumer contracts (Article 19, paragraph 1, Code of Obligations).

The formation of consumer contracts requires the mutual expression of intent and agreement on essential terms (Article 1, Code of Obligations). The essential terms for consumer contracts typically include price, payment terms, product details (specification), and delivery conditions.

Voidable and Rescindable Contracts

The inclusion of terms that are impossible, unlawful, or immoral, can void a contract in whole or in part (Article 20, Code of Obligations). Unlawful terms include those that violate mandatory provisions of private and public law or violate a consumer's personal rights.

The inclusion of obligations that impede a party's ability to freely organise their life can void a contract. Examples include terms that compromise a consumer's physical integrity or privacy, or that impose excessive ties in terms of duration and intensity. (Article 27, Civil Code.)

Contracts that contain fundamental errors or that involve a business intentionally deceiving or exploiting a consumer can be voided or rescinded by the consumer. There is a presumption that the consumer has been exploited if both:

- There is a manifest imbalance between the consumer's and the businesses' obligations under the contract.
- The consumer is in a weaker position and the business has abused this position.

(Articles 21, 23, 24, and 28, Code of Obligations.)

Contracts entered under duress are also voidable (Article 29, Code of Obligations).

Principle of Acting in good Faith

The principle of acting in good faith requires mutual respect and trustworthiness in the exercise and fulfilment of rights and obligations (Article 2, paragraph 1, Civil Code). Accordingly, legal transactions require, and the law protects, both:

- Loyal, correct, and honest behaviour.
- Mutual trust and trustworthiness.

Furthermore, the principle of acting in good faith is the basis for the principle of trust, which is used to interpret or supplement contracts where no actual consensus of the contractual parties can be established. In these cases, a statement is interpreted as a recipient, acting in good faith, could or should have understood it.

Protection Against Unfair Terms

Because general (or standard) terms and conditions (GTCs) are not individually negotiated, they can favour the drafter and user of the GTCs and systematically disadvantage the contractual partner.

There are controls on the incorporation of GTCs into contracts, as well as on their content and their interpretation (see [Incorporation of Terms and Conditions](#)). If a consumer is involved, GTCs must also be assessed under the Unfair Competition Act.

Controls on Content of GTCs and Global Acceptance

GTCs as a whole and each individual clause must pass a validity check (*Geltungskontrolle*). Swiss law distinguishes between cases where:

- The other party has read, understood, and accepted the GTCs (full acceptance).
- Acceptance is assumed based on the principle of trust regarding unread GTCs that are attached or expressly referred to in the contract (global acceptance).

There is a presumption that the non-drafting party did not review the GTCs in detail and accepted them globally.

Individual GTC clauses which have been globally accepted can fail the validity test and be non-binding and invalid if they are both:

- Too broad (in favour of the business) or unusual or surprising.

- Not sufficiently drawn to the consumer's attention, for example, by express reference in separate correspondence or by having the consumer sign the relevant provisions.

Controls via Interpretation of GTCs

Like all contracts, GTCs must be interpreted in accordance with the principle of trust and good faith (see [Principle of Acting in good Faith](#)). Two specific rules of interpretation applying to GTCs are that:

- Individual agreements that differ from the GTCs prevail over the GTCs.
- If GTC clauses are ambiguous, they must be interpreted to the disadvantage of the GTCs' drafter and user (*Unklarheitenregel*).

Unfair Competition Act Controls on GTCs

A GTC clause in a consumer contract that is, in principle, valid and clear must be further assessed to determine whether the specific clause complies with the Unfair Competition Act. It is unfair to use GTCs that provide a significant and unjustified imbalance between contractual rights and obligations to the detriment of consumers in a manner that violates good faith (Article 8, Unfair Competition Act). An unfair clause under Unfair Competition Act Article 8 is invalid and cannot be enforced against the consumer.

Unfair Practices

The Unfair Competition Act also prohibits unfair practices that can negatively affect consumers, such as:

- A bait and switch.
- Snowball and pyramid schemes.
- Making incorrect or misleading statements about goods, works or services, their prices or the quantity in stock.
- Concealing the nature, quantity, intended use, benefit or danger of goods, works or services and thereby misleading consumers.
- Misleading consumers about the actual value of the offer by offering bonuses.
- Using aggressive sales tactics that impair the consumer's freedom of choice.

(Article 3, Unfair Competition Act.)

In distance selling (for example, over the internet), a seller acts unfairly if, without objective justification, the seller, based on the customer's nationality, place of residence, place of establishment, the registered office of the customer's payment service provider, or the place where the customer's payment method is issued, either:

- Discriminates against the customer in price or payment conditions.
- Blocks or restricts the customer's access to an online platform.
- Redirects the customer to another version of the online platform without the customer's consent.

Exceptions to this rule include non-economic services of general interest, financial services, electronic communications services, audiovisual services, and public transport services. (Article 3a, Unfair Competition Act.)

Pre-Contract Considerations

Provision of Pre-Contract Information to Consumers

Generally, Swiss civil law does not require the provision of any specific pre-contract information (for example, information about pricing or accepted payment methods) to consumers. Contracts (including consumer contracts) are concluded on the principle of freedom of contract (see [Freedom of Contract](#)).

There is an exception to this general rule for door-to-door sales and similar contracts. Consumers must be provided information on the right of withdrawal for these contracts. (See Articles 40a-f, Code of Obligations and [Cancellation Rights \(Cooling-Off Periods\)](#).)

In addition, the [Federal Act on Information for Consumers](#) (Consumer Information Act) requires sellers to provide certain objective information when offering certain goods and services to consumers. Currently, extended declaration requirements apply to wood, fur, and their products. In these cases, a seller must inform consumers about:

- The essential characteristics of goods offered for sale.
- The essential content of an offered service, if the service is designated by the Swiss [Federal Council](#).

(Article 2, Consumer Information Act.)

Generally, all declarations must be made in Switzerland's official languages (Article 2, Consumer Information Act). Furthermore, additional and deviating labelling obligations for goods and services may exist and take precedence.

E-commerce traders must provide adequate transparency information to consumers when concluding a contract electronically, which includes providing:

- Clear and comprehensive information on the trader's identity, including the trader's contact details and e-mail address.
- Clear information on the technical steps for placing an order and concluding a contract.
- Electronic confirmation of the order without delay.

(Article 3, paragraph 1(s), Unfair Competition Act.)

Liability for Pre-Contract Statements

Swiss law generally presumes that a contract expresses all the important aspects of the agreement between the parties. Therefore, absent fraudulent statements, there is generally no liability for marketing statements or statements made by sales people (see [Fraud and Misrepresentation](#)). However, pre-contractual statements can be considered in contract interpretation (regardless of any entire agreement provisions) (see [Contract interpretation](#)).

Contract Interpretation

While entire agreement clauses are often used, the rules of interpretation can mean that pre-contractual statements are nevertheless given effect.

Pre-contract statements can be relevant in a conflict regarding the contract's content. Specifically, the statements can be used to establish the true intention of the contracting parties at the time of contract conclusion and so the content of an agreement and the meaning of a clause, a subjective interpretation (Article 18, paragraph 1, Code of Obligations). The following evidence is particularly relevant:

- The wording of the contract.
- The general context, such as the conduct of the parties, custom and usage when the contract was concluded, as well as pre-contractual statements.

Incorrect statements in the contract, whether included by error or to disguise a real common intention, are legally irrelevant.

If the parties' real intention cannot be established, their presumed intentions when the contract was concluded must be determined based on the principle of trust and good faith, an objective interpretation (see [Principle of Acting in good Faith](#)). The contract's unambiguous wording is the primary focus, also in the objective interpretation. Deviating from an agreement's clear wording is only appropriate if there is a serious basis to assume that the wording does not correspond with the parties' intention.

In all instances, the principle of good faith limits the application of an entire agreement clause. An entire agreement clause does not protect a party that invokes the clause in bad faith.

Fraud and Misrepresentation

A party who is induced to enter a contract by the fraud of the other party is not bound by it (Article 28, Code of Obligations). Fraudulent behaviour occurs when false facts are presented or relevant facts are suppressed or concealed. There must be an intention to deceive and the deception must have induced the deceived party to conclude the contract.

Contract Formation

Incorporation of Terms and Conditions

Controls on Incorporation of GTCs

GTCs can only become part of a contract if both:

- The parties expressly or impliedly incorporate the GTCs into the contract prior to its conclusion.
- The non-drafting party had an opportunity to acquire reasonable knowledge of the GTCs' content by being able to directly review the GTCs without major obstacles.

Notably, a mere reference to the GTCs without making them available to the consumer is generally not sufficient in a consumer contract. The GTCs must be made available in a way that gives the consumer a reasonable opportunity to take note of the GTCs. In legal relationships with consumers, it must be clear that the consumer has access to the internet if the GTCs are only available on a website (see [Format and Presentation of Terms and Conditions](#)).

Format and Presentation of Terms and Conditions

Swiss law does not require any specific form for consumer contracts.

To incorporate GTCs, the GTCs user must make the GTCs reasonably available to the other contracting party, particularly a consumer (Federal Supreme Court, BGE 139 III 345 of 1 July 2013). Accordingly, the consumer must be able to access and take note of the GTCs with reasonable efforts. GTCs must also be legible (recognisable) and comprehensible (clear). If the GTCs are not made available to the consumer in an appropriate manner, it is assumed that both:

- The consumer has not consented to the GTCs.
- The GTCs have not become part of the contract.

(Federal Supreme Court, BGE 139 III 345 of 1 July 2013 and BGE 148 III 57 of 5 January 2022.)

Contracting Online

For online contracts, giving a consumer access to the GTCs by click or link is permitted (Federal Supreme Court, BGE 139 III 345 of 1 July 2013). However, the prevailing doctrine and case law suggest a consumer is not considered to have had a reasonable possibility to take note of the GTC where there is a media gap (*Medienbruch*). A media gap occurs when a consumer receives a physical document referring to GTCs but must switch to another medium (that is, the internet) to take full note of the GTCs.

Contracting with Minors

To be able to enter a contract, consumers must, in principle, be 18 years of age and capable of exercising judgement (Article 13, Civil Code). A lack of contractual capacity generally nullifies a contract, meaning it has no legal effect. This nullity can be asserted at any time.

Generally, minors have limited contractual capacity and a contract with a minor requires the consent of the minor's legal representatives. Consent may be given before or after a contract is concluded and can be inferred from behaviour.

Minors who are capable of judgement enjoy full capacity to act when:

- Exercising highly personal rights.
- Obtaining gratuitous benefits.
- Dealing with minor matters of daily life, which can include all types of legal transaction (such as purchases, sales, exchanges, gifts, and services).

(Articles 19 and 19c, Civil Code.)

The decisive factor for whether a transaction is an everyday transaction is not if the transaction typically occurs daily, but whether the public views the transaction as an everyday transaction (for example, purchasing toothpaste, clothing, movie tickets, magazines, or food).

Controls on Changes to Products and Contract Terms

In principle, contract amendment requires a consensus of the involved parties (see [Freedom of Contract](#)). Therefore, the validity of contractual clauses allowing unilateral and substantial modification of the contract should always be carefully checked, especially if a unilateral modification clause in a consumer contract is part of the GTCs (see [Protection Against Unfair Terms](#)).

Swiss law generally accepts that for continuing obligations (*Dauerschuldverhältnis*), a party can have a legitimate interest in including an option to unilaterally change the terms of the contract, including the price (an essential term). Therefore, these clauses are, in principle, possible. However, clauses that grant a party a unilateral power to amend the terms of the contract must be examined individually and run the risk of being declared null and void.

Consumer contracts can include a GTC clause stating that the consumer acknowledges and agrees to the supplier's unilateral right to change the terms on which products are supplied, including the price, if the potential changes (conditions and scope) are sufficiently defined. However, where there has been a global acceptance of the GTCs, it is necessary to examine in detail whether the content of this clause is unusual (see [Controls on Content of GTCs and Global Acceptance](#)).

A unilateral contract modification GTC clause that is sufficiently specific and not unusual must still be examined to determine whether it is unfair under Unfair Competition Act Article 8 (see [Unfair Competition Act Controls on GTCs](#)). The more significant the intended adjustment of the contract's content and the less guidance the GTC clause provides for such unilateral amendment, the more likely it is to be unfair. Unfairness can be mitigated by safeguards to counterbalance the unilateral modification right. An example of a safeguard would be a right for the consumer to terminate the contract without penalty if the business exercises the unilateral modification right.

Cancellation Rights (Cooling-Off Periods)

Generally, Swiss law does not provide consumers with cancellation rights. There is also no right of withdrawal for distance contracts (that is, online sales). A specific exception exists for door-to-door sales and similar contracts (Articles 40a-40f, Code of Obligations).

Consumers have cancellation or withdrawal rights in door-to-door sales when, cumulatively:

- The goods are bought for personal or family use.
- The consideration from the buyer exceeds CHF100.
- The seller acts in a professional or commercial capacity.
- The offer is made at the buyer's place of work, at home, in public places, on public transport, during promotional events, or over the telephone or comparable means of simultaneous verbal communication.

(Articles 40a and 40b, Code of Obligations.)

The right of withdrawal does not apply if either:

- The consumer expressly requested negotiations.
- The contract was concluded at a market stall.

(Article 40c, Code of Obligations.)

The right of withdrawal for door-to-door sales and similar contracts allows the consumer to cancel the contract with retroactive effect and does not require the consumer to give notice of cancellation in any particular form.

The supplier must inform the consumer of the right of withdrawal in writing and be able to prove all the following:

- When the supplier gave the withdrawal information to the consumer.
- That the consumer has taken note of the withdrawal information.
- That the consumer knows where to send the notice of withdrawal.

(Articles 40d and 40e, Code of Obligations.)

The withdrawal must be made within 14 days from the date the consumer accepted the contract and was informed of the right of withdrawal. The withdrawal period does not start until the seller informs the consumer about the legal right of withdrawal. (Article 40e, Code of Obligations.)

After a withdrawal, the consumer can require a refund and the business can demand the return of the delivered goods or services. A consumer that used the goods owes the supplier a reasonable rental payment. For services, the consumer must reimburse the supplier for outlays and expenses. No additional obligations on the consumer's part are permitted. (Article 40f, Code of Obligations.)

There are additional statutory rights of withdrawal in contracts relating to consumer credit, insurance, and dating services. However, these topics are outside of the scope of this Note.

Duration and Automatic Renewal of Consumer Contracts

Obligations that impede the free organisation of a party's life, particularly excessive ties in terms of duration and intensity, violate the right of personality and are inadmissible under Swiss law (see [Freedom of Contract](#)). A contract's permissible maximum duration depends on the subject matter of the contract and must be assessed on a case-by-case basis.

For contracts that impose continuing obligations, such as subscription contracts, the GTCs often contain a provision that automatically extends the initial minimum contract term by a further fixed term (a renewal period), unless the consumer terminates the contract at the end of the minimum term, subject to a notice period. Swiss law accepts these contractual clauses as not being atypical or unusual by themselves. However, automatic renewal clauses must:

- Be properly incorporated into the GTCs and the contract, including by being highlighted and particularly brought to the consumer's attention.
- Like any GTC clause, not provide for a significant and unjustified imbalance between contractual rights and obligations to a consumer's detriment in a way that is contrary to good faith (Article 8, Unfair Competition Act).

(See [Incorporation of Terms and Conditions](#) and [Unfair Competition Act Controls on GTCs](#).)

If these conditions are not met, the relevant clauses are invalid and cannot be enforced against consumers.

Each party is free to terminate an agreement for services at any time and this right cannot be waived or limited (for example, by agreeing to a notice period). However, a party that terminates at an inappropriate time must compensate the other party for any resulting damage. (Article 404, Code of Obligations.)

Pricing and Payment

Under the principle of freedom of contract, the parties to a contract are generally free to agree on the content of their agreements, including the price and payment terms (see [Freedom of Contract](#)). However, the amount of a contractual compensation is always subject to the prohibitions against immoral and exploitive contracts (Articles 20 and 21, Code of Obligations and see [Voidable and Rescindable Contracts](#)). Additionally, in markets without sufficient competition, consumers can report suspected unjustified price increases to the Swiss price supervisor, who can intervene if necessary.

Establishing the Price

In sales agreements, price is an essential contract term (Article 184, paragraph 1, Code of Obligations and see [Freedom of Contract](#)). The parties must at least specify the criteria according to which the price can be determined. Accordingly, there is a valid price agreement if the price is either:

- Explicitly stated in the contract.
- Determinable by referencing objective criteria or left to a specific third person's reasonable discretion.

Additional provisions on pricing and payment for sales agreements allow:

- An obligation to pay in advance (*prenumerando* purchase) (Article 184, Code of Obligation).
- A seller to withdraw from a sales contract if:
 - the goods are sold against payment in advance or in instalments and the buyer defaults on payment (Article 214, paragraph 1, Code of Obligations); or
 - the goods are already in the buyer's possession and the right to withdraw is expressly reserved in the contract (Article 214, paragraph 3, Code of Obligations).

Like a sales agreement, in a contract for work, price is an essential term (that is, the customer's obligation to pay is a necessary part of the contract for work) (Article 363, Code of Obligations). However, the remuneration amount does not need to be fixed at the outset. The price can be determined in advance, by approximation, or in accordance with the value of the contractor's work and expenses.

In an agreement for (professional) services, remuneration for rendering services is only due where agreed or customary (Article 394, Code of Obligations). Accordingly, service agreements in this category can, in principle, be concluded without an agreed price. However, Swiss law presumes that such services are remunerated. The parties can expressly or impliedly agree whether a fee is to be paid or not or the amount of the remuneration. If there is no agreement, customary industry practice can favour an obligation to pay a fee. The fee amount can be determined, for example, by association tariffs or the usual fees applied in other cases.

When an obligation has been performed, the corresponding payment becomes overdue on:

- Expiry of any contractual deadline for payment.
- If no time or deadline for payment has been agreed, the earlier of the creditor:
 - sending a reminder to the debtor; or
 - exercising a right to terminate the contract.

(Article 102, Code of Obligations.)

Charging Interest

A 5% interest rate automatically applies to a party that defaults on a debt payment. However, the parties can agree a higher or lower default interest rate. (Article 104, Code of Obligations.) Unless the parties agree otherwise, a debtor in default must also compensate the creditor for damages caused by late payment (Article 103, Code of Obligations).

In a sales contract, interest automatically accrues on the purchase price from the date payment accrues due, if interest is customary (Article 213, Code of Obligations).

Presenting Prices

Swiss civil law does not set out specific rules for presenting prices in consumer contracts. However, public law does provide general rules.

According to the general rule set out in Article 16 of the Unfair Competition Act, for goods sold to consumers, an offer must state the actual price in Swiss francs. This general rule is further specified in the Ordinance on the Publication of Prices (PBV). Accordingly, the actual price must include public charges, such as value added tax (VAT) (Article 3, PBV). Prices must be:

- Displayed on or immediately next to the goods.
- Clearly visible and legible.

These rules also apply to online transactions. While shipping costs can be published separately, they must also be displayed in a clearly visible and legible manner. (Article 4, paragraph 1, PBV.)

For certain services, an offer to supply (for example, an advert) must state the actual price in Swiss francs, including passed-on public charges and non-optional surcharges (Article 10, PBV).

A tip must either be included in the price or clearly labelled and quantified as a tip (Article 12, PBV). References such as:

- "Tip included" or similar language are permitted.
- "Tip not included" or similar language without numerical information are not permitted.

(Article 12, PBV.)

When advertising with listed prices, the actual price the consumers will pay must be stated (Article 13, paragraph 1, PBV). In distance selling (online commerce), anyone that unjustifiably discriminates against Swiss consumers based on the customer's nationality or domicile, the registered office of its payment service provider, or the place of issue of its means of payment acts unfairly (Article 3a, Unfair Competition Act and see [Unfair Practices](#)).

Surcharges for Payment Methods

There is no prohibition against charging additional fees based on a consumer's chosen method of payment. However, surcharges for credit card payments are only considered optional costs (which can be presented separately from the price) if another free and customary means of payment is available. Otherwise, the price must include these costs. Therefore, if a consumer can choose between cash and credit card payment, the surcharge can be shown separately with a font size that is not smaller than the product price. However, if payment can only be made by credit card, any surcharge must be included in the total price.

Delivery of Goods and Supply of Services and Digital Content

Deadlines for Delivery and Supply

There are default general rules for the delivery of goods and services to consumers (and businesses), over which any contractual arrangements take precedence. Businesses generally specify the arrangements for performance in their GTCs, so as to displace these default rules.

The default rules include the presumptions that, unless the nature of the contract or its surrounding circumstances indicate otherwise:

- A consumer can demand immediate performance (Article 75, Code of Obligations).
- Businesses can render performance before the agreed time for performance (Article 81, paragraph 1, Code of Obligations).
- A party to a bilateral contract cannot demand performance before discharging or offering to discharge its own obligation (Article 82, Code of Obligations).
- The seller and buyer in a sales contract must discharge their obligations simultaneously *quid pro quo* (Articles 82 and 184, Code of Obligations).

- In sales contracts, the buyer must generally take immediate delivery (Article 211, Code of Obligations).

For the rules on interest and default interest applicable to the sale of goods and supply of services and digital content, see [Pricing and Payment](#).

Transfer of Title to and Risk in Goods

Swiss law provides general rules for the transfer of title to and risk in goods to consumers (and businesses).

Transfer of Title

Under Swiss contract law, the transfer of title to goods occurs when both of the following have occurred:

- Conclusion of a contract.
- Delivery of the goods or a surrogate.

Transfer of Risk

In sales contracts, risk in the goods pass to the buyer on conclusion of the contract. Accordingly, the buyer bears the risk once the contract concludes and must pay the price even if the buyer does not receive the item. This rule can be disapplied by contractual agreement between the parties and does not apply in special circumstances that justify the seller's assumption of risk, for example, where the seller retains sole power of disposal over the goods in its own interest and the buyer is thereby prevented from disposing of the sold item. Swiss law provides for additional exceptions to this general rule in sales contracts for:

- Generic purchases (that is, if the object of sale is determined only by its nature), where the risk remains with the seller until the goods intended for fulfilment have been segregated and, if they are to be shipped, handed over for dispatch. This exception would cover many consumer goods, such as clothes, magazines, and books. Where it is contractually agreed that the seller is responsible for delivery, it retains risk in the goods until they reach the consumer.
- Contracts concluded subject to a condition precedent, where the benefit and risk of the object do not pass to the buyer until the condition has been fulfilled.

(Article 185, Code of Obligations.)

- In a contract for work, the contractor bears the risk of loss of the work before completion or delivery. In this case, the buyer does not have to pay any compensation for the work performed or costs incurred (Article 376, Code of Obligations).

Quality of Goods, Services, and Digital Content

Minimum Standards for Goods, Services, and Digital Content

Goods

Sellers must ensure that purchased goods are free of defects and faults, although buyers (including consumers) can waive these rights (see Articles 197-210, Code of Obligations).

The seller is responsible to the buyer for both:

- Ensuring the item has the characteristics set out in the contract. The seller is responsible for any deviations.
- Ensuring the item is free from physical or legal defects that substantially reduce the value or suitability of the goods for the intended use. The seller is only liable if the deviation is unfavourable and significant.
- The seller is liable even if the seller was unaware of these defects.

(Article 197, paragraph 1, Code of Obligations.)

A seller is not liable for defects that:

- Were known to the buyer at the time of purchase.
- The buyer could have discovered by using reasonable care, unless the seller guaranteed that these defects did not exist.

(Article 200, Code of Obligations.)

Advertising claims are not warranties of characteristics. They merely serve the general purpose of promoting the desire to buy. In contrast, a warranty must always be a promise in a specific case or at least a clear claim in advertising about a specific purpose of a product.

A seller is free to exclude or amend warranties, and the consumer may waive their right to rely on them. This is quite common in practice. The exception is that sellers cannot exclude their liability for fraudulently concealed defects (Article 199, Code of Obligations).

Services

For services, a contractor is not liable for achieving a particular outcome, but only for providing the service with the necessary care (Articles 394-406, Code of Obligations). The required standard of care is assessed based on the profession-specific average behaviour, that is, depending on the type and difficulty of the work to be performed and the required expertise. Accordingly, higher demands may be placed on a specialist. This means that "defective" performance in the context of service agreements means a breach of the duty of care, rather than failure to achieve a particular outcome.

Contracts for Work

Where a contract for work is formed, the contractor is liable to produce a piece of work (that is, a specified outcome) (Article 363, Code of Obligations). The work produced is defective if it lacks:

- Contractually warranted characteristics.
- Characteristics that can be expected under the principle of good faith and such lack affects the value or usability of the work.

(Article 368, Code of Obligations.)

Digital Content

Generally, Swiss law is tailored to physical goods and non-physical services and does not provide for any legal categorisation or special regulation of digital content. It is therefore unclear whether digital content should be regulated by the provisions regarding goods or services. This leads to ambiguities regarding the law applicable to, and consumer's rights in, digital content.

Contracts for the definitive transfer of standard software are subject to the goods sales law if the relationship between the parties is a one-off exchange relationship and not a continuing obligation (Federal Supreme Court, BGE 124 III 456 of 27 August 1998). However, there is no case law from the Federal Supreme Court on the temporary provision of digital content. The authorities discuss whether these transactions are licence agreements or contracts that are subject to the laws applicable to services or contracts for work.

Against this background, it is advisable for the parties to agree on detailed provisions in their contracts on digital content, particularly regarding the rights of the parties and their scope.

Notification of Defects by Consumers

Generally, claims for breach of contract (including breach of a services contract) must be brought within five or ten years (Articles 127 and 128, Code of Obligations). As far as possible consumer claims are concerned, the shorter five-year prescription period namely applies to:

- Claims for rent, interest on capital, and all other periodic payments.

- Claims in connection with the delivery of foodstuffs, payments for board and lodging, and hotel expenses.
- Claims in connection with work carried out by trade and craft professionals, purchases of retail goods, medical treatment, and professional services provided by advocates, solicitors, legal representatives, and notaries.

However, shorter limitation periods and notification obligations apply to consumers in relation to sales contracts and contracts for work (Articles 201, 204, 210, 367, 370, and 371, Code of Obligations). Under these contracts:

- Consumers must inspect goods or work as soon as practicable. The parties are free to waive or amend this obligation in their contract.
- If defects are found, the buyer must notify the business immediately, that is, within two or three working days.
- A consumer who fails to notify a business of a defect is deemed to have accepted the goods or work and will not have a warranty claim unless the defect is one that could not be identified during a normal inspection (a hidden defect).
- A consumer who discovers a hidden defect must notify the seller about it immediately after discovering it.
- The consumer bears the burden of proving that the alleged defects existed at the time of receipt.
- A seller is liable for defects in goods or work for two years after their delivery to the consumer, unless the seller has assumed liability under the warranty for a longer period.
- This period can be shortened to one year for second-hand goods but any other contractual shortening of the warranty period in consumer contracts is void.
- For sale of goods contracts only, if goods are shipped to a consumer and the seller has no branch or agent where the consumer lives, the buyer must properly store the goods and cannot return them to the seller.
- For contracts of work only, the limitation period is five years (instead of two years) where the defect is in:
 - a movable object that has been incorporated into an immovable work in a manner consistent with its nature and purpose and this defect in the incorporated movable object has caused the work to be defective; or
 - an immovable work.

Consumers Remedies for Defective or Misdescribed Goods or Services

For a sales contract, the remedies a consumer can seek are:

- Replacement of the defective goods with goods of the same type (Article 206, paragraph 1, Code of Obligations).
- Rescission of the contract (a refund in exchange for return of the goods) or a reduction in the purchase price (Article 205, paragraph 1, Code of Obligations).

Actions against manufacturers are only possible under product liability law, which is outside the scope of this Note.

Under a work contract, the remedies a consumer can seek are:

- For major defects or deviations from the contractual specification, such that the customer has no use for the work or cannot reasonably be expected to accept it, rescission of the contract. (Article 368, paragraph 1, Code of Obligations.)
- For minor defects or slight deviations from the contractual terms, a reduction in the price in proportion to the decrease in the work's value or rectification of the work at the contractor's expense (Article 368, paragraph 2, Code of Obligations). The same remedies are available to a buyer of a work produced on the buyer's land or property that, by its nature, cannot be removed without disproportionate detriment (Article 368, paragraph 3, Code of Obligations).

Case law indicates that negligent performance of a service contract entitles the customer to a reduction in the fee or to pay nothing. Whether the contract is for goods, a work, or services the customer can additionally claim fault-based damages. In sales contracts, the seller is even liable for a certain kind of damages without fault, such as, in the event of rescission of the contract, for the direct damage caused by the delivery of the defective goods.

Updating Digital Content

Unlike in the EU, Swiss consumers have no specific digital product related legal right to updates or upgrades, which creates considerable legal uncertainty when buying digital products or products with digital components. Against this background, a revision is planned to modernise Swiss warranty laws to meet the minimum standards set by the EU for digital products and products with digital components. The parties should contractually agree on the right to updates regarding digital content to overcome the legal uncertainty in this regard under Swiss law (see [Minimum Standards for Goods, Services, and Digital Content](#)).

Guarantees and Warranties from Sellers or Manufacturers

There are no rules specific to guarantees and warranties other than those set out in [Quality of Goods, Services, and Digital Content](#).

Limiting Liability

Generally, a business can limit its liability in a consumer contract. However:

- Any agreement excluding liability for unlawful intent or gross negligence is void (Article 100, Code of Obligations).
- The fairness controls for GTCs under the Code of Obligations and Unfair Competition Act will apply to limitations of liability and indemnities in GTCs (see [Protection Against Unfair Terms](#)).

Consumers must notify defects within the applicable period (see [Notification of Defects by Consumers](#)).

Consumers bear the burden of proving that products were defective or misdescribed in the moment when the risk passed to them (Article 8, Civil Code and see [Transfer of Risk](#)).

Treatment of Consumers in Default

A buyer who does not pay the purchase price on time is in default (see [Pricing and Payment](#)). In general, a party is in default where a payment is due and the party receives a formal reminder from the creditor. There are exceptions to the formal reminder requirement. (Article 102, paragraphs 1 and 2, Code of Obligations.)

There are special rules for sales contracts where a buyer has failed to make payment under Code of Obligations Article 213:

If payment is due in advance (in full or in instalments), the seller is entitled to withdraw from the contract. However, the seller must notify the buyer immediately (Article 214, paragraphs 1 and 2, Code of Obligations).

If the goods are in the buyer's possession, the seller can withdraw and request the return of the goods, if it has contractually reserved the right to do so (Article 214, paragraph 3, Code of Obligations, in conjunction with Article 107, paragraph 2, and Article 109, paragraph 1, Code of Obligations).

Additionally, creditors under contracts other than sales contracts can exercise certain rights if a debtor is in default and fails to pay during an extension period set by the creditor (Articles 107, paragraph 2 and 109, paragraph 1, Code of Obligations). There is no need for the creditor to set an extension period in some situations, for example, if performance becomes pointless due to the other party's default (Article 108, Code of Obligations). The creditor's options include:

- Compelling performance and claiming damages for the delay.
- Foregoing subsequent performance and either claiming damages for non-performance or withdrawing from the contract.

Transfer or Assignment of Consumer Contracts

Different rules apply to assignment of an individual claim, the transfer of an individual obligation, and the assignment of an entire contract (for both consumer and business to business contracts).

Generally, the parties can assign their claims (or rights) under a contract unless the contract provides otherwise or assignment is contrary to the law or the nature of the legal relationship (Article 164, Code of Obligations).

The transfer of obligations or entire contracts requires the agreement of the assignor, the assignee, and the party to whom the obligation is owed (the contractual partner). Unless otherwise expressly provided, the assignee assumes all obligations and acquires all rights that have arisen since the conclusion of the contract. Alternatively, the parties can provide that the assignee only takes the place of the assignor for the future, that is, the period after the transfer.

Data Protection Issues

The [Federal Act on Data Protection](#) (Data Protection Act) applies to all processing of personal data that has an effect in Switzerland, even if the processing takes place abroad. Personal data is any information relating to an identified or identifiable natural person (Article 5(a), Data Protection Act). This includes information such as name, address, telephone number, date of birth, medical data, bank details.

Legal entities can process personal data if the processing does not violate the data subject's personality rights, which can be infringed when:

- Personal data is processed without respecting the principles of data processing (including the principles of lawfulness, data minimisation, and purpose limitation) (Article 6, Data Protection Act).
- Personal data is processed against the data subject's express will.
- Sensitive personal data is disclosed to third parties.

(Article 30, Data Protection Act.)

Processing can be justified by:

- The data subject's consent.
- An overriding private or public interest.
- A legal basis provided by the law.

(Article 31, paragraph 1, Data Protection Act.)

The processing of personal data in direct connection with the conclusion or performance of a contract can be an overriding private interest (Article 31, paragraph 2(a), Data Protection Act). Additional rules apply when data is disclosed abroad, in particular, an adequate level of protection must be ensured (Articles 16 and 17, Data Protection Act).

A company is a data controller if it processes personal data and decides about the means and purpose of the processing. A data processor only processes data on a data controller's behalf. (Article 5, Data Protection Act.) Both the data controller and data processor must ensure the security of personal data in a manner appropriate to the risk. In a security breach likely to lead to a high risk to data subjects' personality or fundamental rights, the [Federal Data Protection and Information Commissioner](#) must be informed as quickly as possible. (Article 24, Data Protection Act.)

Companies must maintain a record of their processing activities. Companies domiciled or resident abroad that process personal data in connection with offering goods or services to Swiss residents or monitoring their behaviour must appoint a local representative and publish their name and address. (Articles 12 and 14, Data Protection Act.)

Consumers concluding a consumer contract must be informed in an appropriate manner about the collection and processing of their personal data, including:

- The data controller's identity and contact details.
- The processing purpose.
- The categories of recipient to which personal data is disclosed.

(Article 19, Data Protection Act.)

Basic information on data processing can be provided first, followed by additional information through accessible links (Article 19, Data Protection Act). Unless there is a statutory exception, a company must honour data subjects' rights to:

- Access, which must generally be provided within 30 days.
- Rectification.
- Erasure.
- Data portability.

(Articles 25, 28, and 32 Data Protection Act.)

Enforcement

Individual Remedies

Consumers have the remedies for defective and incorrectly described goods set out in [Consumers Remedies for Defective or Misdescribed Goods](#).

Class actions are currently not permitted. A draft law to introduce class actions was proposed by the Federal Council three years ago, but it is still being discussed in parliament and it is unclear when and how things will proceed. However, under the Unfair Competition Act, consumer protection organisations can bring actions (see [Public Law and Regulatory Sanctions](#)).

Public Law and Regulatory Sanctions

Consumers, consumer protection organisations, and competitors can bring actions based on unfair practices, including unfair terms, seeking to:

- Prohibit an imminent violation.
- End an ongoing violation.
- Establish the unlawful character of a violation if the violation continues to have a disturbing effect.
- Claim compensation or order the surrender of profits under the Code of Obligations.

(Articles 9 and 10, Unfair Competition Act and Article 89, Civil Procedure Code.)

The federal government can bring an action if overriding interests so require and inform the public about the unfair trading practices, including by naming the relevant companies (Article 10, paragraphs 3 and 4, Unfair Competition Act).

Intentional infringements of certain Unfair Competition Act provisions can be punished with a custodial sentence of up to three years or a monetary penalty (Article 23, Unfair Competition Act). An intentional or negligent violation of the obligations related to the disclosure of prices to consumers is punishable with a fine of up to CHF20,000 (Article 24, Unfair Competition Act). Criminal sanctions are available in other areas of consumer protection, such as product safety.

The [Price Supervision Act](#) addresses abusive pricing towards consumers in non-competitive markets. The price supervisor can issue rulings for price abuses (Article 10, Price Supervision Act). Consumers can report suspected price abuses to the price inspector but cannot bring civil actions (Article 7, Price Supervision Act).

Choice of Law, Jurisdiction, and Dispute Resolution

Choice of Law and Jurisdiction

The Civil Procedure Code and the Private International Law Act contain mandatory rules on jurisdiction and choice of law for consumer contracts.

Consumer contracts are governed by the law of the state of the consumer's habitual residence if either:

- The supplier received the order in that state.
- The contract was concluded after an offer or advertising in that state and the consumer performed the acts required to conclude the contract in that state.
- The consumer was induced by the supplier to go abroad for the purpose of placing the order.

No choice of law is allowed in these cases (Article 120, Private International Law Act). However, when a case is not subject to Article 120 of the Private International Law Act, a choice of law would be permissible.

Where a contract qualifies as a consumer contract pursuant to Article 120 of the Private International Law Act, actions a supplier initiates can only be brought in the consumer's domicile (Article 114, paragraph 1, Private International Law Act). Consumers cannot waive this jurisdiction in advance (Article 114, paragraph 2, Private International Law Act).

Consumers can bring actions arising from consumer contracts either at their domicile or at the other party's domicile. (Article 114, paragraph 1(a), Private International Law Act). Similar provisions exist under the Civil Procedure Code for contractual relationships without an international context (Articles 31, 32, and 35, Civil Procedure Code).

Alternative Dispute Resolution

Swiss law does not provide for mandatory alternative dispute resolution. Nevertheless, there are voluntary [ombudsman offices and out-of-court dispute resolution bodies](#) in several industry sectors that have been set up to deal with disputes arising from consumer contracts.

In ordinary civil proceedings where the amount in dispute does not exceed CHF100,000, the Civil Procedure Code requires an attempt at conciliation (see Article 197, Civil Procedure Code). If requested by all parties, mediation can replace conciliation (Article 213, Civil Procedure Code).

Arbitration

Despite the mandatory jurisdiction rules for consumer contracts, the parties to consumer contracts are free to agree on arbitration (Article 354, Civil Procedure Code and Article 177, Private International Law Act and see [Choice of Law and Jurisdiction](#)). However, arbitration clauses in GTCs must meet the criteria set out in Unfair Competition Act Article 8 (see [Unfair Competition Act Controls on GTCs](#)).

Complaint Handling and Post-Contract Assistance

Swiss law does not provide for a specific complaint handling procedure for consumer contracts and there are no rules on how consumer complaints should be handled.

If ongoing support is required for the continued use of purchased goods or services after the conclusion of the contract, an obligation to provide this support as well as the costs associated with this should be clearly and concisely stated in the contract. Otherwise, this support may not be part of the contract or may have to be provided without remuneration.

Other Considerations

This Note focuses on general aspects of consumer contracts. There are additional sector-specific laws and regulations that can affect dealings with consumers in Switzerland. In certain sectors, such as credit loans, consumer protection rules can be more stringent.

Additionally, current legislative projects should be monitored, particularly regarding warranty law for consumer purchases, which is currently being revised.

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