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Consumer Protection Act

(38/1978; amendments up to 1547/2001 included)

Chapter 1 — General provisions

Section 1

- (1) This Act applies to the offering, selling and other marketing of consumer goods and services by businesses to consumers. The Act applies also where a business acts as an intermediary in the transfer of goods or services to consumers.
- (2) This Act does not apply to statutory insurance, group life assurance of employees, or corresponding benefits granted by a municipal insurance institution.

Section 2

The provisions of this Act on sales apply also to barter.

Section 3 (16/1994)

For the purposes of this Act, *consumer goods and services* are defined as goods, services and other merchandise and benefits that are offered to natural persons or which such persons acquire, to an essential extent, for their private households.

Section 4 (16/1994)

For the purposes of this Act, *consumer* is defined a natural person who acquires consumer goods and services primarily for a use other than business or trade.

Section 5 (16/1994)

For the purposes of this Act, *business* is defined as a natural person or a private or public legal person who, in order to obtain income or other economic benefit, deals in, sells or otherwise offers consumer goods or services on a professional basis and for consideration.

Section 6 has been repealed.

Chapter 2 — **Regulation of marketing**

Section 1

- (1) No conduct that is inappropriate or otherwise unfair from the point of view of consumers shall be allowed in marketing.
- (2) Marketing that does not convey information necessary in respect of the health or economic security of consumers shall always be deemed unfair.

Section 2

False or misleading information shall not be conveyed in marketing.

Section 2a (1072/2000)

Consumer goods or services shall not be marketed by delivering them to consumers without an express order and by requiring that the consumer pays for them, returns them, safekeeps them or undertakes other measures in respect of them.

Section 3

The price of consumer goods or services shall not be advertised as being reduced by more than it actually is below the price previously charged by the business.

Section 4 (1072/2000)

If several consumer goods or services are being marketed at one price or so that the purchase of a good or service entitles one to another good or service at a reduced price or to another specific benefit, the following information shall be clearly noted in the marketing:

- (1) the content and value of the offer and, for goods and services marketed at one price, their individual prices, unless the individual price of a good or service is less than EUR 10;
- (2) the conditions of the offer, especially its duration and the volume restrictions and other restrictions applying to it.

Section 4a (1072/2000)

- (1) For the purposes of this section, *comparative advertising* is defined as advertising where a competitor or a good or service marketed by a competitor can be directly or indirectly recognised.
- (2) Comparative advertising shall be allowed, in so far as concerns the comparison, provided that:
 - (1) it is not false or misleading;
 - (2) it pertains to goods or services that are used for the same purpose or for the fulfilment of the same need;
 - (3) the comparison is impartial and pertains to essential, significant, verifiable and representative characteristics of the goods or services, or to the price of the goods or services;
 - (4) it does not give rise to a danger of confusing the advertiser and the competitor, their trademarks, trade names, other distinguishing marks or goods and services;
 - (5) it does not belittle or dishonour the competitor's trademark, trade name, other distinguishing mark, good or service, operations or circumstances;
 - (6) it does not take unfair advantage of the reputation of the competitor's trademark, trade name or other distinguishing mark, nor of the original appellation of the good or service marketed by the competitor;
 - (7) it does not represent a good or service as a copy or reproduction of another good or service protected by a trademark.
- (3) In so far as does not concern the comparison, comparative advertising shall be subject to the provisions elsewhere in the law on advertising and other marketing.

Section 5

- (1) No benefit based on chance shall be promised in marketing if the obtaining of such benefit presupposes consideration, the purchase of consumer goods or services or the making of a purchase offer.
- (2) The provision in paragraph (1) does not apply to ordinary recreational competitions in newspapers and magazines.

Section 6

Necessary provisions regarding the following may be issued by Decree:

- (1) the attachment of labels or instructions to consumer goods, or the provision of other information on the quality, characteristics and use of consumer goods or services in marketing;
- (2) the quotation of the price of consumer goods and services and of credit terms as well as of other contract terms in marketing; and
- (3) the arrangement of consumer competitions in connection with marketing and the maximum value of prizes or benefits to be given without consideration in marketing.

Section 7

- (1) If deemed necessary in respect of consumer protection, an injunction may be issued against a business ordering or carrying out a marketing operation, forbidding it to continue marketing in violation of the provisions of this chapter or of provisions or regulations issued on the basis thereof, or forbidding it to repeat such or comparable marketing. The injunction shall be reinforced by a threat of a fine unless this is for a specific reason deemed unnecessary.
- (2) Should there be special cause, the injunction may also be directed against a person in the employ of the business referred to in paragraph (1) or against another person acting on its behalf.

Section 8

- (1) An injunction referred to in section 7 shall be issued by the Market Court. The Market Court may also issue an interim injunction, in which case the injunction shall remain in force until the case has been finally decided. (1547/2001)
- (2) The Consumer Ombudsman may issue an injunction or interim injunction referred to in section 7, as provided in the Consumer Ombudsman Act (40/1978).

Section 8a (37/1995)

- (1) An injunction referred to in section 7 may be issued by the State Provincial Office in a matter relating to a violation of the Decree on the Quotation of the Price of Consumer Goods and Services in Marketing (9/1989), the provisions issued thereunder, or the Decree on the Information to be Provided in the Marketing of

Residences (847/1983), if the conduct in question is evidently against the provisions and if the application practice of the provisions in the matter in question is established. The decision of the State Provincial Office shall not be subject to appeal.

- (2) The business may refer an injunction referred to in paragraph (1) to the Market Court within fourteen days of being served with the decision of the State Provincial Office. Otherwise the decision shall be final. (1547/2001)
- (3) The State Provincial Office may reinforce its injunction issued by the threat of a fine. The fine shall be enforced by the Market Court. (1547/2001)
- (4) Before the State Provincial Office issues an injunction referred to in paragraph (1), it shall reserve the business an opportunity to be heard.
- (5) When issuing an injunction referred to in paragraph (1), the State Provincial Office shall make its decision in writing and see to its service on the parties.

Section 9 (1547/2001)

When issuing an injunction referred to in section 7, the Market Court may oblige the business on whom the injunction was imposed or who ordered or carried out the marketing operation to rectify the marketing operation within a set period, where this is deemed necessary because of the evident harm caused to consumers thereby. The obligation may be reinforced by the threat of a fine.

Section 10

- (1) The Consumer Ombudsman shall supervise the lawfulness of marketing with in respect of consumer protection.
- (2) The quotation of the price of a consumer good or service in marketing shall, in addition to the Consumer Ombudsman, be supervised by the National Board of Trade and, as district administrative authorities subject to the National Board of Trade, the State Provincial Offices. (8/1989)
- (3) In other respects, the Market Court and the procedure therein shall be governed by the provisions of the Market Court Act (1527/2001) and the Act on Certain Proceedings before the Market Court (1528/2001). (1547/2001)

Section 11 has been repealed.

Section 12 (8/1989)

- (1) The National Board of Trade may be authorised, by Decree, to grant, for special reasons, dispensations from the provisions of the Decree issued under section 6 on the quotation of the price of a consumer good or service in marketing.
- (2) The National Board of Trade may be authorised, by Decree, to issue orders on the quotation of the unit price of a consumer good or of a group of consumer goods in marketing.

Section 13 has been repealed.

Chapter 3 — **Regulation of contract terms**

Section 1

- (1) A business offering consumer goods or services shall not make use of a contract term which, considering the price of the good or service and the other relevant circumstances, is to be deemed unfair from the point of view of consumers.
- (2) If an association of businesses draws up contract terms for contracts relating to consumer goods or services or issues recommendations or instructions on the terms and conditions to be used, the association shall ensure that its conduct does not result in the use of terms that are unfair from the point of view of consumers. (1259/1994)

Section 2

- (1) Where necessary in respect of consumer protection, a business may be enjoined from continuing the use of a contract term contrary to section 1(1) or repeating the use of such a term or a comparable term. An association of businesses may correspondingly be enjoined from continuing or repeating conduct contrary to section 1(2). The injunction shall be reinforced by the threat of a fine unless this is for a specific reason deemed unnecessary. (1259/1994)
- (2) Should there be special cause, the injunction may also be directed against an employee of a business referred to in paragraph (1) or against a person acting on its behalf.

Section 3

- (1) An injunction referred to in section 2 shall be issued by the Market Court. The Market Court may also issue an interim injunction, in which case the injunction shall remain in force until the case has been finally decided. (1547/2001)
- (2) The Consumer Ombudsman may issue an injunction or interim injunction referred to in section 2, as provided in the Act on the Consumer Agency (1056/1998). (1547/2001)

Section 4

- (1) The Consumer Ombudsman shall supervise the use of contract terms in respect of consumer protection.
- (2) In other respects, the Market Court and the procedure therein shall be governed by the provisions of the Market Court Act and the Act on Certain Proceedings before the Market Court. (1547/2001)

Chapter 4 — **Adjustment and interpretation of a contract** (1259/1994)

Section 1 (1259/1994)

- (1) If a term in a contract referred to in this Act is unreasonable from the point of view of the consumer or if an unreasonable result would ensue from its application, the term may be adjusted or it may be disregarded. Also a commitment as to consideration shall be deemed a contract term. In the assessment of unreasonableness, due note shall be taken of the contract as a whole, of the positions of the parties, of the circumstances under which the contract was concluded and, unless otherwise follows from section 2, of the changes in circumstances, as well as of other relevant points. (1072/2000)
- (2) If a contract term referred to in paragraph (1) is of such nature that it cannot reasonably be required that the rest of the contract remain in force unaltered after the adjustment of the term, the contract may, unless otherwise provided in section 2, be adjusted also in other respects or be ordered to lapse.

Section 2 (1259/1994)

- (1) If a contract term referred to in section 1 has been drafted in advance without the consumer having been able to influence its contents, section 1 shall be applied in compliance with the restrictions provided in this section.
- (2) If a term has been unreasonable under the circumstances at the conclusion of the contract, a change of circumstances shall not be taken note of, to the detriment of the consumer, in any later assessment of the unreasonableness of the term.
- (3) If the adjustment or disregard of a term relates to a contract term which, contrary to good practice, will lead to a significant imbalance in the rights and obligations of the parties to the detriment of the consumer, the other terms of the contract shall not be adjusted. In this case, the contract shall, in other respects, remain in force unchanged if it can be retained in force as such.

Section 3 (1259/1994)

If a term in a contract referred to in this Act has been drafted in advance without the consumer having been able to influence its contents and if uncertainty arises as to the significance of the term, the term shall be interpreted in favour of the consumer.

Section 4 (1259/1994)

Should a dispute arise as to whether a term referred to in sections 2 and 3 has been drafted in advance, the burden of proof on this shall lay on the business.

Section 5 (416/1999)

A choice-of-law term according to which the contract is subject to the law of a state outside the European Economic Area shall not prevail over the provisions of a member state of the European Economic Area on unreasonable contract terms, applicable but for the term in question, if the provisions offer a more effective protection of consumers against unreasonable contract terms than does the law that would be applied on the basis of the choice-of-law term.

Chapter 5 — **Sale of consumer goods** (16/1994)

General provisions on the sale of consumer goods

Section 1 — *Scope of application of the chapter* (1258/2001)

- (1) The provisions of this chapter apply to sale of goods where the seller is a business and the buyer is a consumer.
- (2) The provisions of this chapter apply likewise to orders of goods to be manufactured. If the buyer is to supply an essential proportion of the materials, the order shall, however, not be governed by the provisions in sections 23—28 of this chapter but, instead, by the respective provisions in chapter 8, sections 23—31. In addition, such an order shall be governed by the provisions in chapter 8, sections 14 and 32.
- (3) The provisions of this chapter do not apply where used goods are sold by auction, if the buyer can participate in the auction in person.

Section 2 — *Mandatory provisions* (16/1994)

A contract term differing from the provisions of this chapter to the detriment of the buyer shall be void unless otherwise provided below.

Delivery and risk

Section 3 — *Delivery* (16/1994)

- (1) Unless otherwise agreed, the goods shall be held available to the buyer at the place where the seller had its place of business at the time of the conclusion of the contract. If the seller did not have a place of business relevant to the sale and if it has not been otherwise agreed, the seller shall send or transport the goods to the buyer.
- (2) The goods shall be deemed delivered when the buyer gains possession of the goods.
- (3) However, if the goods are to be installed or assembled by the seller at the buyer's premises, they shall not, for purposes of the provisions on delay by the seller, be deemed delivered until the seller has fulfilled the said obligation.

Section 4 — *Time of delivery* (16/1994)

- (1) Unless it has been agreed that the goods are to be delivered at a fixed time or upon demand or without delay, the goods shall be delivered within a reasonable time after the conclusion of the contract.
- (2) Unless the buyer is granted credit or a postponement in making payment, the seller shall not be under any obligation to relinquish possession of the goods until the buyer pays the purchase price.

Section 5 — *Costs incurred for the goods before delivery* (16/1994)

Unless otherwise agreed, the seller shall be responsible for transport costs and other costs incurred for the goods before their delivery. However, this does not apply to costs incurred because the delivery has been delayed owing to a reason attributable to the buyer.

Section 6 — *Transfer of risk* (16/1994)

- (1) The seller shall bear the risk of the goods being destroyed or lost, deteriorating or diminishing before delivery, owing to a reason not attributable to the buyer. If the buyer fails in time to fetch or take delivery of goods held available to him/her, the buyer shall, however, bear the risk of the goods deteriorating owing to their inherent characteristics after the seller has completed its obligations relating to the delivery.
- (2) If the goods, due to a notice of defect by the buyer, are returned to the seller for inspection or a remedy of the defect, the seller shall bear the risk for the goods until the goods have been redelivered to the buyer.
- (3) If a provisional sale has been made and the goods have been delivered, the buyer shall bear the risk for the goods until the goods have been returned to the possession of the seller.
- (4) If the buyer bears the risk and the goods are destroyed or lost, deteriorate or diminish owing to a reason not attributable to the seller, the buyer shall, nevertheless, pay the purchase price.

Sanctions for delay in the delivery of the goods

Section 7 — *Right to withhold payment* (16/1994)

If the seller is in delay, the buyer shall have the right to withhold payment of the purchase price. The buyer shall, however, not have the right to withhold an

amount that evidently exceeds the claims that he/she is entitled to on the basis of the delay.

Section 8 — *Right to demand fulfilment of the contract* (16/1994)

- (1) If the delivery of the goods is delayed, the buyer has the right to require performance from the seller. The seller shall, however, not be liable to fulfil the contract in the event of *force majeure* or if the performance would require sacrifices that are disproportionate to the buyer's interest in the performance.
- (2) If the *force majeure* event or the disproportion cease to exist within a reasonable time, the buyer may, nevertheless, require performance from the seller.
- (3) The buyer shall forfeit the right to require performance if he/she delays the requirement for an unreasonably long time.

Section 9 — *Cancellation of the contract* (16/1994)

- (1) The buyer may cancel the contract on account of the seller's delay if the breach of contract is essential.
- (2) If the buyer has granted the seller an extension for the delivery of the goods and the extension is not unreasonably short, the buyer shall also be entitled to cancel the contract if the goods are not then delivered in time. During the extension, the buyer may cancel the contract only if the seller makes it known that it will not perform the contract in time.
- (3) If the buyer has not granted an extension to the seller, he/she may cancel the contract if the goods are not delivered within a reasonable time from his requirement of performance.
- (4) Where the contract is for the supply of goods to be manufactured or acquired specially for the buyer in accordance with his instructions or wishes and the seller cannot, without considerable loss, make other use of the goods, the buyer may cancel the contract on account of the seller's delay only if the delay causes, as for the buyer, an essential failure in the purpose of the sale.

Section 10 — *Compensation* (16/1994)

- (1) The buyer shall be entitled to compensation for the loss that he/she suffers because of the seller's delay, unless the seller proves that the delay was due to an impediment, beyond its control, which it could not reasonably be expected to

have taken into account at the conclusion of the contract and whose consequences it could not reasonably have avoided or overcome.

- (2) If the delay is due to a third person whom the seller has engaged to perform all or part of the contract, the seller shall be released from liability only if that third person would also be released from liability under paragraph (1). The same provision applies if the delay is due to a contractor of the seller or someone else at a previous level in the supply chain.
- (3) The seller shall, however, be liable to compensate the buyer for indirect loss only if the delay or the loss is due to negligence attributable to it. Indirect loss shall include:
 - (1) loss of income suffered by the buyer due to the breach of contract or measures arising from the same;
 - (2) loss incurred through obligations based on another contract, and
 - (3) essential loss of the use of the product, not resulting in direct economic loss, as well as other comparable detriment, if essential.
- (4) However, if a loss referred to in paragraph 3(1)–(3) is incurred through the mitigation of another type of loss, it shall not, for that part, be considered indirect loss.
- (5) A member of the buyer's family who suffers loss due to the delay shall have the same right to compensation as the buyer himself/herself.

Section 11 — *Notice of cancellation and claim for compensation* (16/1994)

If the goods have been delivered in delay, the buyer shall not be entitled to cancel the contract nor to claim compensation for the delay unless he/she notifies the seller or the sales agent, within a reasonable time from the delivery of the goods, that he/she wishes to cancel the contract or to claim compensation. However, if the buyer cancels the contract, he/she need not make a separate notification of a claim for compensation.

Characteristics of the goods and defects

Section 12 — *General provision on defects* (16/1994)

- (1) In type, quantity, quality, other characteristics and packaging, the goods shall correspond to what can be deemed to have been agreed.

- (2) Except where something else can be deemed to have been agreed, the goods shall:
 - (1) be fit for the purpose for which such goods are ordinarily used;
 - (2) conform to the particular purpose for which the goods were intended, if the seller must have known of this purpose at the conclusion of the sale and if the seller had not before the conclusion of the sale informed the buyer that the goods possibly do not conform to the intended purpose; (1258/2001)
 - (3) conform to what has been represented by the seller and possess the characteristics which the seller has implied by way of a sample or model; (1258/2001)
 - (4) be packaged in a manner that is usual or otherwise appropriate, if packaging is necessary to preserve or protect the goods; as well as
 - (5) as to durability and otherwise, correspond to what a consumer ordinarily may expect in the purchase of such goods.
- (3) The goods shall in their characteristics conform to the requirements set by law, decree or official decision, unless the buyer intended to use the goods for a purpose where the said requirement is of no significance.
- (4) If the goods do not conform to the provisions of paragraphs (1)–(3), they are defective. However, the buyer shall not invoke as a defect any circumstances that the buyer must have known of at the conclusion of the sale. In addition, the buyer shall not invoke as a defect any circumstances arising from the materials that the buyer has supplied for the manufacture of the goods, except if there has been negligence on the part of the seller. (1258/2001)

Section 12a — *Defect arising from installation or lack of instructions* (1258/2001)

- (1) If the installation or assembly of the goods is included in the contract of sale and if the goods have been installed by the seller or by someone else on the behalf of the seller, the goods shall likewise be defective if they do not conform, owing to erroneous installation or assembly, to what has been provided in section 12.
- (2) The goods shall likewise be defective if they are not delivered complete with such instructions that are necessary for the buyer for the installation, assembly, use, maintenance or storage of the goods.

Section 13 — *Information on the goods* (1258/2001)

- (1) The goods are defective also if they do not conform to the information given by the seller or by a person other than the seller either at a previous level of the supply chain or on behalf of the seller on the characteristics or the use of the goods when marketing the goods or otherwise before the conclusion of the sale.
- (2) However, the seller shall not be liable for a defect referred to in paragraph (1), if the seller proves that:
 - (1) the seller was not aware and should not have been aware of the information given;
 - (2) the information cannot have had an effect on the sale; or
 - (3) the information has been clearly corrected in time.

Section 14 — *“As is” clause* (16/1994)

If the goods have been sold subject to an “as is” clause or a similar general reservation, the goods shall, nevertheless, be considered defective if:

- (1) the goods do not conform to information on the characteristics or use of the goods which was given by the seller before the conclusion of the contract and which can be presumed to have had an effect on the contract;
- (2) the seller has, before the conclusion of the contract, failed to disclose to the buyer relevant information on the characteristics or use of the goods which the seller could not have been unaware of and which the buyer could reasonably expect to be informed about, provided that the failure can be presumed to have had an effect on the contract; or if
- (3) the goods are in a poorer condition than the buyer reasonably could expect, taking the price and the other circumstances into account. (1258/2001)

Section 15 — *Relevant time for defectiveness* (1258/2001)

- (1) The defectiveness of the goods shall be determined with regard to their characteristics at the time when the risk passes to the buyer. The seller shall be liable for any defect that existed at that time even if it appeared only later.
- (2) The defect shall be deemed to have existed at the time when the risk passed to the buyer if it appears within six months of that time, unless the contrary is proven or unless the assumption is incompatible with the nature of the defect or the goods.

- (3) If the goods deteriorate after the risk has passed to the buyer, the goods shall be considered defective if the deterioration was due to a breach of contract by the seller.

Section 15a — *Significance of warranty* (1258/2001)

- (1) If the seller has assumed liability for the fitness or other characteristics of the goods for a fixed period (*warranty*), the goods shall be deemed defective if they deteriorate during this period as referred to in the warranty. Liability for the defect shall, however, not arise if the seller makes it likely that the deterioration was due to an accident, the inappropriate handling of the goods or another circumstance attributable to the buyer.
- (2) If the warranty was given by a person other than the seller, either at a previous level of the supply chain or on behalf of the seller, the goods shall also be considered defective under the conditions referred to in paragraph (1). The seller shall, however, not be liable for a warranty given by a previous level of the supply chain for a defect that he would not otherwise be liable for under this chapter, if the seller shows that it has clearly notified the buyer of the same before the conclusion of the sale.
- (4) A warranty shall not limit the liability for defects provided for in this Act.

Section 15b — *Warranty information* (1258/2001)

- (1) The warranty shall clearly indicate the following information:
 - (1) the contents of the warranty and the fact that the buyer has statutory rights and that the warranty does not restrict these rights; and
 - (2) the party giving the warranty, its period and area of validity and the other information necessary for the filing of claims under the warranty.
- (2) On the request of the buyer, the warranty shall be given in writing or in electronic form so that the information cannot be unilaterally altered and that it remains accessible to the buyer.
- (3) The buyer is entitled to invoke the warranty even if it does not meet the requirements laid down in this section.

Sanctions for a defect

Section 16 — *Notice of defect* (16/1994)

- (1) The buyer shall not invoke a defect in the goods if he/she does not notify the seller of the same within a reasonable time after he/she discovered or ought to have discovered the defect. However, the notice of defect may always be given within two months of the buyer's discovery of the defect; it may also be given to the business who has sold the goods on behalf of the seller or assumed liability for the characteristics of the goods. (1258/2001)
- (2) Irrespective of the provisions of paragraph (1), the buyer shall have the right to invoke a defects in the goods if:
 - (1) the seller's conduct has been grossly negligent or incompatible to honour and good faith;
 - (2) the defect is based on the fact that the goods do not conform to the requirements set in the Product Safety Act (914/1986) or in other provisions or orders issued for the protection of health or property; or if
 - (3) the defect is based on the fact that the goods are otherwise hazardous to health or property.

Section 17 — *Right to withhold payment* (16/1994)

For a defect, the buyer shall have the right to withhold payment of the purchase price. The buyer shall, however, not have the right to withhold an amount that evidently exceeds the claims that he is entitled to on the basis of the defect.

Section 18 — *Rectification* (16/1994)

- (1) The buyer has the right to require that the seller rectify the defect or deliver non-defective goods. Such rectification shall be performed within a reasonable time and so that the buyer does not thereby incur costs or significant inconvenience. However, the seller shall not be liable to rectify the defect if there is an unavoidable barrier to the same or if this would cause unreasonable costs. In this context, special attention shall be paid to the significance of the defect and the value of the goods, had these conformed to the contract, and to the issue whether the rectification can be performed in some other manner without causing significant inconvenience to the buyer. (1258/2001)

- (2) Even if the buyer does not require that the defect be rectified or that non-defective goods be delivered, the seller shall, at its own expense, have the right to perform such rectification if it offers to do so without delay after the buyer has notified it of the defect. The buyer shall have the right to refuse rectification of the defect if that would cause him/her essential inconvenience, a decrease in the value of the goods or a danger that the costs incurred by the buyer not be compensated, or if he/she has another special reason for refusal.
- (3) The seller shall not invoke the fact that it did not have a chance to rectify the defect referred to in paragraph (2) if the buyer has had the defect rectified and if, considering the circumstances, it cannot reasonably be expected that the buyer would have waited for the seller's rectification.

Section 19 — *Reduction of price and cancellation of contract* (1258/2001)

If the rectification of the defect or the delivery of non-defective goods is out of the question or if it has not been performed as referred to in section 18, the buyer shall have the right to:

- (1) demand a price reduction proportionate to the defect; or
- (2) cancel the contract, except if the defect is of minor significance.

Section 20 — *Compensation* (16/1994)

- (1) The buyer shall be entitled to compensation for loss that he/she suffers because of a defect in the goods. Indirect loss, referred to above in section 10(3) and (4) shall, however, be compensated by the seller only if the defect or loss is due to negligence attributable to it or if, at the conclusion of the contract, the goods differed from an express representation of the seller.
- (2) A member of the buyer's family who suffers loss for the defect shall have the same right to compensation as the buyer himself/herself.

Section 21 — *Property damage* (16/1994)

- (1) If a defect of the goods causes damage to property other than the goods that were sold, the provisions of section 20 shall apply to the liability of the seller only if the damage is caused to property with a direct connection of use to the goods sold.
- (2) If the seller pays compensation by virtue of paragraph (1), the right of the beneficiary, if any, to demand compensation on the basis of the Product Liability

Act (694/1990) shall be transferred, for the corresponding amount, to the seller. The provisions of section 10 of the Product Liability Act applies also to the seller's right to compensation.

- (3) The provisions of this chapter do not apply to personal injury caused by the characteristics of the goods.

Section 22 — *Liability of third parties* (16/1994)

- (1) If the goods are defective in the manner referred to in section 13(2), the liability of the person giving the information to compensate the buyer for any loss caused by the defect shall be governed by the provisions on the seller's liability above.
- (2) If someone other than the seller has undertaken to rectify a defect in the goods or otherwise to assume liability for the characteristics of the goods, the liability of the promisor to compensate the buyer for any loss incurred through a breach of the promise shall correspondingly be governed by the provisions of the seller's liability above.

Buyer's obligations and sanctions for buyer's breach of contract

Section 23 — *Purchase price* (16/1994)

If no price for the goods can be deemed to have been agreed, the buyer shall pay a price which is reasonable taking into account the quality and characteristics of the goods, the going price at the conclusion of the contract, as well as the other circumstances. If the seller, when marketing the goods, has given information on the price of the goods or the manner of the calculation of the price relating to the price levels at the conclusion of the contract, and this can be presumed to have had an effect on the contract, the price shall be determined in accordance with the information given.

Section 24 — *Time of payment* (16/1994)

- (1) Unless otherwise agreed, the seller shall pay the purchase price upon demand of the seller, but not, however, before the goods are available to him in accordance with the contract.
- (2) Before the payment of the purchase price, the buyer shall have the right to inspect the goods as is customary or as is appropriate with regard to the circumstances unless such inspection is not compatible with the agreed manner of delivery and payment.

- (3) If the payment is effected through a bank or the post, the payment shall, when considering the rights of the seller referred to in sections 26–28, be deemed effected on the date when the bank or the post has accepted the proper payment order of the buyer.

Section 25 — *Withdrawal of an order* (16/1994)

If the buyer breaches the contract by withdrawing the order before the delivery of the goods, the seller shall not have the right to adhere to the contract and to demand payment of the purchase price. Instead, the seller shall be entitled to compensation for any loss he has incurred, in accordance with section 28.

Section 26 — *Overdue interest* (16/1994)

If the buyer is delayed in paying the purchase price, the seller shall, unless the contract is withdrawn or cancelled, have the right to overdue interest in accordance with the Interest Act (633/1982).

Section 27 — *Seller's right to cancel the contract* (16/1994)

- (1) If the buyer is delayed in the payment of the purchase price, the seller may cancel the contract if the breach of contract is essential.
- (2) If the seller has granted the buyer an extension for the payment of the purchase price and the extension is not unreasonably short, the seller shall also be entitled to cancel the contract if the payment is not then effected in time. During the extension, the seller may cancel the contract only if the buyer makes it known that he/she will not effect the payment in time.
- (3) If the buyer has gained possession of the goods, the seller may cancel the contract only if he has reserved the said right in the contract or if the buyer rejects the goods. The right of the seller to invoke a term to repossess the goods, in the event that the buyer has been granted credit, is governed by chapter 7.
- (4) The seller shall not cancel the contract due to the buyer's delay in payment once the overdue payment has been made.

Section 28 — *Seller's right to compensation* (16/1994)

- (1) If the seller cancels the contract due to the buyer's delay in payment before the buyer has gained possession of the goods or if the buyer cancels the order for the goods in accordance with section 25, the seller shall be entitled to compensation for any special costs that he has incurred due to the conclusion and performance

of the contract and which are likely to be of no use, as well as for any special costs incurred due to the cancellation or withdrawal of the contract.

- (2) As for other losses, the seller shall be entitled to a reasonable compensation, taking into account the price of the goods, the time of cancellation or withdrawal of the contract, the measures undertaken to perform the contract, as well as the other circumstances.
- (3) A contract under which the seller has a right to liquidated damages for withdrawal or cancellation shall be valid if the liquidated damages are reasonable, taking into account the compensation that the seller would generally be entitled to under paragraphs (1) and (2).
- (4) The seller shall, however, not be entitled to compensation under this section if the buyer's delay in payment or the withdrawal of the order is due to the provisions of an Act, the interruption of general transport or payment communications or another similar hindrance which the buyer cannot reasonably avoid or overcome.

Other provisions on the sale of consumer goods

Section 29 — Application of the Sale of Goods Act (1258/2001)

The provisions of the Sale of Goods Act (355/1987) apply to a sale referred to in this chapter, unless otherwise provided in this Act. A sale referred to in this Act shall, however, not be governed by the provisions of sections 13(3), 15, 20(2), 20(3), 24, 31, 35, 39(2), 47, 49(3), 57(2), 58, 60, 63(1) and 73(2) of the Sale of Goods Act. The provisions in sections 19(2) and 37(2) of the Sale of Goods Act do not apply to an auction within the scope of application of this chapter. The provisions of sections 68 and 69 of the Sale of Goods Act on the right of the seller to compensation of price difference do not apply to a sale referred to in this chapter. The provisions of section 76(2) of the Sale of Goods Act do not apply when the duty of care lies with the buyer. Under sections 75–78 of the Sale of Goods Act, the seller shall not be entitled to compensation that exceeds the compensation under section 28 of this chapter.

Section 29a — Restriction of choice-of-law clauses in the sale of consumer goods (1258/2001)

A choice-of-law clause according to which the contract is subject to the law of a country outside the European Economic Area shall not prevail over the rules on

the sale of consumer goods of a member state of the European Economic Area that would be applied in the absence of the clause, if the latter rules provide for more effective consumer protection than those of the law referred to in the choice-of-law clause.

Section 30 — *Mitigation of loss and adjustment of compensation* (16/1994)

- (1) The injured party shall take reasonable measures to mitigate his/her loss. Failing this, the injured party shall self bear the corresponding part of the loss.
- (2) The amount of compensation payable for a breach of contract may be adjusted if it is unreasonable taking into account the reason for the breach, the contributory negligence of the other party to the loss, if any, the financial circumstances of the parties, the price of the goods, the chances of the breaching party to foresee and prevent the damage, as well as the other circumstances.
- (3) The amount of compensation payable by the buyer under section 28 may be adjusted especially if the delay in payment or the withdrawal of the order is due to the buyer's difficulties of liquidity arising from illness, unemployment or another special reason primarily without his own volition.

Section 31 — *Liability for defects of the previous level of the supply chain* (16/1994)

- (1) The buyer shall have the right to direct his/her claims based on a defect in the goods, in accordance with the provisions of this chapter, also at a business who at an earlier level of the supply chain has supplied the goods for resale.
- (2) However, the buyer shall not have the right under paragraph (1):
 - (1) if the defect has arisen from a reason not attributable to the business in question after it delivered the goods;
 - (2) to the extent that the claim is based on a promise which has been given by someone else than the business and which places the buyer in a better position than he/she would be in under the provisions of this chapter in the absence of the said promise; nor
 - (3) to the extent that the claim relates to a price reduction or a refund of the purchase price and exceeds the amount that the contracting party vis-à-vis the said business could have claimed on the same grounds, disregarding any restrictive terms in their contract between the businesses.
- (3) The buyer shall forfeit his right to present claims under paragraph (1), unless he notifies the business of the defect or unless the latter is informed of a notice of

defect made to a later level in the supply chain within the time referred to in section 16(1), and the buyer has had access to the necessary information on the business to present the claim. Notwithstanding the provisions of this paragraph, the buyer may invoke a defect if the conduct of the business against whom the claim is presented has been grossly negligent or incompatible to honour and good faith or if the defect in question is one referred to in section 16(2)(2) or 16(2)(3). (1258/2001)

Section 32 — *Liability for defect of another business* (16/1994)

If the seller has enlisted the aid of another business for the performance of the contract and the performance of the latter is defective, the provisions of chapter 8, section 35 on the right of the commissioner to present claims against a business aiding the service provider apply correspondingly to the right of the buyer to present claims against the business aiding the seller.

Chapter 6 — **Door-to-door selling and distance selling**
(1072/2000)

Section 1 — *Scope of application* (1072/2000)

The provisions of this chapter govern the door-to-door selling and distance selling of consumer goods and services. The provisions in sections 2, 3, 5, 8—12 and 20—25 apply to door-to-door selling. The provisions in sections 2, 4, 6, 7 and 13—25 apply to distance selling.

Section 2 — *Mandatory provisions* (1072/2000)

A contract term derogating from the provisions of this chapter to the detriment of the consumer shall be void, unless otherwise provided below.

Section 3 — *Definition of door-to-door selling* (1072/2000)

For the purposes of this chapter, *door-to-door selling* is defined as the offering of consumer goods or services for sale to the consumer in person at a place other than the premises of the business. However, the offering of consumer goods or services for sale at the following places does not constitute door-to-door selling:

- (1) a place where consumer goods or services are normally offered for sale;

- (2) a place, other than a private home, which the business advertises as a place where consumer goods or services can be obtained, without offering transportation to the consumers;
- (3) a place where the business arrives upon the express request of the consumer in order to offer the requested consumer good for sale.

Section 4 — *Definition of distance selling* (1072/2000)

- (1) For the purposes of this chapter, *distance selling* is defined as the offering of consumer goods or services for sale to the consumer by way of distance offering, arranged by the business, so that the conclusion of the contract and the preceding marketing effort are carried out exclusively through one or more means of distance communication.
- (2) *Distance offering* is defined as a method of marketing or selling so arranged that its primary purpose can be deemed to be the conclusion of contracts through a means of distance communication.
- (3) *Means of distance communication* is defined as telephones, post, televisions, information networks or other devices that can be used for the conclusion of contracts without the parties being simultaneously present.

Section 5 — *Application restrictions in door-to-door selling* (1072/2000)

- (1) The provisions of this chapter on door-to-door selling do not apply to:
 - (1) a contract relating to consumer credit;
 - (2) a contract relating to the sale or rental of real property;
 - (3) a contract relating to securities as referred to in the Securities Markets Act (495/1989);
 - (4) an insurance contract; or
 - (5) a contract relating to time-share housing, as referred to in chapter 10.
- (2) Moreover, the provisions of this chapter on door-to-door selling do not apply if the price of the consumer good is less than EUR 15. However, the provisions of this chapter do apply if several goods are sold at the same time and their total price is at least EUR 15. This amount may be adjusted by a Government Decree, if the development of the economy and monetary conditions so warrant.

Section 6 — *Application restrictions in distance selling* (1072/2000)

The provisions of this chapter on distance selling do not apply to:

- (1) a contract relating to the sale of real property or to another right to real property, with the exception of rental;
- (2) a contract relating to securities as referred to in the Securities Markets Act;
- (3) a contract relating to deposits, credit, insurance or other financial services;
- (4) a contract relating to time-share housing, as referred to in chapter 10;
- (5) a contract concluded by way of a vending machine or in automated business premises;
- (6) a contract concluded with a provider of telecommunications services by way of a pay-phone;
- (7) a contract concluded at an auction, if participation in the auction is possible also without using a means of distance communication.

Section 7 — *Derogations to certain provisions on distance selling* (1072/2000)

- (1) The provisions in sections 13—15 and 18(1) of this chapter do not apply to distance selling where
 - (1) the delivery of foodstuffs, beverages or other everyday items to the home or workplace of the consumer by way of a regular delivery system;
 - (2) accommodation, transportation, restaurants or leisure services, if the business at the conclusion of the contract undertakes to perform the service at a given time or within a given period.
- (2) However, sections 13—15 do apply if the business offers to the consumer goods or services referred to in paragraph (1) by way of cold calling. The provisions in those sections apply to distance selling referred to in paragraph (1)(1) also if the contract concerns continuous or repeated deliveries.

Section 8 — *Door-to-door selling document* (1072/2000)

- (1) In door-to-door selling, the business or its agent shall provide the consumer with a document (*door-to-door selling document*), which shall be dated and which shall state the name and address of the business, the consumer goods or services, the price and the other contract terms. The document shall contain a mention of the rights of the consumer under sections 9—11 and 21—25, as well as instructions

for the exercise of said rights. The door-to-door selling document shall conform to the model approved by the Ministry of Trade and Industry.

- (2) In the sale of tangible goods, the door-to-door selling document shall be given to the consumer at the latest when the consumer takes delivery of the goods or the first shipment of goods. In a contract relating to other consumer goods or services, the document shall be given to the consumer at the latest when the consumer makes an offer or accepts the offer of the business.

Section 9 — *Right of withdrawal in door-to-door selling* (1072/2000)

In door-to-door selling, the consumer is entitled to withdraw from the contract by notifying the business of the same within 14 days of receiving the door-to-door selling document or, in the sale of tangible goods, of taking delivery of the goods or the first shipment of goods, if the delivery takes place later than the receipt of the document. In the sale of tangible goods, the return of delivered goods shall constitute withdrawal from the contract.

Section 10 — *Refund of the price in door-to-door selling* (1072/2000)

In door-to-door selling, the business shall refund what has been paid of the price without delay and in any event within 30 days of being notified of the withdrawal. The consumer is entitled to retain the goods or another retainable performance of the business until the price has been refunded.

Section 11 — *Keeping and returning performances in door-to-door selling* (1072/2000)

- (1) In door-to-door selling, if the consumer withdraws from the contract, he/she shall keep the delivered goods or other returnable performances available to the business at the place where the business delivered the same or a place from where the business can retrieve the goods or performances without undue inconvenience. The consumer shall inform the business of the place where the goods or performances are available. However, it may be stipulated in the contract terms that goods or performances that have been delivered by post are to be returned by the consumer by post within a reasonable time.
- (2) The liability of the consumer to keep the goods or performances on behalf of the business shall cease at the latest two months after receipt of the goods or performance. If the business does not retrieve the goods or performances within this period, the consumer may keep them without consideration unless this is evidently unreasonable to the business.

- (3) If the consumer returns goods or performances to the business, the business shall compensate the consumer for the costs of the return.

Section 12 — *Door-to-door selling document forms* (1072/2000)

The Ministry of Trade and Industry shall see to it that forms conforming to the model approved by the Ministry by virtue of section 8 are kept available to the public for a reasonable charge. It shall be indicated on the forms that they conform to the model approved by the Ministry.

Section 13 — *Prior information in distance selling* (1072/2000)

- (1) In distance selling, the consumer shall be supplied with the following information well in advance of the conclusion of the contract:
 - (1) the name and address of the business and its location, if this is not evident in the address;
 - (2) the main characteristics of the consumer good or service;
 - (3) the price, delivery charge and terms of payment on the consumer good or service;
 - (4) the other terms of delivery or performance of the contract;
 - (5) the minimum duration of the contract, if it is about the continuous or repeated delivery of goods or services;
 - (6) the costs of the use of the means of distance communication, if these exceed the basic tariff;
 - (7) the period of validity of the offer;
 - (8) the existence of the right of withdrawal under section 15 or the absence of the same under section 16(1)(2)—16(1)(7).
- (2) The information referred to in paragraph (1) shall be supplied in a manner suitable for the means of distance communication used, clearly, comprehensibly and in a manner that makes clear the commercial purpose of the information. In telephone contacts, the business shall state its name and the commercial purpose of the call immediately in its beginning.

Section 14 — *Confirmation of information in distance selling* (1072/2000)

- (1) The information referred to in section 13(1)(1)—13(1)(5) shall be confirmed to the consumer in writing or electronically so that they cannot be unilaterally altered

and that they remain accessible to the consumer. In addition, the confirmation shall contain:

- (1) instructions and information for the exercise of the right of withdrawal referred to in section 15 and information to the effect that, under section 16(1), withdrawal from the contract is no longer possible once the provision of the service has been commenced in accordance with the consent of the consumer;
 - (2) the visiting address of the business premises where the consumer may file complaints;
 - (3) information on any warranty and the available maintenance and repair services;
 - (4) the rules on the termination of the contract, if it has been concluded for the time being or for a period exceeding one year.
- (2) The confirmation shall be delivered as soon as possible after the conclusion of the contract and, in the sale of tangible goods, at the latest when the goods are delivered, except where the goods are according to the contract to be delivered to a third party.
- (3) The confirmation need not be delivered, if the information referred to in paragraph (1) has been supplied to the consumer in accordance with that paragraph already before the conclusion of the contract. Moreover, the confirmation need not be supplied if a service is provided through a means of distance communication at a single occasion and if it is billed for by the business whose distance communication service is being used for the purpose. However, the consumer shall always be informed of the visiting address of the business providing the service where the consumer may file complaints.

Section 15 — *Right of withdrawal in distance selling* (1072/2000)

- (1) In distance selling, the consumer is entitled to withdraw from the contract by notifying the business of the same within 14 days of receiving the confirmation referred to in section 14 or, in the sale of tangible goods, of the delivery of the goods or the first shipment of goods, if these are delivered later than the confirmation. If the confirmation need not be supplied, the withdrawal period shall be calculated in the sale of tangible goods from the delivery of the goods or the shipment and in other cases from the conclusion of the contract. In the sale

of tangible goods, the return of the delivered goods shall constitute withdrawal from the contract.

- (2) If the confirmation does not meet the criteria set in section 14, the withdrawal period shall be three months. If the confirmation is rectified during that period, the consumer is entitled to withdraw from the contract in accordance with paragraph (1) as from the date when he/she received the rectified confirmation.
- (2) If the confirmation is not supplied at all, the provision in section 20 applies.

Section 16 — *Restrictions of the right of withdrawal in distance selling* (1072/2000)

Unless otherwise agreed, the consumer shall not be entitled to withdraw from the contract by virtue of section 15, if:

- (1) the provision of the service or the delivery of the good electronically has in accordance with the consent of the consumer commenced before the end of the withdrawal period and the consumer has been informed of the non-existence of the right of withdrawal in the confirmation referred to in section 14;
- (2) the price of the good or service depends on financial market quotations beyond the control of the business;
- (3) the contract pertains to goods manufactured or customised to the consumer's specifications so that they cannot be resold without incurring considerable loss or that they cannot be resold at all;
- (4) the contract pertains to goods that by their nature cannot be resold or that spoil or age rapidly;
- (5) the consumer has opened an audio or video recording or computer software that has been delivered sealed;
- (6) the contract is for the delivery of newspapers or magazines and the business is not offering these goods to the consumer by way of cold calling;
- (7) the contract is for betting or lottery services.

Section 17 — *Return of performances in distance selling* (1072/2000)

- (1) In distance selling, if the consumer withdraws from the contract, he/she shall return the delivered goods or other returnable performances to the business within a reasonable time.

- (2) The business shall refund what has been paid of the price without delay and in any event within 30 days of the return of the goods or performances, as well as compensate the consumer for the costs of the return, if the goods or performances can be normally returned by post. However, the business shall always bear the costs of the return of a replacement good, as referred to in section 18(3). If there is no returnable good or performance, the 30-day period shall be calculated as from the notification of withdrawal.

Section 18 — *Performance of the contract in distance selling* (1072/2000)

- (1) Unless otherwise agreed, the business shall deliver the consumer good within a reasonable time and in any event within 30 days of the date when the consumer has given or sent the offer or acceptance to the business. The time of delivery of a good or service and the sanctions for delay are governed by the provisions in chapters 5, 8 and 9.
- (2) If the business cannot perform the contract because the ordered consumer good is not available, the business shall inform the consumer of the same without delay; in any event, within 30 days of the date of offer or acceptance referred to in paragraph (1) or, if the agreed time of delivery is later, at that time, the business shall refund what has been paid of the price.
- (3) Notwithstanding the provision in paragraph (2), the business is entitled to use a standard term of contract under which a replacement good can be delivered to the consumer, if the ordered good is not available. The replacement good shall correspond in purpose to the ordered good, it shall be of the same or better quality and its price shall not exceed that of the ordered product. In addition, such a contract term shall be clearly indicated in the advance information referred to in section 13. If the delivery of the replacement good meets the criteria set in this paragraph, it shall not be deemed prohibited marketing, as referred to in chapter 2, section 2a.

Section 19 — *Restriction of choice-of-law clauses in distance selling* (1072/2000)

A choice-of-law clause according to which the contract is subject to the law of a country outside the European Economic Area shall not preclude the application of the distance selling rules of a member state of the European Economic Area that would be applied in the absence of the clause, if the latter rules provide for more effective consumer protection than those of the law referred to in the choice-of-law clause.

Section 20 — *Failure to provide information* (1072/2000)

- (1) If the door-to-door selling document or the confirmation referred to in section 14 has not been supplied to the consumer, the contract shall not be binding on him/her. If the consumer wishes to invoke this non-bindingness, he/she shall notify the business of the same within one year of the conclusion of the contract.
- (2) If the business supplies the door-to-door selling document or the confirmation before the consumer has invoked the non-bindingness of the contract, the consumer shall be entitled to withdraw from the contract, in door-to-door selling as referred to in section 9 and in distance selling as referred to in section 15, as from the receipt of the document or the confirmation.
- (3) If the contract lapses owing to the consumer having invoked its non-bindingness, the business shall without delay and in any event within 30 days of the notification refund the payments received and compensate the consumer for the costs of returning the goods or other performances.

Section 21 — *Calculation of the withdrawal period* (1072/2000)

In the calculation of the withdrawal period, the day when the door-to-door selling document or confirmation was supplied, the contract concluded or the goods delivered shall not be taken into account. If the last day of the withdrawal period is a holiday, Independence Day, May Day, Christmas Eve, Midsummer Eve or a Saturday, withdrawal from the contract shall be allowed on the next following weekday.

Section 22 — *Giving or sending certain notifications* (1072/2000)

- (1) If the notification of withdrawal has been given or sent in an appropriate manner before the expiry of the period referred to in section 9 for door-to-door selling and section 15 for distance selling, the consumer may invoke the notification even if it is delayed, altered or lost. The business may likewise invoke a door-to-door selling document or confirmation given or sent.
- (2) If other evidence on the time of arrival of a notification of withdrawal is not available, a notification sent by post shall be deemed to have arrived to the business on the seventh day after posting and a notification sent electronically shall be deemed to have arrived on the day it was sent.

Section 23 — *Responsibility for delivered performances and compensation for benefit accrued* (1072/2000)

- (1) If the consumer has received goods or other returnable performances, he/she shall keep the goods or performances in an essentially unaltered and undiminished condition in order to retain the right of withdrawal.
- (2) The destruction, spoiling or diminishing of the goods or performances through no fault of the consumer shall not preclude the right to withdraw. The consumer shall not be responsible for any reduction in value ensuing from the opening of a package, the inspection of the goods or performances or a comparable reason.
- (3) If, at the withdrawal from or lapse of a contract, the consumer gains the benefit of a non-returnable performance, he/she shall compensate the business for the same with a reasonable amount.

Section 24 — *Termination of a credit agreement* (1072/2000)

If, for the conclusion of a contract in door-to-door selling or distance selling, the consumer has been extended credit by the seller, the service provider or another credit provider on the basis of a contract with the seller or the service provider or of another consumer credit scheme, the credit arrangement shall be terminated when the consumer withdraws from the main door-to-door selling or distance selling contract. The credit agreement shall likewise be terminated if the contract lapses by virtue of section 20. Upon the termination of the credit agreement, the creditor shall without delay and in any event within 30 days of being informed of the withdrawal from or lapse of the main contract refund the payments made by the consumer.

Section 25 — *Overdue interest* (1072/2000)

If a business or creditor liable to refund a price or another payment, has not effected the refund to the consumer within the time set in section 10, 17, 18, 20 or 24, the consumer shall be entitled to overdue interest in accordance with the provisions of the Interest Act.

Chapter 7 — **Consumer credits** (385/1986)

Definitions and application restrictions

Section 1 (85/1993)

- (1) For the purposes of this chapter, *consumer credit* means credit that, by agreement, is granted or promised to the consumer by a business in the form of a loan, deferred payment or another corresponding financial arrangement.
- (2) In the application of this chapter, a consumer credit shall, however, not include credit based on an agreement under which the consumer may pay the price of a good delivered or service provided on a continuous basis in instalments during the validity of the agreement.
- (3) Credit granted for the acquisition of a residence or for studies shall be governed by the provisions of this chapter unless otherwise stipulated in the legislation pertaining to these types of credit.

Section 2 (85/1993)

For the purposes of this chapter:

- (1) *running account credit* means continuous consumer credit used with a credit card or other means and where the receivables of the creditor vary in accordance with the amount of credit actually used;
- (2) *lump-sum credit* means consumer credit other than running account credit;
- (3) *goods-or-services-related credit* means consumer credit granted, for the acquisition of consumer goods or services, by the seller or service provider itself or by another business on the basis of an agreement concluded with the seller or service provider or under other arrangements for the financing of consumers;
- (4) *cash price* means the price for which the consumer could obtain the goods or services if he/she paid for them in cash;

- (5) *credit costs* mean the total amount of interest, costs and other payments that the consumer shall pay on the basis of the consumer credit relationship, with the exception of insurance premiums on an insurance policy relating to the goods delivered or services provided;
- (6) *credit price* means the sum total of the cash price and the credit costs; and
- (7) *annual percentage rate of charge* means the interest rate that results when the credit costs are calculated as annual interest on the credit, taking into account any payments against the balance.

Section 3

In the application of the provisions of this chapter;

- (1) the assignee of the rights of the creditor on the basis of a consumer credit agreement shall also be deemed a creditor; and
- (2) a leasing or hiring or similar agreement on the basis of which goods pass into the possession of a consumer and under the terms of which the cash price and the credit costs shall be paid during the leasing period or the terms of which otherwise indicate that the intent of the agreement is to transfer the ownership of the goods to the consumer, shall be deemed a credit sale.

Section 4 (85/1993)

- (1) Sections 6, 7, 9, 10, 11 and 12(1) of this chapter do not apply to consumer credit to be paid within a maximum of three months. Sections 10 and 11 do, however, apply to such credit if the credit may be used by means of a credit card or other corresponding means of identification.
- (2) Sections 13 and 14 of this chapter apply only to goods-or-services-related credit and section 17 only to goods-or-services-related credit granted for the acquisition of goods.
- (3) It may be stipulated by Decree that sections 6, 7, 9, 10 or 11 apply to consumer credit amounting to not less than FIM 1,000. It may further be stipulated by Decree that the provisions of sections 9, 10 and 11 may, in certain types of goods-or-services-related credit, be satisfied by sending the consumer, together with the consumer goods or services, a document to be further confirmed by Decree if this can be deemed necessary in order to retain or establish in the field

in question an invoicing, delivery or other practice that is in the interest of the consumers.

Section 4a (85/1993)

The amounts in FIM provided for in section 4(3) and 12(4) may be altered by Decree if this is warranted by the development of the economy and monetary conditions.

Marketing of consumer credit

Section 5

The granting of consumer credit shall not be used as a main method of marketing when marketing other consumer goods or services.

Section 6

- (1) In marketing lump-sum credit, the annual percentage rate of charge shall be stated. If the cash price of the goods or services is stated, their credit price shall also be stated. If the granting of the credit is subject to taking out insurance on the goods or services, the insurance and its premium shall also be stated. (85/1993)
- (2) If a business grants consumer credit for the same purpose on different terms, the annual percentage rate of charge and the credit price may be stated in the form of an example of the customary credit terms offered by the business.

Section 7

In marketing running account credit, the annual percentage rate of charge shall be stated in the form of an example illustrating the typical use of the credit.

Section 8

Mere reference in marketing to the possibility of consumer credit shall not be considered marketing of consumer credit under sections 6 and 7.

Section 9 (85/1993)

Before the conclusion of a consumer credit agreement the consumer shall be notified of the contract terms and any other information referred to in section 11, in addition to which he/she shall be provided with an opportunity to peruse them in writing.

Provisions on the consumer credit agreement

Section 10 (85/1993)

- (1) A consumer credit agreement shall be concluded in writing. The consumer shall be given a copy of the agreement.
- (2) The consumer shall not be charged any payment, interest, fee or compensation that is not included in the terms of the agreement referred to in paragraph (1).

Section 11 (85/1993)

- (1) The consumer credit agreement shall state:
 - (1) the amount or limit of the credit, if any;
 - (2) the payments, interest and other credit costs relating to the granting and use of the credit;
 - (3) the due date of the credit or, if the credit is to be paid in instalments, the amount and due date of each instalment or the other repayment conditions;
 - (4) the credit price, any down payment and the cash price if the agreement relates to a goods-or-services-related credit;
 - (5) other terms of the contract;
 - (6) the right, based on section 12, to pay the credit before maturity and the determination of the compensation therefor, if any; as well as
 - (7) the annual percentage rate of charge.
- (2) In an agreement relating to a running account credit and in another agreement relating to credit that varies in amount, the annual percentage rate of charge may be expressed in the form of an example describing a typical use of the credit.
- (3) The terms of a consumer credit agreement may stipulate that the interest rate payable on the credit shall vary in accordance with the basic rate of interest charged by the Bank of Finland or other reference interest rate detailed in the agreement. The reference interest rate shall be public and based on matters not dependent on the unilateral decisions of the creditor. The reference interest rate of a credit in a foreign currency may also be in the currency of the credit or, if the credit has been granted in units calculated from several currencies (basket credit), a rate calculated in the same manner from said currencies.

- (4) The consumer shall be notified of changes in the interest rate either in the account statements or otherwise in writing.

Section 12

- (1) The consumer shall have the right to pay the consumer credit before it matures.
- (2) If the consumer pays the credit before maturity, a deduction shall be made from the remaining receivables of the creditor for the portion of the credit costs that concerns the period of credit that shall not be used. If the costs arising from the establishment of the credit relationship have been specified in the agreement and they are not unreasonable, the creditor may collect them in full.
- (3) If the consumer pays a credit payable in instalments on another date than the due date, the period of credit that shall not be used shall be calculated as from the first due date following the payment.
- (4) The creditor may charge a compensation for premature payment of the credit if the amount of the credit granted exceeds FIM 100,000 and if the interest rate on the credit is fixed or if the period for the determination of the reference interest rate is at least three years and if the interest rate of a corresponding new credit offered by the same creditor at the time of repayment is lower than the interest rate agreed upon. The maximum compensation that may be collected shall be the difference between the interest agreed upon and the corresponding credit with fixed interest for the remaining credit period or the period for the determination of the reference interest rate. (85/1993).

Section 13

- (1) Where a consumer has the right to withhold payment or to receive a refund, compensation or another money payment from the seller or the service provider on the basis of a breach of contract of the latter, this right shall apply also in respect of the creditor who has financed the purchase or service. However, the creditor shall not be liable to pay to the consumer more than what he received from the latter as payment.
- (2) If the seller repossesses the purchased goods or if the sale is otherwise cancelled by agreement between seller and consumer, the consumer may invoke the accounting of the repossession or cancellation of the sale also against the creditor who has financed the sale. However, the consumer shall not have this right if:

- (1) the creditor has, in good time and in a clear manner, notified the consumer that the seller does not have the right of repossess the goods or any other right to dispose of the agreement and, in case the subject-matter of the sale is by law to be registered, the creditor is entered in the register as the owner;
- (2) the creditor can otherwise prove that the consumer was aware of the restriction of the rights of the seller (541/1994).

Section 14

- (1) No bill of exchange or other debt instrument may be taken from the consumer on the basis of a consumer credit claim where the transfer or pledge of such an instrument restricts the right of the consumer to make claims on the basis of the sale or agreement of service against a party who has received the instrument in good faith. Such an instrument shall not be taken from a person who shares a household with the consumer, either.
- (2) The provisions of paragraph (1) does not apply to a negotiable promissory note issued by a bank.
- (3) A person who takes a bill of exchange or a negotiable instrument in violation of paragraph (1) shall not enforce the said instrument. Separate provisions govern the right of the debtor to make claims against an endorsee.

Section 15

The consumer shall have the right to decide to which of several receivables of the same creditor his/her payment shall be credited.

Section 16 (541/1994)

- (1) If the creditor, by agreement, for reason of the consumer's delay in payment or another breach of contract, has the right to claim an instalment that has not otherwise matured, to repossess the goods sold or to enforce another specific sanction, the creditor may enforce such a right only:
 - (1) if the payment has been delayed by at least one month and is still outstanding and if the amount, in a lump-sum credit, is at least 10 per cent or, if it concerns more than one instalment, at least five per cent of the original amount of the credit or, in the case of a goods-or-services-related credit, of the credit price or if it concerns the total remaining claim of the creditor; or

- (2) if the other breach of contract by the consumer is essential.
- (2) However, the creditor shall not have the right to enforce the sanction referred to in paragraph (1) if the matter is of a delay in payment and the said delay is due to the consumer's illness, unemployment or another corresponding reason that is not attributable to him, except where this would, taking into account the length of the delay and the other circumstances, be evidently unreasonable to the creditor.
- (3) If the creditor, on the basis of a term in an agreement referred to in paragraph (1), claims instalments that would not have otherwise matured, the deductions referred to in section 12(2) shall be made in calculating the claim of the creditor. The maturity cannot enter into force earlier than four weeks or, if the consumer has earlier been reminded of the delay or other breach of contract, not earlier than two weeks from the date on which the notice of maturity was given or sent to the consumer. If the consumer, within this period, pays the delayed amount or remedies the other breach of contract, the maturity shall lapse.

Section 17

- (1) If the creditor repossesses the goods, a statement of account shall be made between him and the consumer.
- (2) In the statement of account, the consumer shall be credited with the value of the goods at the time they were repossessed. The value shall be determined in accordance with what the seller can be presumed to have after the goods have been sold in an appropriate manner and, if needed, reasonably repaired. However, in determining the value, consideration shall be given to the cash price mentioned in the agreement and to the length of time the goods were in the possession of the consumer and to the manner in which the goods were maintained.
- (3) The creditor shall be credited with the following:
 - (1) The unpaid portion of the credit with a deduction made in accordance with section 12(2);
 - (2) the interest on the matured instalments;
 - (3) the necessary costs and payments incurred by the creditor in repossessing the goods and which the creditor had to pay in order to obtain possession of the goods; and

- (4) the claim of the creditor for repairs on or maintenance of the goods if the creditor has the right of retention over the goods on the basis of such a claim.
- (4) If the consumer pays at one time the amount that is to be credited to the creditor under paragraph (3), he may retain the goods.

Section 18 has been repealed.

Section 19

- (1) A consumer who has the right to use running credit shall be liable for the unauthorised use of a credit card or other means of identification providing the right to use a running account only if:
 - (1) he has given the means of identification to another;
 - (2) the passing of the means of identification into the possession of an unauthorised person is due to the negligence of the account holder and this negligence is not slight; or
 - (3) after having lost possession of the means of identification in a manner other than that referred to in subparagraph (2) and after having become aware of the same, the account holder has neglected to notify the creditor without delay.
- (2) However, the account holder shall not be liable for the unauthorised use of the means of identification in the cases referred to in paragraph (1) if:
 - (1) the means of identification is used after the creditor is notified that the means of identification has been lost or is in the possession of an unauthorised person; or
 - (2) the seller or the party performing the service or a person who has accepted the means of identification as the representative of them has not been sufficiently careful in ensuring that the person in possession of the means of identification has the right to use such means.

Section 20

A condition restricting the rights of a consumer under sections 10—19 shall be void.

Authority to issue orders

Section 21

- (1) If it is necessary to limit the granting of consumer credit in order to prevent indebtedness detrimental to consumers, the Government may order that:
 - (1) in granting lump-sum credit, at least a certain portion of the cash price of certain types of consumer goods or services or of consumer goods or services with a price exceeding a certain cash price shall be charged before delivery of the goods or performance of the service;
 - (2) it shall be agreed that the price in the lump-sum credit referred to in subparagraph (1) shall be paid in full within a certain maximum period at regular intervals and primarily by equal instalments; or that
 - (3) in running account credit agreements it shall be agreed that at least a certain portion of the respective balance of the credit shall be paid at regular intervals.
- (2) If an order given on the basis of paragraph (1) has not been complied with, a term in the agreement on retention of ownership or repossession of the goods sold on the basis of a breach of contract by the consumer shall be void.

Section 22

The Ministry of Trade and Industry may issue more detailed orders on the providing of the information referred to in sections 6—11 and on the calculation of the annual percentage rate of charge.

Supervision and sanctions

Section 23

A business that violates the provisions of this chapter on marketing or on consumer credit agreements or the provisions issued on the basis of section 21 or 22 may, if this is necessary for consumer protection, be enjoined from continuing such measures or repeating these or comparable measures. The issuing of the injunction and its enforcement by the threat of a fine shall be governed by the provisions of chapters 2 and 3.

Section 24

- (1) Compliance with the provisions of this chapter shall be supervised by the Consumer Ombudsman, the Consumer Agency and, as district authorities subordinate to it, the State Provincial Offices as well as by the Banking Supervision Authority when the granting of credit falls within the activity supervised by the Banking Supervision Authority. (85/1993)
- (2) A business shall present for inspection by the supervisory authorities the documents concerning consumer credits that are necessary for the supervision of such credits.

Section 25 has been repealed.

Chapter 8 — **Certain consumer services contracts** (16/1994)

General provisions on consumer services contracts

Section 1 — *Scope of application of the chapter* (16/1994)

- (1) The provisions of this chapter shall apply to services provided by a business (*contractor*) against consideration to a consumer (*commissioner*) and consisting of work or other performance relating to movables, a building, other structures or real estate. Certain construction contracts shall, however, be governed by the provisions of chapter 9 below. (1258/2001)
- (2) The provisions of this chapter do not apply to services consisting of the safekeeping of the property of the consumer.

Section 2 — *Mandatory provisions* (16/1994)

A contract term derogating from the provisions of this chapter to the detriment of the commissioner shall be void unless otherwise provided below.

General provisions on the performance of the contractor

Section 3 — *Delivery of a service* (16/1994)

If the object of the service is in possession of the contractor for the delivery of a service or if the service pertains to the production of movable goods, the service shall be deemed delivered when the goods are returned to the commissioner after the provision of the service. In other cases, the service shall be deemed delivered when it has been completed.

Section 4 — *Time of delivery* (16/1994)

If it has not been agreed that the service is to be delivered at a certain time or upon demand or without delay, it shall be delivered within reasonable time taking into consideration the nature and scope of the service.

Section 5 — *Acquisition of material* (16/1994)

Unless otherwise agreed, the contractor shall acquire the material, spare parts and supplies (*material*) necessary for the delivery of the service.

Section 6 — *Additional work* (16/1994)

- (1) If, during the provision of the service, additional measures which are not included in the commission, but which are appropriately undertaken in the same connection (*additional work*), become necessary, the contractor shall ask the permission of the commissioner to perform such work.
- (2) If the commissioner cannot be reached within a reasonable period, the additional work may be done only if the costs charged for the work are minor in amount or in relation to the price of the service agreed upon or the cost estimate given for the service. The costs incurred through the additional work may not result in the maximum price agreed upon, if any, being exceeded.
- (3) Should the contractor notice that there is need for such additional work that cannot be postponed without causing a hazard to health or property and which is not performed under this section, the contractor shall, without delay, notify the commissioner of any facts endangering safety that he has noticed.

Consequences of a delay in service

Section 7 — *Right to withhold payment* (16/1994)

On the basis of a delay of the contractor in delivering the service, the commissioner shall be entitled to withhold payment of the service price. The commissioner shall, however, not be entitled to withhold an amount which clearly exceeds the claims that he is entitled to on the basis of the delay.

Section 8 — *Right of the commissioner to demand fulfilment of the contract* (16/1994)

The right of the commissioner to demand that the contractor fulfil the contract shall correspondingly be governed by the provisions of chapter 5, section 8.

Section 9 — *Cancellation of the contract* (16/1994)

- (1) The commissioner shall be entitled to cancel the contract for the delay of the contractor if the breach of contract is essential.
- (2) If the commissioner has granted the contractor an extension for the delivery of the service and the extension is not unreasonably short, the commissioner shall likewise be entitled to cancel the contract if the service is not delivered within the said period. During the extension, the contract may be cancelled by the commissioner only if the contractor states that he will not deliver the service within the said period.
- (3) If the commissioner has not granted the contractor any extension, he may cancel the contract if the service is not delivered within a reasonable period after he has demanded its delivery.
- (4) If there are weighty reasons to presume that the service will be essentially delayed, the commissioner may cancel the contract immediately.
- (5) If a considerable portion of the service has already been delivered, the commissioner shall be entitled to cancel the contract only with regard to the portion that has not been delivered. If the delay results in an essential failure to attain the result of the service, the commissioner may, however, cancel the contract in its entirety. For performances which cannot be returned, the commissioner shall pay the contractor compensation corresponding to their value to the commissioner.

Section 10 — *Compensation* (16/1994)

- (1) The commissioner shall be entitled to compensation for any loss that he suffers due to a delay of the contractor unless the contractor proves that the delay was due to a cause beyond his control which he could not reasonably have been expected to take into account at the time of the conclusion of the contract and whose consequences he could not reasonably have avoided or overcome.
- (2) If the delay is due to a person whose aid the contractor has enlisted for the performance of all or part of the contract, the contractor shall be exempt from liability only if the said person would also, under paragraph (1), be exempt from liability. The same applies if the delay is due to a supplier of the contractor or another previous level in the supply chain.

- (3) However, the contractor shall be liable for indirect loss only if the delay or loss was caused by negligence attributable to him. Indirect loss shall be deemed to include:
 - (1) loss of income incurred by the commissioner due to breach of contract or measures caused thereby;
 - (2) loss incurred through an obligation based on another contract; and
 - (3) essential loss of use of the object of the service not resulting in direct economic loss or other corresponding damage that is not essential.
- (4) If the loss referred to in paragraph (3)(1)—(3)(3) is incurred through the mitigation of other loss, it shall, however, not be deemed an indirect loss.
- (5) A member of the commissioner's family who suffers loss for the delay shall have the same right to damages as the commissioner.

Section 11 — *Notice of cancellation of contract and claim for compensation (16/1994)*

If a service is delivered delayed, the commissioner shall not cancel the contract or claim damages for the delay unless he, within a reasonable period after learning of the delay, notifies the contractor that he is cancelling the contract or that he wishes to claim compensation. If the commissioner cancels the contract, he is, however, not liable separately to notify the contractor of his claim for damages.

Characteristics and defects of the service

Section 12 — *General provision on defects (16/1994)*

- (1) In contents, manner of performance and result, the service shall conform to what can be deemed to have been agreed.
- (2) A service shall be provided with professional skill and care and taking into account the interests of the commissioner. With regard to durability and otherwise, the service shall conform to what the consumer generally has reason to expect in the case of such a service. The service shall also conform to the requirements set by law, decree or official decision.
- (3) If the contractor is to acquire material necessary for the provision of the service and unless otherwise agreed upon, the material shall, in durability and other characteristics, conform to ordinary good quality.

- (4) If the service does not conform to the provisions of paragraphs (1)—(3), it shall be deemed defective. The burden of proof for the service having been provided with professional skill and care shall lie with the contractor.

Section 13 — *Information on the service* (16/1994)

- (1) The service shall likewise be defective if it does not conform to the information that the contractor has given on the contents of the service or his performance or on other circumstances relating to the quality or use of the service when marketing the service or otherwise before the conclusion of the contract and which can be deemed to have had an effect on the decision-making of the commissioner. The same shall apply to information given during the provision of the service which may be deemed to have an effect on the decision-making of the commissioner.
- (2) The service shall likewise be defective if it does not conform to information referred to in paragraph (1) and given by a person other than the contractor at a previous level of the supply chain or, on behalf of the contractor, when marketing the service before the conclusion of the contract. The service shall, however, not be deemed defective if the information has been clearly corrected in good time. The contractor shall likewise not be liable for a defect referred to in this paragraph if he neither knew nor should have known of the information given.
- (3) The service shall likewise be defective if the contractor has failed to give the commissioner information on a circumstance referred to in paragraph (1) that he should have been aware of and which the commissioner could justifiably have been expected to be notified of.

Section 14 — *Duty to advise* (16/1994)

- (1) Should it, either upon the conclusion of the contract or thereafter, become evident that the service, taking into account its price, the value and characteristics of the object of the service or other circumstances, evidently would not be appropriate from the point of view of the commissioner, the contractor shall without delay inform the commissioner thereof. The contractor shall likewise inform the commissioner if the service is likely to be considerably more expensive than the commissioner could reasonably expect.
- (2) If the commissioner cannot be reached within a reasonable time or fails to issue the necessary instructions, the contractor shall interrupt the provision of the service. The contractor may, however, continue his performance if he has special

reason to presume that the commissioner, nevertheless, wishes the service to be provided.

- (3) Should the contractor fail in his duties under this section, the service shall be defective.

Section 15 — *Time determining the defect and warranty* (16/1994)

- (1) The defectiveness of the contractor's performance shall be assessed on the basis of the results of the performance at the time of delivery or, if the delivery is delayed for a reason attributable to the commissioner, after the contractor has done what the performance requires of him. The contractor shall be liable also even if the defect is discovered later. If the quality of the performance deteriorates after the time referred to above, the performance shall be deemed defective if the deterioration is due to a breach of contract by the contractor.
- (2) A warranty relating to a service shall correspondingly be governed by the provisions of chapter 5, sections 15a and 15b. (1258/2001)

Sanctions for a defect

Section 16 — *Notice of defect* (16/1994)

- (1) The commissioner shall not invoke a defect unless he notifies the contractor of the defect within a reasonable period from the time he noticed or should have noticed the defect. The notice of defect can also be made to a business who has acted as an intermediary in the service or undertaken liability for its characteristics.
- (2) Notwithstanding the provisions of paragraph (1), the commissioner may invoke the defect of a service if:
 - (1) the contractor's conduct has been grossly negligent or incompatible with honour or good faith;
 - (2) the defect is based on the fact that the service does not conform to the requirements issued in provisions for the protection of health and property;
 - (3) the defect is based on the fact that the result of the service is otherwise hazardous to health or property.

Section 17 — *Right to withhold payment* (16/1994)

On the basis of a defect, the commissioner shall be entitled to withhold payment of the service price. However, the commissioner shall not withhold an amount that evidently exceeds the claims he is entitled to on the basis of the defect.

Section 18 — *Rectification of a defect* (16/1994)

- (1) The commissioner shall be entitled to demand that the contractor rectify the defect or replace his service with a non-defective service without additional cost to the commissioner. However, the contractor shall not be liable to rectify the defect if this would cause him unreasonable cost or inconvenience.
- (2) Even if the commissioner does not demand that a defect be rectified, the contractor may, at his own expense, perform such a rectification if he offers to do so as soon as the commissioner notifies him of the defect. The commissioner shall have the right to refuse the rectification if it would cause him essential inconvenience or the danger that he would not be compensated for the costs incurred by him or if he has another special reason for his refusal.
- (3) The contractor shall not invoke the fact that he has not been given an opportunity referred to in paragraph (2) to rectify the defect, if the commissioner has had the defect rectified and it could not reasonably have been expected that the commissioner wait for rectification by the contractor.

Section 19 — *Price reduction and cancellation of contract* (16/1994)

- (1) If the rectification of a defect or a replacement of a service is not possible or if such a remedy is not effected within a reasonable time from the commissioner's notice of defect, the commissioner shall be entitled to demand a price reduction corresponding to the defect.
- (2) If there are weighty reasons to presume that there will be an essential defect in the service, the commissioner may cancel the contract to the extent that the service has not yet been performed.
- (3) To the extent that the service has been performed, the commissioner may, in the cases referred to in paragraph (1), cancel the contract if no other result can be deemed reasonable for him. For performances that cannot be returned without essential inconvenience, the commissioner shall pay the contractor a price corresponding to its value.

Section 20 — *Compensation* (16/1994)

- (1) The commissioner shall be entitled to compensation for any loss that he suffers for a defect in a service. The liability shall cover personal injury and property damage sustained by the commissioner unless otherwise provided in section 21. However, the contractor shall be liable to compensate indirect damage referred to in section 10(3)—(4) only if the defect is attributable to negligence on his part.
- (2) A member of the commissioner's family who suffers loss for the defect shall have the same right to damages as the commissioner.

Section 21 — *Property damage caused by materials* (16/1994)

- (1) If the material used in the performance of a service causes damage to other property than the object of the service, the provisions of section 20 on the liability of the contractor apply only if the damage is caused to property with an essential connection of use with the object of the service.
- (2) If the contractor pays compensation under paragraph (1), any right of the commissioner to claim damages under the Product Liability Act shall correspondingly be transferred to the contractor. The provisions of section 10 of the Product Liability Act shall apply also to the right of the contractor to compensation.
- (3) The provisions of this chapter do not apply to compensation payable for personal injury caused by the material used in the performance of a service.

Section 22 — *Third-party liability* (16/1994)

The provisions of chapter 5, section 22 apply correspondingly to a service referred to in this chapter.

Duties of the commissioner and sanctions for a breach of contract by the commissioner

Section 23 — *Price of the service* (16/1994)

- (1) If the price of the service or the basis for its determination has not been agreed upon, the commissioner shall pay a price that is reasonable taking into account the contents, scope, quality and economically appropriate manner of performance of the service, the going price or manner of calculating the price at the time of the conclusion of the contract as well as the other circumstances. If the contractor, when marketing the service, has given information on the price of the

service or its manner of calculation relating to the price level at the time of the conclusion of the contract and this can be deemed to have affected the contract, the price shall be determined in accordance with the information given.

- (2) If the business, at the request of the consumer, has made preliminary inquiries into the contents of the service or the costs to be incurred thereby, he may demand payment for such preliminary investigations except if the consumer, on the basis of the practice prevailing in the field or other reason, had reason to presume that the measures would be undertaken without charge.
- (3) If what the contractor has performed under the contract is damaged, destroyed or otherwise lost before delivery of the service and this is not due to a reason attributable to the commissioner, the contractor shall not be entitled to demand payment for the work or material lost or for other additional costs. The above does not apply if the performance has been lost after the delivery of the service has been delayed due to a reason attributable to the commissioner.

Section 24 — *Cost estimate* (16/1994)

- (1) If the contractor has given a cost estimate on the service, the final price may exceed the estimate by 15 per cent at the most. The commissioner and the contractor may, however, separately agree on the amount by which the cost estimate may be exceeded.
- (2) The cost estimate shall be deemed to relate to the total price charged for the service unless otherwise agreed.
- (3) Should a dispute arise as to whether a quoted amount is to be deemed a fixed price, a cost estimate or an indicative price, the contractor shall prove his claim.

Section 25 — *Payment of the price and itemisation* (16/1994)

- (1) If no time has been agreed for the payment of the service price, the commissioner shall pay the price upon demand of the contractor, however, not before the service has been delivered in accordance with section 3 and the commissioner has had a reasonable period to examine the performance.
- (2) If the service is not rendered against a fixed price, the contractor shall, upon request of the commissioner, give him a written itemisation on the basis of which he may evaluate the contents of the performance and the determination of its price. A commissioner who has requested the itemisation without undue delay

after the rendering of the service or after receipt of an invoice for the service, shall not be liable to pay until after receipt of the itemisation.

- (3) If the payment is made through the bank or the post, it shall, for the purposes of estimating the rights of the contractor referred to in sections 27—30, be deemed effected on the date on which the bank or the post accepted the proper payment order from the commissioner.

Section 26 — *Cancellation of a service* (16/1994)

If the commissioner breaches the contract by cancelling the service prior to its delivery, the contractor shall not be entitled to finish the service. Instead, the contractor shall be entitled to compensation for loss incurred by him in accordance with section 30.

Section 27 — *Right of the contractor to withhold delivery* (16/1994)

- (1) If the price of the service or a part thereof shall be paid before delivery of the service, but the payment is delayed, the contractor shall be entitled to withhold delivery until he receives the payment. The commissioner shall immediately be notified of the interruption of the service.
- (2) Should the interruption of the delivery cause a hazard to health or a considerable hazard to property, the contractor shall, however, undertake the measures necessary to prevent the hazard.
- (3) A contractor who interrupts performance under this section shall be entitled to compensation for the extra costs thereby incurred.

Section 28 — *Overdue interest* (16/1994)

If the commissioner is delayed in paying the price of the service, the contractor shall, if the commission is not withdrawn or if the contract is not cancelled, be entitled to overdue interest in accordance with the Interest Act.

Section 29 — *Right of the contractor to cancel the contract* (16/1994)

- (1) If the commissioner is delayed in paying all or part of the price of the service and if the breach of contract is essential, the contractor shall be entitled to cancel the contract to the extent that the service has not been provided.
- (2) If the contractor has granted an extension for the payment of the service price and the extension is not unreasonably short, and if the commissioner does not make the payment within that period, the contractor shall also be entitled to

cancel the contract. During the extension, the contractor may cancel the contract only if the commissioner makes it known that he will not make the payment within that period.

- (3) The contractor shall be entitled to cancel the contract on the grounds referred to in paragraphs (1) and (2) also if the commissioner fails to co-operate in the delivery of the contract as required for the rendering of the service.
- (4) If it has become clear that the commissioner will make himself guilty of an essential breach of contract, the contractor may cancel the contract with immediate effect.

Section 30 — *Right of the contractor to compensation (16/1994)*

- (1) If the contractor cancels the contract or the commissioner withdraws the commission, the contractor shall have the right to consideration for any part of the service already provided as well as for measures that have to be undertaken in spite of the cancellation or withdrawal of the contract.
- (2) The contractor shall additionally be entitled to compensation for other costs that he has incurred through performance of the contract and which are likely to be of no use as well as for special costs incurred through the cancellation or withdrawal of the contract. For other losses, the contractor shall be entitled to compensation that is reasonable taking into account the price of the service, the time of the cancellation or withdrawal of the contract, the measures undertaken to fulfil the contract as well as the other circumstances.
- (3) The contractor shall, however, not be entitled to compensation referred to in paragraph (2) if the delay of the commissioner in making the payment or the withdrawal of the commission is due to provisions of the law, an interruption of general transport or payment traffic or another similar hindrance which the commissioner cannot reasonably avoid or overcome.

Section 31 — *Right of the contractor to retain the service object (16/1994)*

- (1) If the object of the service is movable property which is in possession of the contractor and if the commissioner fails to make payments under the said contract, the contractor shall be entitled to deny the property to the commissioner or the owner of the property until his claim has been paid or until sufficient security therefor has been placed.

- (2) The right to sell a piece of property subject to the right of retention shall be governed by special provisions thereon.

Other provisions on certain consumer service contracts

Section 32 — *Property damage caused in connection with a service* (16/1994)

- (1) If the object of the service or other property of the commissioner or his family member has been damaged, diminished, destroyed or lost while in the possession or under the supervision of the contractor under a service contract, the contractor shall be liable to compensate for the loss unless he proves that the loss was not due to negligence on his part.
- (2) The obligation of the contractor to look after the service object shall not cease on the basis of the cancellation of the contract until the object has been returned to the possession of the commissioner or until the contractor, in accordance with provisions elsewhere in the law, is entitled to stop looking after it.

Section 33 — *Mitigation of damage and adjustment of compensation* (16/1994)

The provisions of chapter 5, section 30 apply correspondingly to a service referred to in this chapter.

Section 34 — *Liability of the supplier of materials for defects* (16/1994)

- (1) The commissioner shall be entitled to direct his claim, caused by a defect in the material used in the provision of a service and based on this chapter, also against the business who has delivered the material for sale at a previous level of the supply chain.
- (2) The commissioner shall, however, not have the right referred to in paragraph (1):
 - (1) if the defect has been caused for reasons not attributable to the material supplier after he delivered the material on;
 - (2) to the extent that the claim is based on another commitment than one made by the supplier of the material, which places the commissioner in a better position than he would be in by the provisions of this chapter without the said commitment; nor
 - (3) to the extent that the claim relates to a demand of price reduction or refund of the price of the service and exceeds the amount that the counterparty of the material supplier under the contract could have demanded on the same basis, any restrictive terms in their contract disregarded.

- (3) The commissioner shall forfeit his right to present claims under this section unless he notifies the supplier of the material or unless the latter is notified of a notice of defect made to a later level in the supply chain within a reasonable period after the commissioner noticed or should have noticed the defect and the necessary information on the supplier of the material was available to him. However, the commissioner may, notwithstanding this paragraph, invoke the defect if the conduct of the supplier of the material in question has been grossly negligent or incompatible with honour and good faith or if it is a defect referred to in section 16(2)(2) or 16(2)(3).

Section 35 — *Liability of another business for defects* (16/1994)

- (1) If the contractor has enlisted the aid of another business for the delivery of a service and the performance of this business is defective, the commissioner shall be entitled to direct his claim, caused by the defect and based on this chapter, also against the business in question.
- (2) The commissioner shall, however, not have the right referred to in paragraph (1):
 - (1) if the defect has been caused for reasons not attributable to the business in question after he made his delivery;
 - (2) to the extent that the claim is based on another commitment than one made by the business in question, which places the commissioner in a better position than he would be in by the provisions of this chapter without the said commitment; nor
 - (3) to the extent that the claim relates to a demand of price reduction or refund of the price of the service and exceeds the amount that the counterparty of the business in question under the contract could have demanded on the same basis, any restrictive terms in their contract disregarded.
- (3) The commissioner shall forfeit his right to present claims under this section unless he notifies the business in question or unless the latter is notified of a notice of defect made to the contractor within a reasonable period after the commissioner noticed or should have noticed the defect and the necessary information on the business was available to him. However, the commissioner may, notwithstanding this paragraph, invoke the defect if the conduct of the business in question has been grossly negligent or incompatible with honour and good faith or if it is a defect referred to in section 16(2)(2) or 16(2)(3).

Chapter 9 — **Sale of building elements and construction contracts**

General provisions on the sale of building elements and on construction contracts

Section 1 — *Scope of application of the chapter* (16/1994)

- (1) The provisions of this chapter shall apply to contracts between a business (*contractor*) and a consumer (*commissioner*):
 - (1) on the delivery of an entity of installation-ready construction parts (*elements*) of a building or fixed structure connected therewith;
 - (2) where the delivery obligation of the business contains the delivery of elements referred to in subparagraph (1), as well as all or part of their installation; or
 - (3) where the delivery obligation of the business includes the construction or renovation of a building or a fixed structure connected therewith, a subcontract relating to such a project and of significant economic value or the basic repair or renovation of domestic premises with significant economic value (*project*).
- (2) The provisions of this chapter shall also apply when the business, in addition to performances referred to in paragraph (1), also delivers to the consumer goods for a building or structure or performs other services relating to a building or repair project. The provisions below on elements shall also refer to such other goods here referred to.
- (3) A minimum value of a project falling within the scope of paragraph (1)(3) may be provided by decree.

Section 2 — *Mandatory provisions* (16/1994)

A contract term derogating from the provisions of this chapter to the detriment of the commissioner shall be void.

Delivery, distribution of costs and risk

Section 3 — *Delivery* (16/1994)

- (1) The elements shall be deemed delivered when the commissioner has obtained possession thereof. If the performance of the contractor also includes installation, the elements shall, in the application of the provisions on the delay

of the contractor, not be deemed delivered until the installation has been completed.

- (2) A project shall be deemed delivered when it has been completed and the final inspection, if any, has been held.

Section 4 — *Time of delivery* (16/1994)

- (1) If no specific date has been agreed for the delivery of the elements or the project the delivery shall take place within a reasonable time from the conclusion of the contract.
- (2) If the contractor is entitled to determine the exact date of the delivery of the elements or other performance by the contractor, the contractor shall, within a reasonable advance period, notify the commissioner of the date chosen.

Section 5 — *Costs for the elements prior to delivery* (16/1994)

Unless otherwise agreed, the contractor shall be liable for costs of transport and storage and for other costs incurred for the elements before their delivery. This provision does not, however, apply to costs incurred through a delay for a reason attributable to the commissioner.

Section 6 — *Passing of risk* (16/1994)

- (1) The contractor shall bear the risk for the elements being destroyed, lost or damaged before their delivery for a reason not attributable to the commissioner. The contractor shall likewise bear the risk for other destruction, damage or loss of his performance for a reason not attributable to the commissioner before the delivery or, if the delivery is delayed for a reason attributable to the commissioner, before the contractor has performed what is necessary for him to perform for the delivery.
- (2) If elements are destroyed, lost or damaged for a reason not attributable to the contractor while the risk lies with the commissioner, the commissioner shall, nevertheless, be liable to pay the price. The same shall apply if another performance of the contractor is damaged after the risk has passed to the commissioner.

Sanctions for the contractor's delay

Section 7 — Right to withhold payment (16/1994)

- (1) If, due to a delay of the contractor, the elements are not delivered when the price or part thereof is due for payment, the commissioner shall be entitled to withhold payment until the delivery is effected. If only a part of the delivery is delayed, the commissioner shall, however, not be entitled to withhold payment to the extent that it would clearly exceed the claims that he is entitled to because of the delay. Even after the delivery, the commissioner shall be entitled to withhold payment of such part of the price that is necessary as security for a claim based on the delay.
- (2) If, due to the delay of the contractor, a delivery referred to in section 1(1)(3) has not reached a stage referred to in the contract when the payment or part thereof falls due, the commissioner shall be entitled to withhold payment until the contractual stage is reached. If the delivery is only partly delayed, the provisions of paragraph (1) apply correspondingly. The right of the commissioner to withhold payment to secure his claim for compensation shall likewise be governed by the relevant provisions of paragraph (1).
- (3) If the price or part thereof under the contract falls due at a certain time before delivery, but if there is good reason to presume that the delivery of the elements or the project will be delayed, the commissioner shall be entitled to withhold payment until the contractor makes it likely that he can perform the contract on time.

Section 8 — Right of commissioner to demand fulfilment of the contract (16/1994)

The right of the commissioner to demand that the contractor fulfil the contract shall be correspondingly governed by the provisions of chapter 5, section 8.

Section 9 — Standard compensation for delay (16/1994)

- (1) If the delivery of elements or the project is delayed, the commissioner shall be entitled to standard compensation. This shall, for each beginning week of delay during the first month, amount to 0.5 per cent of the corresponding part of the price and, for each beginning week of delay thereafter, to 1 per cent of the corresponding part of the price.
- (2) If the delay in the delivery of the elements also delays the installation of other elements, the standard compensation shall be calculated from a part of the price

including the share of the latter elements, including their installation, if this is a part of the obligations of the contractor.

- (3) The maximum of the standard compensation shall amount to 10 per cent of the part of the price referred to in paragraph (1) or (2). This provision notwithstanding, the commissioner shall, however, be entitled to a compensation under section 11 for any loss exceeding the standard compensation.
- (4) If the delivery of the contractor is prevented for a reason referred to in section 11(1) or (2), the contractor need not pay compensation.

Section 10 — *Cancellation of the contract* (16/1994)

- (1) The commissioner shall be entitled to cancel the contract for a delay of the contractor if this causes him essential inconvenience. If the elements forming the subject-matter of the contract are to be manufactured or acquired specifically for the commissioner in accordance with his instructions or wishes and if the contractor cannot, without considerable loss, make other use of them, the commissioner shall not cancel the contract unless the delay has lasted for more than 60 days. The commissioner shall, however, be entitled to cancel the contract even before the delay has lasted for 60 days if his position would be unreasonable, had he to adhere to the contract.
- (2) If the delay related to an element which can, without any detriment, be replaced by corresponding goods acquired elsewhere, the commissioner shall be entitled to cancel the contract under the conditions referred to in chapter 5, section 9.
- (3) If the contractor is delayed in the installation of the elements, the commissioner shall be entitled to cancel the contract for this part under the conditions referred to in chapter 8, section 9.
- (4) If there are weighty reasons to presume that a delay entitling to cancellation will occur, the commissioner may cancel the contract even before the time of delivery has arrived.

Section 11 — *Compensation* (16/1994)

- (1) The commissioner shall be entitled to compensation for loss that he suffers due to a delay of the contractor, unless the contractor proves that the delay was due to an impediment beyond his control which he cannot reasonably have been expected to take into account at the time of the conclusion of the contract and whose consequences he could not reasonable have avoided or overcome.

- (2) If the delay is due to a person whose aid the contractor has enlisted for the performance of all or part of the contract, the contractor shall be exempt from liability only if the person in question would also be exempt from liability under paragraph (1). The same applies if the delay is due to a supplier of goods or another previous level in the supply chain.
- (3) The contractor shall, however, be liable to compensate for indirect loss only if the delay or loss is due to negligence attributable to him. Indirect loss shall include:
 - (1) loss of income suffered by the commissioner due to the breach of contract or measures resulting therefrom;
 - (2) loss incurred through obligations based on another contract, and
 - (3) essential loss of the use of the product not resulting in direct economic loss, as well as other comparable detriment where this is essential.
- (4) If a loss referred to in paragraph 3(1)—(3) is incurred through the mitigation of other loss, it shall not, however, be considered indirect loss for the said part.
- (5) If the performance of the contractor is subject to an impediment referred to in paragraph (1) or (2) and if the contractor fails, without delay, to notify the commissioner of the impediment and its effect on the chances to perform the contract, the commissioner shall be entitled to compensation for loss that could have been avoided if he had been notified in time.
- (6) A member of the commissioner's family who suffers loss for the delay shall have the same right to compensation as the commissioner.

Section 12 — *Special provisions on cancellation of the contract* (16/1994)

- (1) If the commissioner cancels all or part of the contract and if the performance already effected by the contractor cannot be returned essentially unchanged or without causing essential detriment to the commissioner, the contractor shall be entitled to receive from the commissioner compensation which corresponds to its value to the commissioner.
- (2) If the commissioner cancels all or part of the contract to the extent that is has not been performed, he shall be entitled to receive from the contractor any drawings or special instructions or information that is necessary to perform the remaining part of the work.

Characteristics of the performance and defect

Section 13 — General provision on defects (16/1994)

- (1) The performance of the contractor shall be defective if it does not in contents, quality or other characteristics conform to what can be deemed agreed.
- (2) The performance of the contractor shall also be defective if:
 - (1) it does not comply with the requirements contained in provisions or orders in force at the time of the delivery or with the requirements of good building practice;
 - (2) it causes or it can reasonably be presumed to cause a health hazard;
 - (3) the installation of the elements or the project or other task belonging to the obligations of the contractor has not been performed with professional skill and care;
 - (4) the elements have not been appropriately packaged or otherwise protected where this is necessary for the transport or storage of the elements; or
 - (5) the delivery does not in other respects conform to what the consumer can reasonably expect in connection with such contracts.

Section 14 — Information on the performance (16/1994)

- (1) The performance of the contractor shall also be defective if it does not conform to the information given by the contractor in marketing or otherwise before the conclusion of the contract of the characteristics of the elements, the contents of his performance or other circumstances relating to the quality or use of his performance and which can be presumed to have had an effect on the contract. The same shall apply to information given after the conclusion of the contract which can be presumed to have affected the decision-making of the commissioner.
- (2) The performance of the contractor shall also be defective if it does not conform to information referred to in paragraph (1) and given by a person other than the contractor either at a previous level of the supply chain or on behalf of the contractor when marketing the performance. However, the performance shall not be considered defective if the information was clearly corrected in time. Moreover, the contractor shall not be liable for a defect referred to in this paragraph if he neither knew nor should have known of the information given.

- (3) The performance of the contractor shall likewise be defective if it is supplied to the commissioner without instructions which are necessary for the storage, installation, use, or maintenance of the elements or if the contractor otherwise has failed to notify the commissioner of a factor referred to in paragraph (1) which he should have been aware of and which the commissioner could reasonably expect to be informed of.

Section 15 — *Relevant time for determining conformity; warranty* (1258/2001)

The provisions of chapter 5, sections 15, 15a and 15b, apply correspondingly to a contract referred to in this chapter.

Sanctions for a defect

Section 16 — *Notice of defect* (16/1994)

- (1) A commissioner shall not have the right to invoke a defect in the delivery of the contractor if he does not give notice to the contractor of the defect within a reasonable time after he discovered or ought to have discovered it. The notice of defect may also be given to the business who has acted as an intermediary in the delivery on behalf of the contractor or undertaken responsibility to remedy the defect or otherwise to be responsible for the characteristics of the performance.
- (2) Notwithstanding the provisions of paragraph (1), the commissioner shall have the right to invoke the defect if:
 - (1) the conduct of the contractor or other business referred to in paragraph (1) has been grossly negligent or incompatible with honour and good faith;
 - (2) the defect is based on the fact that the performance does not conform to the requirements set for it in the Product Safety Act or in other provisions or orders issued for the protection of health or property; or if
 - (3) the defect is based on the fact that the performance is otherwise hazardous to health or property.

Section 17 — *Right to withhold payment* (16/1994)

On the basis of a defect, the commissioner shall have the right to withhold payment of the price. The commissioner shall, however, not have the right to withhold an amount that evidently exceeds the claims that he is entitled to on the basis of the defect.

Section 18 — *Rectification of the defect* (16/1994)

- (1) The commissioner is entitled to require that the contractor rectify the defect or replace the defective elements with non-defective elements without costs to the commissioner. It is a prerequisite that the defect can be rectified without causing the contractor unconscionable costs or unreasonable detriment.
- (2) Even if the commissioner does not require that the defect be rectified or that non-defective elements be delivered, the contractor shall have the right to perform such a rectification, at his own expense, if he offers to do so without delay after the commissioner has notified him of the defect and he has had an appropriate opportunity to inspect the object. The commissioner shall have the right to refuse the rectification of the defect if it would cause him unreasonable detriment or a danger that the costs incurred by the commissioner not be compensated.
- (3) The contractor shall not invoke the fact that he did not have a chance to remedy the defect referred to in paragraph (2) if the commissioner has had the defect rectified and if, considering the circumstances, it cannot reasonably be expected that the commissioner would have waited for the contractor's rectification.

Section 19 — *Reduction of price and cancellation* (16/1994)

- (1) If rectification of the defect is out of the question or if the rectification is not effected within reasonable time after the commissioner has given notice of the defect and the contractor has had an appropriate opportunity to inspect the object, the commissioner may demand a reduction in the price comparable to the defect or, if the breach of contract is essential, to cancel the contract.
- (2) To the extent that the delivery already effected by the contractor cannot be returned without essential detriment, the commissioner may cancel the contract only if another consequence cannot be deemed reasonable from his point of view.
- (3) If there are weighty reasons to presume that a later delivery of the contractor will be defective, the commissioner may cancel the contract to the extent that it has not yet been performed by the contractor.
- (4) The provisions of section 12 apply correspondingly when the commissioner cancels the contract under this section.

Section 20 — *Compensation* (16/1994)

- (1) The commissioner shall be entitled to compensation for loss that he suffers because of a defect in the delivery of the contractor.

- (2) Indirect loss referred to above in section 11(3) and (4) shall, however, be compensated for by the contractor only if the defect or loss is due to negligence on his part.
- (3) Compensation under this section shall also cover personal injury and property damage incurred by the commissioner because of the defect. However, this section does not apply:
 - (1) to the compensation of personal injury caused by an element delivered or by a defect in the material of a performance effected;
 - (2) to the compensation of property damage caused by an element delivered or by a defect in the material of a performance effected if the damage is caused to other property than the building or residential movable property that is primarily in private use; nor
 - (3) to the compensation of property damage caused by a defect in a piece of equipment belonging to the fixtures of a building if the damage is caused to property that does not have an direct connection of use with the equipment.
- (4) A member of the commissioner's family who suffers loss for the defect shall have the same right to damages as the commissioner.

Section 21 — *Liability of a third party* (16/1994)

The provisions of chapter 5, section 22 apply correspondingly to a performance referred to in this chapter.

Section 22 — *Liability for an error in an estimate* (16/1994)

If the contractor has given the commissioner an estimate for the cost of supplies, work and measures necessary for the completion of a building, but which are not included in the contractor's own performance, and if the commissioner has had good reason to rely on the estimate not being essentially exceeded, the commissioner shall be entitled to a reasonable compensation if the contractor, in preparing the estimate, has not proceeded with care and if the costs incurred by the commissioner are therefore considerably higher than estimated.

Price and its payment

Section 23 — *Cost estimate* (16/1994)

If the delivery of the elements or the service relating to the performance of the contractor referred to in section 1(2) has not been agreed to be effected for a fixed

price, the contractor shall, before the conclusion of the contract, give the commissioner a cost estimate thereof. The price of the delivery may, in this case, not exceed the cost estimate by more than 15 per cent unless otherwise provided in section 24.

Section 24 — *Terms of price increase* (16/1994)

- (1) A contract term under which the contractor may unilaterally raise the price agreed upon or exceed the cost estimate by more than that provided for in section 23 shall be valid only if:
 - (1) the raise is due to an amendment of the law or a decision of an authority that the contractor cannot reasonable have been expected to take into account at the time of the conclusion of the contract or an impediment affecting building, the installation of elements or other service to be performed by the contractor which is beyond the control of the contractor and which he cannot reasonably have been expected to take into account at the time of the conclusion of the contract and whose consequences he cannot reasonably have avoided or overcome;
 - (2) the performance of the contractor has been postponed for a reason attributable to the commissioner and the raise is due to increased costs thereby incurred by the contractor; or if
 - (3) the raise is due to the incorrectness of information which has been given by the commissioner or whose acquisition has been the responsibility of the commissioner.
- (2) The commissioner shall be informed of the price increase and its grounds without delay. In the cases referred to in paragraph (1)(1) and (1)(2), a term for the increase of the price shall not be invoked after the contractor has effected his performance.
- (3) If, in a case referred to in paragraph (1)(1), the price increase would exceed 5 per cent of the price, the commissioner shall be entitled to cancel the contract except when the price increase is due to a expansion of the basis of taxation so that a formerly tax-exempt performance becomes a taxable performance. If, with regard to the installation of elements, the raise exceeds 15 per cent of the contract price, the commissioner shall be entitled to cancel the contract for the installation.

Section 25 — *Payment of the price and security* (16/1994)

- (1) If the time of the payment of the price has not been agreed, the commissioner shall pay the price upon demand, however, not before the performance has been delivered in accordance with section 3 and the commissioner has had a reasonable opportunity to inspect the performance.
- (2) If, under the contract, the commissioner is to pay a part of the price to the contractor in advance, the contractor shall give the commissioner security that has to be valid until the value of the contractor's performance is at least equal to the advance payment.
- (3) A performance which is not effected at a fixed price shall be governed by the provisions of chapter 8, section 25(2) on the itemisation of the price.
- (4) If the payment is effected through a bank or the post, the payment shall, when considering the rights of the contractor in accordance with sections 28 —31, be deemed effected on the date when the bank or the post has accepted the proper payment order of the commissioner.

Sanctions for the commissioner's breach of contract

Section 26 — *Cancellation of the commission* (16/1994)

- (1) If the commissioner breaches the contract by cancelling the commission before the delivery of the elements, the contractor shall not have the right to adhere to the contract and to demand payment of the price. Instead, the contractor shall be entitled to compensation for any loss he has incurred, in accordance with section 30.
- (2) If the cancellation relates to a project or only the installation of the elements being delivered or other service included in the contractor's delivery, the provisions of chapter 8, sections 26 and 30 apply.

Section 27 — *Contractor's right to withhold performance* (16/1994)

The provisions of chapter 8, section 27 apply correspondingly to the contractor's right to withhold performance of a contract referred to in this chapter.

Section 28 — *Overdue interest* (16/1994)

If the commissioner is delayed in paying the price, the contractor shall, unless the commission is withdrawn or the contract cancelled, have the right to overdue interest in accordance with the provisions of the Interest Act.

Section 29 — *Contractor's right to cancel the contract* (16/1994)

- (1) If the commissioner is delayed in the payment of the purchase price, the contractor may cancel the contract if the breach of contract is essential.
- (2) If the contractor has granted an extension for the payment and the extension is not unreasonably short, and if the commissioner does not pay the price within this period, the contractor shall also be entitled to cancel the contract. During the extension, the contractor may cancel the contract only if the commissioner makes it known that he will not make the payment within that period.
- (3) If the commissioner has obtained possession of the elements, the contractor may cancel the contract, in regard to those elements, only if he has reserved the right thereto or if the commissioner rejects the elements. With regard to work or services to be performed for the commissioner, the contractor shall be entitled to cancel the contract only to the extent that the work or service has not yet been performed.
- (4) The contractor shall not cancel the contract due to the commissioner's delay in payment after the delayed payment has been made.

Section 30 — *Compensation* (16/1994)

- (1) If the contractor cancels the contract due to the commissioner's delay in payment or if the commissioner cancels the commission in accordance with section 26(1), the contractor shall be entitled to compensation for any special costs that he has incurred due to the conclusion and performance of the contract and which are likely to be of no other use as well as for any special costs incurred through the cancellation or withdrawal of the contract.
- (2) For other loss, the contractor shall be entitled to a reasonable compensation taking into account the price agreed, the time of cancellation or withdrawal of the contract, the measures undertaken to perform the contract, as well as other circumstances.
- (3) The contractor shall, however, not be entitled to compensation if the commissioner's delay in payment or the withdrawal of the commission is due to the provisions of an Act, the interruption of general transport or payment communications or other similar hindrance which the commissioner cannot reasonably avoid or overcome.
- (4) A contract under which the compensation payable by the commissioner is determined formulaically as a certain proportion of the price, or on another

standard basis, shall be valid if the compensation under the contract is reasonable taking into account the loss generally incurred through withdrawal or cancellation and the provisions of paragraphs (1)—(3).

Section 31 — *Failure of the commissioner to co-operate* (16/1994)

- (1) If the delivery of the elements is delayed due to a reason attributable to the commissioner, the contractor shall be entitled to compensation from the commissioner for costs of transport, storage and protection of the elements, as well as insurance costs, made necessary because of the delay. A contract under which the compensation payable by the commissioner is determined formulaically as a certain proportion of the price, or on another standard basis, shall be valid if the compensation under the contract is reasonable taking into account the costs generally incurred by the contractor in a delay referred to above.
- (2) If the installation of the elements is included in the obligations of the contractor and if the installation is delayed due to reasons attributable to the commissioner, the contractor shall be entitled to reasonable compensation for any loss that he incurs because no replacement work can be offered for the personnel allocated for the installation.
- (3) If the delivery referred to in section 1(1)(3) is delayed due to reasons attributable to the commissioner, the contractor shall be entitled to compensation in accordance with paragraphs (1) and (2).
- (4) If the delivery of the contractor is unreasonably delayed due to a reason attributable to the commissioner, the contractor shall be entitled to cancel the contract and to obtain compensation from the commissioner in accordance with section 30. If the installation of the elements is included in the obligations of the contractor, the contractor shall, for this part, have a corresponding right to cancel the contract and the right to compensation.

Other provisions on the sale of building elements and on construction projects

Section 32 — *Application of the provisions of the Sale of Goods Act* (16/1994)

The provisions of the Sale of Goods Act apply to the sale of elements referred to in this chapter unless otherwise provided in this Act. The sale of elements referred to in this chapter is not governed by the provisions in sections 13(3), 31, 47, 49(3) and 73(2) of the Sale of Goods Act. The provisions in section 76(2) of the

Sale of Goods Act do not apply when the duty of care lies with the commissioner. The provisions in sections 75—78 of the Sale of Goods Act do not apply to the sale of elements referred to in this chapter if the compensation payable to the contractor thereunder would exceed the compensation payable under sections 28—30 of this chapter upon the contractor cancelling the contract.

Section 33 — *Mitigation of damage and adjustment of the compensation* (16/1994)

The provisions of chapter 5, section 30 apply correspondingly to a contract referred to in this chapter.

Section 34 — *Liability of third party* (16/1994)

The provisions of chapter 5, section 31 and chapter 8 section 34 or 35 of the right of the buyer or the commissioner to direct his claim based on a defect also against a business on a previous level in the supply chain or one enlisted by the business to aid him apply correspondingly to contracts referred to in this chapter.

Chapter 10 — **Marketing and selling of time-share housing** (1162/1997)

Section 1 — *Scope of application of the chapter and definitions* (1162/1997)

- (1) The provisions of this chapter apply to the marketing of time-share housing by businesses to consumers, as well as to the selling of time-share housing by businesses to consumers.
- (2) For the purposes of this chapter:
 - (1) *time-share housing* is defined as a building or an apartment whose possession rotates among shares at defined or definable intervals (*time shares*);
 - (2) *time-share object* is defined as an entity comprising time-share housing and the common rooms and areas available to the shareholders, as well as the services connected to the same.

Section 2 — *Mandatory provisions and choice of law* (1162/1997)

- (1) A contract term derogating from the provisions of this chapter to the detriment of the consumer shall be void, unless otherwise provided below.

- (2) If the time-share housing is located in a member state of the European Economic Area (EEA state), but the contract would be subject to the law of a non-EEA state, the provisions of this chapter nevertheless apply in so far as they offer more effective consumer protection than the law that would otherwise apply.

Section 3 — *Marketing document* (1162/1997)

The business shall draw up a specific document concerning a time-share object (*marketing document*), containing the information referred to in section 4 and explaining how the consumer can obtain additional information. When marketing time-share housing, the document shall be referred to and the consumers shall be informed of where and how to obtain such a document.

Section 4 — *Information in a marketing document* (1162/1997)

- (1) A marketing document shall contain at least the following information:
 - (1) the name and address of the seller and, if the seller is not the owner of the time-share object, the name and address of the owner, as well as an explanation of the legal status and relationship of the seller and the owner;
 - (2) an account of the characteristics of the time-share right and the conditions for the exercise of that right in the state where the time-share object is located and, if these conditions have not been fulfilled, an account of that part of the conditions that remains unfulfilled;
 - (3) a detailed account of the time-share object and the available housing, as well as information on the location of the object;
 - (4) information on common rooms and services included in the contract or available for inclusion therein, as well as on the conditions for their use;
 - (5) an account of how the maintenance, administration and management of the object has been arranged;
 - (6) information on the selling prices, an estimate on the costs of use of the common rooms and services, as well as information on the bases for the calculation of the costs, such as fees and statutory charges, that arise from the ownership and use of the time-share right;
 - (7) an account of whether the object belongs to an exchange or resale arrangement, the administrator of the arrangement and the costs to the consumer for making use of the arrangement;

- (8) an account of the right of withdrawal, as provided in section 10, on the prohibition to accept payments, as provided in section 13, as well as to whom, how and when the withdrawal is to be communicated and what costs of withdrawal may arise, as provided in section 14;
 - (9) information on the termination of the credit contract referred to in section 12 in the event that the contract of sale is withdrawn from.
- (2) Moreover, the following information shall be supplied for objects under construction:
- (1) the stage of construction and the estimated time of completion;
 - (2) the time when the services of general interest, such as gas, electricity, water and telephone connections, will be available;
 - (3) the building permit number and the name and address of the authority that granted the permit;
 - (4) information on completion guarantees and security for the repayment of collected payments and on the terms for the exercise of the same or, if there are no such guarantees or security, information on the same and on the payment schedule determined in accordance with section 15;
 - (5) information whether the object is envisaged to belong to an exchange or resale arrangement.

Section 5 — *Promotion or sales events* (1162/1997)

- (1) If time-share housing is to be offered to a consumer in person at a promotion or sales event, the business shall in the invitation clearly indicate the nature of the event and supply the most significant information on the nature of the time-share right, the selling prices, the other costs and the time-share object.
- (2) The marketing document referred to in section 3 shall be available to the consumer at any time during the event. The document shall be available at least in the language used in the invitation to the event.

Section 6 — *Form and language of the contract* (1162/1997)

- (1) The contract of sale shall be drawn up in writing and both parties shall sign it. The form and content of a credit contract connected to the contract of sale, as referred to in section 12, are governed by the provisions of chapter 7.

- (2) The contract of sale and the credit contract referred to in section 12 shall, at the choice of the buyer, be drawn up in the language of his/her state of residence or state of citizenship, provide that the matter is of an EEA state and the chosen language is an official language of the European Union, Norwegian or Icelandic. If the time-share housing is located in another EEA state than the one whose language has been chosen for the contract, the seller shall also supply the buyer with a translation of the contract in the language of the state of location, said translation to be done or authenticated by a licensed translator.

Section 7 — *Marketing document as a part of the contract* (1162/1997)

The information to be supplied in the marketing document in accordance with section 4 shall form a part of the contract, unless the parties specifically agree otherwise. The seller may unilaterally change the information in the document only if the change is a result of circumstances which are beyond his control and which he could not reasonably have anticipated. Any changes shall be communicated to the buyer before the conclusion of the contract. The information in the marketing document and the changes thereto shall be mentioned in the contract.

Section 8 — *Other contents of the contract* (1162/1997)

- (1) In addition to the contents referred to in section 7, the contract shall include the following:
 - (1) the name and address of the buyer;
 - (2) the date when the right of possession commences and the clearly defined periods when the housing is available for use;
 - (3) the selling price and the payment schedule determined in accordance with section 15, if some part of the price is agreed to be paid before a building inspection authority has approved the housing for use;
 - (4) the date and place of signature, separately for either party.
- (2) The contract shall indicate that the buyer is not liable for any other payments, costs or obligations than those mentioned in the contract.

Section 9 — *Failure to observe the provisions on the form, language or contents of the contract* (1162/1997)

- (1) A contract that does not meet the requirements provided in sections 6—8 shall not be binding on the buyer. However, if the buyer wishes to invoke the non-bindingness of the contract because of a lack of information referred to in section 7 or 8, he/she shall notify the seller of the same at the latest in three months and ten days from the date when the contract has been signed by both parties.
- (2) If the seller rectifies the contract so that it meets the requirements before the buyer has invoked the non-bindingness, the buyer shall have the right of withdrawal referred to in section 10 as from the date when he/she received the rectified contract.
- (3) If the contract lapses due to the buyer having invoked its non-bindingness, the seller shall without delay return the payments that he has received and refund the buyer for the amount of the payments made under section 14. The returned amounts shall bear interest, at the rate referred to in section 3(2) of the Interest Act (633/1982), as from the date when the payment had been received.

Section 10 — *Buyer's right to withdraw from the contract* (1162/1997)

- (1) The buyer shall have the right to withdraw from the contract within ten days of the date when both parties had signed the contract.
- (2) In the calculation of the withdrawal period, the date of signature shall not be taken into account. If the last day of the withdrawal period is a holiday, Independence Day, May Day, Christmas Eve, Midsummer Eve or a Saturday, the buyer may withdraw from the contract on the next following weekday.

Section 11 — *Notice of withdrawal* (1162/1997)

- (1) The buyer shall give written notice of the withdrawal to the seller or to the person whose name and address have been supplied for this purpose in the marketing document. The notice may be given in the language in which the contract was drafted under section 6(2).
- (2) If the notice of withdrawal has been given or sent in an appropriate manner before the end of the period provided in section 10, the buyer may invoke the notice even if it is delayed, altered or lost.

Section 12 — *Termination of a credit contract* (1162/1997)

If, for purposes of the sale, the buyer has been extended credit by the seller or by another person on the basis of an agreement with the seller or another arrangement for the provision of consumer credit, the credit contract shall be terminated if the buyer withdraws from the contract. The credit contract shall be likewise terminated if the contract of sale lapses under section 9. Upon the termination of the credit contract, the creditor shall without delay return the payments received from the buyer.

Section 13 — *Prohibition to accept payments during the withdrawal period* (1162/1997)

The seller shall not accept the selling price, a part thereof or any other payment based on the contract of sale from the buyer, nor shall the creditor accept a payment under a credit contract referred to in section 12, until the expiry of the withdrawal period referred to in section 10.

Section 14 — *Costs of withdrawal* (1162/1997)

If the buyer withdraws from the contract, he/she shall only be liable for payments that under the law applicable to the contract are to be paid before the expiry of the withdrawal period and which arise from the fulfilment of the formal requirements of contract or are otherwise by nature subject to public law.

Section 15 — *Payment of the selling price at the construction stage* (1162/1997)

If some part of the selling price is agreed to be paid before the building inspection authority has approved the housing for use, the advance instalments shall not be so large that they are out of proportion to the value of the performances of the seller at the due dates. At least ten percent of the selling price shall remain unclaimed until the housing has been approved for use and the buyer has had a reasonable opportunity to inspect it.

Section 16 — *Application of the provisions on consumer selling* (1162/1997)

The provisions of chapter 5 on consumer selling apply, in so far as appropriate, also to selling referred to in this chapter.

Section 17 — *Sanctions for violation of certain provisions* (1162/1997)

A business that violates for provisions in sections 3—8, 13 or 15 on marketing or contracting may, if necessary for consumer protection, be enjoined from continuing such conduct or from repeating such or comparable conduct. The

injunction and its reinforcement by the threat of a fine shall be subject to the provisions of chapters 2 and 3.

Chapter 11 — **Penal provisions** (1162/1997)

Section 1 (1072/2000)

A person who deliberately or through gross negligence violates the provisions of chapter 2, sections 2—5, or provisions issued on the basis of section 6 of the same chapter, or deliberately fails to supply a door-to-door selling document in the manner referred to in chapter 6, section 8, or deliberately accepts a payment prohibited in chapter 10, section 13, shall, unless the act is punishable as a marketing offence referred to in chapter 30, section 1 of the Penal Code (39/1889), be sentenced for a *consumer protection violation* to a fine.

Section 2 (514/1999)

The penalty for a violation of chapter 7, section 14, is provided in chapter 30, section 3, of the Penal Code.

Section 3 (1162/1997)

A business that deliberately or through gross negligence violates the provisions of chapter 7, sections 5—7 or 9, or provisions issued on the basis of section 22, or who deliberately or through negligence violates the provisions of chapter 7, sections 10 or 11, or provisions issued under section 21 of the same chapter, shall be sentenced for a *consumer credit violation* to a fine.

Section 4 (1162/1997)

A person who breaks an injunction reinforced with the threat of a fine, as provided in chapter 2, section 7, chapter 7, section 23, or chapter 10, section 17, shall not be sentenced to a penalty for the same act.

Section 5 (1162/1997)

- (1) Charges for a consumer protection violation or a consumer credit violation shall be heard by a general court of first instance.
- (2) Before bringing charges for a consumer protection violation, the public prosecutor shall reserve the Consumer Ombudsman the right to issue a statement in the matter. This shall, however, not be necessary if the charges only relate to a violation of a decree issued under chapter 2, section 6, the violation of

a provision of such a decree or a provision issued under a decree issued under chapter 2, section 12(2), or the failure to supply a door-to-door selling document.

- (3) When hearing a case concerning a consumer protection violation, the court shall, subject to the restrictions referred to in paragraph (2), reserve the Consumer Ombudsman the right to be heard.

Chapter 12 — **Miscellaneous provisions** (1162/1997)

Section 1 — *Liability of an intermediary in respect of consumer goods and services* (1162/1997)

- (1) A business that acts as an intermediary in respect of a contract on consumer goods or services on behalf of the offerer of the consumer goods or services, shall be liable towards the consumer acquiring the goods or services for the fulfilment of the contract in accordance with chapters 5 and 8 and section 41 of the Sale of Goods Act. Such liability shall, however, not arise if the business acts on behalf of another business and if the consumer, at the time of the conclusion of the contract, is aware of this and the effect of this fact on his rights.
- (2) The liability of the intermediary shall not limit the rights of the consumer against the other party to the contract.
- (3) Separate provisions apply to the liability of real estate agents.

Section 1a — *Period for bringing an action for compensation in certain cases* (1162/1997)

An action under this Act for compensation for property damage caused by the goods to other property or property damage caused to other than the object of a service by a defect in the material used in the performance of the service shall be brought within three years from the date on which the plaintiff was informed of the damage and the party liable for it. The action shall, nevertheless, be brought within ten years from the release of the goods or material to the market by the liable party.

Section 1b — *Relation to the Tort Liability Act and other Acts* (1162/1997)

The provisions of this Act do not restrict the right of the injured party to claim damages on the basis of the Tort Liability Act, the Product Liability Act or any other Act.

Section 1c — *Right to invoke certain notices* (1162/1997)

If a notice of defect that has to be given under this Act by the consumer to the business has been appropriately sent, the consumer may invoke the notice even if it delayed, altered or lost. The same applies to a notice of cancellation given by a consumer or a business.

Section 1d — *Handling of disputes* (1162/1997)

- (1) A term in a contract concluded before a dispute arises, under which a dispute between a business and a consumer shall be settled in arbitration, shall not be binding on the consumer.
- (2) In a dispute between a consumer and a business, the consumer may bring the action also in the general court of first instance in whose jurisdiction he/she resides.

Section 1e — *Statute of limitations in consumer receivables* (1162/1997)

- (1) A receivable of a business that is based on the conveyance of consumer goods or services or the granting of consumer credit shall be statute-barred in three years from the date on which the business effected his performance or, if the consumer has been granted an extension for payment or credit, from the maturity of the payment or credit. The receivable shall, nevertheless, be statute-barred in the time referred to in section 1 of the Decree on Time Limits in Debt Cases and on Public Summonses to Creditors.
- (2) The limitation period shall be interrupted when the business demands payment from the consumer or reminds him thereof or when the consumer pays a part of the claim, its interest or costs. The interruption shall start a new three-year period of limitation. Should a dispute arise as to whether the limitation has been interrupted, the business shall prove his claim.
- (3) The provisions of this section do not apply to a receivable subject to separate provisions on limitation.

Section 1f — *General provisions on choice of law* (416/1999)

In so far as it is not otherwise provided in this Act or another Act, the law applicable to contractual obligations referred to in this Act shall be chosen on the basis of the Rome Convention of 19 June 1980 on the Law Applicable to Contractual Obligations. Even if the contractual obligations referred to in this Act

do not fall within the scope of the Convention, the Convention shall be applied in so far as appropriate.

Section 2 — *Detailed provisions* (1162/1997)

More detailed provisions on the application and implementation of this Act may be issued by Decree.

Section 3 — *Entry into force* (1162/1997)

This Act shall enter into force on 1 September 1978.