

09

**Distance
selling**

Background

Most business-to-consumer distance selling contracts are subject to the Consumer Protection (Distance Selling) Regulations 2000 (as amended). These rules complement those Regulations and do not replace them.

These rules must be read in conjunction with other rules in this Code, especially the rules on availability in Section 3: Misleading Advertising.

The Direct Marketing Association (DMA) requires its members to observe the DM Code of Practice, which covers some practices that are not covered in the CAP Code.

Definition

Distance selling marketing communications are marketing communications that promote specific goods or services and include direct response mechanisms that allow readers to place orders without face-to-face contact with the marketer.

In this section of the Code (and only in this section), “consumer” does not include those acting in the course of their business.

Rules

- 9.1** Distance selling marketing communications must make clear the marketer’s identity and geographic address; that information must be given in a form that can be retained by consumers.
- 9.2** Distance selling marketing communications must include:
 - 9.2.1** the main characteristics of the product
 - 9.2.2** the price, including any VAT or other taxes payable (see “Prices” in Section 3: Misleading Advertising, and payment arrangements
 - 9.2.3** the amount of any delivery charge
 - 9.2.4** the estimated delivery or performance time (see rule 4.9.3) and arrangements
 - 9.2.5** a statement that, unless inapplicable (see rule 9.6), consumers have the right to cancel orders for products. Marketers of services must explain how the right to cancel may be affected if the consumer agrees to services beginning less than 7 working days after the contract was concluded. They must, however, make it clear when the services will begin
 - 9.2.6** any telephone, postal or other communication charge calculated at higher than the standard rate (for example, if a premium-rate call is required)
 - 9.2.7** any other limitation on the offer (for example, period of availability) and any other condition that affects its validity

- 9.2.8** a statement on whether the marketer intends to provide substitute products (of equivalent quality and price) if those ordered are unavailable and one that it will meet the cost of returning substitute products on cancellation
- 9.2.9** if goods are supplied or services performed permanently or recurrently, the minimum duration of open-ended contracts.
- 9.3** At the latest by the time that goods are delivered or services begin, marketers must give consumers written information on:
- 9.3.1** how to exercise their right to cancel, unless inapplicable (see rule 9.6). Marketers must allow at least seven clear working days after delivery (or after the conclusion of service contracts unless the consumer agrees to an earlier start date) for consumers to cancel
- 9.3.2** for goods, whether the consumer has to return the goods to the suppliers on cancellation and, if so, who is to bear the cost of return or recovery of the goods (though see rule 2.8.9 for substitute goods)
- 9.3.3** any other guarantees and after-sales services
- 9.3.4** the full geographical address of the suppliers for any consumer complaints
- 9.3.5** the conditions that apply to the cancellation of any open-ended contract.
- 9.4** Marketers must fulfil orders within 30 days from the day consumers send their order unless:
- 9.4.1** the nature of the product or service makes it reasonable to specify a longer period in the marketing communications: for example, marketing communications for made-to-measure products, plants that are out of season, or products or services that are supplied on an instalment basis may reasonably specify a longer period, or
- 9.4.2** a longer performance period has been agreed with the consumer.
- 9.5** Marketers must refund money promptly (and at the latest within 30 days of notice of cancellation being given) if:
- 9.5.1** consumers have not received products within the specified period. If they prefer to wait, consumers must be given a firm dispatch date or fortnightly progress reports. Alternatively marketers may, if asked or if stated before purchase, provide a substitute of equivalent quality and price
- 9.5.2** products are returned because they are damaged when received, are faulty or are not as described; if so, the marketer must bear the cost of transit in both directions

- 9.5.3** consumers cancel within seven clear working days after delivery, unless the product is listed in rule 9.6. Consumers should assume they may try out products, except for audio or video recordings or computer software, but should take reasonable care of them before they are returned. Consumers must return the product and, unless the product is a substitute product sent instead of the ordered product, the marketer may require the consumer to pay the costs of doing so providing the marketer made that clear at the latest at the time the product was delivered.
- 9.5.4** an unconditional money-back guarantee is given and the products are returned within a reasonable period
- 9.5.5** products that have been returned are not received back, provided consumers can produce proof of posting.
- 9.6** If all contractual obligations to consumers are met, marketers do not have to provide a refund on:
- 9.6.1** services that have already begun with the consumer's agreement, if rule 9.2.5 has been complied with
- 9.6.2** products the price of which depends on financial market fluctuations that are outside the control of the supplier
- 9.6.3** perishable, personalised or made-to-measure products
- 9.6.4** audio or video recordings or computer software if unsealed by the consumer
- 9.6.5** newspapers, periodicals or magazines
- 9.6.6** betting, gaming or lottery services.
- 9.7** Marketers should take particular care when packaging products that might fall into the hands of children.
- 9.8** Marketers must not falsely imply that consumers have already ordered the marketed product by including in marketing material an invoice or similar document that seeks payment.
- 9.9** Marketers should not ask consumers to pay for or return unsolicited products, except for substitute products supplied in conformity with rules 8.12 and 9.5.1.
- 9.10** Marketers must make product fiche information about products that fall under delegated regulations available to consumers before commitment.

