

## **Legal advice on right of rescission (right of cancellation)**

### **1. Preliminary information**

- 1.1. European consumer protection law provides that, under certain circumstances, consumers will have a right of rescission when ordering goods from an entrepreneur via distance selling.
- 1.2. 'Consumer' is defined as any person who is not an 'entrepreneur'. An 'entrepreneur' is any person or entity who operates an enterprise. An enterprise is every organisation of independent commercial activity which is established on a permanent basis, even if not oriented toward making a profit (e.g. this webshop). Legal entities under public administrative law are always deemed 'entrepreneurs' (see sec. 1 Austrian Consumer Protection Act, German acronym: KSchG). Thus, consumers are typically individuals acquiring goods for their personal leisure purposes.
- 1.3. The Austrian legislature has transposed the requirements under EU law into domestic law primarily through the Distance and Field Sales Act (German acronym: FAGG) and, in respect of legal terminology, has selected the term "right of rescission". In other European Union countries, by contrast, the term "right of cancellation" is more customary.
- 1.4. Where a consumer is not advised to the contrary during the order process or in sec. 4, you, as a customer of our webshop (provided that you are a consumer), have a right of cancellation. That right is described in the text below.

### **2. Exercise of right of rescission**

- 2.1. You have the right to rescind this contract within fourteen days' time, without the need to state any grounds of rescission. The rescission period is fourteen days from the date on which you or a third party designated by you (who is not the carrier or freight forwarder) took possession of the goods.

In order to exercise your right of rescission, you must inform us

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by unambiguous statement (e.g. a letter dispatched by post, a facsimile or e-mail) of your decision to rescind this contract. For that purpose, you may use the attached specimen cancellation form, but you are not legally required to use that form.

In order to comply with the cancellation period, it will suffice if you send us your notification that you are exercising your right of cancellation prior to expiry of the cancellation period.

### **3. Consequences of rescission/cancellation**

- 3.1. If you cancel your contract with us, we are required to refund to you all payments we have received from you, including the shipping charges (with the exception of additional costs arising due to the fact that you have chosen a different mode of delivery than the cheapest mode of standard delivery we offer) without delay, and by the end of a fourteen day period, at the latest, from the date on which we received your notification that you were cancelling this contract. For any such refund, we will use the same means of payment you used in the original transaction, except where there was an express agreement with you to the contrary; you will not be charged any fees under any circumstances for any refunds.

We may refuse to pay a refund to you until such time as the goods have either been returned to us or you have furnished evidence that you have returned the goods to us, whichever is the earlier.

You must return or deliver the goods to us without delay, in any event within a 14 days, at the latest, from the date on which you notified us that you were cancelling the contract

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You will be deemed to have complied with the cancellation period if you dispatch the goods prior to expiry of the fourteen day period. You are responsible for the direct costs of returning the goods to us.

You are only required to pay compensation for a loss in value of the goods if such loss in value is attributable to your handling of the goods which goes beyond what is necessary to examine their features, characteristics and functionality.

#### **4. Exceptions to right of rescission/right of cancellation**

- 4.1. If you order one of the following types of goods from our webshop, no right of cancellation will apply: ... (here are potential cases, please delete those that do not apply).
- Goods produced to customer specifications or clearly tailored to the customer's personal requirements,
  - Goods that are susceptible of rapid spoilage or the expiry date of which would quickly pass,
  - Goods which were delivered in a sealed container and which, for reasons of health or hygiene, are not suitable for return if their seal was broken following delivery,
  - Goods which, based on their characteristics, were comingled with other goods following delivery,
  - Sound or video recordings or computer software delivered in sealed packaging, where such sealed packaging is removed following delivery,

- Newspapers, magazines or glossies, except for subscription contracts for the delivery of such publications,
- Services in the realm of accommodation for purposes other than residential purposes, forwarding of goods, rental of vehicles and supply of foods and beverages and services rendered in connection with leisure activities where a particular date or period of time for the entrepreneur's performance of the contract was envisaged by the parties' contract.