

NOVEMBER 2ND, 2021

CONSUMER RIGHTS IN THE PURCHASE AND SALE OF DIGITAL GOODS, CONTENTS AND SERVICES

Decree-Law no. 84/2021, of October 18th, which transposes into the Portuguese law the Directives (EU) 2019/771 and (EU) 2019/770, of the Parliament and of the Council, was published on 18 October.

This law applies to contracts of purchase and sale of goods concluded between professionals and consumers, and to the supply, within the scope of such contracts, of digital contents or services, integrated into the goods in such way that their absence prevents the fulfilment of the function of the goods. It also applies, with the necessary adaptations, to the supply of goods within the scope of contracts of provision of services and the lease of goods.

Consumer rights are strengthened in these areas of application by defining conformity requirements with which the goods subject to the contract must comply and whose absence may cause civil liability on the part of the professional seller, producer or online market provider.

I. COMPLIANCE IN THE CONTEXT OF SALES CONTRACTS FOR GOODS BETWEEN TRADERS AND CONSUMERS

The set of conformity requirements with which the goods sold on a professional basis to consumers must comply are of subjective nature - *i.e.*, correspondence of the good with the characteristics described in the contract; suitability of the good for the intended purposes; delivery of all accessories and instructions relating to the good; and updated nature of the good, all under the terms of the contract - and objective - *i.e.*, suitability of the good for the use which goods of the same kind are intended; delivery of all accessories and instructions relating to the good; and correspondence of the good to the characteristics demonstrated by the trader before the purchase, as well as the quantity and qualities (namely durability, functionality and safety) to be expected considering other goods of the same kind and public statements, namely those of the trader and the producer.

Incorrect installation of mobile goods constitutes non-conformity when carried out by the trader or the consumer on the basis of faulty instructions from the trader, as does the failure to communicate within a reasonable time to do the necessary updates in the services or digital content included in the goods.

The conformity requirements for immovable property shall relate to the provisions of the contract of purchase and sale and with the characteristics of quality, safety, habitability, environmental protection and functionality which allow the property to be used for a technically and economically reasonable time. The property shall be deemed to be non-conforming if it does not correspond to the description or qualities presented by the trader on a sample or model; it does not fit for the normal purpose of goods of the same type and those for which the consumer intended it; if it does not demonstrate normal qualities and performance which the consumer can reasonably expect.

In the event of non-compliance, the consumer is entitled to have the goods repaired or replaced, have the price reduced proportionately or terminate the contract. Even if the lack of conformity of the goods becomes apparent within thirty days of delivery, the consumer may demand immediate replacement or terminate the contract.

II. COMPLIANCE IN THE PROVISION OF DIGITAL CONTENT OR SERVICES

Digital contents or services provided under a purchase and sale contract must also comply with subjective conformity requirements - *i.e.*, correspondence with the description, quantity, quality and other characteristics provided for in the contract; suitability with the purpose for which the consumer intended them; delivery of all accessories and instructions; and updated nature of the contents and services¹, all in accordance with the terms of the contract - and objective *i.e.*, suitability for the use for which contents and services of the same kind are intended; correspondence to the quantity, qualities and other performance characteristics to be expected considering contents and services of the same kind and public statements by, *inter alia*, the trader and the producer; delivery with reasonably expected accessories and instructions; and conformity to trial versions or previews made available by the trader before the conclusion of the contract.

Non-conformity of the contents or services supplied shall entitle the consumer the right to the conformity restitution, to the proportionate reduction of the price or to have the contract terminated.

Incorrect integration of the contents or services is considered to be non-compliance when it is carried out by the trader or by the consumer on the basis of faulty instructions of the trader.

¹ The law sets that, in the absence of agreement in contrary, the contents or services provided shall correspond to the latest version available at the moment.

III. LIABILITY FOR NON-COMPLIANCE

The trader of movable goods is liable for any defects which become apparent within the first three years since the delivery of the goods, just as he is obliged to make the necessary pieces available for reparation within the first ten years after placing the last unit on the market.

In the case of immovable goods, the trader is responsible for any non-conformities which become apparent within the first five years since the delivery or the first ten years if the nonconformities relate to structural construction elements.

The consumer of a good, content, or digital service who complains of non-compliance can choose to have it repaired or replaced directly by the producer.

Moreover, the consumer can sue both the professional seller of the goods, or the provider of the online market that, acting for purposes related to their activity, is a contractual partner of this, as they are jointly and severally liable under this Decree-Law.

IV. FINAL PROVISIONS

Decree-Law n.º 84/2021, of October 18th, will come into force on January 1st, 2022, and will apply to all contracts entered into and services or digital contents provided thereafter. The provisions contained in this Decree-Law are mandatory and its exclusion or limitation by way of a general contractual clause or agreement will render them null and void.

A **PARES | Lawyers** is available to provide information on this and other issues in a more concrete and appropriate way to the reality of each client, being able to assist its customers in any issues on consumer rights and provision of digital content or services.

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