

## FAQ on the right of withdrawal in e-commerce

Accurate knowledge of withdrawal rules is essential to online traders in order to react correctly upon receipt of a withdrawal. The Händlerbund collected and answered the most frequently asked questions in this FAQ section for you.

### **Do I have to send the instructions on withdrawal once again after the order was placed?**

Yes. The complete instructions on withdrawal (including the model withdrawal form) have to be made available to the consumer again after the conclusion of the contract, however at the latest at the time of delivery of the goods, in a durable medium (e.g. by e-mail, fax, DVD, USB stick or in paper form).

A reference to the company's website is not sufficient.

### **Is it admissible to extend the statutory 14-day withdrawal period?**

Yes. The Oberlandesgericht (Higher Regional Court) Frankfurt a. M. decided that instructions on withdrawal with a longer withdrawal period are admissible (decision of 07.05.2015, case number: 6 W 42/15). However, it is not admissible to shorten the withdrawal period – e.g. to 7 days.

### **When does the withdrawal period actually begin and when does it end?**

In principle, the withdrawal period begins with conclusion of contract (e.g. in the case of performance of services and purchase of digital contents).

By way of derogation, the withdrawal period begins in the case of selling goods at distance

- As soon as the consumer has **received the goods**.
- If the consumer ordered multiple goods and the goods are delivered separately, as soon as the consumer **received the last goods**.
- If the goods are delivered in several separate consignments (e.g. individual volumes of encyclopedia), as soon as the consumer **received the last consignment**.
- In the case of a contract for regular delivery of goods during defined period of time (e.g. magazine subscription), as soon as the consumer **received the first goods**.

In principle, the right of withdrawal ends 14 days after the beginning of the withdrawal period.

*Example: The consumer receives his ordered item on Tuesday, 2 June 2015. The withdrawal period begins on Wednesday, 3 June 2015. The withdrawal period ends with the expiration of 16 June 2015.*

### **The customer was a trader. Does the trader have a right of withdrawal?**

No. In principle, a right of withdrawal is only for consumer contracts, i.e. for contracts between a trader and a consumer.

### **What applies when there is a dispute about whether the customer purchased as trader or as consumer?**

Basically, the trader is obligated to prove the fact that the contracting party is a trader and therefore there is no statutory right of withdrawal.

If the billing and delivery address is the one of the company this is an indication for the fact that the company is the contracting party. This is also the case if the invoice is paid by the company or if the goods are typical articles for use in the exercise of a trade or profession (e.g. labelling machine).

### **How can customers withdraw from the contract with an online trader?**

The consumer's withdrawal is to be made by means of an unequivocal statement to the trader stating to withdraw from the contract.

The consumer's withdrawal is thus possible by means of:

- ✓ letter, fax, e-mail
- ✓ sending the completed model withdrawal form (e.g. by letter, fax, e-mail) to the trader
- ✓ completing and sending an electronic withdrawal form (in so far as they are offered on the web page)
- ✓ telephone call
- ✓ prominent statement to that effect clearly stating the decision to withdraw from the contract.

### **Does the consumer have the right to return the goods without comment?**

No. Returning the goods without comment to the trader is not sufficient for the exercise of the right of withdrawal.

The consumer's withdrawal has to be made by means of an unequivocal statement to the trader stating to withdraw from the contract. Especially returning the goods without comment is not clearly attributable. It could also be a return due to a warranty claim.

### **Is the refusal to accept already a statement to withdraw from the contract?**

No. The refusal to accept cannot be clearly identified as a statement to withdraw from the contract. The consumer's withdrawal has to be made by means of an unequivocal statement to the trader stating to withdraw from the contract.

### **The consumer wants to withdraw from the contract without stating reasons. Is that legitimate?**

Yes. The statutory right of withdrawal aims at protecting the consumer in the event of entering into a contract hastily or without thorough consideration in a specific purchase situation (e.g. on the Internet). Therefore reasons for withdrawing are not necessary.

**The customer sent a statement to withdraw from the contract (e.g. by e-mail). How much time does he have to return the goods?**

The consumer is obliged to return the goods without undue delay and in all cases no later than 14 days from the withdrawal, unless the collection of the goods by the trader is formulated in the instructions on withdrawal. In the case of goods not capable of being sent by parcel, a forwarding agency has to be commissioned.

**Is a withdrawal excluded if the consumer returned the goods without the original packaging?**

No. Returning the goods without its original packaging is not a prerequisite for the effective exercise of the right of withdrawal.

**Do the original costs of delivery need to be reimbursed in the case of a complete withdrawal?**

Yes. The repayment obligation also includes the standard costs of delivery. Excluded is only the reimbursement of supplementary costs which were requested by the consumer, e.g. costs for express delivery.

**Do the original costs of delivery also need to be reimbursed in the case of a partial withdrawal?**

It depends. Flat-rate delivery costs are not to be reimbursed. If the buyer returns only some of the goods and keeps the remaining goods, the original costs of delivery for the goods which remain with the buyer are not to be reimbursed.

In the case of delivery costs which are determined from weight and quantity of the goods, the buyer has to bear the original costs of delivery which would have accrued for individual dispatch and/or dispatch of the remaining goods that were not returned.

**Who bears the costs of returning the goods?**

In principle, the consumer bears the direct costs of returning the goods if he has been informed accordingly.

**How do I correctly inform the consumer?**

Members of the Händlerbund use such instructions on withdrawal in the provided legal texts which have to be integrated in the shop as a clearly visible button (e.g. "right of withdrawal"). Furthermore, the instructions on withdrawal has to be provided to the consumer after conclusion of the contract, however at the latest at the time of delivery of the goods, in a durable medium (e.g. by e-mail, fax, DVD, USB stick or in paper form).

However, online traders can agree to bear these costs themselves. Thus, the answer to the question of who bears the costs depends on the individual provisions on the bearing of costs in the instructions on withdrawal. Online traders please have a look at the instructions on withdrawal used in the respective shop to see which provisions on the bearing of costs they have chosen.

### **Is it possible to make a distinction between domestic and foreign consumers with regard to bearing the return costs?**

The statutory model instructions on withdrawal along with the instructions for completion do not provide a distinction with regard to bearing the return costs. Rather, the following is proposed as formulation for bearing the costs: *“We bear the costs of returning the goods.”* or *“You bear the direct costs of returning the goods”*.

A provision such as *“If returning the goods takes place within Germany, we bear the costs. In the event that you return the goods from abroad, you bear the direct costs of returning the goods.”* or formulations with similar content are not provided for by the statutory model instructions.

It has not yet been clarified whether such a provision on the bearing of costs is admissible. Therefore, avoid formulations which differ from the statutory model instructions in order to prevent the risk of a written warning.

### **Do traders have to accept returns where postage has not been paid?**

Yes. Online traders are obligated to accept returns where postage has not been paid. The seller has to bear any costs which result from the refusal to accept the return where postage has not been paid (e.g. storage costs of DHL).

### **Do the return costs of goods not capable of being sent by parcel really have to be specified?**

In the case of goods not capable of being sent by parcel, the consumer has to be additionally informed about the amount of the return costs. The passage in the instructions on withdrawal thus reads as follows: *“You bear the direct costs of returning the goods capable of being sent by parcel as well as the direct costs of returning the goods not capable of being sent by parcel amounting to EUR [insert the amount]”*.

If the costs cannot reasonably be calculated in advance, their estimated amount has to be specified: *“You bear the direct costs of returning the goods capable of being sent by parcel as well as the direct costs of returning the goods not capable of being sent by parcel. The costs of goods not capable of being sent by parcel are estimated to be a maximum of about EUR [insert the amount]”*.

### **Who bears the risk in case of transport loss during the return?**

In case of a sale of consumer goods, the trader bears the risk that the goods are accidentally damaged or get lost during shipping. Even in case of a return after the exercise of the right of withdrawal by the consumer, the trader bears the risk that the shipment gets lost or is damaged.

### **The returned goods are dirty or damaged. What can traders do?**

If the trader receives the goods and they are dirty or even damaged, compensation is possible under certain conditions.

### **How much time do traders have to reimburse the purchase price?**

The seller has to reimburse the purchase price immediately, at the latest within 14 days from the withdrawal. However, the trader may withhold the reimbursement until he has received the goods back or until the consumer has supplied evidence of having sent back the goods (e.g. deposit receipt).

The trader shall carry out the reimbursement using the same means of payment as the consumer used for the initial transaction; e.g. if the purchase price was paid by bank transfer, it also has to be reimbursed by bank transfer.

### **What rights does the customer have in the case of a delivery of damaged goods?**

If the customer has received damaged goods, on the one hand, he may rely on his warranty right. In this case, the buyer has the choice as to whether he wants to claim the so-called “supplementary performance” in the form of remedy of defects (e.g. by way of a repair) or the new delivery of a product free from defects. The seller has to bear the return costs of the damaged goods and the new shipping of the new/repaired goods to the customer. The right of termination, i.e. the reimbursement of the purchase price against returning the goods, only exists subject to certain conditions. The customer cannot simply demand the reimbursement of the purchase price and terminate the contract. For example, a termination is only admissible if the seller failed to remedy the defect twice.

Where a right of withdrawal exists and the withdrawal period has not yet expired, the consumer can invoke the statutory right of withdrawal alternatively. If the consumer decides to exercise his statutory right of withdrawal, he shall be subject to the rights and obligations related thereto. Depending on the agreement, it is thus possible that the customer has to bear the return costs.

The **right of withdrawal** and the **warranty right** are two different rights. The consumer has to decide which right he wants to exercise. He needs to accept the applicable rights and obligations accordingly (e.g. bearing or not bearing the return costs).

The right of withdrawal is intended to protect the consumer against hasty purchases on the Internet. Since the customer cannot see or try on the products before purchasing – unlike in a retail shop – he has a right of withdrawal. Within a prescribed period from the date of delivery, the consumer has time to decide whether he wants to keep the goods or not.

However, the warranty right pursues a different purpose. The intention of the legislature was that the sellers assume liability for selling damaged goods to the customer or even for any consequential damages.