

**Full title**

Federal Act of 8 March 1979 Governing Provisions to Protect Consumers  
(Konsumentenschutzgesetz – KSchG)

**PART I**  
**Special Provisions for Contracts**  
**Between Entrepreneurs and Consumers**

**CHAPTER I**  
**Scope of Application**

**Section 1.** (1) This Part shall apply to legal transactions involving:–

1. on the one hand, a person who makes the transaction in the course of carrying on his<sup>1</sup> business (hereinafter called “entrepreneur”) and
2. on the other hand, a person to whom this does not apply (hereinafter called “consumer”).

(2) For the purpose of Sub-para 1 of Para 1 above, “business” shall mean any organisation, which is intended to be permanent, for the purposes of independent commercial activity, even though it may be a non-profit enterprise. All legal entities governed by public law shall be deemed to be entrepreneurs.

(3) No transaction carried out by a natural person before starting a business in order to create the preliminary conditions for such business shall be deemed as already being made in the course of carrying on a business within the meaning of Sub-para 1 of Para 1 above.

(4) This Part shall not apply to contracts made by a person in his capacity as an employee or quasi-employee (Para 3 of Section 51 of the Federal Act Governing Labour and Social Security Courts (Arbeits- und Sozialgerichtsgesetz ASGG)) with an employer.

(5) The provisions of the Parts I and II shall also be applied to the joining of and membership in associations where such associations charge contributions or other payments from their members but grant them only limited membership rights and where membership does not serve any business purposes.

**Section 2.** (1) This Part shall be without prejudice to regulations whereby the legal consequences laid down herein arise in other cases.

(2) To the extent that an agreement conflicts with the provisions of this Part to the consumer’s disadvantage it shall be null and void.

**CHAPTER II**  
**General Rules**

**Right of Rescission**

**Section 3.** (1) If the consumer does not submit the contractual statement at the premises permanently used by the entrepreneur for the purposes of his business, or at a stand used by the entrepreneur for such purposes at a fair or market, the consumer may rescind his order or contract. Notice of Rescission may be given before the contract has been brought about or within one week thereafter; the time limit shall commence upon delivery to the consumer of a document containing at least the name and address of the entrepreneur, all information required to identify the contract and instructions on the consumer’s right of rescission, but at the earliest on the date on which the contract has been brought about. Such instructions shall be given to the consumer upon acceptance

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<sup>1</sup> Translator's comment: For the purposes of simplification, “he” is used throughout the text rather than he/she/it, as the case may be.

of the consumer's contractual statement. In the case of insurance contracts, the right of rescission shall expire at the latest one month after the contract has been brought about.

(2) The right of rescission shall also arise where the entrepreneur or a third party working with him has conveyed the consumer, in the course of a direct marketing trip, excursion or similar event, or by personally and individually addressing the consumer on the street, to the premises used by the entrepreneur for the purposes of his business.

(3) The consumer shall not enjoy the right of rescission:–

1. if he himself has established the business contact with the entrepreneur or his agent for the purpose of making the contract,
2. if no discussion has taken place between the parties or their agents before the contract has been brought about, or
3. in the case of contracts which require immediate performance by both parties, if they are normally concluded by entrepreneurs outside their business premises and the agreed consideration does not exceed €15, or if the business by its nature is not carried on at permanent business premises and the consideration does not exceed €45.

(4) In order to be legally effective, notice of rescission shall be given in writing. It shall be sufficient for the consumer to return to the entrepreneur or his agent who took part in the contract activities (note: correctly: "contract negotiations") a document containing his contractual statement or that of the entrepreneur, with an endorsement to the effect that the consumer refuses to bring about or maintain the contract. It shall be sufficient for the notice to be sent within the period specified in Para 1 above.

(5) The consumer may furthermore rescind the contract application or contract if and when the entrepreneur has violated the Industrial Code regulations governing the collection and acceptance of services {sic} the addressing of private persons or the acceptance of orders for goods (Sections 54, 57 and 59 of the 1994 Industrial Code). The provisions of Paras 1 and 4 above shall also be applied to this right of rescission. This right shall also be due to the consumer in the cases referred to Para 3 above.

**Section 3a.** (1) The consumer may also rescind his contract application or contract if circumstances which are significant for his consent and which the entrepreneur has represented in the course of the contract negotiations as being highly likely to come to pass are found not to occur at all or only to a substantially lesser degree.

(2) Significant circumstances within the meaning of Para 1 above shall be:

1. the expectation of a third party's contribution or consent as required for the entrepreneur to render performance or the consumer to make use of it,
2. the prospect of tax benefits,
3. the prospect of public subsidies, and
4. the prospect of a loan.

(3) The contract may be rescinded within one week. This period shall commence when it becomes obvious to the consumer that the circumstances listed in Para 1 above have not come to pass at all or to a substantially lesser extent than promised and the consumer has been furnished with written instructions on this right of rescission. At the latest, the right of rescission shall expire one month after the complete performance of the contract by both contracting parties, or, in the case of bank and insurance contracts of a term of more than one year, one month after the contract has been brought about.

(4) The consumer shall have no right of rescission if and when:–

1. he knew or was bound to know already during the contract negotiations that the significant circumstances will not come to pass at all or only to a substantially lesser degree,
2. an exclusion of the right of rescission has been negotiated on a case-to-case basis, or
3. the entrepreneur agrees to make a reasonable adjustment to the contract.

(5) Section 3 (4) shall apply *mutatis mutandis* to the notice of rescission.

**Section 4.** (1) If the consumer rescinds the contract in accordance with Section 3 or Section 3a, the parties shall, concurrently, perform as follows:

1. the entrepreneur shall return all payments received, together with statutory interest as of the date of receipt, and reimburse the consumer for all costs necessarily and beneficially spent by him on the article,
2. the consumer shall return the goods received and pay the entrepreneur a reasonable sum for the use thereof, including compensation for any reduction thereby caused in the fair market value; the mere fact that the goods were taken into the consumer's custody shall not give rise to a loss in value.

(2) If it is impossible or impractical to return the performance already made by the entrepreneur, the consumer shall repay the value thereof to the entrepreneur, to the extent that they are to his clear and predominant advantage.

- (3) Paras 1 and 2 above shall be without prejudice to claims for damages.

### **Estimates**

**Section 5.** (1) The consumer shall be required to pay for the preparation of an estimate within the meaning of Section 1170a of the Civil Code only if he is notified beforehand of the obligation to do so.

(2) If the contract is based on an estimate by the entrepreneur, the validity of such estimate shall be deemed to be guaranteed unless expressly stated otherwise.

### **Distance Sales Contracts**

**Section 5a.** (1) Sections 5c to 5i shall apply to contracts made exclusively by the use of one or more means of distance communication, provided that the entrepreneur makes use of a marketing or service system organised for distance sales.

(2) Means of distance communication within the meaning of Para 1 above shall be defined as means of communication which may be used for entering into a contract without the need of the simultaneous physical presence of the parties, including but not limited to printed matter with or without address, catalogues, press advertisements with an order coupon, model letters, telephone calls with persons or machines as partners, broadcasting, videotelephone, fax, teleshopping and publicly accessible electronic media which allow individual communication, such as e-mail.

**Section 5b.** Sections 5c to 5i shall not apply to:–

1. contracts for financial services within the meaning of Section 1 of the Distance Financial Services Act of Federal Law Gazette I no. 62/2004,
2. contracts for the construction and sale of real estate properties or other titles to real estate properties, with the exception of lease agreements,
3. contracts made through the use of goods vending machines or automated business premises, and
4. auctions.

**Section 5c.** (1) The consumer must have the following information at his disposal in good time before making his contractual representation:

1. the entrepreneur's name (designation) and summons address,
2. the essential properties of the good or service,
3. the price of the good or service, including any and all taxes,
4. the cost of delivery, if any,
5. the details of payment and delivery or performance,
6. the existence of a right of rescission, except in the cases provided for in Section 5f,
7. the cost of using a means of distance communication, except when such cost is not calculated by its base rate,
8. the validity of the offer or price, and

9. the minimum term of the contract if it governs a permanent or repetitive performance.

(2) The information listed in Para 1 above shall be supplied to the consumer in a clear and understandable manner that is suitable for the means of distance communication used. Its commercial purpose shall be unequivocally recognisable.

(3) In a telephone call with a consumer, the name or designation of the entrepreneur and the commercial purpose of the call shall be clarified in a clear and understandable manner from the very start. The use of a machine as a call partner for the consumer shall require the consumer's prior – and at all times revocable – consent. Other provisions on the admissibility of using means of distance communication shall remain unaffected.

(4) Paras 1 and 2 above shall not apply to contracts:–

1. on the supply of food, beverages or other everyday household goods which are delivered by the entrepreneur within the scope of frequent and regular trips to the consumer's domicile, residence or workplace, and
2. on services regarding accommodation, transport, delivery of food and beverages, and leisure activities, provided that the entrepreneur, upon entering into the contract, undertakes to render the services at a specified time or within a precisely specified period (leisure-time services).

**Section 5d.** (1) The consumer shall be furnished with a confirmation in writing of the information referred to in Sub-paras 1 through 6 of Para 1 of Section 5c in good time during performance of the contract, or, in the case of goods not designed for the delivery to any third party not later than at the time of delivery, unless such information has been supplied to the consumer in writing prior to entering into the contract. The confirmation in writing (furnishing of information) shall be equal to a confirmation on a permanent data carrier available to the consumer.

(2) The consumer shall furthermore be furnished, in good time, with the following information either in writing or by way of a permanent data carrier available for his disposal:

1. information on the conditions and details of exercising his right of rescission pursuant to Section 5e, including the cases specified in Sub-para 1 of Section 5f,
2. the geographical address of the entrepreneur's place of business where the consumer may, if necessary, file complaints,
3. information on customer services and applicable commercial warranty terms, and
4. in the case of contracts of unlimited duration or a term of more than one year, the termination conditions.

(3) Paras 1 and 2 above shall not apply to contracts for home delivery (Section 5c (4) 1) and leisure-time services (Section 5c (4) 2). Neither shall they apply to services rendered directly through the use of a means of distance communication, provided that they are rendered in one go and charged through the operator of the means of communication; however, the consumer shall be given an opportunity to obtain the geographical address of the entrepreneur's place of business where the consumer can file complaints.

**Section 5e.** (1) The consumer may rescind any distance sales contract or contract statement within the scope of any distance sale until expiry of the periods specified in Paras 2 and 3 below. It shall be sufficient for the consumer to mail the statement of rescission before expiry of such period.

(2) The period of rescission shall be seven working days, with Saturday not counting as a working day. For contracts on the delivery of goods it shall commence on the day of their receipt by the consumer; for contracts on the rendering of services it shall commence on the day on which the contract is entered.

(3) If the entrepreneur has failed to comply with his information obligations pursuant to Section 5d (1) and (2), the period of rescission shall be three months as of the dates specified in Para 2 above. If the entrepreneur complies with his information obligations within this period, the period

during which the right of rescission may be exercised, as set forth in Para 2 above shall commence upon the date such information is furnished by the entrepreneur.

**Section 5f.** The consumer shall not be entitled to rescind contracts on:–

1. services the rendering of which to the consumer commences within seven working days (first sentence of Section 5e (2)) upon entering into the contract as agreed,
2. goods and services the price of which depends on developments on the financial markets which are beyond the entrepreneur's control,
3. goods made to the customer's specification, which are clearly tailored to personal requirements, which due to their nature are unsuitable to be returned, which spoil quickly or where the sell-by date would be exceeded;
4. audio or video recordings or software, provided that the consumer has removed the seal from the delivered goods,
5. newspapers, magazines and pictorials, with the exception of contracts on periodic printed matter (Section 26 (1) 1),
6. gambling and lottery services, and
7. home deliveries or leisure-time services (Section 5c (4) 1 and 2).

**Section 5g.** (1) When the consumer rescinds his contract pursuant to Section 5e, the following shall be performed concurrently:–

1. the entrepreneur shall return the payments made by the consumer and refund the consumer for any necessary and useful expenditure with regard to the matter, and
2. the consumer shall return the good received and pay the entrepreneur a reasonable consideration for its use, including compensation for the reduction of the fair market value of the good; acceptance of the good into the consumer's safekeeping by itself shall not be deemed any loss of value.

(2) As regards any costs charged to the consumer these shall be limited to the direct cost of returning any good if so agreed between the parties.

(3) Section 4 (2) and (3) shall apply.

**Section 5h.** (1) When the consumer rescinds a distance sales contract pursuant to Section 5e where the payment for the good or service is financed in whole or in part through a loan granted by the entrepreneur or a third party within the scope of a single economic unit (Section 18), the rescission shall also apply to the loan agreement.

(2) When a loan agreement with the meaning of Para 1 above is rescinded, each party shall return to the other party the performance received respectively. The consumer may be charged only with the cost of certifying signatures which may be necessary and with compensating the charges incurred by the entrepreneur or a third party due to the granting of a loan if so agreed between the parties. Any claims against the consumer for payment of other costs and interest shall be excluded.

**Section 5i.** (1) Unless otherwise agreed between the parties, the entrepreneur shall execute the consumer's order at the latest 30 days after the day next following the delivery of the order by the consumer, except when the entrepreneur does not accept the consumer's offer.

(2) When the entrepreneur is unable to execute the consumer's order because the good or service ordered is not available, the entrepreneur shall promptly inform the consumer thereof and refund any payments already made to him. The same shall apply when the entrepreneur does not accept the consumer's offer.

(3) Para 1 above shall not apply to contracts for home delivery (Section 5c (4) 1) and leisure-time services (Section 5c (4) 2).

**Section 5j.** Any entrepreneurs who send promises of a prize or similar notifications to certain consumers and by the design of such notifications cause an impression with the consumer that he

has won a certain prize shall deliver such prize to the consumer; such prize may also be claimed through court action.

### **Inadmissible Stipulations**

**Section 6.** (1) Specifically, the consumer shall not be bound by contractual stipulations within the meaning of Section 879 of the Civil Code, whereby:–

1. the entrepreneur reserves an unreasonably long or inadequately specified period during which he may accept or refuse a contractual proposal made by the consumer, or during which the consumer is bound by the contract;
2. a specific conduct by the consumer is deemed to constitute a declaration or failure to make a declaration, except when the consumer is expressly informed of the significance of his conduct at the beginning of the time limit provided and is allowed a reasonable period in which to make an express declaration;
3. a declaration of legal significance for the consumer sent by the entrepreneur, which is not received by the former, is deemed to have been received by him, unless it is a matter of the validity of a declaration sent to the consumer's last known address in the event of the consumer not having notified the entrepreneur of a change of address;
4. a notice or declaration to be given by the consumer to the entrepreneur or third party has to comply with stricter formal requirements than merely being in writing, or with special requirements as to its receipt;
5. the entrepreneur is entitled, on demand, to a higher consideration for his performance than that fixed when the contract was made, except when the circumstances which determine the increase are described in the contract and their occurrence does not depend on the entrepreneur's will;
6. the consumer's right to refuse performance under Section 1052 of the Civil Code until the counterperformance is rendered or secured is excluded or restricted in case the entrepreneur does not render his performance in conformity with the contract or the rendering thereof is put at risk by the entrepreneur's poor financial situation, which neither was nor ought to have been known to the consumer at the time when the contract was made, including but not limited to cases where the right to refuse performance is made conditional on the entrepreneur acknowledging defects in his performance;
7. a right of retention to which the consumer is entitled by law is excluded or limited;
8. the consumer's right to discharge his obligations by set-off is excluded or limited in the event of the entrepreneur's insolvency or in respect of counterclaims which are legally connected with the consumer's obligation and which are the subject of a court judgment or acknowledged by the entrepreneur;
9. an obligation on the entrepreneur's part to make good any damage is excluded if he or a person for whom he is responsible causes the damage deliberately or as a result of gross negligence;
10. the entrepreneur or an authority or person within his sphere of influence is authorised to decide, with binding effect for the consumer, whether the performance rendered to him by the entrepreneur conforms to the contract;
11. a burden of proof is imposed on the consumer which does not by law fall upon him;
12. the consumer's title to an article which has been given to the entrepreneur for processing lapses in an unreasonably short time;
13. the interest payable in the event of the consumer's default exceeds by more than five percentage points p.a. the interest rate agreed for contractual payment;
14. the right to assert an error or the lack or frustration of contract is excluded or limited in advance, i.a. by an agreement according to which the entrepreneur's promises do not concern the merits or essential nature of the agreement (Section 871 (1) of the Civil Code);

15. the consumer undertakes to pay collection costs upon occurrence of a default, provided that such costs are not separately listed and broken down in the agreement, or provided that such costs were not necessary to reasonably collect the debt.

(2) Unless the entrepreneur proves that they were specifically negotiated, the same shall apply to contractual stipulations whereby:–

1. the entrepreneur may cancel the contract without factual justification;
2. the entrepreneur is authorised to assign to a third party, who is not named in the contract, his obligations or the entire contract and all his obligations under it;
3. the entrepreneur may unilaterally alter or vary the performance to be rendered by him, unless the consumer may be reasonably expected to accept the alteration or variation, particularly because it is negligible and factually justified;
4. the entrepreneur is entitled, on demand, to payment of a consideration higher than that originally specified for a performance which has to be rendered by him within two months of entering into the contract;
5. an obligation on the part of the entrepreneur to make good any damage to an article which he has accepted for processing is excluded or limited;
6. claims by the consumer under Section 908 of the Civil Code are limited or excluded;
7. a dispute between the entrepreneur and the consumer is to be settled by one or more arbitrators.

(3) Any contractual provision included in the General Terms and Conditions or contractual form shall be ineffective if it is unclear or unintelligible.

### **Deposit and Forfeit**

**Section 7.** If the entrepreneur is entitled to keep or demand back a deposit (Section 908 of the Civil Code) or the consumer is under an obligation to pay a forfeit (Section 909 of the Civil Code), it may be reduced by the court by applying Para 2 of Section 1336 of the Civil Code *mutatis mutandis*.

### **Legal Warranty**

**Section 8.** (1) If the entrepreneur is obliged, by virtue of Section 932 of the Civil Code, to replace or make an improvement to goods and/or services supplied by him, he shall perform this obligation:–

1. at the place where the article was delivered; if the entrepreneur, in conformity with the contract, has conveyed or sent the article to a place situated in Austria, that place shall be substituted for the place of delivery; or, if so required by the consumer,
2. at the place where the article is normally situated, provided that the place is within Austria, should not be a matter of surprise to the entrepreneur and that, according to the nature of the article, it is impractical for the consumer to convey the article to the entrepreneur, particularly if it is bulky, heavy or has become immovable as a result of being attached to or incorporated in something else.

(2) Where it is practicable for the consumer to send the article to the entrepreneur, the latter may require him to do so. However, the entrepreneur shall bear the risk and pay the costs.

(3) The requisite cost of improving or exchanging the article, including but not limited to the cost of mailing, work and materials, shall be borne by the entrepreneur.

**Section 9.** (1) The consumer's claims under legal warranty (Sections 922 through 933 of the Civil Code) may not be excluded or limited prior to the knowledge of a defect. Any agreement on a shorter than the legal warranty period shall be ineffective; however, the legal warranty period may be reduced to one year for the sale of second-hand movable property provided that this is specifically negotiated on a case-to-case basis. With regard to automotive vehicles such a reduction shall be effective only when more than one year has passed since the day the vehicle was first registered.

(2) Sections 925 through 927 and 933 (2) of the Civil Code covering livestock defects shall not apply to a purchase by consumers.

**Section 9a.** When the entrepreneur was under the contractual obligation to install a good, he shall also be liable for any defect of the good caused by his improper handling. The same shall apply when the good was designed for installation by the consumer and the improper installation was due to an error in the installation instructions.

### **Commercial Warranty**

**Section 9b.** (1) When an entrepreneur undertakes to a consumer to improve or replace any defective good, to refund the purchase price or otherwise make good the defect (commercial warranty), he shall also inform the consumer of the legal warranty imposed on the person handing over the good and shall point out that such legal warranty shall not be limited by the commercial warranty. The entrepreneur shall be bound by the promises made in the warranty statement and its content as notified in his advertising.

(2) The warranty statement shall include the name and address of the warrantor and, in simple and straightforward terms, the content of the warranty, including but not limited to the term and geographical application and all other information necessary for drawing on the warranty. If the warranted features are not made clear from the statement, the warrantor shall be liable for the good to have those features customarily required of it.

(3) The commercial warranty shall be furnished to the consumer at his request in writing or by another permanent data carrier that the consumer can make use of.

(4) If the warrantor violates Paras 1 through 3 above, this shall not affect the validity of the commercial warranty. The warrantor shall furthermore be liable to the consumer for any loss or damage caused by such violation.

### **Extent of Authorisation and Oral Promises**

**Section 10.** (1) Any authorisation granted by an entrepreneur shall extend, in transactions with consumers, to all legal acts which such transactions normally involve; this shall be without prejudice to special statutory provisions on the extent of the authorisation. Any limitation of such authorisation shall be effective vis-à-vis the consumer only if the consumer has been aware of such limitation.

(2) Where the consumer was not aware of the limitation of authorisation solely as a result of gross negligence, the entrepreneur shall have the right to rescind the contract, without prejudice to the right to plead the limitation of authorisation under other provisions; notice of rescission must be given immediately after the entrepreneur obtains knowledge that the agent has exceeded his powers, and of the circumstances from which the consumer's gross negligence arises.

(3) It shall not be possible to contractually exclude the legal validity of informal declarations by the entrepreneur or his agents to the consumer's disadvantage.

### **Prohibition on Order Bills**

**Section 11.** (1) An entrepreneur may procure a consumer to enter into a liability on bills of exchange for the entrepreneur's claims against the consumer only if the entrepreneur is a payee of bills (Sub-para 6 of Article 1, Sub-para 5 of Article 75 of the 1955 Bills of Exchange Act (Wechselgesetz)) and provided that the bill bears the words "not to order" or an endorsement to the same effect. Any contravention of this provision shall not affect the legal validity of the bill.

(2) In the event of non-compliance with Para 1 above, any consumer who honours the bill shall have a claim to payment by the entrepreneur of a sum equivalent to the liability on the bill, unless the entrepreneur proves that the consumer, by accepting or fulfilling the obligation on the bill, has discharged an obligation to pay this sum which existed even without the bill.

### **Prohibition on Assignment of Wages**

**Section 12.** (1) The consumer may not assign any claim in respect of wages or salary to the entrepreneur in order to secure or satisfy any claims by the entrepreneur which are not yet due for payment.

(2) If an employer pays any sums to an entrepreneur or third party on the basis of an assignment of a claim to wages or salary made in contravention of Para 1 above with the effect that the employer has discharged the consumer's claim to the wages or salary, the consumer shall be entitled to demand restitution of that sum from the entrepreneur, except to the extent that the entrepreneur proves that the consumer has discharged a debt by the assignment or payment of the claim in respect of wages or salary.

### **Early Repayment**

**Section 12a.** (1) The consumer shall be entitled to discharge his obligations under a loan agreement before their due date. In such case, the consumer shall be entitled to have the loan costs reduced by such amount in interest payments and term-dependent costs as is not incurred when a current account settlement is made of the sum which is paid back before its due date. No agreement on or charging of any additional consideration shall be permissible.

(2) Para 1 above shall not apply to:–

1. loans
  - a) which are intended for the construction or rehabilitation of buildings and which have a term of not less than ten years, or
  - b) which have been secured by a mortgage, or
  - c) which are in excess of €25,000, nor to:–
2. leasing contracts which do not provide for the title to the leased asset to be passed to the lessee.

### **Loss of Right to Pay by Instalments**

**Section 13.** Where the consumer has to pay his debt in instalments and the entrepreneur has reserved the right, in the event of failure to pay instalments or ancillary claims, to demand immediate payment of the entire debt outstanding, the entrepreneur may exercise this right only if he himself has already performed his obligations, if the consumer has been in arrears with at least one payment for at least six weeks and if the entrepreneur has allowed the consumer a period of grace of not less than two weeks, at the same time warning him that he may lose his right to pay by instalments, and no payment has been received.

### **International Consumer Contracts**

**Section 13a.** (1) Where the parties to an international consumer contract have opted for the law of a state which is not party to the EEC Treaty, such choice of law shall, in respect of assessing:–

1. the validity and the consequences of the invalidity of a contractual provision which does not specify any of the mutual heads of agreement,
2. the consequences of a provision drafted in an unclear and unintelligible manner,
3. the protection of distance sales contracts (Section 5a) within the meaning of Sections 5c through 5i and 31a, as well as the provisions of the Distance Financial Services Act of Federal Law Gazette I no. 62/2004, and
4. the legal and commercial warranty when buying or manufacturing moveable assets within the meaning of Sections 8 through 9b and of Sections 922 through 924, 928, 932 and 933 of the Civil Code,

be without regard inasmuch as the law system chosen is more disadvantageous to the consumer than the law which would be applicable without such choice of law. This shall apply only when, without such choice of law, the law of a state would apply which is party of the EEC Treaty.

(2) Sections 6 of the Consumer Protection Act and Sections 864a and 879 (3) of the Civil Code shall be applied for the consumer's protection without regard to the law governing the contract when such contract has been brought about in connection with an entrepreneur's or his agent's activity pursued in Austria and directed towards entering into such contracts.

**Note:**

Pursuant to Article XXXII Sub-para 8 of the 1977 Value Limits Amendment (Wertgrenzennovelle) of Federal Law Gazette I no. 140/1997, the revision of Paras 1, 2 and 4 above shall be applied to proceedings where suits or initiating applications are filed with the court after 31 December 1997.

**Jurisdiction**

**Section 14.** (1) If the consumer has his domicile or normal residence in Austria or if he is employed in Austria, the only court with jurisdiction to hear an action against him under Sections 88, 89, Section 93 (2) and 104 (1) of the Jurisdiction Rules (Jurisdiktionsnorm) shall be a court whose district includes his domicile, normal residence or place of employment.

(2) An *ex officio* notice shall be taken if the court does not have jurisdiction at any stage of the proceedings; the provisions on remedying the lack of jurisdiction (Section 104 (3) of the Jurisdiction Rules) shall, however, apply.

(3) Any agreement whereby a court having statutory jurisdiction for an action brought by the consumer against the entrepreneur is excluded shall be void against the consumer.

(4) Paras 1 through 3 above shall not be applicable either in whole or in part if otherwise explicitly provided under international law or special statutory provisions.

**CHAPTER III**

**Special Types of Contract**

**Contracts for the Recurring Supply of Goods or Services**

**Section 15.** (1) Contracts whereby the entrepreneur undertakes recurring delivery of movable tangible assets, including energy, or the recurring provision of services, and the consumer undertakes to make recurring money payments, and which are concluded for an unlimited period or a period exceeding one year, may be terminated by the consumer on giving two months' notice, expiring at the end of the first year and subsequently at the end of any half-year.

(2) If the totality of articles to be supplied constitutes, by its nature, an indivisible whole the volume and price of which are already fixed when the contract is made, the earliest date of termination may be deferred until the end of the second year. For such contracts, the period of notice may be extended to a maximum of six months.

(3) If the performance of a particular contract specified in Para 1 above or of such contracts with a group of individual consumers who have already been ascertained necessitates substantial expenditure on the part of the entrepreneur, and if he has notified the consumer of this fact at the latest when the contract was made, the agreed termination dates and periods of notice may differ from those laid down in Paras 1 and 2 above, as befits the circumstances.

(4) If the consumer gives a notice of termination which does not conform to the specified time limits, it shall take effect on the next termination date following expiry of the period of notice.

**Instalment Purchase Transactions**

**Section 16.** (1) Sections 18 through 25 shall apply to instalment purchase transactions with regard to which:—

1. the cash price does not exceed €25,000 or, at the time the contract is made it is not certain that it will exceed €25,000, and

2. at least two instalments (apart from the initial payment) are to be paid after the goods have been supplied by the entrepreneur.

(2) For the purposes of these provisions, “instalment purchase transaction” shall mean a contract for the sale of a movable tangible asset, on the basis of which contract the entrepreneur delivers the article to the consumer before full payment, and the consumer pays the price in instalments.

(3) For the purposes of these provisions, the cash price shall consist of the consideration which would have been payable on immediate payment in cash (cash price), and the total consideration shall be the cash price and all interest and other extra charges.

### **Equivalent Transactions**

**Section 17.** Subject to the conditions laid down in Section 16, Sections 18 through 25 shall also apply *mutatis mutandis* to legal transactions other than contracts of sale if the parties’ economic purpose is the same as in the case of an instalment purchase transaction.

**Section 18.** If the same economic purpose is pursued by means of a third party (lender) supplying the funds for payment of the consideration, and if the consumer has to pay the sum owed to the lender in instalments, Section 17 shall also apply to the relationship between the consumer and the lender, if the contracts with the entrepreneur and the lender constitute a single economic unit as far as the entrepreneur and lender are concerned; this shall be presumed to be the case when the entrepreneur and the lender enter into a legal relationship within the framework of the transaction, or if they have a permanent business relationship in respect of such financing transactions. In this respect the consumer may refuse to meet the lender’s claims to the extent that he is entitled to raise against the entrepreneur any objections arising from his legal relationship with the entrepreneur.

**Section 19.** If, in the case of a contract of sale which is neither an instalment purchase transaction nor comes within the purview of Section 18, the same economic purpose is pursued by means of the entrepreneur causing the consumer, in economic conjunction with the contract, to take up a loan in order to pay the consideration, and such loan is to be repaid in instalments, and if the entrepreneur assists in the preparations for taking up the loan, Sections 18 through 25 shall apply *mutatis mutandis* to the relationship between the entrepreneur and the consumer, with the following differences:

1. To the extent that the tenor of the loan agreement is of material relevance, the consumer cannot plead any variation in the loan agreement which is actually made from that which was proposed.
2. (Note: repealed in Federal Law Gazette I no. 6/1997)
3. If the consumer has to make payments to the lender which he would not have been obliged to make if the loan agreement had been a legal transaction under Section 18, the entrepreneur shall release the consumer from the obligation to pay such sums to the lender and/or reimburse the consumer for any sums already paid.

### **Initial Payment**

**Section 20.** (1) The consumer shall make an initial payment of part of the cash price at the latest on delivery of the article; the initial payment shall be at least 10 percent of the cash price and, if this exceeds €220, at least 20 percent of the cash price. Where the initial payment is made in the form of a movable tangible asset, it shall be valued at its fair market value. In cases which come within the purview of Sections 18 and 19, the consumer may make the initial payment either to the entrepreneur or to the lender.

(2) If the entrepreneur delivers the article to the consumer without having received the minimum initial payment (Para 1 above), he shall have no claim to that part of the purchase price which represents the unpaid amount of the initial payment.

### Term

**Section 21.** The consumer shall pay the outstanding instalment claims at the latest within five years of delivery of the article. If a longer repayment period than five years has been agreed, the entrepreneur shall not be entitled to that part of the interest and other additional charges which would be payable after the expiry of five years if they were evenly spread over the whole repayment period.

### Non-performance by the Consumer

**Section 22.** (1) If, in cases coming within the purview of Section 18, the lender has reserved the right to deny the consumer the use of the article by reason of the consumer's failure to fulfil his obligations, and to sell the article privately, exercise of these rights shall not constitute rescission of the contract if the conditions laid down in Section 13 for loss of the right to pay by instalment are satisfied and if the consumer, in the event of the article being sold, is credited with the entire proceeds and in any case at least with the fair market value of the article at the date of sale.

(2) In cases coming within the purview of Section 18, the lender's obligations concerning reimbursement and maintenance under Section 4 (1) 1 shall also cover benefits received by the entrepreneur.

### Legal Warranty

**Section 23.** Until the purchase price has been paid in full, a claim for legal warranty under the liability for material defects may be brought in an action after the periods specified for this purpose in Section 933 of the Civil Code and until the due date of the last instalment; in addition the purchaser may plead a legal warranty as a defence if he has previously notified the seller of the defect.

### Instalment Purchase Contract

**Section 24.** (1) The contract for an instalment purchase transaction shall be recorded in writing (instalment purchase contract). The contract shall state:—

1. the first name and surname (name of company), occupation (object of the enterprise) and normal residence (principal place of business) of the parties;
2. the date and place of the proposal and acceptance of the contract by the consumer;
3. the subject of the instalment purchase transaction;
4. the cash price;
5. the total consideration and the amount of the resulting effective annual interest rate (Section 33 (4) of the Banking Act (Bankwesengesetz));
6. the amount of initial payment;
7. the number, amount and due dates of instalments;
8. the delivery date;
9. a statement as to whether, and if so how many, bills of exchange have been issued to collateralise the outstanding instalments, and whether any other securities, including reservation of title, as the case may be, have been agreed;
10. in a case coming within the purview of the first sentence of Para 1 of Section 3, the wording set out in Section 3 (consumer's right of rescission) with the heading, but without the last sentence of Para 1.

(2) Immediately after the instalment purchase contract is signed by the consumer, the entrepreneur shall, at his own expense, deliver a copy of the contract to the consumer; the particulars specified in Para 1 above shall be set out clearly and legibly therein.

(3) The legal validity of the instalment purchase transaction shall not be conditional upon the execution of an instalment payment contract.

**Section 25.** (1) Section 24 shall apply to instalment purchase transactions in the printed materials trade only if the transaction is concluded under such circumstances as to give the consumer a right of rescission under Section 3.

(2) In cases coming within the purview of Section 18, the entrepreneur and the consumer shall execute a contract of sale, and the lender and the consumer shall execute a separate document on their legal transaction; the two documents together form the instalment purchase contract. The contract of sale shall contain the particulars set out in Sub-paras 1 to 4, 6, 8 and 10 of Para 1 of Section 24, and the document relating to the other legal transaction shall contain, *mutatis mutandis*, the particulars set out in Sub-paras 1, 3, 7 and 9 of Para 1 of Section 24 together with the consideration or balance which is being financed and the consideration for the loan. The obligation under Section 24 (2) shall affect the entrepreneur and the lender only in relation to the respective documents to be executed by them.

(3) In cases coming within the purview of Section 19, the entrepreneur and the consumer shall execute a document recording the contract, which shall be deemed to be the instalment purchase contract. The document shall contain the particulars set out in Sub-paras 1, 2, 8 and 10 of Para 1 of Section 24, together with the subject of the contract, the consideration, the amount of the initial payment and the amount and term of the proposed loan.

#### **Loan Transactions by Spouses**

**Section 25a.** An entrepreneur whose business it is to grant or broker loans shall be obliged to deliver a separate document to spouses who, in their capacity of consumers, jointly raise a loan, regardless of whether one spouse is liable solely as a surety, or a spouse who, in his/her capacity of consumer, accepts liability for the other spouse's existing loan obligation, which document must instruct the recipients that:–

1. in the event that the spouses are jointly and severally liable, each of the debtors may, in any order, be required to pay the full debt, regardless of who has received the loan amount;
2. that such liability shall remain valid even if their marriage has been dissolved, and
3. that in the event of divorce, limitation of the spouse's liability to a deficiency guarantee under Section 98 of the Marriage Act (Ehegesetz) is reserved to the court and will have to be petitioned for within one year of the divorce having become final.

#### **Consumers' Loan Debts**

**Section 25b.** (1) If a consumer is jointly and severally liable for a loan granted by an entrepreneur as set forth in Section 25a, the creditor shall deliver also to the consumer each and every reminder and other statement concerning the default of the other jointly and severally liable debtor.

(2) If a consumer acts as surety or guarantor of a loan granted by an entrepreneur as set forth in Section 25a, and the principal debtor defaults, then the creditor shall notify the consumer within a reasonable period. If the creditor fails to do so, the consumer shall not be liable to the creditor for the interest and cost accruing from the date when the creditor has knowledge of the principal debtor's default until a default by the consumer himself.

**Section 25c.** If a consumer accedes to a debt by way of becoming co-debtor, surety or guarantor (suretyship), the creditor shall inform him of the debtor's economic situation if he realises or is bound to realise that the debtor is not likely to meet his debt either fully or in part. If the entrepreneur fails to provide such information, the surety shall be liable only if he would have undertaken such obligation in spite of such information.

#### **Court's Right of Reduction**

**Section 25d.** (1) A judge may reduce or waive a surety's debt (Section 25c) to the extent that, when all circumstances are considered, such debt is unfairly disproportionate to the surety's

capacity, provided that the fact that the consumer was only a surety and that the circumstances which caused or created this disproportionateness were obvious to the creditor when the debt was entered.

- (2) When ruling in accordance with Para 1 above, the following shall, i.a., be considered:
1. The creditor's interest in the justification for the surety's liability,
  2. the surety's responsibility for the circumstances that caused or generated the disproportionateness set forth in Para 1 above,
  3. the surety's benefit obtained from the creditor's performance, and
  4. the surety's thoughtlessness, predicament, inexperience, mental excitement or dependence on the debtor in creating the debt.

### **Deliveries in the Printed Materials Trade**

**Section 26.** (1) A contract in the printed materials trade shall be executed in writing if:–

1. under such contract, the seller undertakes to make recurring deliveries and the buyer undertakes to make recurring money payments, and
2. it is made under circumstances which give the buyer the right of rescission under Section 3.

(2) The contractual document shall contain:–

1. the first name and surname (name of company), occupation (object of the enterprise) and normal residence (principal place of business) of the parties;
2. the date and place of the proposal and acceptance of the contract by the consumer;
3. the subject of the contract;
4. the amount and due dates of the payments to be made, and their number, provided that this has already been agreed;
5. instructions as to the right of rescission under Section 3.

(3) Immediately after the document is signed by the consumer, the entrepreneur shall, at his own expense, deliver a copy to the consumer; the particulars set out in Para 2 above shall be reproduced clearly and legibly therein.

(4) The legal validity of a contract governing non-periodic publications shall not be conditional upon the execution of a contractual document.

**Section 26a.** (1) In respect of contracts governing periodic publications coming within the purview of Section 26, the entrepreneur who accepts performance of the contract as a contractual party shall furthermore mail a document to the consumer which clearly and legibly reproduces the particulars set out in Section 26 (2). The time limit for rescinding the contract under Section 3 shall not commence until the consumer has received such document. Rescission shall also be effective if notice is given to the entrepreneur who has mailed the document.

(2) Para 1 above shall not apply to periodic publications which are published at least six times per week.

**Section 26b.** Sections 26 and 26a shall not apply to contracts in which the total price or, if the total price cannot yet be calculated, the purchase price to be paid within one year is given as a figure of more than €25,000.

### **Secondary Liability of Creditor**

**Section 26c.** (1) If the consumer, for the purpose of financing the procurement of goods or services, is granted a loan from a party other than the provider (supplier or service provider), the consumer may refuse to satisfy the lender – without prejudice to the applicability of Sections 17 through 19 – to the extent that the consumer is entitled to plead objections against the provider from his legal relationship with the provider provided that a loan has been agreed with another party for the supply of goods or services, and

- a) a previous agreement has been made between the lender and the provider whereby loans to the provider's customers, made for the purpose of procuring goods or services from the provider, will be granted solely by such lender, and
- b) the consumer is granted the loan within the framework of such agreement, and
- c) the goods and services governed by the loan agreement are not supplied or supplied only in part or do not meet the conditions of the supply agreement, and
- d) the consumer has been unsuccessful in enforcing his rights against the supplier.

(2) Para 1 above shall not apply to legal transactions coming within the purview of Para 2 of Section 12a.

### **Home Improvement**

**Section 26d.** (1) Contracts governing work to rehabilitate housing units shall be executed in writing when the orderer is a consumer and such contracts are concluded under circumstances that entitle the consumer to rescind the contract under Section 3.

(2) The contract deed shall include:

- 1. The first name and surname (name of the company), occupation (object of the enterprise) and normal residence (principal place of business) of the parties;
- 2. the date and place of the proposal and acceptance of the contract by the consumer;
- 3. the subject of the contract, including data on the manufacturer and type of goods to be delivered for performance of the contract, provided that their description by way of manufacturer and type is customary;
- 4. the amount and due dates of the payments to be made;
- 5. this agreement, if the consumer's rescission is excluded under Section 3a (4) 2;
- 6. instructions as to the right of rescission under Sections 3 and 3a.

(3) Immediately after the document is signed by the consumer, the entrepreneur shall, at his own expense, deliver a copy to the consumer; the particulars set out in Para 2 above shall be reproduced clearly and legibly therein.

(4) The legal validity of a contract pursuant to Para 1 above shall not be conditional upon the execution of a contractual document.

### **Advance Payment Purchases**

**Section 27.** The consumer may rescind a contract for the delivery of a movable tangible asset, whereby the consumer undertakes to pay the purchase price in advance by instalments, if the commodity is identifiable solely by declaration of the contractual parties or if the price is not fixed in accordance with prices applicable at the date when the contract is made, and for as long as the contract has not been completely performed by both parties. Section 4 shall apply *mutatis mutandis* to the return of payments already made.

### **Contract for Work and Services**

**Section 27a.** If a work has not been executed and the entrepreneur nevertheless demands payment of the agreed consideration (Section 1168 (1) of the Civil Code), he shall inform the consumer of the reasons why through his failure to execute the work he has neither saved anything nor acquired anything by any other use nor intentionally failed to acquire anything.

### **Contracts between Nursing Home Owners/Operators and Inmates**

**Section 27b.** (1) Sections 27b through 27i shall govern specific aspects of civil law contracts between owners/operators and inmates of old-age homes, nursing homes and other care facilities which can accept at least three individuals. They shall apply to contracts on the permanent or temporary accommodation, care and nursing in such facilities (nursing home contracts). These provisions shall not apply to contracts on the acceptance, nursing and care of inmates of hospitals and intramural facilities for medical rehabilitation measures.

(2) Nursing home contracts within the meaning of Para 1 above shall not require a fee to be paid under Section 33 Rate 5 of the Act Governing Fees (Gebührengesetz) of Federal Law Gazette no. 267/1957 as amended.

### **Duty of Information**

**Section 27c.** The Nursing Home Owner/Operator shall inform, in writing, interested parties which may gain admittance to such home upon their request of all matters relevant for entering into the contract and on the accommodation, care and nursing provided by the home. He shall state in all his advertising for his facility an address to which to apply for such information.

### **Content and Form of the Nursing Home Contract**

**Section 27d.** (1) A nursing home contract shall, as a minimum, include information on the following:

1. name (company name) and address of the contracting parties;
2. term of the contractual relationship;
3. premises (living rooms where the inmate is accommodated, as well as common rooms and facilities), their appointments, laundry service and cleaning of the living rooms;
4. general situation of the food provided to inmates;
5. services within the scope of basic care, including, i.a., nursing during short spells of illness, standby service and assistance to the inmate in personal matters;
6. due date and amount of payment, and a breakdown of the payment for accommodation, board and basic care, for special nursing services and additional services; and
7. procedure followed by the home owner/operator for terminating the contractual relationship.

(2) To the extent and provided that the home owner/operator renders, brokers or demands performance of the following, the nursing home contract shall furthermore include information on:—

1. special board services, such as dietary food;
2. type and scope of special nursing services;
3. medical and therapeutic services, such as presence and accessibility of physicians, other therapeutic and social workers, and equipment for providing such services;
4. other services rendered by third parties;
5. social and cultural care of the inmates, such as educational, occupational and cultural events, and
6. the deposit to be paid by the inmate.

If and to the extent that the home owner/operator fails to render, broker or demand such services, he shall include a note to this end in the nursing home contract.

(3) The nursing home contract shall furthermore specifically include statements with regard to the following personal rights enjoyed by the inmate:

1. right of free development of his personality, to decent treatment, self-determination and respect of his privacy and private life,
2. right to maintain the privacy of correspondence, mail and telephone conversations,
3. right of political and religious self-determination, the free expression of opinion, freedom of assembly and association, especially associations designed to enforce the inmates' interests,
4. right of external communication, of visits by family members and acquaintances, to use telephones,
5. right of equal treatment regardless of sex, origin, race, language, political conviction and religious faith,
6. right of modern medical services, free choice of physician and treatment and adequate palliative treatment, as well as
7. right of personal apparel and own furniture.

(4) The details of the contract shall be set down in a simple and intelligible manner that is nevertheless comprehensive and detailed.

(5) The nursing home contract shall be executed in writing prior to acceptance of the inmate in the home or, in the case of contracts for an indefinite period, not later than three months as of acceptance. The home owner/operator shall deliver a copy of the contract to the inmate, his representative and confidant (Section 27e (1)). A defect of form may be pleaded only by the inmate.

### **Confidant**

**Section 27e.** (1) The inmate shall be entitled at any time to name a confidant to the home owner/operator. Unless the inmate specifies otherwise, the home owner/operator shall also deal with the confidant in any important civil law matter.

(2) If the inmate has grossly violated his duties under the contract or has seriously disturbed the operation of the home, the home owner/operator shall admonish him and point out to him the possible consequences of his conduct. The inmate's representative and confidant shall be invited to such meeting by registered letter setting out the reason. The home owner/operator shall promptly deliver to the inmate, his representative and confidant a copy of such admonition or send it by registered letter.

### **Reduction of Payment**

**Section 27f.** If the home owner's/operator's performance is faulty, the payment shall be reduced proportionately to the duration and seriousness of the fault. The same shall apply to services which need not be rendered by the home owner/operator if the inmate is away for more than three days.

### **Deposits and Inadmissible Arrangements**

**Section 27g.** (1) Provided that the home owner/operator requires the inmate to pay a deposit, its amount shall not exceed the payment for a month, or, in the case of an inmate whose payment is made wholly or in part by the Social Assistance Scheme, the amount of €300. The home owner/operator shall promptly and in writing confirm to the inmate, his representative and confidant his receipt of the deposit.

(2) The home owner/operator may use a deposit paid in by the inmate solely to cover claims for compensation, damages or enrichment against the inmate. He shall pay the deposit into a separate escrow account. The deposit shall not pass into the home owner's/operator's ownership.

(3) If the home owner/operator wishes to draw on the deposit, he shall inform the inmate, his representative and confidant in writing, specifying the reasons therefor.

(4) To the extent that the home owner/operator does not draw on the deposit, he shall refund it to the inmate or his legal successor upon termination of the contractual relationship, together with bank interest applicable for sight deposits, but reduced by the charges and account handling costs paid by him.

(5) Any contractual provisions according to which the inmate has to make a payment to the home owner/operator or another party without equivalent counter-performance or according to which the inmate's property is forfeited within an unreasonably short period shall not be binding.

### **Termination by the Inmate, Death**

**Section 27h.** (1) Aside from immediate termination for cause, the inmate may terminate the contractual relationship at any time at one month's notice at the end of each month. The home owner/operator shall promptly and in writing confirm receipt of such notice to the inmate, his representative and confidant.

(2) The contract shall be voided by the inmate's death. The home owner/operator shall refund, *pro rata*, to the inmate's legal successor any payment made in advance.

### **Termination by the Home Owner/Operator**

**Section 27i.** (1) The home owner/operator may terminate the contractual relationship solely for cause, in writing and specifying the causes, and at one month's notice or, in the case of Sub-para 1 below, at three months' notice at the end of the respective month. A valid cause shall, i.a., be:–

1. operation of the home is terminated or substantially reduced;
2. the inmate's health has deteriorated to such an extent that his proper and medically advisable care and nursing can no longer be provided in the home;
3. the inmate repeatedly and seriously disturbs the home's operation in spite of being admonished by the home owner/operator (Section 27e (2)) and in spite of reasonable remedial measures taken by the home owner/operator so that the home owner/operator and the other inmates cannot reasonably be expected to continue to house him, or
4. the inmate is in default of payment of the consideration for at least two months in spite of a reminder (Section 27e (2)) delivered after the due date.

(2) If, in the course of eviction proceedings based on termination as per Para 1 (4) above, the amount due is disputed, the court shall rule on this issue prior to conclusion of the hearing. A termination based on Para 1 (4) above shall be ineffective if the amount due is paid within two weeks of such ruling becoming final. However, the inmate shall compensate the home owner/operator for the cost of the proceedings to the extent that, without his payment, he would have incurred an obligation to reimburse costs and provided that he was at fault for the default.

(3) If the contractual relationship is terminated, the home owner/operator shall simultaneously notify the geographically responsible organisation for social and disability assistance, unless the inmate objects. Other legal or contractual notification duties shall remain unaffected.

## **PART TWO**

### **Class Action**

#### **Injunction**

**Section 28.** (1) Injunction proceedings may be brought against any person who, with regard to his commercial dealings, in his general terms and conditions on which he bases his contracts or in printed forms used by him for contracts, lays down conditions which contravene a statutory prohibition or which are contrary to public policy. This ban shall also include a prohibition to invoke any such condition to the extent it was inadmissibly agreed.

(2) The risk that such conditions are used and recommended will cease if the entrepreneur, after being admonished by a body authorised to sue under Section 29, within a reasonable period issues a cease-and-desist statement secured by a reasonable penalty (Section 1336 of the Civil Code).

(3) Any person using or proposing general terms and conditions or forms for contracts shall furnish such to a body authorised to sue under Section 29 within four weeks of the latter's request provided that such body shows that knowledge of the general terms and conditions or forms is necessary to advocate the consumers' interests.

**Section 28a.** (1) Any person who, within the scope of his business transactions with consumers in connection with doorstep transactions, consumer loan relationships, package tour arrangements, time-share relationships, distance sales, the agreement of unfair terms, legal or commercial warranty for the purchase or manufacturing of moveable tangible assets or in connection with IT services in e-commerce transactions, violates a statutory order or prohibition and thus impairs the general interests of consumers may, without prejudice to Section 28 (1), be sued for an injunction.

(1a) Para 1 above shall also be applied if an entrepreneur within the scope of business transactions with consumers in connection with nursing home contracts violates a statutory order or prohibition and thus impairs the general interests of consumers.

(2) Section 28 (2) shall be applied.

**Section 29.** (1) An action may be brought by the Austrian Economic Chamber, the Federal Chamber of Labour, the Council of Austrian Chambers of Agricultural Labour, the Presidential Conference of Austrian Chambers of Agriculture, the Austrian Trade Union Federation, the Verein für Konsumenteninformation (Consumer Information Association) and the Austrian Council of Senior Citizens.

(2) If the infraction (Sections 28 (1) and 28a (1)) originates in Austria, an action may also be brought by any body or organisation of another European Union Member State notified in the Official Journal of the European Communities by the Commission pursuant to Article 4 (3) of Directive 98/27/EC on injunctions for the protection of consumers' interests, Official Journal L 166 of 11 June 1998, p. 51, provided that:–

1. any interests protected by such bodies are impaired in such Member State, and
  2. the purpose of such body as identified in the notification justifies bringing such action.
- (3) Proof of such notification shall be submitted upon bringing an action.

#### **Application of the Act Against Unfair Competition (UWG)**

**Section 30.** (1) Section 24, and Paras 3 to 7 and 26 of Section 25 of the 1984 Federal Act Against Unfair Competition (Bundesgesetz gegen den unlauteren Wettbewerb) shall apply *mutatis mutandis*.

(2) The first sentence of Para 2 of Section 7 and Para 2 of Section 8 of the Jurisdiction Rules shall not apply.

#### **Rescission of Real Estate Transaction Contracts**

**Section 30a.** (1) If a consumer furnishes a contract statement on the acquisition of a tenancy right, another usufructuary right or ownership of an apartment, a single-family dwelling or a piece of land suitable for erecting a single-family dwelling on it on the same day that he has inspected the contractual object for the first time, he may rescind his contract statement provided that such acquisition was intended to cover an urgent residential need on the part of the consumer or any of his near relatives.

(2) The contract may be rescinded at the latest one week after the consumer has furnished his contract statement. If a real estate agent has been involved and the statement of rescission is addressed to such agent, the rescission shall also extend to a real estate agent contract entered into within the scope of the contract statement. In other respects, Section 3 (4) shall apply to the statement of rescission.

(3) The period set forth in Para 2 above shall commence only upon the consumer receiving a copy of his contract statement and written instructions on his right of rescission. The right of rescission shall, however, expire at the latest one month after the day of the first inspection.

(4) Any agreement on the payment of a deposit, forfeit money or downpayment prior to expiry of the rescission period shall be ineffective.

#### **Special Information Obligation by Real Estate Agents**

**Section 30b.** (1) Prior to entering into an agency contract, the real estate agent shall furnish the client, provided that such client is a consumer, with a written overview prepared with the diligence of a prudent real estate agent from which it can be surmised that he acts as a real estate agent and which states any and all costs, including the commission, expected to arise for the consumer from entering into the brokered transaction. The amount of commission shall be stated separately; any economic or family association within the meaning of the third sentence of Section 6 (4) of the Real Estate Agency Act (Maklergesetz) shall be pointed out. Where the real estate agent may also act as a dual agent by virtue of his business practices, such overview shall furthermore include a note to this effect. If conditions undergo a material change, the real estate agent shall correct the overview accordingly. If the real estate agent fails to meet these obligations by, at the latest, the

time the client issues a contractual statement regarding the brokered transaction, Section 3 (4) of the Real Estate Agency Act shall apply.

(2) The real estate agent shall furnish to the client the information required under Section 3 (3) of the Real Estate Agency Act in writing. Such information shall in any event include all circumstances that are essential to assess the transaction involved.

### **Maximum Term of Sole Agency Orders**

**Section 30c.** (1) The term of a sole agency order (Section 14 (2) of the Real Estate Agency Act) by a consumer may be agreed to be at most:-

1. three months for brokering tenancy contracts for flats or other contracts concerning the use or utilisation of flats;
2. six months for brokering contracts on the sale or acquisition of ownership of apartments, single-family dwellings or plots suitable for erecting a single-family dwelling.

(2) If special circumstances prevail, a longer term than set forth in Para 1 above may be agreed.

## **PART THREE Supplementary Provisions**

### **Written Form and Imperative Provisions of a Real Estate Agency Contract**

**Section 31.** (1) The following agreements shall be legally effective only when they have been made expressly and in writing:

1. Agreement to reimburse expenditures due to additional orders (Section 9 of the Real Estate Agency Act);
2. conclusion and extension of sole agency orders (Section 14 of the Real Estate Agency Act);
3. special arrangements for the event that no brokerage result was achieved (Section 15 of the Real Estate Agency Act).

(2) The provisions of Sections 30a through 31 (1) and of Sections 2 (2), 3, 9, 10, Sub-paras 4 and 5 of Section 28 and Section 39 of the Real Estate Agency Act shall not be derogated to the consumer's disadvantage.

### **Abuse of Credit/Debit Cards in Distance Sales**

**Section 31a.** If a credit/debit card or its data are misused within the scope of a distance sales contract (Section 5a or Section 1 of the Distance Financial Services Act of Federal Law Gazette I no. 62/2004), the authorised cardholder may require the card issuer to cancel or refund, as the case may be, its posting or payment. This provision shall not be derogated to the consumer's disadvantage.

### **Contracts for Organised Tours**

**Section 31b.** (1) The following provisions shall apply to organised tours.

(2) For the purpose of these provisions, the following terms shall have the meanings as set out below:

1. organised tour: a combination, fixed in advance, of at least two of the following services, which is offered or arranged for an overall consideration:
  - a) transport,
  - b) accommodation,
  - c) other touristic services which are not just ancillary to transport and which constitute a significant part of the overall performance;

this condition shall also be deemed to have been met when individual services are charged separately but rendered within the scope of a single organised tour;

2. tour operator: a person who, on a non-occasional basis, arranges or offers in his own name to render travel services organised by him;

3. traveller: a person who enters into a contract or preliminary contract governing travel services; any other person on whose behalf such person enters into a contract; and any person to whom such person assigns his claims (“assignee”).

**Section 31c.** (1) No agreement made to grant the tour operator the right to increase the consideration specified in the tour contract shall be valid as of the period commencing on or after the twentieth day before the agreed departure date. Otherwise, such an agreement – notwithstanding the general limits of admissibility of such a contractual provision – shall be admissible only if it similarly provides for a reduction in the price in the event that conditions for an increase have been agreed and if it includes precise particulars for calculating the new price, which may take into account solely changes in the transport cost (including, without limitation, fuel costs), in the charges for specified services (including, without limitation, landing charges, embarkation and disembarkation fees in ports and similar fees on airports) or in the exchange rates applicable for the organised tour.

(2) If the tour operator – to the extent that he is entitled to do so by statutory or contractual provisions – makes significant changes to essential components of the contract (including, without limitation, the price) prior to departure, the traveller shall have the choice of accepting the change or rescinding the contract without being obliged to pay a penalty or forfeit. The tour operator shall be obliged to promptly inform the traveller of the change and to instruct him of the choice open to him; the traveller shall be obliged to make his choice promptly.

(3) If the traveller is prevented from participating in the organised tour, he may assign the contractual relationship to another person provided that such person complies with all conditions for participation and the assignment is notified to the tour operator within a reasonable period prior to the date of departure. The assignor and assignee shall be jointly and severally liable for any outstanding consideration and for any extra charges which may have arisen in connection with the assignment.

**Section 31d.** (1) If the traveller rescinds the contract under Section 31c (2) or if the tour operator cancels the tour prior to the agreed date of departure for any reason which is not the traveller’s fault, the traveller may, rather than requesting that the contract be wound up by the refunding of all payments made, demand its performance by participating in another organised tour of equivalent value, provided that the tour operator is able to render such performance. Alternatively, the tour operator may offer the traveller an organised tour of greater value at the same consideration; if the traveller chooses an organised tour of lesser value, the tour operator shall refund the difference between that value and the consideration for the performance originally agreed.

(2) In addition to the title under Para 1 above, the traveller shall be entitled to claim damages for non-performance, except when:–

1. the organised tour was cancelled because the number of persons who had booked the organised tour did not come up to the minimum number required and the consumer was informed of the cancellation in writing within the time limit stipulated in the description of the organised tour, or
2. the organised tour was cancelled for reasons of force majeure, i.e. because of unusual and unforeseeable events which were beyond the control of the person pleading force majeure and the consequences of which could not have been avoided in spite of exercising proper care; however, this shall not include overbooking.

**Section 31e.** (1) If it is found after departure that a significant part of the contractually agreed performance is not or cannot be rendered, the tour operator shall, without charging extra, make reasonable arrangements so as to continue with the organised tour. If such arrangements cannot be made or if the traveller, for valid reasons, does not accept such arrangements, the tour operator shall, if necessary and without charging extra, provide for an equivalent mode to convey the traveller to the place of departure or to any other place agreed with the traveller. The tour operator

shall furthermore be obliged to use his best efforts to assist the traveller in overcoming difficulties in the event of non-performance or imperfect performance of the contract.

(2) The traveller shall promptly notify any defect in the performance of the contract which he finds in the course of the tour to a representative of the tour operator, provided that he has been informed of the existence of such representative and that the representative can be contacted locally without any undue effort on the part of the traveller, and that the tour operator has informed the traveller in writing of such obligation, stating that omission of such notification, while not affecting the traveller's warranty claims, may be deemed to be contributory negligence (Section 1304 of the Civil Code).

(3) If the tour operator has failed to render a substantial part of the contractually agreed performance for reasons within the tour operator's control, the traveller shall be entitled to claim reasonable damages for his loss of holiday enjoyment. In calculating such damages, consideration shall specifically be given to the severity and duration of the defect, the degree of fault, the agreed purpose of the journey and the price paid for the journey.

**Section 31f.** (1) Section 6 (1) 9 and Section 9 shall also apply to contracts for organised tours which in other respects are not governed by Part One of this Act. The period of limitation pursuant to Section 31e (3) may be reduced to one year provided that this has been agreed on a case-to-case basis.

(2) To the extent that any agreement deviates from Sections 31b through 31e to the disadvantage of the traveller, it shall be ineffective.

### Penal Provisions

**Section 32.** (1) An administrative offence is committed – provided that the act does not comprise the elements of a criminal offence coming within the jurisdiction of the courts – by any entrepreneur or, in cases coming within the purview of Section 18, any lender, or an agent acting on behalf of these persons, who:–

1. fails:–
  - a) to execute an instalment purchase contract (Section 24 (1)) or a document referred to in Section 25 (1) through (3) and Section 26d (1),
  - b) to record therein the particulars described in Sections 24 (1), 25 (2) and (3), 26 (2) or 26d (2), or
  - c) to instruct and/or notify borrowers in accordance with Sections 25a through 25c,
2. contravenes Sections 24 (2), 26 (3) or 26d (3),
3. contravenes Section 11 (1),
4. contravenes Section 12 (1),
5. sends goods or renders services to a consumer without the consumer causing him to do so and combines this with a request for payment,
6. includes incorrect data in the document to be issued under Section 3 (1), or
7. starts a telephone conversation without clearly and lucidly announcing the name (company name) of the entrepreneur and the business purpose of the conversation,

and the fine for any such offence shall be a maximum of €1,450.

(2) If, in a case coming within the purview of Sub-para 3 of Para 1 above, a third party claims a debt under a bill of exchange against the consumer or his surety or if, in a case coming within the purview of Sub-para 4 of Para 1 above, the entrepreneur or a third party asserts the assigned right to wages or salary against the employer, it shall be possible to exceed the upper limit of the fine up to the amount of the bill or the amount which is demanded from the employer and in any case up to twice the specified fine.

(3) In cases coming within the purview of Sub-paras 3 and 4 of Para 1 above, the limitation period shall begin to run when a claim is made on the bill of exchange or when the bill is returned or destroyed, or, respectively, when the assigned right to wages or salary is claimed from the

employer or on the date on which the assignment is cancelled, whichever of the respective dates is earlier.

#### **Amendments to the Civil Code**

**Section 33.** (Note: Amendment to the Civil Code, JGS no. 946/1811)

#### **Amendments to the Commercial Code**

**Section 34.** (Note: Amendment to the Commercial Code, Imperial Law Gazette S 219/1897)

#### **Amendments to the Usury Act**

**Section 35.** (Note: Amendment to the Usury Act, Federal Law Gazette no. 271/1949)

#### **Amendments to the Code of Civil Procedure**

**Section 36.** (Note: Amendment to the Code of Civil Procedure, Imperial Law Gazette no. 113/1895)

#### **Amendments to the Attachment Code**

**Section 37.** (Note: Amendment to the Attachment Code, Imperial Law Gazette no. 79/1896)

#### **Transitional and Final Provisions**

**Section 38.** This Federal Act shall enter into force on 1 October 1979.

**Section 39.** (1) This Federal Act shall not apply to contracts which were made before its entering into force.

(2) To be applied are:–

1. Sub-paras 1 through 9 of Section 36 when the hearing where or based on which the judgment by default has been given has been held after 30 September 1979;
2. Sub-paras 10 through 14 of Section 36 when the ruling has been passed after 30 September 1979;
3. Sub-para 15 and – to the extent it decrees annulment of the word “his” – Sub-para 19 of Section 36 to all procedures where the oral hearing is closed after 30 September 1979;
4. Sub-paras 16 through 18 and – to the extent it concerns the period permitted for objections – Sub-para 19 of Section 36 in all cases where such period permitted for objections commences after 30 September 1979;
5. Section 37
  - a) in all cases where a protest is raised against a judgment by default;
  - b) to the extent it concerns attachment to collateralise payment orders when the period to raise objections against the payment order commences after 30 September 1979.

**Section 40.** (1) With the effectiveness of this Federal Act, the Federal Act of 19 November 1961 of Federal Law Gazette no. 279 governing instalment transactions shall cease to be effective. However, with the exception of Sections 12 and 15 (1) 12, it shall continue to be applied to instalment transactions entered into prior to this date.

(2) The Act of 30 June 1878 of Imperial Law Gazette no. 90, which includes several provisions on the sale of state and other lottery tickets or their prizes, and the Act of 25 November 1933 of German Imperial Law Gazette 1 p. 1011 on discounts as amended in the Ordinance of 16 February 1940, German Imperial Law Gazette I p. 399 shall remain unaffected.

**Section 41.** With the effectiveness of this Federal Act, Sub-para 6 of Article 8 of the Fourth Ordinance to introduce commercial law provisions in the country of Austria of 24 December 1938, German Imperial Law Gazette 1938 1, p. 1999, most recently amended by the Federal Act of Federal Law Gazette no. 91/1976, shall cease to be effective. This provision shall, however, continue to be applied to commercial transactions concluded prior to this date.

**Section 41a.** (1) Sections 3 (1), 16 (1) 1, 19 (2) and 26b as well as Sections 12a, 26c and 31b through 31f as amended in the Federal Act of Federal Law Gazette no. 247/1993 shall enter into force on the same date as the Agreement on the European Economic Area; Sections 31b through 31f shall, however, enter into force on 1 May 1994 at the earliest.

(2) The new provisions shall not be applied to contracts which were made before the dates set out in Para 1 above.

(3) The amendments in Sections 1 (4); 3 (3); 3a; 4 (1); 6 (1) 9, 14 and 15; 6 (2) 6 and (3); 7, 16 (1) 1 and (3); 19 (2); 20 (1); 24 (1) 5; 25a through 25d; 26c (2); 26d; 27a; 28 and 29; 30 (1); 31 (2); 31a; 31f (1) and (2); 32 (1); 41a (1) and 42 as made in the Federal Act of Federal Law Gazette I no. 6/1997 shall enter into force on 1 January 1997. Section 6 (1) 5 and 13 as amended in the Federal Act of Federal Law Gazette I no. 6/1997 shall enter into force on 1 March 1997.

(4) Not to be applied in the version set forth in Para 3 above shall be:

1. Section 28 to recommendations made before 1 January 1997.
2. Section 3 (3); 3a; 4 (1); 6 (1) 9, 14 and 15; 6 (2) 6 and (3); 7; 16 (1) 1 and (3); 19 (2); 20 (1); 24 (1); 25a through 25d; 26c (2); 26d; 27a; 31 (2); 31a; 31f (1) and (2); and 32 (1) to contracts made before 1 January 1997, and
3. Section 6 (1) 5 and 13 to contracts made before 1 March 1997.

(5) Section 13a shall enter into force on the day that the Convention of 19 June 1980 on the law applicable to contractual obligations becomes effective for the Republic of Austria; it shall be applied to contracts made after this date.

(6) Sections 1 (5), 5j and 42 as amended in the Federal Act of Federal Law Gazette I no. 185/1999 shall enter into force on 1 October 1999.

(7) Section 1 (5) shall not be applied to the accession to and membership in associations when such accession took place before 1 October 1999. Section 5j shall not be applied to prize promises and similar notifications sent to a given consumer prior to 1 October 1999.

(8) Sections 5a through 5i, 13a (1), 31a and 32 (1) 7 as amended in the Federal Act of Federal Law Gazette I no. 185/1999 shall enter into force on 1 June 2000.

(9) The provisions set forth in Para 8 above shall not be applied to contracts made before 1 June 2000.

(10) Sections 28a and 29 (2) and (3) as amended in the Federal Act of Federal Law Gazette I no. 185/1999 shall enter into force on 1 January 2001.

(11) Sections 8, 9, 9a, 9b, 13a and 28a as amended in the Federal Act of Federal Law Gazette I no. 48/2001 shall enter into force on 1 January 2002. They shall be applied in this version to contracts made after 31 December 2001.

(12) Sections 3, 12a, 16, 20, 26b, 32 and 41a as amended in the Federal Act of Federal Law Gazette I no. 98/2001 shall enter into force on 1 January 2002.

(13) Sections 3, 12a, 16, 20 and 26b amended as set forth in Para 12 above shall be applied to contracts made after 31 December 2001. Section 32 amended as set forth in Para 12 above shall be applied to criminal offences committed after 31 December 2001.

(14) Section 3 as amended in the Federal Act of Federal Law Gazette I no. 111/2002 shall enter into force on the first day of the month next following promulgation of this Act. The provision shall be applied as thus amended to contracts made after this date.

(15) Sections 6, 28, 30b, 31f and 42 as amended in the Federal Act of Federal Law Gazette I no. 91/2003 shall enter into force on 1 January 2004. They shall not be applied to contracts or contractual statements made or given before this date.

(16) Sections 3 and 31e as amended in the Federal Act of Federal Law Gazette I no. 91/2003 shall enter into force on 1 January 2004.

(17) Sections 27b through 27i, 28a and 42 as amended in the Federal Act of Federal Law Gazette I no. 12/2004 shall enter into force on 1 July 2004. They shall be applied solely to matters realised after this date.

(18) Sections 5b, 13a and 31a as amended in the Federal Act of Federal Law Gazette I no. 62/2004 shall enter into force on 1 October 2004. These provisions shall be applied to contracts made before this date in the version previously effective.

**Section 42.** The Federal Minister for Finances shall be charged with enforcement with regard to Section 27b (2), the Federal Minister for Social Security, Generations and Consumer Protection by agreement with the Federal Minister for Justice shall be charged with enforcement of Section 32, and in other respects the Federal Minister for Justice shall have powers of enforcement.