

Unsolicited consumer agreements

What defines an unsolicited consumer agreement?

- The supplier, their salesperson or dealer approaches a consumer uninvited.
- The agreement results from negotiations away from the supplier's premises.
- The total value of the goods or services is more than \$100, or not established when the agreement was made.

Permitted hours for contacting consumers.

Telemarketing

Telemarketing calls and fax marketing **cannot** be made:

- on Sunday or a public holiday
- before 9am or after 8pm on a weekday
- before 9am or after 5pm on a Saturday.

Calling on a consumer

You **must not** call on a consumer:

- on Sunday or a public holiday
- before 9am or after 6pm on a weekday
- before 9am or after 5pm on a Saturday.

You can visit at any time only if you make an appointment over the phone or in writing (not in person) beforehand.

When calling on a consumer.

You must:

- explain up-front the purpose of your visit
- produce identification including information as set out in the *Trade Practices (Australian Consumer Law) Amendment Regulations 2010 (No. 1)*
- let the consumer know that they can ask you to leave
- leave the premises immediately if the consumer asks you to.

When negotiating a sale.

You must:

- inform your customer of their right to cancel the agreement (termination or cooling-off rights) before making the sales agreement
- ensure you and the customer sign the agreement and any amendments
- give the customer a written copy of the agreement:
 - ✘ immediately after signing if negotiated in person; *or*
 - ✘ within five business days of the agreement— in person, by post or electronically (if the customer agrees) if negotiated by telephone.

The sales contract.

The document must:

- be transparent – that is, expressed in plain legible and clear language
- be printed - although any changes to the agreement may be handwritten (and must be signed by both parties)
- clearly state:
 - ✘ the customer's cancellation and cooling-off rights
 - ✘ full terms of the agreement
 - ✘ total price payable, or how this will be calculated
 - ✘ any postal or delivery charges
- contain your (the supplier's):
 - ✘ name
 - ✘ business address (not a post office box number)
 - ✘ Australian Business Number (ABN) or Australian Company Number (ACN)
 - ✘ fax number and email address, if you have these
- contain a notice the customer may use to cancel the agreement, in a format set out in the *Trade Practices (Australian Consumer Law) Amendment Regulations 2010 (No. 1)*.

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What are the customer's cancellation rights?

The customer has 10 business days to cancel the agreement without penalty. This period begins on the first business day after the agreement was made. If the agreement was made by telephone the 10 day period commences on the first business day after the consumer receives the documentation about the agreement.

Important: You must not provide any goods or services, or accept any payment during the cooling-off period – unless supplying electricity or gas to premises not already connected to such services.

The customer may also cancel an agreement up to three months after it was made if you did not:

- visit within permitted selling hours
- disclose the purpose of your visit
- produce identification, or
- leave the premises upon request.

The cancellation period is extended to six months if you:

- did not provide information about cooling-off rights
- breached requirements for unsolicited consumer agreements (such as failing to provide a written copy or not including required information)
- supplied goods during the cooling-off period, or
- accepted or requested payment during the cooling-off period.

The customer may cancel the agreement verbally or in writing. The cancellation date is when the customer gives or sends the notice.

What happens when the customer cancels the agreement?

An agreement cancelled by a customer is void – that is, treated as if it never existed.

You must promptly return or refund any money paid under an agreement or related contract.

The customer must, within a reasonable time, return any goods that have not been consumed, or tell you where to collect them.

For more information on your obligations under the Australian Consumer Law (ACL), refer to:

- ✕ *ACL: Sales practices – a guide for business and legal practitioners*
- ✕ *Trade Practices (Australian Consumer Law) Amendment Regulations 2010 (No. 1)*

Note: Door-to-door sales agreements are referred to in the ACL guide as 'unsolicited consumer agreements'.