

## **Official Gazette of the Government of Catalonia**

DOGC 5677 – 23.7.2010

### **DISPOSITIONS**

#### **DEPARTMENT OF THE PRESIDENT**

#### **LAW**

*22/2010, of 20 July, on the Catalan Consumer Code.*

#### **THE PRESIDENT OF THE CATALAN GOVERNMENT**

Let it be known to all citizens that the Parliament of Catalonia has approved and, in the name of the King (of Spain) and in accordance with article 65 of the Autonomous Statute of Catalonia, I proclaim the following:

#### **LAW**

##### *Preamble*

Article 123 of the Autonomous Statute of Catalonia gives the Government of Catalonia the exclusive power over consumer affairs issues. Apart from this, it should be kept in mind that the rights of consumers and service users are protected in accordance with the provisions of Articles 28, 34 and 49 of the Statute of Autonomy. Article 51 of the Constitution also provides that public authorities must guarantee the protection of consumers and service users and their safety, health and legitimate economic interests must be protected by effective procedures.

Catalonia, of old, has always had a notable and remarkable sensitivity towards the protection of consumers and service users. In this sense, as the most immediate antecedent, 12.1.e article of the Statute of Autonomy of 1979 already established that the Government of Catalonia has powers regarding the protection of consumers and service users. Moreover, it should be noted that Article 113 of the Statute of Autonomy expressly stipulates the competency of Government of Catalonia to develop, implement and execute the regulations of the European Union affecting its competencies. This is especially important, since the Community rules on consumer is an axis around which revolve the various Community policies and, consequently, directly affects areas in which the Government of Catalonia has exclusive competencies.

The idea of consumer affairs is related to the activity of buying, but consumer affairs is much more than just a specification in the context of the chain of economic activity, “production, distribution, consumption”. Consumer affairs is a way of relating between people, is a means of development in advanced societies that has become a key aspect of the economy and, therefore, will always be regarded as a clear manifestation of wilful independence. Therefore, in this increasingly globalised society, we must realize that consumer affairs responds to social beliefs, deep motivations and to the exteriorisation of certain lifestyles that affect the self-esteem and feelings of people, a certain idea of self-realisation and, in essence, a certain lifestyle.

Therefore, it was necessary to develop rules that take into account two aspects of reality: first, the idea of doing business *en masse*, which means that there are many possibilities to buy, take out a loan or provide a service that are advertised and are set uniformly, and, secondly, the existence of new technologies that have created a category of experts that provide goods and services to an un-expert group of people, who are encouraged to purchase these types of products.

Today, the role of private autonomy in purchasing has been distorted, since, although this autonomy was supposedly ruled by the principle of equality, the reality is quite different. In fact, it appears that new requirements and standard-form agreements *en masse* have almost eradicated it.

Thus, it is confirmed that the alleged balance between the contracting parties has disappeared. Consumers have only the faculty to accept outright, but not concerning the conditions of the decision, which are established and fixed by the other. Because of all this, we emphatically underline that there is an imbalance. For this reason, consumers need, especially in cases or situations of inequality, effective mechanisms established to protect and help provide them with clear information and training to make decisions.

The Government of Catalonia has long reclaimed having its own regulations on protection of consumers and service users. This intention is reflected in Law 1/1990 of 8 January, on market regulations and defence of consumers and service users, in Law 3/1993 of 5 March, of the Consumer Statute and the revised text on internal trade, approved by Legislative Decree 1/1993 of 9 March.

Now, in addition to the internal regulations, consumer law can not be understood without the work carried out by Community institutions, which have put consumer law in a pivotal position around which revolve many Community policies. In fact, the integration of consumer law into the European Union legal system and its explicit recognition as a differential Community policy in the treaties should be considered targets of relevance and special cross-cutting significance for the creation and development of consumer law.

The European Union, in a firm and resolute manner, has promoted, initiated and spearheaded activities to protect consumers and, indeed, has turned them into one of its strategic objectives in improving the quality of life of European citizens. Although the Treaties establishing the European Communities, signed in Rome on 25 March 1957, did not expressly provide for this policy; at the Paris Summit of 1972 there appears for the first time a desire that the actions of joint protection of consumers should become one of the axes of Community action. Some years later, in April 1975, the European Commission presented the first programme of action on consumer protection, which included five categories of fundamental rights that became the basis of Community legislation in this area: the right to protection of health and safety, the right to protection of economic interests, the right to compensation for damages, the right to information and education and the right to representation.

This programme reunites and makes manifest the cross-cutting character of the policy of consumer protection and demonstrates that these objectives must be integrated into the various specific actions of the Community, such as economic policy, common agricultural policy, and the policies on environment, transport and energy, which affect consumers.

However, it was not until the Single European Act of 1986, when the concept of “consumer” was incorporated the foundations were laid for a legal recognition of the policy of consumer protection.

Subsequently, by the Treaty on European Union, or Maastricht Treaty of 1992, consumer protection was raised to the rank of true Community policy.

The Amsterdam Treaty is the heir of all EU policy undertaken since 1972 and shows that, to guarantee the interests of consumers and ensure them a high level of protection, the Community should promote the protection of their health, safety and economic interests, and also their right to information, education and to organise themselves to ensure their interests.

Even a regulatory instrument as important as the Charter of Fundamental Rights of the European Union of 1999, which has been integrated into the Treaty of Lisbon of 2007, expressly states that EU policies must ensure a high level of consumer protection.

Thus, the process of European integration has given consumer rights a new dimension, has made them become a prominent and important part of EU policies and has given them an impulse that transcends all economic relations. Ultimately, EU legislation has led to a complete turnabout in this area, which has impacted, impacts and will impact on issues and matters of particular importance for all parties involved.

## I

The creation of the Catalan Consumer Agency by Law 9/2004 of 24 December, gives a new approach to the problem of consumer affairs. This approach derives from the Agency's own sphere of competence, functions and objectives as well as of the knowledge of new developments in recent years and the development of many aspects regulated by basic rules, although in a dispersed manner. This projects the consideration of the protection of consumers and users in a new light, which underlines the need to update and make a modern development of the basic rules regulating consumer affairs.

That is why the establishment of a new law has been proposed as an objective and that it should be endowed with a structure and a basic content that may become the general reference framework for consumer protection. The codification of Catalan consumer law is intended to ensure the clarity of applicable legislation regarding the protection and defence of consumers and its systematisation, once laws that regulate the categories have already reached a clear consolidation. In fact, there are specific regulations that fix the unequal situation affecting consumers and service users and which is ultimately the basis of their legal protection. This is precisely what the law regulates.

We must not forget that the grouping and systematisation of the regulation on the structure of consumer affairs through a Code supposes a substantial progress in ensuring adherence to the principle of legal certainty. The legal community must know and apply the law in the easiest and safest way possible and, through this code, will systematise and articulate, in a single legal standard, all the scattered rules that impede the task of application.

The codes are the creators of the new European culture and an irreplaceable instrument for resolving conflicts of interest. This code is certainly subordinated to the constitutional and statutory values and principles and the provisions of Community law. It is foreseeable, in the long-term, that there will be a cross-cutting Community legal instrument, but a code of this magnitude will always respect the essential parts of the statutory and constitutional principles and the whole of the EU.

## II

The rules on consumer protection and service users in Catalonia are three-fold: Law 1/1990, Law 3/1993 and the revised text on internal trade. During the period of validity of these legal provisions, the market has evolved significantly, new types of activities, new practices and forms of services have emerged and, moreover, Catalan society has become much more demanding.

Radical legislative action was necessary, therefore, and this legislation must be ruled by a guarantee of up-datedness, durability and security that help to effectively protect citizens. Therefore, the essential objectives of this law are: adapt the basic rules and general defence of consumers to market activity, improve the technical shortcomings in previous regulations, standardise the provisions on this matter in a single legal text and establish a global structure and content of the standard.

An instrument of consumer protection may be obtained in this way with more effective and adequate guarantees for the provision of services, as established by cross-cutting EU directives.

The Catalan Consumer Agency, after analysing both the Catalan legislation and comparative law, decided that the regulations had to be reformulated in order to adapt to social reality. The option that was considered most suitable to obtain a systematic and comprehensive regulation within the scope of statutorily and constitutionally assigned responsibilities was to draft a text containing all the rules codified into a single law structure, to achieve an internal harmony and aspire to be the common rule on consumer protection.

Moreover, we must remember that the Statute of Autonomy of 2006 extends the protection of consumers. Indeed, consumer protection appears in multiple precepts of the statutory text: to Article 28 must be added Article 34, which includes the linguistic rights of consumers and users, and Article 49, which elevates the protection of consumers and users to the category of a guiding principle. Consumers can not be protected without considering the coexistence of other equally important principles such as sustainability (Articles 4.3 and 45.1) or corporate social responsibility (Article 45.5). It is for this reason that the Code has attempted to integrate all these principles into its structure, which undoubtedly must converge in a modern text that aims to respond adequately to the needs of consumer protection.

Moreover, the observed distance between the current provisions and EU directives is one of the reasons determining the need to revise and update regulations to improve the level of adequacy.

### III

The Consumer Code is an innovative text, both from the formal point of view and from the material point of view. From a formal point of view we must first justify the numbering. It was decided to follow the numbering system imported to Catalonia by the Civil Code, borrowed from the legislation of the Dutch Civil Code and later adopted by the regulations of other countries, such as the French *Code de la Consommation*. This system facilitates the inclusion of new regulations or modifications, which is particularly important in a sector as dynamic from the legal point of view as consumer protection.

Regarding structure, the Consumer Code is divided into three books: the first book contains general provisions, the second book regulates aspects of consumer relations and the third book is devoted to market regulation and the rights of the consumers. Overall, the Code consists of two hundred and four articles, two additional provisions, five transitional provisions, three final provisions and a derogatory provision.

From the material point of view, the Consumer Code incorporates many innovations, the result of experience gained from government activity. This experience has allowed solutions to be incorporated already adopted by more modern and advanced legislations and correct situations that were not well resolved by the previous rules or simply not foreseen.

The first book is organised into three Titles. Title I, under the heading “Preliminary provisions”, is divided into two Chapters. The first defines the object, scope of application and provides definitions of concepts which are referred to in the provisions of the Code. These definitions follow the model established by Community legislation; they, of course, help the legal community and the community at large to understand the content of the law, and are interpretative rules of the legislation into which they are incorporated. The list of definitions has also allowed important changes that clarify the scope of certain concepts and make the code meet the requirements of European Union directives, including Directive 2005/29/EC, on unfair commercial practices by businesses in their relationships with consumers and Directive 2006/123/EC on services in the internal market. This is the case, for example, of the concept of the *average consumer*, which implies a certain level of diligence of the customer in their

consumer relationship or the *specially protected groups* which, although taking as a reference the criteria of Article 21 of the Statute of the Consumer, adapts it to new demands of social reality and at the same time, serves as counterpoint to the concept of average consumer, thereby providing a high degree of protection but without being overprotective. Moreover, the introduction of the concept of *consumer relations*, covering the complete itinerary of the relations established between consumers and traders, and covers the entire spectrum of these relations: from advertising to after-sale service, including marketing of goods or services. There are other definitions that also have an important role and respond to the purpose of balancing the protection of consumers and the interests of traders, in order to allow the internal market to function properly, as we see in concepts of *safe goods and services*, *risk and unacceptable risk*. Finally, it was considered necessary to incorporate the concept of *responsible consumption*, as it represents the expression of a need for balance between social, economic and environmental aspects always present in the field of consumer affairs. Chapter II contains the five guiding principles consumer rights are based upon: its nature as basic law, the principle of good faith and balance of legal positions, the inalienable character of consumer rights, the principle of responsible consumption and the principle of pro-consumer interpretation.

Title II contains the basic rights of consumers. In Chapter I the protected rights are enumerated, it reflects the particular attention given to the specially protected groups and recalls that protection usually takes as reference the concept of *average consumer*. Chapter II develops the right to health and safety protection in which government plays a key role by reviewing all the goods and services, so the basic concept of risk as a general principle of regulation was entered into the Code. Chapter III establishes the contents of the right to protection of economic and social interests of consumers, which aims to include respect for the integrity of their property. Chapter IV is noteworthy for the incorporation of the right to reparation or compensation for damages suffered by consumers as a result of the acquisition or use of goods and services. This right is of crucial importance in the field of consumer relations and allows consumers to obtain, if necessary, an indemnity against actions that undermine their rights. Moreover, Chapter V includes the right to legal, administrative and technical protection, including the possibility that the government may initiate administrative and judicial processes deemed appropriate to cease activities harmful to the rights and economic interests of consumers, and establishes the obligation to promote voluntary dispute resolution procedures. Chapter VI regulates the right to information and education.

As for information on goods and services, it includes all items that were scattered in different legislation. First, it emphasises the obligation to inform consumers and respond adequately to enable them to learn, use and safely and satisfactorily use goods and services. Regarding the information that consumers can get from the government, the regulation of so-called *public consumer services* and the creation of a registry of these services are noteworthy. Finally, it provides educational content to the task the government must fulfil, given that the right to education and training in use is configured as a cross-cutting right guaranteed by government action. In this regard, the education of consumers is considered part of the comprehensive training of citizens, with the aim of training people to be critical, active and responsible in the area of consumer relations. To this end, we should mention, among the other innovations of this code, the establishment of a permanent centre for consumer education covering the entire territory of Catalonia. Chapter VII gives content to the right to representation, consultation and participation, whilst containing accurate and innovative regulation on consumer organizations. It establishes the rights and obligations which consumer organisation are subject to, and updates the criteria to be taken into account in considering them as representative organisations. To guarantee the new system, it creates a registry of organisations and has established minimum requirements for registration. Chapter VIII concerns the right to receive information and the use of official languages, includes this right in the basic rights of consumers and thus implements Article 34 of the Statute.

Title III presents important developments with regard to extrajudicial dispute resolution systems. Chapter I contains general provisions applicable to any mechanism of extrajudicial resolution of consumer disputes and is based on channelling, through consumer mediation and arbitration, respecting the voluntary and binding character of agreements. Chapter II governs mediation, taking into account the underlying principles: voluntariness, fairness and confidentiality by the mediator and universality on any topic at any issue affecting Catalan consumers. Likewise, the final provisions establish a statutory reserve to provide mediation procedures with regulations. Chapter III regulates the organisational aspects of consumer arbitration powers that are competency of the Catalan Government. The innovation of incorporating adherence to consumer arbitration as a condition of execution of contracts for government and public agencies and companies that depend on it is also noteworthy. Finally, it promotes the social consideration of companies that adhere to consumer arbitration as a condition of their distinctive badge of quality.

#### IV

The second book regulates the requirements of consumer relations. Title I, which is subdivided into two chapters, contains general provisions applicable to any economic activity which manifests itself in a consumer-trader relationship. Chapter I establishes the requirements for information of a substantial nature that all traders are obliged to supply to consumers. This information, crucial to the economic behaviour of consumers, refers to prices and their eventual reductions in the characteristics of goods and services, in terms of promotions and special offers, for gifts, competitions and raffles, and the possibility of exercising the right of withdrawal. In addition, it establishes the obligation of traders to attend to consumers in any circumstance or incident that affects the normal functioning of the consumer relations, and also a free helpline that traders must make available to consumers. Chapter II refers to requirements that permanent establishments must generally comply with in terms of pricing information, sales conditions, budgets and documentation to be given to consumers.

Title II regulates the special modalities of consumer relations. The revised text on internal trade, in which converge government regulations of the same activity requirements inherent in the protection of consumers, already regulated these special modalities. The Consumer Code transfers and updates the existing legislation regarding consumer protection. In this sense, Chapter I defines these modalities and identifies them with those that occur outside of a permanent establishment, i.e., distance selling and those carried out outside of a permanent establishment, those made via automatic machines and those made through non-permanent establishments, and it establishes common rules concerning the information to be supplied to consumers. Chapter II regulates the relations of distance selling. In particular, those relations by telephone, postal correspondence and by electronic and audiovisual media, which represent an important innovation. The regulation is based on determining the information to be supplied to consumers when the simultaneous presence of both parties does not occur when establishing the trader-consumer relationship. Chapter III regulates the consumer-trader relations in the absence of a permanent mercantile establishment, dominated by marketing techniques unknown to consumers for goods and services. For this reason, the information and contract documentation requirements are particularly important and reflect a more strict content concerning the obligations that traders who engage in this type of marketing goods and services must comply with. Chapter IV introduces important developments relating to the acquisition of goods and services using automatic machines. These innovations include the contents of the obligation to report, covering various aspects, such as instructions for obtaining the good or service, the information relative to price and payment methods accepted and identification of the operator. Breach of this obligation entails the extension of liability to the holders of the permanent establishment where the machine is located. In the trader-consumer relations in non-permanent establishments defined in Chapter V the obligation to provide the information provisions of Article 221-2 applies.

Title III contains a single chapter and presents another innovation in the consumer protection regulations. This title incorporates the regulation of mediation into the Code, which applies to any person or entity that engages in any of the activities referred to in Article 231-1, on behalf of a third party and for pecuniary remuneration or not, but always in some form of economic advantage. In such cases, a duty to inform is imposed on intermediaries concerning the various aspects regarding the scope and price of their intervention. Similarly, it establishes the obligations assumed by intermediaries regarding their form of action, the receipt of amounts paid and the regime of liability.

Title IV applies to the leasing and acquisition of goods. Chapter I refers to both the leasing and acquisition of non-movable property. Chapter II regulates the information to be made available to the purchasers of non-movable property, and the conformity of the goods and guarantees, in accordance with the regulations.

Under the heading “On the obligations in service provision”, Title V regulates the plurality of services that traders can make available to consumers. These services are classified according to their purpose, which allows people to distinguish between services to people, services of goods, basic services, on-going services and brand-name services. Chapter I refers to the common obligations that must be met in any case, regardless of the type of service rendered. Among the obligations to be assumed emphasis should be placed on the content of the pre-sale information that must be supplied to consumers: the content of the bill, documentation requirements for advanced or partial payments, regulation of fees and supplements, and the establishment of a minimum period of guarantee in case there is no sector law establishing a different period. Chapter II breaks down traders’ obligations depending on the type of service provided. Thus, in the case of personal services it is of particular importance the fulfilment of the provisions on health, safety, hygiene and personal privacy and other regulations set by the specific regulations of the matter, notwithstanding the possibility of verifying the results offered and information on risks that the provision of the service entails. As for services of goods, importance is placed on the obligations relating to information and budgeting and the obligations of a deposit, if this is necessary for the service. Regarding basic services, it has been considered of special interest to better protect consumers by an obligation to provide information, and an established place and procedures to address complaints and claims. If the transaction deals with ongoing services, the obligations are precisely in line with the indefinite nature of the service, so the regulation refers to the continuity and quality of the service and information concerning the procedure for discontinuing service that must be supplied at the time of subscription. Brand-name services entail obligations directly related to the use of the distinctive characteristics of the brand and with the link to the vendors in dealing with advertising or to announced offers related to services provided, unless otherwise specified. The chapter ends with a reference to the mixed nature of services, for which it establishes a concurrence rule to the extent that the rules are compatible.

## V

The third book covers market regulation and the rights of consumers. Title I contains general provisions organised into two chapters. Chapter I imposes on the public authorities of Catalonia, especially those who have been entrusted with the protection and rights of consumers, the obligation to ensure compliance with the rights conferred by this code. In this sense, it can promote the adoption of codes of conduct as an instrument of self-regulation and co-regulation of companies and collaboration with the various government agencies in order to obtain a higher degree of protection of consumers’ interests. It also regulates the cooperation of consumers in this task of protection. Consumers have the right and obligation to do so, mainly through filing a complaint, the procedure for processing being regulated in detail. Chapter II sets out the principles of market regulation: legality, non-retroactivity, typification, accountability, proportionality, precautions, prescription, concurrence of sanctions, territorial jurisdiction and area competence, to which is added the pro-consumer principle, establishing

interpretation criteria of standards and for resolving conflicts resulting from a possible concurrence of typified rules concerning an infringement.

Title II regulates the inspection and control of the market. The general provisions, established in Chapter I, introduce the figure of the consumer affairs inspector. Inspection activities are regulated by Chapter II, which first provides the functions of the consumer affairs inspection and the powers of inspection. In particular, it stresses the obligation of individuals under inspection to appear when they are required to by inspection personnel in the exercise of their functions. It declares the probative value of the inspection reports, which are equated to the inspection certificate. Regarding the adoption of precautionary measures regulated in Chapter III, the legislation is made flexible to gain efficiency, especially in emergency situations, provided that the adoption of these measures is motivated by an inspection record. Among the measures adopted should be mentioned the possibility of announcing the precautionary measure to inform affected individuals that may have been exposed to risk arising from the use of a product or the provision of a service. This chapter concludes with a reference to the municipal government competencies on the adoption of such measures, and the obligation to communicate them to the Catalan Consumer Agency. Chapter IV regulates the control activities, including the possibility to make studies and market surveys to establish administrative action strategies that increase the efficiency of consumer protection.

Title III establishes offences and sets penalties. Chapter I typifies offences and classifies them according to the purpose, and distinguishes between offences involving safety of goods and services made available to consumers and the provisions or government decisions relating to sales bans, sale or distribution of goods and services involving alteration, adulteration, fraud or deception, which directly impact on the trade and technical conditions of sale and on prices, those related to standardization, documentation and conditions of sale and supply or the provision of services, those relative to non-compliance with obligations or contractual prohibitions of a legal character and, finally, other offences not classifiable in any of the above types. The result of the innovations presented by the Consumer Code is that it incorporates new types of offences regarding obligations traders must assume such as offences related to unfair practices or the inclusion of unfair terms. Chapter II is devoted to the classification of offences. Overall, it should be noted that the categories have been adapted to current reality, so that certain offences are considered serious in any case. This situation also implies adapting the penalties established in Chapter III, which has resulted in increased amounts and in a review of the aggravating and mitigating circumstances when determining the amount and extension of sanctions. Thus, for example, it sets the repetition of a behaviour as an aggravating circumstance in the penalty. Noteworthy among the penalties that can be imposed is the requirement for public correction of advertising made by a trader or company, i.e., the ability to require the offender or offenders to publish a statement rectifying published advertising, which should be carried out under the same or similar conditions to the conditions as the penalised action. It also includes the possibility of adopting an agreement to publicise the penalties for minor infringements. Also included is the possibility of requiring the offender or offenders to correct the situation altered by the offence to its original state and, if necessary, to compensate the consumer for demonstrated damages. Chapter IV sets out the responsibilities arising from offences, with different characteristics depending on whether the offence was committed in the marketing of identified or unidentified goods or services, which implies the introduction of new criteria in this area. Chapter V introduces the regulations governing the prescription of offences, of penalties and of the enforcement of penalties.

Title IV closes the third book with the regulation of disciplinary proceedings. Chapter I highlights the determination of the expiration term, which is fixed at twelve months from the date of initiation of disciplinary proceedings, with the possibility of suspending the time limit in the event of application or introduction of certain evidence. Finally, Chapter II regulates the corrective fines and establishes the possibility to repeat them in case of non-compliance of the fines already imposed.

The Consumer Code includes several additional provisions that include mandates to the government to dictate rules to implement this code and make it effective. The Consumer Code also contains transitional provisions relative to, in the first place, the procedures that are in a processing phase. Secondly, we must give a grace period of six months to traders and organisations to adapt to the provisions of the second book. Thirdly, it regulates the transitory regime of inspections and determines the transitory nature of penalising agencies. Finally, it establishes the regime applicable to counties (or administrative regions) that, at the time of entry into force of this Act, do not have a public consumer service. The Consumer Code contains three final provisions. The first provides that, in the area of consumer affairs, the references made to Law 1/1998, of 7 January, on language policy, and Law 1/1990, of 8 January, on market regulation and protection of consumers and service users, are understood to conform to this code. The second and third determine, respectively, the *vacatio legis* and the legislative implementing of this law.

It should be noted that the system of language rights established by the Consumer Code does not enter into contradiction with the rules established by Law 1/1998, which therefore remains valid.

The final part provides for express repeal of Act 3/1993 and the provisions of equal or lower rank that conflict with the provisions of this law.

## BOOK I

### *General provisions*

## TITLE I

### *Preliminary provisions*

## CHAPTER I

### *Object, scope of application and definitions*

#### Article 111-1

##### *Object and scope*

The object of this law is to guarantee the defence and protection of consumer rights and to set forth, within the territory of Catalonia, the principles and regulations that are to govern them in order to improve the quality of life of consumers.

#### Article 111-2

##### *Definitions*

For the purposes of this law, the following terms must be understood as follows:

a) *Consumers and service users*: the physical or legal persons acting within the framework of consumer relations that do not fall within the sphere of their commercial or professional activity. This also applies to members of cooperatives in consumer relations with the cooperative. Any reference made in the present law to *consumer* is understood to be made to the consumer or service user insofar as they enjoy goods and services that are the product of business activity in the market.

b) *Average consumer*: consumer which, pursuant to a criterion of ordinary diligence, should be reasonably well-informed and reasonably observant and circumspect in consumer relations, taking into account social, cultural and language factors.

c) *Specially protected groups*: groups, which, due to the concurrence of certain characteristics, are particularly vulnerable with regard to consumer relations. In any event, special protection should be awarded taking into consideration the average consumer in the group to which the consumer belongs. In particular, the following are deemed specially protected groups: children and teenagers, the elderly, the ill, people with disabilities and any other group in a situation of inferiority or defencelessness.

d) *Trader*: any physical or legal person, public or private which, in carrying out business, a trade or a profession, markets goods or services, or in any other manner, acts within the framework of their business activity or profession.

e) *Permanent establishment*: stable infrastructure in which a trader effectively undertakes an economic activity, which basically comprises the offer and sale of goods or the provision of services to consumers.

f) *Collaborating organisation*: agency or organisation of a public or private nature, duly authorised by consumer organisations, either generally or specifically, to undertake a number of the activities which fall under government jurisdiction or to afford their support thereto.

g) *Goods and services*: movable or immovable property, products, activities or functions used or purchased by consumers, or intended for them, or under reasonably foreseeable conditions may be used by them, irrespective of the individual or social, public or private nature, or of the producer, supplier or provider.

h) *Identified good or service*: good or service that uses any type of brand, symbol, logotype or external marks that lead consumers to believe that the product or service was created, distributed or marketed by a certain company.

i) *Safe good or service*: good or service which, under the terms of proper or reasonably foreseeable use, including the terms related to duration, and, if appropriate, its setting into operation, installation and maintenance, does not pose any risk or only the minimum risks related to the good or service deemed acceptable in compliance with a high standard of health protection, safety and the economic interests of consumers.

j) *Risk*: the likelihood that the health, safety or economic interests of consumers will be adversely affected as a result of the use, consumption or presence of a good or service.

k) *Unacceptable risk*: risk that implies that the specific good or service does not fulfil the requirements outlined in letter *i*.

l) *Responsible consumption*: moderate, informed, considered and circumspect consumption of goods and services, bearing in mind the principles of cultural, environmental, socioeconomic and language sustainability.

m) *Consumer relation*: any relationship established between, on the one hand, traders, intermediaries or the government as providers of goods and services, and, on the other hand, consumers. This relation encompasses information, offers, promotions, advertising, commercialisation, use, sale and supply of goods and services, as well as the resulting obligations.

n) *Right of withdrawal*: the consumer has the right to decide to return the good or cancel the service during the period of reflection established by law or by contract.

o) *Extrajudicial dispute resolution*: any alternative process to judicial dispute resolution that acts as a means of settling disputes arising within the context of a consumer relation.

p) *Code of conduct*: agreement or set of rules based on ethical principles and commercial good practice, not imposed by legal, regulatory or administrative provisions, which defines the conduct of traders that pledge to fulfil them in their consumer relations.

q) *Mark of quality or origin*: external or visible mark the government or accredited organisations may grant traders that adhere to certain codes of conduct or to goods or services that have quality guarantees.

r) *Invitation to purchase*: any commercial communication which outlines the characteristics of the good or service and its price, and thereby enables the consumer to make a purchase.

s) *Commercial communication*: any form of communication intended to directly or indirectly promote the image of the goods or services of a company, establishment, organisation or person that undertakes an economic activity in order to establish consumer relations.

t) *Electronic commercial communication*: commercial communication transmitted by means of electronic data processing equipment and storage connected to a telecommunications network.

u) *Accessible information*: information sent in the most appropriate format to ensure it is properly interpreted and understood by people with sensory disabilities.

## CHAPTER II

## *Guiding principles of consumer rights*

### Article 112-1

#### *Basic right*

Consumer rights have the nature of basic rights and are subject to special protection.

### Article 112-2

#### *Good faith and balance between legal positions*

Consumer relations must be based on good faith and an equitable balance between the legal positions, which excludes misleading or unfair commercial practices and the inclusion of unfair terms in contracts.

### Article 112-3

#### *Inalienability of rights*

The rights granted under this law to consumers cannot be waived and any agreement that excludes them is void.

### Article 112-4

#### *Principle of responsible consumption*

Consumer relations are to comply with the principles of rationality and sustainability with regard to the preservation of the environment, quality of life, cultural specificity, fair trade, accessibility, family debt, acceptable risks and other factors that determine individual and collective socioeconomic development.

### Article 112-5

#### *Principle of consumer protection*

The Government of Catalonia must ensure effective compliance with the rights granted to consumers under the present law.

## TITLE II

### *Basic consumer rights*

## CHAPTER I

### *Consumer rights*

### Article 121-1

#### *General provision*

1. Consumers are granted the rights and interests set forth by the present law pursuant to the provisions of this Book, without prejudice to the rights and obligations established by the applicable specific sectoral regulations and general civil regulations.

2. Consumer relations that take place within the territory of Catalonia are governed by the prescripts of this law, with the exception of the cases in which the specific sectoral regulation grants greater protection to consumer rights.

### Article 121-2

#### *Protected rights*

The following consumer rights and interests are protected by this law:

- a) The right to the protection of health and safety.
- b) The right to the protection of economic and social interests.
- c) The right to compensation and repair of damages.
- d) The right to legal, administrative and technical protection.
- e) The right to information, education and training.
- f) The right to representation, consultation and participation.
- g) Language rights.

#### Article 121-3

##### *Specially protected groups*

1. Consumer rights which affect specially protected groups enjoy special and preferential attention from the public authorities, in accordance with the prescriptions of this law, the provisions that set it forth and the remainder of the legal structure.

2. People with disabilities, in particular, are to be ensured adequate access to information regarding goods and services, and the full exercise and benefit of the rights and guarantees granted by the present law, in the same manner as other consumers.

#### Article 121-4

##### *General protection*

General consumer protection is to take the concept of the average consumer as a reference.

### CHAPTER II

#### *Right to the protection of health and safety*

#### Article 122-1

##### *General obligation*

1. Goods and services intended for consumers cannot imply risks to their health or their safety, except those which are customary or legally admissible under normal or foreseeable conditions of use.

2. General or legally acceptable risks under normal and foreseeable conditions of use are to be made known to consumers in a clear manner and by way of appropriate means.

3. Goods and services must abide by the provisions of the applicable sectoral regulation, particularly those pertaining to industrial safety, health and public health, as well as any other which seeks to safeguard the health and safety of consumers.

4. Access to information, particularly that related to health and safety, is to be guaranteed, across the board, to all people with disabilities, by means of the stipulated regulation on goods and services.

5. The government must promote the inclusion of Braille on the labelling of goods, particularly on goods affecting health and safety.

#### Article 122-2

##### *Obligation of traders*

Those who produce, import, distribute, handle or market goods and services, in their capacity as professionals, are obliged to supply safe goods or provide safe services and, therefore, must act diligently to prevent the release of unsafe goods and services on the market. Goods which bear the CE mark or a certificate of compliance issued by a certified European Union agency are deemed to be safe.

#### Article 122-3

##### *Food goods and services*

Goods and services related to food must comply with the enforceable requirements pertaining to production, creation, handling, conservation, commercialisation, transport and information for the consumer.

#### Article 122-4

##### *Goods and services intended for health and healthcare*

1. Goods and services intended for health and healthcare purposes must comply with enforceable requirements and specify the necessary measures in order for consumers to be informed of the composition, properties, conditions and precautions of use and expiration date, if necessary.

2. The provisions of the present law are only applicable to public health services to the extent that they are compatible with their specific characteristics.

#### Article 122-5

##### *Dangerous goods*

Goods which contain substances and preparations classified as dangerous must be manufactured, transported, stored and marketed with the corresponding safety conditions and information, packaging and labelling. Furthermore, they must indicate the dangers implied and bear the corresponding symbols, and describe the appropriate measures to be adopted to offset and mitigate any possible adverse effects on health and safety.

#### Article 122-6

##### *Appliances, installations and services*

Provision must be made for the pertinent controls and specification of the necessary maintenance and repair services for appliances, installations and services that could affect the physical safety of consumers.

#### Article 122-7

##### *Transport and areas of public use*

Public transport, facilities, premises and areas of public use must comply with the enforceable requirements that guarantee their safety, salubrity and accessibility.

#### Article 122-8

##### *Government interventions*

If goods or services with unacceptable risks to consumer health or safety are found on the market, the competent agencies on the matter must adopt the appropriate measures to detect and withdraw them from the market and inform consumers, elucidate liability and put an end to unlawful conduct, if necessary.

### CHAPTER III

#### *Right to the protection of economic and social interests*

#### Article 123-1

##### *General provision*

Consumers are entitled to have their legitimate economic and social interests protected in accordance with the prescriptions of the present law and the provisions that set it forth.

#### Article 123-2

##### *Protection against unfair terms:*

Consumers are entitled to:

a) Precisely, clearly and plainly formulated general terms or other that have not been negotiated individually, within the framework of consumer relations, fulfilling the principles of good faith and equitable balance between the rights and obligations of the parties, which excludes the use of unfair, unintelligible or incomprehensible terms.

b) Receive from the providers of the goods or services a copy of the contract, invoice, receipt or proof of the payment made which states, at the very least, the personal, corporate or tax identity of the provider, the address, the amount paid, the description of the item concerned and the date.

c) Receive, in writing, or by other duly accredited means, should the price not have been accurately established in advance given the nature of the good or service, a quote which states, at the very least, the name and address of the provider, the operations to be undertaken, the price, the term of validity, the approximate date and the planned duration of the service to be delivered. This quote is binding on the service provider until the term of validity has expired. Similarly, in the event that additional expenses that affect the consumer cannot be calculated in advance, notification of these expenses and their approximate cost must be given.

d) Obtain, should a good be left for verification, checking, repair, replacement or any other intervention, a deposit receipt which states, at the very least, the name of the establishment or

depository, the object's identity, the operation to be performed, the date of delivery of the good and the planned service date.

e) A guarantee for any sum paid in advance.

#### Article 123-3

##### *Pre-contractual information*

Consumers are entitled to have a model contract, which outlines the foreseen general terms and conditions, delivered to them sufficiently and reasonably in advance.

#### Article 123-4

##### *Contractual information*

The contractual documentation must state, if necessary, the general terms and conditions, the right of withdrawal and the conditions and period of validity, the existence of additional warranties and compliance with codes of conduct and alternative means of dispute resolution.

#### Article 123-5

##### *Quality and suitability of goods and services*

The term, guarantee and the possibility of withdrawal or refund established in the contracts must enable the consumer:

- a) To ensure the nature, characteristics, conditions, use and purpose of the good or service.
- b) To effectively file a complaint in the event of errors, faults or deterioration.
- c) To enforce the quality guarantees or standard of service and to obtain a total or partial fair refund of the market price of the good or service, in the event of non-fulfilment or improper fulfilment.

#### Article 123-6

##### *Compliance of goods and services*

1. The consumer must, at the very least, enjoy the quality and services stated in the contract, quote, advertising material, invitations to purchase or any other document that associates the trader with the consumer relations.

2. Consumers are entitled to be informed of the rights that correspond to them as purchasers of the goods or services, particularly with regard to compliance and guarantee of durable goods.

3. The vendors or producers are to ensure consumers have the benefit of adequate technical and customer service, devoid of demurrals or unjustified postponements.

4. In the case of the provision of services, the consumer is entitled to adequate customer service once the service has been provided, which guarantees its correctness and suitability.

#### Article 123-7

##### *Integration of the offer, promotion and advertisement in the contract*

1. The offer, promotion and advertisement concerning the goods or services must be adapted to the nature, characteristics, use or purpose and the legal or economic requirements of the contract.

2. Consumers can demand the content of the offer, promotion or advertisement, the typical features of each good or service, the legal or economic requirements and the guarantees offered, though they do not expressly appear in the contract or in the supporting document or receipt received. These aspects should be taken into consideration in deciding the principle of compliance with the contract.

3. Contracts with consumers should be constituted in accordance with the principle of objective good faith, including in the event of the omission of the pertinent pre-contractual information.

4. Notwithstanding the provisions of section 3, should the contract contain more favourable terms to the consumer, these are to prevail over the content of the offer, promotion or advertisement.

#### Article 123-8

### *Requirements of goods and services*

Consumers are entitled to:

- a) The adaptation of goods and services to expectations of consumer use, quality and characteristics that they offer.
- b) Accuracy in the weight and measurement of the goods and services and the proper supply of services.
- c) Information pertaining to the origin of the goods or services, particularly whether or not they originate from an EU member state.

### Article 123-9

#### *Housing*

Consumers are entitled to be acquainted with the health, hygiene-related and building characteristics of their housing, as well as the quality and the on-site installation systems of the materials and utilities, including those related to energy-saving, gas, water, power supply, electronic communications, sewerage, lifts and, particularly, insulation and sound-proofing, fire prevention and extinguishing, in accordance with the provisions of the specific regulation pertaining to housing referred to building record and other relevant aspects.

## CHAPTER IV

### *Right to compensation and repair of damages*

#### Article 124-1

##### *Compensation and repair of damages*

1. Consumers are entitled, in accordance with the provisions of the applicable regulation, to compensation for loss and damages suffered as a result of the purchase or use of goods or services.
2. The Government of Catalonia must adopt the appropriate measures to foster compensation for loss and damages for consumers.
3. Damages arising from the provision of a public service are subject to the applicable regulations pertaining to asset liability of the government.

## CHAPTER V

### *Right to legal, administrative and technical protection*

#### Article 125-1

##### *Legal, administrative and technical protection*

1. The Government of Catalonia, for reasons of public interest and by means of the proceedings established by law, may undertake the pertinent actions to put an end to activities that prove detrimental to the rights and interests of consumers.
2. The Government of Catalonia must foster voluntary dispute resolution proceedings.
3. The different agencies of the Government of Catalonia, within the framework of the legislation currently in force and within the scope of its powers, must participate in the consumer arbitration system.

## CHAPTER VI

### *Right to information, education and training*

## FIRST SECTION

### *Information pertaining to goods and services*

#### Article 126-1

##### *Promotion, advertising and information*

1. The promotion of goods and services intended for consumers must be conceived and carried out in such a manner that it does not mislead or is not likely to mislead consumers with regard to their characteristics or conditions.

2. Advertising must be carried out in accordance with the principles of sufficiency, objectivity, veracity and authenticity, and must not, regardless of the support used, lead to error or false expectations among its target consumers.

3. The information which appears on product containers, packaging and labels must be truthful and sufficient.

#### Article 126-2

##### *Customer service*

Consumers are entitled to receive the appropriate and necessary information and service to be familiar with, employ and use the goods and services safely and satisfactorily.

#### Article 126-3

##### *Use*

Consumers are entitled to receive the necessary information to be familiar with and use the goods and services safely and satisfactorily.

#### Article 126-4

##### *Identification*

1. The information must include the identity of the goods and services and the identification of the provider, so that a rational choice may be made between competitive goods and services.

2. Information must be given, if necessary, on the processes of production, commercialisation and purchase of the goods and services to ensure compliance with principles of responsible consumption.

#### Article 126-5

##### *Characteristics of the goods*

The information that appears on product containers, packaging and labels must include the following details:

- a) The nature and composition.
- b) The quantity.
- c) The quality.
- d) Measurements and weight.
- e) The risk related to use, if necessary.
- f) The means of foreseeing, offsetting and reducing undesirable effects that, regardless of the instructions, may arise.
- g) The origin.
- h) Mandatory information pertaining to marks of quality.
- i) Other characteristics relevant to the offer.

#### Article 126-6

##### *Prices and conditions of sale*

Consumers are entitled to receive sufficient and easily accessible information regarding prices, rates, conditions of sale and elements which increase the price, prior to purchasing the good or contracting the service or the use of the goods at the points of sale and in service provider establishments.

#### Article 126-7

##### *Compensation and damages*

1. Consumers are entitled to receive sufficient information, prior to entering into a contract, on compensation, refunds and damages, and the method of deciding the sum, in the event of non-compliance of the good or service, particularly with regard to basic or essential services.

2. *Sufficient information* is understood as that which enables the target consumer to properly understand the characteristics and terms of the system of compensation, refunds and damages according to the group for which the good or service is intended. The trader must be able to provide any additional information required by the consumer.

#### Article 126-8

##### *Opening hours*

Consumers are entitled to know the customer service opening hours of the establishments, including when they are closed.

#### Article 126-9

##### *Information regarding claim systems*

1. Consumers are entitled to have, on request, an official claims or complaint form. Moreover, they are entitled to have the forms established by the extrajudicial procedures of dispute resolution decided by the government, according to the matter of dispute. Both the official claims or complaint form and the standardised forms must also be available by electronic means of transmission.

2. It is the responsibility of the public authorities and traders to inform consumers of the dispute resolution procedures in consumer relations.

### SECOND SECTION

#### *Information for the consumer*

#### Article 126-10

##### *Public consumer services*

1. Any publicly owned agency or organisation under the aegis of the Government of Catalonia that undertakes informative, guidance or advisory functions aimed at consumers is deemed to be a public consumer service in the scope of its jurisdiction and in accordance with its powers. This public consumer service may exercise the following functions, among others:

- a) Receiving and processing complaints and claims from consumers.
- b) Informing, orientating and advising consumers on their rights and obligations and the means of exercising them.
- c) Managing claims by means of mediating in consumer affairs.
- d) Managing complaints and carrying out consumer affairs inspections.
- e) Initiating disciplinary proceedings in consumer affairs.
- f) Promoting arbitration with commercial establishments and companies as a means of dispute resolution in consumer affairs.
- g) Educating and training consumers on consumer affairs, particularly specially protected groups, whether through direct initiatives or through the publicly owned media.
- h) Making consumer organisations known and collaborating with them.

2. Public consumer services must receive, manage and resolve complaints and claims, at the very least, from consumers residing in their territorial jurisdiction, undertake the mediation and, if necessary, direct them to the consumer arbitration system. They may also do so with regard to the complaints and claims concerning establishments based in their territory. In accordance with the principle of proximity, in the first instance, the public consumer service of the municipality in which the consumer resides constitutes the competent authority. Should the municipality not have an office, the corresponding supra-municipal office, is the competent authority, and in the absence thereof, that corresponding to the jurisdiction of Catalonia.

3. Consumers must have benefit of, at the very least, access to a public consumer service in their county (or administrative region).

4. The Government of Catalonia must promote the development of local public consumer services in accordance with the principles of efficacy, effectiveness and greater proximity to consumers and should advise them whenever necessary to enhance the performance of their functions.

5. The Government of Catalonia must cooperate with local governments that exercise powers with regard to consumer affairs and jointly endorse collaboration agreements to share the allocation of the appropriate technical resources and materials to fulfil their aims, and, particularly to ensure compliance with the provisions of section 3.

#### Article 126-11

##### *Registry of Public Consumer Services of Catalonia*

1. Public consumer services that undertake their activities in the territory of Catalonia must be entered in the Registry of Public Consumer Services of Catalonia, for information purposes. This registry is under the aegis of the Catalan Consumer Agency. The organisation and running of the Registry must be prescribed by regulations.

2. The functions the corresponding public consumer service undertakes among those established in letters *a, b, c, d* and *e* of article 126-10.1, together with any other information prescribed by regulations, must be entered in the Registry of Public Consumer Services of Catalonia.

#### Article 126-12

##### *Information provided to consumers via telephone and electronic means of transmission*

The Government of Catalonia must ensure consumers have easy access to information regarding their rights and obligations and should provide the presentation, processing, and, if necessary, resolution of their complaints and claims by means of fast and efficient media such as electronic communication systems.

#### Article 126-13

##### *Consumers' access to European consumer information*

1. The Government of Catalonia must ensure consumers have access to consumer information in the other European Union member states so that they may be guided and advised with regard to their rights and obligations as consumers.

2. The Government of Catalonia must play a part in European consumer organisations and initiatives to ensure consumers have information pertaining to consumer regulations and the activities of European institutions and organisations.

#### Article 126-14

##### *Promotion of consumer information platforms in the media*

1. The public authorities must ensure the social media of Catalonia undertake the role of informing and educating consumers, as well as the creation and development of consumer programmes and platforms and the dissemination of the activities of consumer organisations.

2. Publicly owned media must facilitate the access of consumer organisations to the platforms they manage and their participation in these platforms.

#### Article 126-15

##### *Awareness-raising campaigns and dissemination activities*

The Government of Catalonia must undertake and promote awareness-raising campaigns and dissemination activities to ensure consumers are aware of their rights. These campaigns and activities must be undertaken by means of the most appropriate media in each case. Awareness of the following matters must be particularly fostered and promoted.

a) Information and prevention in the use of goods and services on the market, should they imply a risk to the health and safety of consumers.

b) Information on the use of new goods and services that appear on the market and which could affect the economic interests of consumers.

c) Newly approved regulations which affect the rights and obligations of consumers.

d) Information, training and educational policies which promote responsible, considered, fair and sustainable consumption of goods and services and also within the framework of consumer cooperatives.

#### Article 126-16

##### *Studies and surveys on consumer habits*

The Government of Catalonia must promote and foster the performance of technical studies and surveys regarding consumer dynamics and habits in Catalonia in order to plan more appropriate consumer policies and to establish the instruments that allow consumers to better

choose the goods and services that are more in line with their needs and requirements. These studies and surveys, provided they are technically and legally viable, must be presented with gender-disaggregated data and must incorporate a gender-based impact analysis.

### THIRD SECTION

#### *Consumer education and training*

##### Article 126-17

###### *Consumer education*

1. The consumer is entitled to consumer education, which comprises the following objectives:

a) To contribute to the comprehensive training of the person, raising the awareness of individual and collective awareness of children and young people as regards responsible, critical and active consumer habits, aiming for information, consideration, solidarity and sustainability in the consumption of goods and services.

b) To develop the capacity to make a free, rational, critical and healthy choice of the goods and services offered, and to use them in a proper and responsible manner.

c) To be conversant with their rights and obligations, and with the means of exercising their rights responsibly.

2. The Government must ensure consumers have access to consumer education and must adopt the appropriate measures in order to achieve the following objectives:

a) To develop consumer education across the different levels of formal education that is deemed most effective.

b) To foster permanent consumer training among teachers, parents' associations and other members of the education community.

c) To foster the publication of educational material that contributes to consumer education.

d) To ensure the existence of a permanent consumer education centre that covers the entire territory of Catalonia.

e) To establish collaboration with public organisations with powers in consumer-related affairs, with the competent educational institutions and consumer organisations to develop consumer education.

##### Article 126-18

###### *Consumer training*

The Government must ensure on-going and life-long training of consumers, promoting and giving impetus to the following types of training:

a) The permanent training of young people and adults as consumers with particular attention afforded to specially protected groups and groups with specific needs.

b) On-going training of consumer affairs professionals in government agencies and Catalan consumer organisations that undertaken consumer-related tasks.

c) The training of economic agents that place goods and services on the market and of the business and professional associations and their guilds on the requirements of their activity related to the rights and obligations of consumers, with special emphasis on people with disabilities.

d) The training of people that act as arbiters for consumer arbitration associations that are established in Catalonia.

e) Training in consumer cooperatives.

### CHAPTER VII

#### *Right to representation, consultation and participation. Consumer organisations*

##### Article 127-1

###### *Representation, consultation and participation*

Consumer organisations are organisations with representative, consultative and participative functions, which protect the legitimate rights and interests of citizens in their consumer relations.

#### Article 127-2

##### *Consumer organisations*

For the purposes of this law, the following organisations in the framework of Catalonia must be deemed consumer organisations:

- a) Legally constituted non-profit organisations whose corporate purpose, in accordance with their articles of association, is to defend, inform, educate, train, assist and represent collective citizen interests in their consumer relations as well as those of their members.
- b) Organisations constituted in accordance with the applicable regulation pertaining to cooperatives included in their articles of association, whose corporate purpose is to defend, inform, educate, train, assist and represent consumers, and which have established a fund for this purpose, pursuant to their specific legislation.

#### Article 127-3

##### *Registry of Consumer Organisations of Catalonia*

1. The Registry of Consumer Organisations of Catalonia is established under the aegis of the Catalan Consumer Agency. Entry in the Registry grants the status of consumer organisation in Catalonia.

2. Legally constituted organisations with headquarters in Catalonia which fulfil the requirements of Article 127-2 and wish to enjoy the status of consumer organisation for the purposes of the present law must be entered in the Registry of Consumer Organisations of Catalonia.

3. The organisations which cannot be entered in the Registry of Consumer Organisations of Catalonia are as follows:

- a) For-profit organisations which have legal persons among their members.
- b) Those which receive any form of financial aid from companies providing goods or services intended for consumers, from the associations which represent them or organisations associated with these companies.
- c) Those which act negligently as proven in a court of law.

4. For the purposes of letter *b* of section 3, the following items are not deemed as financial aid:

- a) Occasional contributions to undertake general interest activities for consumers in joint collaboration with organisations.
- b) Payments made by companies to consumer organisations for work, studies or other tasks undertaken related to consumer protection.

#### Article 127-4

##### *Functions of consumer organisations*

Consumer organisations have the following functions:

- a) Informing consumers on their rights and obligations.
- b) Educating and training consumers.
- c) Managing consumer-related disputes, particularly through mediation.
- d) Undertaking initiatives which protect their members, their organisation and general consumer interests.
- e) Protecting the rights and interests of the consumers of goods and services by means of providing consultation, information and advice to public authorities.
- f) Any other function that may result from consumer relations and consumer and service user protection.

#### Article 127-5

##### *Rights of consumer organisations*

Consumer organisations in Catalonia have the following rights:

- a) To be declared of public use and benefit from the corresponding legally established tax exemptions and incentives.
- b) To obtain information from the government.
- c) To take part in consumer arbitration, subscribe to it and appoint arbiters who represent general consumer interests in arbitral tribunals.
- d) To benefit from public subsidies and other support and incentive measures.
- e) To promote administrative initiatives which protect consumer rights.
- f) To be deemed an interested party in government disciplinary proceedings they have filed, provided they have appeared in court, and the proceedings affect the general protection of consumer interests.
- g) To benefit from legal aid, in accordance with the laws.
- h) To demand the public rectification of misleading or unlawful advertising communication and information, and exercise, if necessary, the corresponding right of rectification, in accordance with the laws.
- i) To represent consumers before the various competent bodies which affect them directly or indirectly.
- j) To represent consumers in the public and private media.
- k) To join associations or federations which have the same purposes and a broader territorial scope.
- l) To be part of the Catalan Consumer Council.

#### Article 127-6

##### *Obligations of consumer organisations*

1. Consumer organisations in Catalonia have the following obligations:
  - a) Their actions must comply with the principles of good faith, precaution and diligence and must not disclose data without due accreditation, sufficiently contrasted analytical findings or quality controls, without prejudice to their right to file the complaints they deem pertinent.
  - b) Publicly rectify or bring an end to negligent activities if a firm judicial ruling exists.
  - c) To collaborate with the Government of Catalonia to jointly achieve the objectives of the present law.
  - d) To offer consumers effective legal protection, aimed at compensation for loss and repair of damages suffered as a result of the purchase, use or enjoyment of the goods or services.
2. Should a consumer organisation disclose, through fraud or negligence, erroneous information which gives rise to damages, it may be temporarily suspended or permanently withdrawn from the Registry of Consumer Organisations of Catalonia, with the guarantee of the principles of public hearing and contradiction, without prejudice to the civil and penal liability it may have incurred.

#### Article 127-7

##### *Representativity of consumer organisations*

1. Consumer organisations must fulfil the following conditions to enjoy greater representativity:
  - a) Primarily or exclusively have the corporate purpose referred to in 127-2.a.
  - b) Request accreditation, granted by the Catalan Consumer Agency, in accordance with, at the very least, the criteria of territorial establishment and number of members.
2. The most representative consumer organisations in Catalonia enjoy the following benefits:
  - a) They act on behalf of consumers in public agencies, in necessary matters.
  - b) They exercise the right to participate in sectoral policies which directly affect consumer interests.
  - c) They are members of the Permanent Commission of the Consumer Council of Catalonia.
  - d) They have priority in accessing the social media referred to in Article 126-14.

#### Article 127-8

##### *The Consumer Council of Catalonia*

1. The Consumer Council of Catalonia constitutes the representative and consultative body for consumer organisations. Its representation is institutional before the Government of Catalonia and other governments, entities and organisations.

2. The Consumer Council of Catalonia is attached to the Catalan Consumer Agency.

#### Article 127-9

##### *Public hearing*

1. The Catalan Consumer Council must be heard in a mandatory hearing in the following proceedings:

a) The drawing up of general laws and administrative provisions which directly affect consumer rights and interests.

b) The putting forward of proposals regarding service prices and rates which directly affect consumers and which are legally subject to the control of the Government of Catalonia, if stipulated by a regulation for the service.

c) The proceedings prescribed by any regulatory provisions.

2. The hearing is deemed fulfilled in relation to the organisations that belong to professional associations which inform or play a role in drawing up regulatory provisions or in adopting administrative measures. In other cases, the hearing is deemed fulfilled when a hearing is held with the Consumer Council of Catalonia.

#### Article 127-10

##### *Promotion of consumer organisations in Catalonia*

The Government of Catalonia must give impetus to organisations which defend and represent consumer interests, as a suitable means of protecting them, and must offer them support in order to achieve their objectives.

#### Article 127-11

##### *Financial aid to consumer organisations*

1. The government must establish aid for activities undertaken by the consumer organisations of Catalonia related to informing, training, educating and defending consumers.

2. Consumer organisations which undertake third-party advertising activities of a commercial rather than a purely informative nature or those dedicated to activities other than consumer protection, with the exception of consumer cooperatives, cannot benefit from the aid referred to above in section 1.

3. Consumer organisations are obliged to use the aid and collaboration resources or the aid received for the exclusive purpose of defending consumers and obtaining the tools and staff resources to achieve these goals.

#### Article 127-12

##### *Collaboration with the government*

The Government of Catalonia must foster collaboration with consumer organisations and socioeconomic agents, as well as between them, by means of the following actions, among others:

a) Fostering consumer arbitration.

b) Assisting in the reporting of risks, if their magnitude calls for public action to ensure the effectiveness of the measure.

c) Fostering the development of symbols of business quality.

d) Giving impetus to the self-regulation of business sectors by means of promoting codes of conduct and other means that may be established for these purposes.

e) Informing and training consumers on goods and services for general use and consumption from the perspective of responsible consumption.

f) Promoting consumer cooperatives.

## CHAPTER VIII

### *Language rights*

## Article 128-1

### *Language rights of consumers*

1. In their consumer relations, consumers are entitled to be served in the official language they choose, both orally and in writing, in accordance with the provisions of Autonomous Statute and the applicable legislation pertaining to languages.

2. Consumers, without prejudice to the full compliance with the language availability obligation, are entitled to receive the following in Catalan:

a) Invitations to purchase, information of a permanent nature, contractual documentation, quotes, deposit receipts, invoices and other documents which are referred to or which arise therefrom.

b) The information necessary for the appropriate consumption, use and handling of the goods and services, in accordance with their characteristics, regardless of the medium, format or support used, and, in particular, the mandatory information directly related to safeguarding health and safety.

c) Standard-form agreements, contracts with standard clauses, regulated contracts, general conditions and documentation referring thereto or arising from the execution of any of the these contracts.

3. The Government of Catalonia must advocate the promotion of consumer relations using the Occitan language, known as Aranese in the area of Val d'Aran, where it constitutes one of the official languages.

## TITLE III

### *Extrajudicial dispute resolution*

## CHAPTER I

### *General provisions*

## Article 131-1

### *Promotion of systems of voluntary dispute resolution*

1. The Government of Catalonia must foster, in collaboration with consumer organisations, the availability of processes for voluntary dispute resolution and the settlement of claims in consumer-related matters for consumers and traders.

2. The Catalan Government, within the scope of the powers conferred by the legislation, must exercise the functions of promotion, management and development of mediation and consumer arbitration.

## Article 131-2

### *General principles*

1. Extrajudicial resolution of disputes arising from a consumer relation is mainly channelled through consumer mediation or arbitration, without prejudice to the matters or sectors that have public extrajudicial dispute resolution processes.

2. Extrajudicial resolution of consumer disputes addresses consumer claims and is binding on the parties that have voluntarily agreed to it, without prejudice to the applicable administrative and judicial protection.

3. Matters that are freely decided upon by the parties can be subject to dispute mediation and arbitration, pursuant to the applicable laws.

## CHAPTER II

### *Mediation*

## Article 132-1

### *Definition*

Consumer mediation is a procedure characterised by the intervention of an impartial and expert third party that seeks to aid the parties and facilitate their reaching of a satisfactory agreement.

#### Article 132-2

##### *Principles*

1. The principles of consumer mediation are voluntariness, impartiality, confidentiality and universality.

2. In accordance with the principle of voluntariness, the parties are entitled to have recourse to mediation as well as to withdraw from it at any time.

3. In accordance with the principle of impartiality, the mediator must be impartial and therefore aid the participants to reach the pertinent agreements without imposing any specific solution or measure. Should a conflict of interests arise between the parties and the mediator, the latter should abstain from the intervention.

4. In accordance with the principle of confidentiality, the mediator and the parties must uphold an oath of confidentiality with regard to the matter under consideration. By taking this oath, the parties pledge to safeguard privacy, and therefore agree not to call upon the mediator as a witness in any proceeding that may impinge on the subject of mediation. Moreover, the mediator must refuse to act as an expert in the same cases.

5. In accordance with the principle of confidentiality, the documentation and notes drawn up during the mediation process are confidential. However, the mediator is not subject to the oath of confidentiality and has the duty to report to the competent authorities any information that could disclose the existence of criminal acts liable to prosecution by the state.

6. In accordance with the principle of universality, the power of the Government of Catalonia to undertake mediation extends to any matter which affects consumers, with the exceptions established by law.

#### Article 132-3

##### *Nature of the agreements*

The agreements reached by the parties following the mediation process are binding on them and can be formalised in a written deed signed by them and the mediator. The mediator's signature is proof of the agreement reached. The agreements are enforced in accordance with the regulation pertaining to mediation.

### CHAPTER III

#### *Arbitration*

#### Article 133-1

##### *Suitability of the arbitration*

Arbitration is appropriate if a prior arbitration agreement exists between the parties. Otherwise, the government must promote the formalisation of an arbitration agreement to settle the dispute by means of consumer arbitration.

#### Article 133-2

##### *Transfer of the arbitration request*

If arbitration is appropriate, the government agency upon which the entity that received the request is dependent, must transfer the matter to the competent arbitration board according to the territory.

#### Article 133-3

##### *Composition of the arbitration association*

Arbitration associations must include representatives from the sectors affected by the claim, consumers and government, in the manner established by law.

#### Article 133-4

### *The public sector and consumer arbitration*

1. The Catalan Government, within the scope of their respective powers, must impose on public companies subject to private law the duty to establish in the general terms of contract and in contracts with consumers, subscription or obligation terms pertaining to consumer arbitration to settle disputes and claims arising from the provision of services, whose application depends directly on the will of the consumer.

2. The contracting agencies of the Government of Catalonia and its public bodies and companies must incorporate the subscription to arbitration as a condition of implementation in the award of contracts.

3. Organisations and private companies that manage public services, services of general interest or universal services under the system of concessions must be encouraged to include in their specifications the obligation to provide for subscription to consumer arbitration.

4. The Government of Catalonia must consider the subscription to consumer arbitration as an objective merit in granting awards for quality which are established or may be established. The Government of Catalonia should take the subscription to consumer arbitration into consideration in the allocation of aid and subsidies to companies and establishments which offer goods and services to consumers.

### Article 133-5

#### *Mark of subscription to arbitration*

1. The mark, which certifies the subscription to consumer arbitration, constitutes a mark of quality.

2. Traders subscribed to the consumer arbitration system must clearly inform consumers of their subscription to arbitration by means of the mark referred to above in section 1.

## SECOND BOOK

### *Requirements of consumer relations*

#### TITLE I

##### *General provisions*

#### Chapter I

##### *Common requirements*

#### Article 211-1

##### *Scope of application*

Traders engaged in the sale of goods or the provision of services, irrespective of the type and sector of activity, must comply with the obligations established in this book, specific sectorial regulations and applicable general civil regulations, without prejudice to State jurisdiction in civil and commercial matters.

#### Article 211-2

##### *Health and safety requirements*

If unsafe goods or services have been placed on the market, consumers must be informed immediately of the risk deriving from the use of the good or provision of the service. This information must be provided as soon as possible by means of special warnings that enable consumers to know of the risk deriving from the use of the good or provision of the service. These goods or services must be withdrawn from the market. If consumers have already acquired them, appropriate measures must be adopted to make them safe, replace them and refund any amount paid.

#### Article 211-3

##### *Advertising and information*

1. Advertising, information and any offer made through any medium, and information transmitted in the framework of the business or professional activity referring to goods and services must comply with the principles of honesty and objectivity and must not contain information that may cause confusion.

2. The price must indicate the full amount that must be paid and must be broken down, where necessary, indicating the different items included, such as taxes, commissions, additional expenses charged to the consumer and other similar items. If additional expenses cannot be previously calculated, their existence and method of calculation must be indicated. This information must be clearly visible to the consumer prior to entering into any contract and in a way that does not cause error or deception.

3. The form or means of payment employed may not result in an increase in prices and conditions by amounts higher than the expenses the trader will directly incur as a consequence of allowing a particular method of payment. In the case of deferred payments or payments by instalments in which interest may be charged, the instalments, costs, payment frequency and total sum to be paid must be specified. Indication must also be made of the amount corresponding to interest as well as to other expenses and to the good or service, together with the guarantees demanded to insure collection of any deferred amounts. In the case of payment of amounts on account of the final price, information must be provided regarding the conditions applicable should the transaction not be completed.

4. Traders must be obliged to document important information in writing or on any other medium that enables its storage and which has a duration equivalent to at least the useful life or condition of the good or service. For this purpose *important information* must be considered to be that which refers to the main characteristics of the good or service, whether it is of EU origin or not, its use or maintenance, explanation of the transaction and the conformity of the good or service.

5. In the case of companies subscribed to the consumer arbitration system, the logotype demonstrating such subscription must be displayed in the permanent establishment, the pre-contractual and contractual documentation and, where applicable, the website. Display of this logotype must be clear and visible.

#### Article 211-4

##### *Customer service*

Traders are obliged to:

a) Heed, facilitate and provide personally and if necessary, face to face, the information consumers may request from them, using the appropriate means.

b) Attend to and inform consumers immediately, appropriately and, if necessary, in person, of any incident, event or circumstance that affects the normal process of consumer relations. They must also minimise or alleviate possible loss and damages deriving therefrom, avoiding excessive and unjustifiable delays. Should the trader provide a telephone line or lines for customer service, these may in no case be subject to premium rate tariffs and must be made available to consumers by informing them of the numbers.

c) Reliably guarantee, for the purposes of any future exercise of their rights, that consumers have a record, in writing or on any durable medium, of the presentation of any kind of complaint or claim relating to incidents, events or circumstances that affect the normal process of consumer relations. Traders must respond to complaints or claims received as soon as possible and in any case within a period of one month from the date of their presentation. Should the complaint or claim not be satisfactorily resolved within this period, any trader subscribed to an extrajudicial dispute resolution system must provide the appropriate means to guarantee the consumer's access to the corresponding extrajudicial dispute resolution system or, if necessary, must refer the consumer to the public consumer service.

d) Make available to consumers in any consumer relation and whatever their place of residence, information that must include the postal address, customer service telephone number and fax number or e-mail address where they may either request advice or information regarding the good or service acquired or contracted or formulate complaints or claims regarding any matter that affects the normal process of consumer relations.

#### Article 211-5

##### *Linguistic requirements*

1. All documentation and information addressed to consumers which is necessary for the proper consumption and use of the goods and services must be immediately available to them, in accordance with that established in Article 128-1. This requirement does not apply to brands, commercial names or signs protected by industrial property legislation.

2. Without prejudice to that established in Law 1/1998 of 7 January on Linguistic Policy and other applicable laws, the government agencies must promote, foster and foment the linguistic obligations established by this law, especially with regard to establishments and advertising that occupy the public domain and to concessionary companies.

#### Article 211-6

##### *Formal documentation requirements*

1. Documentation which, in accordance with this law, is of an obligatory nature must comply with the following formal requirements to enable and facilitate its reading and understanding:

- a) The type size must enable and facilitate reading and understanding of the text.
- b) The contrast of the smallest type must be at least equal to the highest text contrast.

2. The type size necessary for the practicable reading and understanding of document text must be laid down by regulations.

1. Pre-contractual and contractual information on general conditions, standard-form agreements and individually non-negotiable clauses and conditions must be documented as established in sections 1 and 2, as appropriate.

#### Article 211-7

##### *Payment in advance*

Receipt of full or partial payment in advance for goods and services is permitted if the following requirements are met:

- a) It must be previously stated in the budget or announced in a poster or sign in such a way as to enable consumers to be aware of this condition prior to initiating the provision.
- b) The advance payment must not entail consumers granting approval of the suitability of the service or any waiving of their rights.
- c) The trader must have made appropriate legal arrangements with finance or insurance entities to guarantee refund of any amounts advanced by the consumer. This obligation must be applicable in consumer relations in which the amounts advanced exceed 25% of the total amount of the transaction and are more than 100 euros.

#### Article 211-8

##### *Sale promotions*

1. *Sale promotions* must be understood to mean any activity that uses persuasive communication techniques to draw consumers' attention to the goods or services.

2. Traders may use any means in the exercise of sale promotion activities, provided they are acceptable in the legal structure and respect consumers' economic and social interests.

#### Article 211-9

##### *Invitations to purchase*

1. Consumers have the right to choose freely from amongst the diverse invitations to purchase.

2. Invitations to purchase addressed to consumers and which usually include an additional good or service must also include the same when more favourable conditions are offered. Thus, the trader may not demand additional remuneration in such invitations except in cases where, by their very nature, it may be deduced that such inclusion is not compatible.

#### Article 211-10

### *Requirements in the matter of consumer affairs for special offers or promotions*

1. The advertising of special, more beneficial conditions for consumers with respect to those usually offered by the company or establishment must indicate at least:

- a) The starting date of the promotion or special offer.
- b) The duration of the promotion or special offer, or the number of units available in the special offer or promotion, or the number of consumers who may benefit from the promotion.
- c) The requirements that consumers must meet.
- d) The conditions, quality and features of the goods or services on offer and the advantages entailed in the special offer or promotion.
- e) The person responsible for the promotion, indicating the name or company name and address of the establishment or establishments where the more beneficial conditions may be found, except when the promotion refers solely to the same establishment in which it is offered.

2. If promotions or special offers are advertised as having a certain duration, this period of time must always be specified and the company must be able to satisfy the demand from consumers for the good or service on offer, without prejudice to legislation relating to seasonal sales. If the demand cannot be met, consumers must be advised of their right to acquire the good or service offered, or one of similar conditions, in accordance with the special offer or promotion. This measure must be implemented by means of providing an order form giving the consumer the right to obtain the goods or services object of the promotion and indicating the date when this right can be exercised. This rule is established without prejudice to the administrative liabilities deriving from non-fulfilment of the obligation laid down in this section in relation to the period of the promotion or special offer. In any case, promotions may not be initiated in which the number of units available is manifestly insufficient with respect to the duration and advertising of the promotion or special offer and to the usual level of sales.

3. If the promotion or special offer indicates the number of units available or number of customers who may benefit, consumers must be informed of the system of priority employed to meet demand. This system must enable objective confirmation that preferences established in the advertising have been followed.

4. The promotion or special offer may be demanded by consumers throughout the entire time during which it is in the public domain and is accessible.

5. If the number of products or services in more beneficial conditions is limited for each consumer, such limitation must be mentioned in the advertising and posters or signs of the establishment where the special offer or promotion takes place.

6. If one same establishment has articles or services in normal conditions of sale and others with more beneficial conditions, the former must be clearly differentiated or separated in such a way as to prevent error or confusion with respect to the special offers and promotions or to their nature.

7. Goods or services in more beneficial conditions may not be deteriorated or of lower quality than those that the company or establishment making the special offer or promotion usually offers, except in the case of sales of obsolete items and other types of stock permitted in accordance with requirements established by legislation on the subject of commercial regulation.

### Article 211-11

#### *Reduction in the price of goods or services*

1. If the more beneficial conditions or advantages for the consumer consist in a reduction in prices with respect to those at which the goods or services were previously offered, this reduction must be clearly indicated. Information must also be provided with regard to the normal or usual price of the good or service as well as to the reduced price.

2. The information laid down in section 1 may be substituted by the percentage reduction in price of each good or service. Batches of goods or services that may be considered a unit can be formed on the basis of their characteristics and the reduction in prices.

3. *Normal or usual price* must be understood to be that which the same establishment has applied for at least one month within the six months prior to initiation of the special offer or

promotion. It is the trader's responsibility to prove compliance with this requirement with respect to the goods or services offered at reduced prices.

4. In introductory offers where the good or service has not previously been sold or available to consumers, this condition must be indicated in advertising and in posters or signs, by means of the expression "oferta de llançament" [introductory offer].

#### Article 211-12

##### *Gifts*

1. If a gift is offered in the framework of a consumer relation the consumer must be clearly informed in the advertising and at the establishment of the following aspects:

- a) The obligations entailed in its presentation, where applicable and especially including those regarding taxation.
- b) The conditions of receipt, especially any expenses entailed in delivery or making the gift available.
- c) The conditions and limitations that must be met to obtain the gift.
- d) The clear and concise instructions that must be followed to obtain the gift.

2. That established in Article 211-10 must apply with regard to the duration of the offer and stock of gifts.

3. If a consumer complies with the requirements necessary to be a beneficiary of the gift offer, the effective presentation or making available of the gifts must take place within one month from the moment in which the consumer has completed all procedures established by the conditions of the invitation to purchase.

#### Article 211-13

##### *Competitions and draws*

1. Traders may use draws and competitions as promotion techniques. *Draw* must be understood to be the offer of prizes in which the selection of winners is the fruit of chance, and *competition* must be understood to be the offer of prizes in which selection of the winners depends on the skill or know-how of the competitors. Use of these techniques is subject to the system of authorisation and communication established in the regulations governing raffles, lotteries and games of chance.

2. In the advertising of draws and competitions, consumers must be informed of the following aspects:

- a) The name or company name and registered address of the company or establishment organising the draw or competition.
  - b) Participation requirements.
  - c) Limitations on participation.
  - d) Rules and method of obtaining the prize.
  - e) The method of presentation of the prize and specification of any expenses entailed on the part of the consumer.
- 3) The effective presentation or making available of the prize must take place within one month from the moment in which the winner of the draw or competition is known.

4) If a consumer has been awarded a prize in a draw in which he or she has not participated voluntarily, presentation of the prize must not be conditioned by the purchase or contracting of any good or service.

#### Article 211-14

##### *Complaint forms*

All traders are required to have complaint forms available for consumers in the manner established by regulations.

#### Article 211-15

##### *Right of withdrawal*

1. If the trader offers the right of withdrawal or a provision establishes that in accordance with the type of contract such right must be offered, the trader must inform the consumer of the following details, both in the invitations to purchase and in the contractual document:

- a) The period during which the consumer may exercise the right of withdrawal.
- b) The conditions for exercising the right of withdrawal.
- c) The amount of expenses entailed in returning the good and their payment method, where applicable.
- d) The methods of restitution of the good or service.

2. In cases where laws grant consumers the right of withdrawal, the withdrawal document must contain at least the following details:

- a) Its identification as a withdrawal document.
- b) The name and address of the recipient.
- c) Identification details of the contract and contracting parties.

3. The right of withdrawal legally granted to consumers must be governed, in the first place, by the specific legal provisions applicable in each case and, in the absence thereof, by that established in this article.

4. The formalities, terms and consequences of the right of withdrawal must be those established by legislation on the subject.

## CHAPTER II

### *Consumer relations requirements in establishments*

#### Article 212-1

##### *Requirements of price and payment conditions*

1. Information on the full price, including taxes, of the goods or services offered to consumers must be provided in establishments. This information must be visible to the consumer in such a way as to avoid error or deception.

2. The full price including expenses and taxes must be indicated in invitations to purchase.

3. If credit or debit cards or other means of payment are usually accepted, their use may not be limited to certain periods or conditions, provided the normal requirements for these means of payment are fulfilled.

#### Article 212-2

##### *Obligations*

1. Establishments engaged in the sale of goods or the provision of services must comply with the following obligations:

- a) Those established in chapter I if they are applicable to the nature of the consumer relation, the special offer or the promotion.
- b) To present a prior budget if the consumer so requests.
- c) To present an invoice, sales slip or receipt of the transaction showing the following items, without prejudice to that established in tax law:

First. Name or company name of the vendor or service provider, tax identification number and full address of the establishment.

Second. The goods acquired or services provided and the price of each.

Third. Total price, including taxes, broken down if necessary.

Fourth. Transaction date.

2. Prior to entering into a contract and if so requested by the consumer, traders must present a standard contract with the anticipated general conditions.

#### Article 212-3

##### *Information on opening times*

Establishments selling goods or supplying services must provide information regarding the times they are open to the public. This information must be visible to the public from outside even when their premises are closed, except where a legal provision prevents same.

## TITLE II

### *On special modes of consumer relations*

#### CHAPTER I

##### *General provisions*

###### Article 221-1

###### *Types of special models*

1. For the purposes of this law, the following are special modes of consumer relations:

- a) Consumer relations in distance sales.
- b) Consumer relations away from the permanent establishment.
- c) Consumer relations in sales by automatic vending machines.
- d) Consumer relations in non-permanent establishments.

###### Article 221-2

###### *Consumer information*

In all special models of consumer relations, the trader must clearly and unambiguously display the following information:

- a) Identification details of the trader and the corresponding administrative authorisation, situated in a visible place at points of sale, on the outside of the machine in the case of automatic vending, in the contractual offer and, if necessary, in any documentation presented to consumers.
- b) The telephone number, e-mail address and, in all cases, a physical address where consumers can present complaints and exercise their right of withdrawal, in accordance with that established in this law.
- c) The information established in Article 211-15 in relation to the right of withdrawal.

#### CHAPTER II

##### *Consumer relations in distance sales*

###### Article 222-1

###### *Concept*

1. Consumer relations in distance sales are those executed without the simultaneous physical presence of the trader and the consumer, if the offer and acceptance is made exclusively by means of distance communication within a system of distance contracting organised by the trader.
2. The concept of consumer relations in distance sales includes telephone contracting, contracting by correspondence and contracting made through audiovisual and electronic media, which include on-line auctions.

###### Article 222-2

###### *Consumer information*

1. All distance contracting proposals must include clear and unambiguous information on the following details:

- a) The identity of the supplier of the good or service.
- b) Identification of the contract proposal. The lack of response to the proposal must not imply acceptance.
- c) The procedure to be followed and requirements necessary to execute the contract.
- d) The cost of using the distance communication technique where this is higher than basic service costs.
- e) Information relating to the good or service on offer, with sufficient description of the nature, quantity, quality and possibilities of consumption or use of the good or service.

f) The total price, in accordance with that established in applicable regulations. The amount corresponding to delivery expenses must be stated separately if it is to be paid by the consumer.

g) The method and maximum term of delivery of the good or performance of the service from the moment of receipt of the order. To this end, the trader must send the consumer an order receipt acknowledgement within three days of receiving the order.

h) The information established in Article 211-15 in relation to the right of withdrawal, when such right corresponds to the consumer.

i) The system of return of the good in the case of non-compliance. Express mention must be made that, in such case, the costs of return must be paid by the trader.

j) Payment methods.

k) Guarantees and after-sale service.

2. The information referred to in section 1 must be provided in a format appropriate to the distance communication technique employed and which may be conserved by the consumer. This right is to be considered upheld if an informative document is delivered on paper or by another medium which enables its electronic storage and subsequent reproduction. It is the trader's responsibility to prove compliance with this provision.

3. If the contract proposal is made by telephone or by audiovisual means, this information must be sent to the consumer on a durable medium.

4. In the case of contracting through electronic means of communication, access to the information must be identified in a way that the consumer has no doubt as to its origin.

#### Article 222-3

##### *Contractual documentation*

The trader must deliver to the consumer all documentation relating to the contract and to acknowledgement of payment, as well as the document relating to exercise of the right of withdrawal, where appropriate.

### CHAPTER III

#### *Consumer relations away from business premises*

#### Article 223-1

##### *Concept*

1. Consumer relations away from business premises are those in which the goods or services are offered with the physical presence of the trader and the consumer away from the supplier's business premises.

2. Included in the concept of consumer relations away from business premises, amongst others, are consumer relations with respect to goods for consumption in the consumer's household, in the consumer's workplace, in places of recreation, in meetings and on organised excursions.

3. Home deliveries of goods acquired by any other type of commercial relation and those regulated by Article 3.2 of Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises must not be considered consumer relations away from business premises.

#### Article 223-2

##### *Requirements of the object of the contract*

Regulations governing the good or service supplied must be complied with in any contract. Goods or services forbidden by a specific regulation, especially in the case of foodstuffs and goods and services which fail to comply with technical or health rules due to their form of presentation or other circumstances must not be the subject of consumer relations away from business premises.

#### Article 223-3

##### *Consumer information*

In all consumer relations away from business premises, the supplier of the good or service must provide clear and unambiguous information on the following details:

- a) Information relating to the good or service, with a complete description of the nature, quantity, quality and possibilities of consumption or use of this good or service.
- b) The total price, including taxes and expenses. The amount corresponding to delivery expenses must be stated and broken down if it is to be paid by the consumer.
- c) The maximum delivery term of the good or performance of the service if the good or service is not supplied at the time of entering into the contract.
- d) Information regarding the non-acceptance of the right of withdrawal, if required by the purpose of the contract.
- e) The system of return of the good in the case of non-compliance, expressly mentioning that, in such case, the costs of return must be paid by the trader.
- f) Guarantees and after-sale service.

#### Article 223-4

##### *Contractual documentation*

1. The trader must deliver to the consumer all documentation relating to the contract signed and acknowledgement of any payment made.
2. If a consumer is entitled to exercise the right of withdrawal, the trader must provide the consumer the following documentation:
  - a) A document containing at least the date, the consumer's signature and the information that Article 211-15 establishes in relation to the right of withdrawal.
  - b) The document for exercise of the right of withdrawal.
3. It is the trader's responsibility to prove compliance with the obligations established in this article.
4. In the case of services provided away from the supplier's premises, the documentation and information obligations established in Title V must be complied with, where applicable.

#### CHAPTER IV

##### *Consumer relations in sales by automatic vending machines*

#### Article 224-1

##### *Concept*

1. Consumer relations in sales by automatic vending machines are those in which the consumer acquires the good or service directly from a machine prepared for this purpose, by means of the operation of a mechanism and following payment of the appropriate amount.
2. The machine being installed on the premises of the vendor does not deprive the relation of its automatic condition.

#### Article 224-2

##### *Compulsory information*

1. The following information must be clearly displayed on the machines:
  - a) The identity and address of the supplier of the good or service, and a free telephone number to attend to consumers who may wish to make any complaint or claim.
  - b) Identification and essential characteristics of the good or service, except where the content of the machine is obvious.
  - c) Instructions on how to obtain the good.
  - d) The exact price of the good or service, the types of payment card, coins and notes accepted by the machine and indication as to whether it gives change or the exact amount must be inserted.
  - e) How to operate the automatic system that enables recovery of coins or notes in the case of error, non-existence of the good or service or malfunction of the machine.
2. The machine must be fitted with a system that enables consumers to obtain a receipt for the transaction carried out, in accordance with that established in Article 212-2.3. The receipt

must contain the identification and address of the person responsible for the machine, the price, a description of the good or service and the date. This obligation does not apply to recreational and gambling machines, or to machines dispensing foodstuffs.

3. The automatic machine must be equipped with a system that enables cancellation of the operation prior to acquisition of the good or service and without charge to the consumer.

#### Article 224-3

##### *Responsibility*

1. In general, those responsible for compliance with that established in this chapter are the machine operators. Machine operators must be understood to be those traders who receive a direct benefit related to the activity of the machine.

2. If the machine operators are not identified, those responsible for the machine are the owners of the establishment where the machine is located, who must be answerable to consumers jointly and severally with the machine operator for compliance with the obligations established in Article 224-2.

### CHAPTER V

#### *Consumer relations in non-permanent establishments*

#### Article 225-1

##### *Non-permanent establishment consumer relations in fixed locations*

For the purposes of this law, *consumer relations in non-permanent establishments* is understood to be those which traders carry out away from a permanent establishment on a regular, occasional, periodical or continuous basis, in peripheries and duly authorised locations.

#### Article 225-2

##### *Consumer relations in itinerant trading*

*Consumer relations in itinerant trading* must be understood to be those which traders carry out on a regular, occasional, periodical or continuous basis, in locations and peripheries that are not previously established.

### TITLE III

#### *On consumer relations through intermediaries*

### CHAPTER I

#### *Requirements and obligations*

#### Article 231-1

##### *Concept of intermediary*

Intermediary is understood to be any trader who, through another person and in return for remuneration of a pecuniary nature or in the form of any other agreed economic advantage, regularly engages in any of the following activities:

- a) Presentation or offer to consumers of the possibility to acquire goods or services.
- b) Preparation of the preliminary treatment for formalisation of a contract with consumers.
- c) Formalisation of the contract with consumers.
- d) Advice to consumers with regard to the legal business in which he or she intervenes.

#### Article 231-2

##### *Consumer information*

1. Before providing any service to a consumer, the intermediary must supply the following information:

- a) His or her identity and address.

- b) Details of the record in the corresponding register in which, if applicable, he or she is registered.
  - c) The scope of his or her competencies.
  - d) Indication as to whether he or she works exclusively for one trader or as an independent intermediary.
  - e) The real, fixed price of his or her intermediary activity. This obligation does not apply to insurance mediation activities.
  - f) The information provided for distance contracting where the intermediation is supplied through electronic media.
  - g) Information with respect to guarantees and extrajudicial systems of dispute resolution in consumer affairs.
2. The information referred to in section 1 must be included in all documents presented to the consumer by the intermediary.
  3. Intermediaries must offer true and full information in the promotion and supply of the goods and services they market and, in general, in their advisory activity, where applicable.
  4. The consumer must be able to conserve the information on a documentary medium. This right must be understood to be upheld if an example of the information is presented on paper or on another medium which enables its electronic storage and subsequent reproduction. It is the trader's responsibility to prove compliance with this provision.

#### Article 231-3

##### *Advice*

1. If the commercial activity undertaken by intermediaries includes advice to consumers, said intermediaries must provide information regarding the nature, characteristics, conditions and use or purpose of the good or service in order to enable consumers to evaluate whether the proposed contract suits their needs
2. Intermediaries must provide consumers with the information referred to in section 1 in a clear, comprehensible and easily interpretable manner.

#### Article 231-4

##### *Obligations*

1. Intermediaries must carry out commercial transactions with professional diligence and responsibility, respecting legality and the codes of ethics of the sector in which they practice their professional activity. Under no circumstances can they refer to or use names that induce or may induce error on the part of consumers with respect to the true nature of the company or establishment, or the service they provide.
2. If the consumer pays an amount on account of the cost of the good or service prior to executing the contract, the intermediary must be considered trustee of this amount until formalisation of the contract and may not apply it to his or her professional fees.

#### Article 231-5

##### *Liability*

1. Intermediaries are liable for any lack of formalisation of the contract if this derives from non-fulfilment, for any cause or reason, of their obligations to inform and advise.
2. All traders who use an intermediation service are jointly and severally liable for the purposes of that established in this code.

### TITLE IV

#### *On the acquisition and leasing of goods*

#### CHAPTER I

##### *Immovable property*

#### Article 241-1

#### *Information on the offer for the sale of immovable property*

1. In offers for sale of immovable property, full information must be provided regarding its essential condition prior to the purchaser paying any amount on account, in accordance with that established in legislation on the subject of housing.

2. In offers for the sale of immovable property, information must be provided regarding the legal owner, liens and encumbrances, conditions of use, existing services, foreseeable maintenance expenses, economic and financial conditions of the offer and, if possible, the amounts of the taxes that apply to the property. The remaining information required in accordance with legislation must also be provided.

3. In offers for the sale of immovable property, information must be provided regarding the types of guarantee, terms, quantities and the means established by applicable legislation to demand execution of same.

#### Article 241-2

##### *Information on the offer for the leasing of immovable property*

1. In offers for the leasing of immovable property, specific information must be provided regarding its characteristics, services and installations, as well as the conditions of use, contractual rent and other information required by legislation on the subject of housing.

2. The lessor of the property must be in possession of the certificate of habitability (*cèdula d'habitabilitat*), and the definitive qualification or equivalent proof of same in the case of officially protected housing. The lessee is entitled to be provided with a copy of this documentation upon formalising the contract.

## CHAPTER II

### *Movable property*

#### Article 242-1

##### *Information on the offer for the sale of movable property*

In offers for the sale of movable property, full information must be provided regarding its essential conditions, with reference to such characteristics as its size, weight, design, quality, installation, conservation, maintenance and possibilities of repair.

#### Article 242-2

##### *Guarantees*

1. The vendor must deliver to the consumer a good which conforms to the formalised sale contract and which necessarily:

a) Complies with the description made of the good and has the qualities of the good that the vendor has presented to the consumer in the form of a sample or model, where applicable.

b) Presents the usual qualities and features of a good of the same characteristics as the consumer may expect based on the nature of the good and the characteristics which the vendor has presented.

c) Is suitable for the use for which goods of the same type are intended.

d) Is fit for the uses required by the consumer and accepted by the vendor.

2. The vendor must be answerable to the consumer for any non-conformity that may exist upon delivery of the good.

3. The consumer must be entitled to demand repair of the good, its replacement, a reduction in its price or termination of the contract, in accordance with that established in legislation on the subject of guarantees.

#### Article 242-3

##### *Acceptable means for effecting information*

1. The vendor must inform consumers of their rights in the case of non-conformity of goods by means of a sign, written document, invoice, sales slip or any other means that enables reliable transmission of such information.

2. If such information is provided by means of a permanent sign it must be placed in full view of the public and must facilitate reading and comprehension of the text.

3. If the means employed is documental, the text presented to the purchaser must be immediately available to consumers in Catalan and Spanish.

4. If the information is included on the sales slip or invoice it must be printed with a type font and size that can be clearly read.

5. Information regarding goods of a durable nature must be provided by means of any of the means referred to in sections 3 and 4.

## TITLE V

### *On the obligations in service provision*

#### CHAPTER I

##### *General provisions*

##### Article 251-1

###### *Traders who provide services*

1. Traders who provide any type of services in the territory of Catalonia are subject to that provided in this Title, without prejudice to that established in applicable sectoral regulations. Supplementary sales services must be excluded from this provision. Services which furnish materials or goods must be included if the service provision is of a primary nature.

2. In order to determine the primary or supplementary nature of the service, the nature of the service provision requested by the consumer must be taken into account together with the price of materials and goods with respect to the service labour price.

##### Article 251-2

###### *Service classification*

For the purposes of this law, services must be classified into the following types:

a) To people: Services in which the provision is made on the person, whether it be of a physical, intellectual, psychological, emotional or locomotor nature, or in any other aspect intrinsically linked to the person.

b) Of goods or objects: Services in which the provision is made on a good or an object, whether it be to adapt, improve, repair or install it, or in relation to any other aspect that affects the good.

c) Basic services: Services of an essential and necessary nature for everyday life or which have a generalised use among consumers. This includes utilities, transport, audiovisual media, communications mediums, welfare and health services, and those related to finances and insurance.

d) On-going services: Services which the trader does not provide in one sole operation, but rather which continue in time, on a periodical or regular basis, or in various periods.

e) Brand-name services: Services in which visible display is made of the trade name, brand, logotype, emblem or any other symbol that identifies them with another trader in such a way that may lead consumers to believe that these services have a special legal connection with the owner of the brand or trade name.

##### Article 251-3

###### *Common obligations for all types of services*

1. Traders who offer or provide any type of service or who advertise the same must inform consumers of the complete price of the service by means of a visible sign in the establishment or of a tariff notice or price list. The full price must be shown, including all types of taxes, charges and levies, as well as other items supplementary to the service.

2. Traders who offer or provide any type of service or who advertise the same must draft and present to consumers a prior quotation for the service if the consumer is unable to calculate

the price directly, except when the latter expressly waives preparation of the quotation in a signed, written document.

3. The quotation referred to in section 2 must contain at least the following details:

- a) The identity of the service provider, with indication of the name or company name, tax identification number and full address of a physical establishment pertaining to this service provider.
- b) The reason for or object of the service, with indication of the activities or operations that are to be carried out.
- c) The expenses to be paid for by the user, with prices broken down, and the cost of parts and spares, accessories and goods that will form part of the service.
- d) The validity period of the quotation.
- e) The anticipated initiation date of the provision and duration of the service.
- f) The quotation date and signature of a person representing the service provision company.
- g) The date of acceptance or refusal of the budget by the service user, with spaces of equal size reserved for both parties to sign either option.

4. Copies of the budgets must be conserved for a minimum period of six months from the date of non-acceptance of same or from that of finalisation of the service, as appropriate.

5. Non-accepted budgets may be charged for if this is indicated in the price list or tariff, or if the consumer has been expressly informed of this condition. The amount charged may not exceed that indicated or corresponding to the real time employed in preparing the quotation.

6. Budget prices may in no case exceed those advertised, whatever the item to which they are applied.

7. Traders who offer or provide any type of service or who advertise same must draft and present an invoice, sales slip or payment receipt once the service is completed and paid. Without prejudice to that established in tax law, this document must include:

- a) The name or company name of the service provider, tax identification number and full address of the establishment.
- b) The items or activities entailed in the service provided.
- c) The costs of the items or activities.
- d) The applicable taxes or charges and their amount.
- e) Indication of the service guarantee period, where applicable.
- f) The date of the service provision, where applicable.

8. If partial payments are made for the service, a receipt must be issued to the consumer for each payment, containing at least the following details:

- a) Identification of the service provider, with the name or company name, tax identification number and address of the establishment.
- b) The object of the service and indication of whether the payment is on account or partial.
- c) The amount paid on each occasion.
- d) The total amount paid to date and the total amount pending payment.
- e) The date and signature of a person representing the service provision establishment.

9. Notwithstanding any partial payments, once the service has been completed the obligation to issue an invoice, sales ticket or payment receipt must be fulfilled, in accordance with that established in section 7.

10. If for some reason the trader is unable to fulfil the obligations deriving from the consumer relations and agreed with the consumer, the trader must guarantee that such obligations will be completed by means of his or her own infrastructure or by that of a third party.

#### Article 251-4

##### *Invoice amount*

1. The invoice amount may not exceed that of the budget, where one exists.
2. If, during provision of the service, new items appear that must be charged to the consumer or other modifications must be made to the quotation, the service provider must extend or modify the budget and must inform the consumer who, if necessary, must accept it in a manner in which such modification is recorded.

#### Article 251-5

##### *Service guarantee*

1. The different types of service must be guaranteed in accordance with the specific legislation applicable to each.
2. Where there is no specific applicable legislation, services must be guaranteed for at least six months from the date of completion of the last action or activity of the service.

#### Article 251-6

##### *Service prices*

1. Service prices, surcharges and supplements may be freely set, except for those subject to systems of prior approval or authorisation. Nonetheless, obligations of prior information established by this law and other applicable provisions must be respected.
2. If parts, spares, accessories or other goods must be incorporated in order to properly provide the service, a list of their prices must be available and consumers must be informed of its existence.
3. Abusive prices may not be charged, especially if the particular circumstances of the case reduce the consumer's freedom of choice.

#### Article 251-7

##### *Surcharges and supplements on the service price*

1. If surcharges or supplements on the service price are charged, the consumer must be informed of them by means of a price list or prior written quotation.
2. Surcharges or supplements for night service may only be charged if the service is provided between 10 pm and 6 am of the following day.
3. Surcharges and supplements for public holidays may only be charged if the service is provided within the twenty-four hours of the public holiday. For these purposes, holidays must be understood to be Sundays and public holidays observed in the address where the service is provided. As a general rule, Saturdays must not be considered holidays.
4. In no case may surcharges or supplements be charged based on immediate availability, urgency or similar concepts.
5. Surcharges and supplements for night service and holidays must not be mutually compatible; only one of the two may thus be charged.
6. That established in this article is of supplementary application in services regulated by specific regulation.

## CHAPTER II

### *Obligations according to the type of service*

#### Article 252-1

##### *Additional obligations*

In addition to fulfilling the obligations established in chapter I and according to the type of service, the obligations established in this chapter must be fulfilled.

#### Article 252-2

##### *Services to people*

1. Provisions on safety, health, hygiene, personal privacy, data protection and other obligations established in specific regulations must be fulfilled.
2. If the service provision involves some form of result, the consumer or expert third parties must be able to confirm and verify this result without the intervention of the service provider.
3. If provision of the service involves health and safety hazards to the consumer, he or she must be informed of such risks and the pertinent warnings made by means of a sign visible in the establishment or presentation of a written notification to the consumer.

## Article 252-3

### *Services of goods or things*

1. If the good must be deposited in order for the service to be provided, the consumer must be issued a deposit receipt which must contain at least the following details:

- a) Identification of the establishment, with the name or company name, address and tax identification number.
- b) Identification of the person depositing the good.
- c) Identification of the good.
- d) Description of the service in as much detail as possible.
- e) Date of reception of the good and anticipated duration of the service.
- f) The period following which the right to recover the deposited good expires.
- g) The signature or any other means of enabling reliable identification of the person responsible for the service provision establishment.

2. The person depositing the good must conserve a copy of the deposit receipt, at least until expiry of the period established in section 5.

3. If the good has been deposited in the establishment, the deposit receipt must be presented to recover it. If the consumer does not possess this receipt he or she must prove ownership of the good in any of the ways accepted by law.

4. If a prior budget exists it may serve the purpose of a deposit receipt provided it has been accepted by the consumer and this condition is indicated on the document.

5. The consumer loses the right to recover the deposited good once a period of three years has elapsed from the date of deposit. Three months prior to the expiration of this period, the service provider must reliably inform the consumer who deposited the good of the date of such expiration and how the good will be disposed of. If the consumer has not objected once the period has expired, the service provider may dispose of the good in the way established by law.

## Article 252-4

### *Basic services*

1. Providers of basic services must provide consumers with relevant information regarding the provision, in writing or in a manner adapted to the circumstances of the provision.

2. Upon entering into the contract, the service provider must provide a physical address in Catalonia where the consumer may be attended to quickly and directly with respect to any complaint or claim regarding the service, provided customer service is not offered in the same establishment where the service is contracted. A customer service telephone number must also be made available free of charge to attend to incidents and complaints.

3. Contracts must contain information regarding the place where service users can process complaints or claims against the basic service provider and the procedure for doing so. Information must also be provided regarding whether the service provider subscribes to a consumer arbitration system and of the consumer's possibility to approach these organisations to resolve disputes.

4. Pre-contractual and contractual information must indicate the existence of compensation, refunds or indemnifications in the case of the company's non-fulfilment of the basic service quality established by regulations or by the company itself. Information must also be provided about the mechanisms to implement the measures referred to in section 3 and about the method of calculating the amount.

5. Companies that provide basic services must ensure that standard-form contracts are provided to people with disabilities, on request, in a form accessible to them.

## Article 252-5

### *On-going services*

1. The procedure for unsubscribing to an on-going service must not contain more requirements or be more difficult than the procedure for subscribing to the same service.

2. Upon contracting an on-going service, information must be provided regarding the procedure to unsubscribe and the compensation, penalties and payments entailed if the consumer does so.

3. The service provider must guarantee service continuity and quality in accordance with the information provided and the advertising carried out regarding the service, without being released from liability by the conduct of third parties with whom the consumer has not entered into contact. Mechanisms of control and verification of the quality of on-going services may be determined by regulation.

4. The on-going service provider must guarantee appropriate consumer service without delay or hindrance. This service must be personal whenever the consumer so wishes, without automatic procedures or mechanisms that make conversation impossible.

5. On-going service provision must not be interrupted due to non-payment of a bill or invoice if the consumer has presented a claim with respect to such bill or invoice against the service provider or through judicial or extrajudicial dispute resolution mechanisms.

6. In order to interrupt the on-going service and to include the consumer in bad-debt files, at least two unpaid bills or invoices must exist in respect of which no claim is pending resolution, provided they have not been the object of any claim by the consumer, that the consumer has been reliably informed of the consequences of such non-payment and has been given a period of not less than ten working days to pay said bills or invoices.

#### Article 252-6

##### *Brand-name services*

1. With respect to consumers, providers of brand-name services are obliged to undertake all procedures, resolve incidents, provide information about goods and services and honour commercial guarantees as if they were the company to which the brand they exhibit belongs.

2. In no case may they advertise brands or logotypes that induce error or confusion on the part of consumers regarding the nature of the brand or service, or the relationship of the establishment to the brand.

3. If the brand-name service providers are authorised to subscribe consumers to an on-going service they must also unsubscribe them when so requested, with the same requirements as for subscription. The consumer must be presented with a document acknowledging the request to unsubscribe.

4. If service providers apply prices or expenses authorised or decided by the owner of the brand they represent, they must make price tables or tariffs drafted by the brand owner available to consumers.

5. Brand-name service providers are bound by the advertising and offers made by the brand owner in relation to the goods or services they market, except when the establishments included in the promotion or offer appear in the advertising document and the provider is not amongst them.

#### Article 252-7

##### *Services of a mixed nature*

If one same service has characteristics of more than one of the types of service established in this law, the obligations and requirements specified for each of those services that form part of the main service must be applied, provided they are mutually compatible.

### BOOK THREE

#### *Market regulation and consumer rights*

#### TITLE I

##### *General provisions*

#### CHAPTER I

##### *General provisions*

#### Article 311-1

##### *Protection of consumer rights*

1. The Catalan authorities, particularly those charged specifically with protecting and defending the rights of consumers, shall implement efficacious and effective procedures to ensure that the rights recognised under this law, as well as by specific and sectoral regulations protecting and defending consumers, are upheld.

2. In cases where this legislation is infringed in any way that might endanger consumers' rights or interests, the authorities referred to in Section 1 shall adopt the measures established under this law and the rest of the legal system.

3. If consumer rights are infringed, the Government shall take appropriate legal action to end such infringement.

#### Article 311-2

##### *Code of conduct*

1. The consumer affairs authorities shall promote the adoption of codes of conduct as instruments for self- and co-regulation to improve consumer protection and market regulation, and shall work to ensure that such codes adhere to the principles of responsible consumption.

2. These codes may be drawn up by representatives from the principal consumer, business and professional organisations in the sectors concerned, and by the consumer affairs authorities.

3. If considered appropriate, the Consumer affairs authorities may establish and award seals of approval, as well as legally establishing the commitments and obligations undertaken by organisations that opt for them, and the rules for awarding, withdrawing and advertising the aforementioned seals of approval. Moreover, if considered appropriate, these seals of approval may be linked to the adoption of a code of conduct.

#### Article 311-3

##### *Cooperation by other public or private bodies or organisations with public powers*

1. The government agencies charged with ensuring consumer protection may request, if considered appropriate, the cooperation of other government agencies. When considered necessary, these agencies will exercise the powers attributed to them by specific sectoral legislation in order to protect consumers' rights or interests. If the government agency whose cooperation is requested considers that action is not necessary, or that it is not competent to undertake such action, it shall reply to the agency that makes the request to explain its decision.

2. Requests for cooperation made by the Catalan Government's consumer affairs authorities shall be founded on good grounds. The agency or organisation whose cooperation is requested shall reply within the period of one month unless, due to reasons of urgency, a shorter period is established in the request, stating the measures, decisions or agreements adopted, as well as the actions implemented.

#### Article 311-4

##### *Coordination amongst government agencies related to consumer protection*

1. All the agencies that form part of the Catalan Government shall act in a coordinated way in defence of consumers' rights and interests.

2. Agencies forming part of the Catalan Government shall act jointly with the Catalan Consumer Agency and shall establish the criteria and guidelines for action with regard to disciplinary measures to ensure the protection of consumer rights.

3. If powers are delegated to local authorities by another level of the government, the latter shall supervise the action of these agencies, providing them with instructions, guidelines and criteria and ensuring compliance with them.

4. The Catalan Consumer Agency shall provide local authorities with the necessary information and shall provide them, to the best of its ability, with appropriate resources to enable them to carry out their tasks efficiently.

#### Article 311-5

##### *Consumer cooperation*

1. Consumers have the right and the responsibility to cooperate, individually or through organisations that represent them, with the authorities that are responsible for ensuring compliance with consumer protection legislation.

2. This cooperation may be provided through complaints or any other means of consumer protection that is accepted by law.

#### Article 311-6

##### *Consumer complaints*

1. Consumers have the right to formulate and lodge complaints before the competent authorities for consumer affairs, whether individually or through the organisations that represent them.

2. Complaints are used to inform the competent authorities about facts, circumstances or events that may be in breach of legislation governing consumer affairs.

#### Article 311-7

##### *Complaints processing*

1. If the complaint indicates an offence, in accordance with the provisions established by this law and sectoral consumer regulations, the competent authorities shall officially launch appropriate administrative procedures to prevent such infringements of the legislation.

2. The competent authority must inform the complainant of the launch of pertinent action and about the possible effects of the complaint, as well as his/her legal position with regard to the alleged violations.

3. If the complaint fails to meet all formal requirements and the complainant is able to remedy this situation, the competent authority with which the complaint is lodged must allow him/her a period of a minimum of ten days in which to do so.

4. If the authority with which a complaint is lodged does not have competency due to the subject matter of the complaint or to territorial reasons, this authority must refer the complaint to the competent body for the subject or territory, and must inform the complainant of this.

5. If the competent authority concludes that the complaint lodged does not indicate any infringement of the legislation, it must adopt a reasoned agreement to close the case, informing the complainant of this.

## CHAPTER II

### *Principles of market regulation*

#### Article 312-1

##### *General questions*

1. The activities of authorities with regard to market regulation and consumer protection must be in accordance with the general principles of Law, the provisions of this law and, particularly, regulations concerning the legal system governing public authorities and the common administrative procedure.

2. The government agencies responsible for exercising market regulation and consumer protection functions must ensure compliance with the general principle of law and legislation, and must seek the greatest possible balance with the purpose of protecting the rights and interests of consumers.

#### Article 312-2

##### *Principle of legality*

1. The exercise of administrative powers with regard to market regulation and consumer protection shall be governed by regulations with the status of law.

2. Precautionary measures that affect the legitimate rights and interests of regulated businesses must be regulated by a law.

#### Article 312-3

#### *Principle of non-retroactivity*

The sanctions to be applied to a given offence are those in force at the time an administrative offence is committed. This notwithstanding, the provisions most favourable to the person alleged to have committed an offence shall be applied retroactively.

#### Article 312-4

##### *Principle of typification*

1. Only offences of the legal order established by law are administrative offences.
2. No one can be subject to penalties if their conduct does not constitute an administrative offence.
3. Statutory provisions with regard to market regulation and consumer protection may not establish penalties or graduations of penalties. However, they may refer to a law whose infringement can result in penalties.

#### Article 312-5

##### *Principle of responsibility*

1. Only individuals or legal persons that commit offences, including by omission, may be penalised.
2. If more than one individual or legal person is involved in the commission of the offence or health hazard, they must respond collectively with regard to the offences, measures and penalties that may be applied.
3. If a trader has the legal or regulatory duty to cooperate in the detection or prosecution of an offence and deliberately fails to do so, they may be considered responsible for the offence.
4. If a legal person is accused of an offence, the people who form its administrative or management bodies at the time when the offence is committed may be held responsible. The members of such administrative bodies are understood to be the people named in public registers or that have publicly shown themselves to represent the legal person, or have acted as such representatives.

#### Article 312-6

##### *Principle of proportionality*

1. Penalties must be proportional to the gravity of the facts, with particular attention to the number of consumers affected, the danger to consumer health or safety, recidivism or repetition, whether the offence was committed voluntarily and the profits obtained as a consequence of the offence.
2. Penalties and precautionary measures must not be of greater benefit to the offender than compliance with the regulation that has been infringed.

#### Article 312-7

##### *Principle of precaution*

1. Depending on the degree of acceptability of the risk to health and consumer safety or interests, the authorities may adopt measures proportional to and consistent with this risk in order to decrease it, even if such measures affect the rights of regulated businesses. Precautionary measures must be maintained for the minimal time indispensable to guarantee the purpose for which they are adopted.
2. Precautionary measures may be adopted only if there exist rational indications of administrative offence or danger to consumer health or safety. Such measures must be adopted along with the guarantees established for this purpose. In such cases, the burden of proof lies with whomsoever produces, manufactures, imports or sells the goods or service.

#### Article 312-8

##### *Principle of limitation periods*

Offences and penalties prescribe in accordance with the provisions established by this law.

#### Article 312-9

### *Principle of concurrent penalties*

Offences that have been penalised by the penal or administrative channels cannot be penalised if there exists identification of subject, fact and grounds.

### Article 312-10

#### *Principle of territorial competence*

1. Public consumer bodies may act, investigate, monitor, inspect and adopt measures with regard to facts that affect or may affect consumers within their territorial jurisdiction, whatever the domicile of those responsible or the location of the establishment.

2. Agencies of the Government of Catalonia with sanctioning powers shall exercise these with regard to offences that affect or may affect consumers within their territorial jurisdiction, whatever the domicile of those responsible or the location of the establishment, without disqualifying themselves in favour of other authorities outside Catalonia.

3. If the offence affects the territorial jurisdiction of more than one municipality, the Catalan Consumer Agency is the competent sanctioning body.

### Article 312-11

#### *Principle of subject-matter jurisdiction*

1. Public consumer organisations are competent to sanction offences typified under this law and other specific consumer protection laws, without prejudice to the sanctioning powers that may correspond to other agencies by reason of the subject matter.

2. Public consumer organisations may investigate, inspect and penalise actions that, breaching any sectoral or specific regulations protecting consumers' rights and interests, may be considered offences under this law.

### Article 312-12

#### *Pro consumer principle*

1. Legislation on the protection of consumers' rights and interests shall be interpreted in favour of consumers.

2. If one same case or offence is typified under different precepts under this law, that which typifies the most serious offence shall apply.

## TITLE II

### *On market inspection and control*

## CHAPTER I

### *General provisions*

### Article 321-1

#### *Market inspection and control*

1. In accordance with their respective powers and functions established in the Registry of Public Consumer Services of Catalonia, the Government of Catalonia and local authorities shall implement the inspection and control measures necessary to ensure that companies and establishments that produce, distribute or sell goods or services, including information society services, comply with the responsibilities, prohibitions and limitations established by legislation governing the different sectors of economic activity whose in compliance may damage the general interests of consumers protected by this law.

2. Inspection and control activities may focus on goods and services aimed at consumers and the elements, conditions and facilities used to produce, distribute and sell them.

### Article 321-2

#### *Powers*

1. The inspection and control activities referred to in Article 321-1 shall be carried out by the competent Government of Catalonia agencies and the inspection services of local authorities in the field of their respective powers, according to subject matter.

2. The function of inspection by local authorities centres, principally, on checks and controls, within their territorial jurisdiction, of goods and services in common, ordinary and general use, compliance with general safety requirements for establishments and the safety of products, and the adoption of precautionary measures.

3. The body of the Catalan Consumer Agency that exercises inspection functions in the field of consumer affairs and local authority inspection services must act in a coordinated way, cooperating with each other and providing assistance to any public authority with powers in the field of consumer affairs that so requests with a view to implementing the inspection and control activity according to subject matter or territorial jurisdiction.

#### Article 321-3

##### *Personal status of consumer affairs inspectors*

1. Public servants who exercise inspection functions are agents of the authorities in the general sense and, especially, with regard to the administrative and penal responsibility of people who offer resistance or attack those agents, in word or deed, whether in the exercise of their duties or as a consequence of the same.

2. Unless such identification might lead to frustration of the purpose of the inspection, inspectors must identify themselves before exercising the powers invested by their functions.

3. When inspecting public companies or services, consumer affairs inspectors must act independently of the bodies responsible for the direction, management or administrative control of such companies or services.

4. Inspectors and personnel attached to bodies related to inspection services must respect the confidentiality of all matters that they discover in the course of their work.

#### Article 321-4

##### *Cooperation with inspection*

1. Inspection personnel may request the cooperation or assistance of any other public body or authority or the security forces in the exercise of their control and investigation duties.

2. In accordance with the provisions of legislation governing the protection of personal information, the trader shall provide inspection personnel with the information and documentation they request in the exercise of their duties, including personal information, without third-party consent.

## CHAPTER II

### *Inspection activities*

#### Article 322-1

##### *Functions of inspection*

1. Inspection activities carried out by the different authorities must be implemented at the time, in the manner and with the resources that best enable the activity of the market and the players that operate in it to be made known, and which enable the facts relevant to consumer protection to be identified. These inspection functions and activities must be implemented under the criterion of proportionality of the measures adopted to the alleged offences.

2. The general functions of organisations that exercise inspection functions in the field of consumer affairs are surveillance, control, investigation and inspection of goods and services for the purpose of guaranteeing consumers' rights.

3. Besides these general functions, organisations that exercise inspection functions in the field of consumer affairs also exercise the following functions:

a) To investigate irregularities in order to ascertain their scope, their causes and the responsibilities of their alleged authors.

b) To produce complementary reports on their actions.

c) To inform traders about compliance with legislation that may affect them.

d) To inform those inspected about any irregularities observed and to require them to make the necessary changes within appropriate periods of time.

- e) To recommend to the competent agencies measures appropriate to the irregularities observed and to cooperate in the implementation of these measures.
- f) To adopt, in emergency cases, the necessary precautionary measures, which must be ratified by the competent agency.
- g) To supervise organisations that cooperate with the Consumer affairs authorities in the field of control.
- h) To draw up reports on the adaptation of legislation to the different sectors.
- i) To cooperate with administrative penalties proceedings in the field of consumer affairs.
- j) To perform any other function related to consumer protection as charged by the competent authorities on consumer affairs.

## Article 322-2

### *Powers of inspectors*

1. In accordance with the principle of proportionality and respect for the rights of regulated businesses within the framework of the powers granted to consumer affairs authorities, inspection personnel have the following powers:

- a) To enter, without prior warning, the premise and facilities of individuals under inspection, and to carry out inspection and control visits, whether or not the general public has access to these premises and facilities.
- b) To require individuals under inspection to furnish them with the documentation that they are obliged to possess due to their activity, as well as trade, industrial, accounting and any other documentation that may be relevant to investigation of the facts.
- c) To require the documentation referred to in b), above, or information that is necessary but not provided at the time of the visit, to be forwarded to the inspectorate's administrative offices.
- d) To require, giving formal notice, the presence of individuals under inspection, their legal representatives or any other person, at the inspectorate's administrative offices, at the company address or in the place where products are sold, stored, distributed or handled or services are provided, in order to carry out pertinent inspection activities or to require documentation as referred to in c), above.
- e) To carry out all testing, investigation and examination necessary to confirm compliance with legislation, and to take samples and carry out tests and checks on goods and services made available to consumers.
- f) To inform individuals under inspection about any irregularities detected and to require them to remedy these and adapt them to legislative requirements.
- g) To adopt, with immediate effect if appropriate, the precautionary measures established under the legislation to ensure that consumers' general interests are protected.

2. If access to the premises and facilities referred to in Section 1.b is restricted to the general public, inspection personnel must obtain the consent of the individuals under inspection, without prejudice to the administrative responsibilities that may derive from refusal or resistance to allow access to premises and facilities.

3. The consumer affairs authorities may apply for legal authorisation to gain access to the premises and facilities of the individuals under inspection. If the refusal or resistance to allow access persists, they may request the assistance of security forces in order to gain access to premises subject to inspection.

4. In accordance with the provisions of legislation governing the protection of personal information, inspection personnel may obtain copies or reproductions of the documentation referred to in Section 1.b, including personal information, without the consent of third parties, for inclusion in inspectorate proceedings.

5. Documentation and information obtained by the competent agencies with regard to consumer affairs inspection in the exercise of their investigation and control duties are reserved, and may only be used for the purposes of inspection activities. Accordingly, the cession or communication of such information to third parties is expressly prohibited, unless a regulation with the status of law should oblige the facts to be communicated if they reveal indications of penal or administrative offences in other subjects.

6. Summonses issued to individuals under inspection in accordance with the provisions of Section 1.d shall state place, date, time and subject of appearance and shall avoid, as far as possible, any disturbance to the work and professional responsibilities of those summonsed, who may be accompanied by such advisors as they consider appropriate at their appearance before inspectorate personnel.

#### Article 322-3

##### *Responsibilities of individuals under inspection*

1. In accordance with the provisions of Article 322-2, individuals under inspection shall permit and facilitate the work of inspection personnel. To this end, they must facilitate access to premises and facilities subject to inspection, and the documentation and information required in the conditions established by this law.

2. If summonsed by inspection personnel, individuals under inspection, their legal representative or those with sufficient powers shall appear at the inspectorate's administrative offices, at the company address or at the place where products are sold, stored, distributed or handled or services are provided.

3. In addition to the persons referred to in Section 2, any other person strictly necessary for inspection activities may also be summonsed.

#### Article 322-4

##### *Inspection certificates*

1. Inspection personnel must issue certificates of inspection on their inspection visits, other investigation and control activities and whenever administrative irregularities are detected.

2. Certificates of inspection must be numbered and must identify the inspector involved, the time and date of inspection and the place where the certificate is issued.

3. Certificates of inspection must identify the name or trade name, the fiscal identification number and the address or headquarters of the alleged offender. They must also include the name and surname and official identity document of the appearing individual, and the capacity in which they appear, unless information society activities or services are under inspection and it is not possible for the alleged offender to appear, or their presence might frustrate the purpose of the inspection activity. In such circumstances, the alleged offender must be informed of the content of the certificate so that they can make any statements pertinent to defending their rights and interests.

4. Certificates of inspection shall contain the facts relevant to the investigation or control and other circumstances and objective information that enhance identification of the irregularities observed, their scope, and those allegedly responsible.

5. Certificates of inspection shall include the statements that the appearing individual wishes to make.

6. By signing the certificate of inspection, the appearing individual does not admit any irregularities described in it, nor accept any responsibilities that might derive from them. Conversely, refusal to sign the certificate of inspection does not invalidate either its content or the administrative procedure that derives from it, nor does it alter its probative value, as referred to in Article 322-5.

7. Certificates of inspection must include, in an annex, the documentation necessary to clarify the facts investigated, including documents on paper and any other durable support. In any case, documents included in this annex must be processed by the inspector involved.

8. Inspection certificates are public documents, and must be signed by the inspectorate personnel that issue them.

#### Article 322-5

##### *Probative value of inspection certificates*

1. Unless evidence is presented to the contrary, the facts ascertained by inspection personnel and described in inspection certificates have probative value and enjoy legal certainty.

2. Inspection certificates that conform to the formal requirements established by this law, issued by the inspection services of other public agencies than those referred to in this law have the same probative value in administrative proceedings derived from the application of this law.

#### Article 322-6

##### *Inspection reports*

1. Inspection personnel may issue reports if these are relevant to clarifying the facts investigated and it is impossible or clearly unnecessary to issue an inspection certificate. Inspection reports must identify the inspector and the date, time and place where they are issued. They must also indicate the circumstances causing the report to be issued, the facts ascertained by the inspector and, if appropriate, the inspector's evaluation of them. Reports must be signed by the inspector.

2. The facts stated in inspection reports have the same probative value as the facts stated, contained or described in inspection certificates.

3. Inspection reports may contain, in an annex, the documentation necessary to demonstrate the facts investigated, including both documents on paper and on any other durable support.

#### Article 322-7

##### *Official sample-taking*

Inspection personnel may take an official sample to ensure that the composition, label, presentation, advertising and safety levels of goods made available to consumers comply with the applicable legislation.

#### Article 322-8

##### *Tests and checks*

Inspection personnel may take indicative samples and carry out tests and checks on facilities, goods and services in order to ensure that these conform to the legislation.

#### Article 322-9

##### *Testing procedure*

1. Studies and analyses resulting from sample-taking and tests and checks on facilities, goods and services can be carried out by agencies and organisations duly accredited for the particular type of activity. They can also be carried out, if applicable, by inspection personnel, without prejudice to the trader's right to carry out counter-testing.

2. The authorities must pay the cost of samples and all analyses, tests, studies and checks commissioned.

3. Once the decision to impose penalties, if applicable, is final, the authorities may require those responsible for the offence to reimburse costs incurred. Should the offender refuse to reimburse these costs, this obligation can be enforced by judicial order of payment.

### CHAPTER III

#### *Precautionary and final measures*

#### Article 323-1

##### *General matters*

1. The competent agency, without prejudice to any measures that may be adopted as part of penalty proceedings, may agree to adopt precautionary measures in an urgent and immediate way if there exist rational indications of an unacceptable risk to health and safety, economic and social interests or consumer information rights. These measures are not sanctions in nature.

2. The competent agency may adopt the following precautionary measures:

a) Impose, for reasons of safety, conditions prior to the sale and distribution of goods or the provision of services.

b) Immobilise goods or oblige them to be withdrawn from the market and call in those already in the possession of consumers and, if appropriate, agree to their destruction in appropriate conditions.

c) Suspend or prohibit the activity, offer, promotion or sale of goods or the provision of services.

d) Temporarily close establishments and facilities.

e) Complementary measures to those referred to in *a*, *b*, *c* and *d* in order to ensure that these are effective.

f) Any other legal measure that may be necessary to protect consumers from risk.

3. Precautionary measures may affect those responsible for the production, distribution and sale of goods and the provision of services, or any other person responsible for the good or service.

4. The competent agency may oblige those affected by precautionary measures to inform those exposed to the risk deriving from the use of goods or the provision of services, immediately and through the most appropriate means, by the publication of special warnings.

5. The adoption of a precautionary measure is compatible with the prior, simultaneous or subsequent initiation of sanctions proceedings.

6. Precautionary measures must be proportional to the gravity of the irregularities detected and restrict the free circulation of goods and business freedom as little as possible. They shall be maintained for the time strictly necessary to carry out checks and eliminate risks or, if the irregularities can be amended, the time necessary to eliminate the elements that led to the application of the precautionary measure, which may be checked by inspection personnel.

7. In emergency situations, inspection personnel may adopt the precautionary measures established by this law by issuing an urgent inspection certificate. Such measures must be confirmed, modified or lifted by agreement of the competent body within the shortest possible period and in no case in a period longer than fifteen days from the day after their application. The person subject to inspection must be informed of this agreement. If these conditions are not complied with, the precautionary measures are null and void.

#### Article 323-2

##### *Procedure for adopting final measures*

1. Once precautionary measures have been agreed, administrative proceedings are initiated in accordance with the applicable legislation.

2. The decision resulting from this administrative procedure must confirm, modify or lift the precautionary measures adopted, and must include the terms and conditions for implementing final measures.

3. If the facts are serious, in order to avoid irreparable damage, an agreement may be reached to adopt the emergency administrative procedure. The competent agency may, at any time, order the inspections and controls necessary for resolution of the procedure.

4. The administrative procedure decision does not prevent the simultaneous launch of sanctions proceedings if a concurrence of administrative offences is observed.

5. The responsible party must pay all costs deriving from the adoption of the precautionary and final measures, once these have been made final by administrative decision. The costs of tests and checks are payable by whoever commissions them.

#### Article 323-3

##### *Penalty payments*

Penalty payments may be imposed in order to guarantee the execution of precautionary and final measures.

#### Article 323-4

##### *Local authority powers*

Local authorities may adopt precautionary and final measures if the unacceptable situation of risk to consumer health and safety or economic and social interests and the right to information also affects their jurisdiction. In any case, they must duly inform the Catalan Consumer Agency of any such measures taken.

#### Article 323-5

### *Communication of serious risks and irregularities*

The competent authorities must inform consumers about serious risks and irregularities subject to precautionary measures, and about the precautions necessary to prevent serious damage to their rights, particularly those of health and safety. Following the procedures established, these authorities must also communicate such irregularities to any other authorities that might be affected.

## CHAPTER IV

### *Other control activities*

#### Article 324-1

##### *Market studies and prospects*

1. The competent authorities with regard to consumer affairs may carry out studies, controls, tests, analyses and checks directly on goods, services and establishments where these are sold and provided in order to establish administrative action strategies to increase efficacy in consumer protection.

2. Personnel carrying out market study and prospect activities with a view to obtaining the information necessary to carry out their duties may be released from the obligation of identifying themselves.

3. Irregularities detected during market study and prospect activities must be communicated immediately to those responsible for them so that they can adopt appropriate measures to correct them, without prejudice to the administrative action that may derive from them.

4. Market study and prospect activities may be advertised if the results bring about improvements in the sectors concerned or general consumer interests.

5. The Government can commission partner organisations and consumer organisations to carry out market study and prospect activities.

#### Article 324-2

##### *Partner organisations*

1. In the sphere of public action for consumer defence and protection, the Government may commission partner organisations to carry out some of the control activities for which the Consumer affairs authorities are responsible, under its supervision.

2. Partner organisation types, fields of action and duties must be established in the form of regulations.

## TITLE III

### *Offences and penalties*

## CHAPTER I

### *Typification of offences*

#### Article 331-1

Offences related to safety and non-compliance with government provisions or decisions

The following are offences related to safety and non-compliance with administrative provisions or decisions:

a) Failure to comply with provisions regarding the safety of goods and services placed on the market and made available to consumers.

b) Actions and omissions that, though they do not breach any provisions, cause risk or effective damage to consumer safety if carried out without the due care and precaution to be expected from the activity.

c) Non-compliance with administrative provisions or decisions on prohibition of the sale, marketing or distribution of certain goods or the provision of services to certain establishments or specific types of consumers.

d) The sale, marketing or distribution without administrative authorisation of goods that require authorisation.

#### Article 331-2

##### *Offences related to alteration, adulteration, fraud or deception*

The following are offences related to alteration, adulteration, fraud or deception:

a) Producing for distribution, supply and sale goods to which any substance or element has been added or from which any substance or element has been removed to change its composition, structure, weight or volume in detriment of its qualities, to correct its defects or to conceal its quality level, the alteration or the origin of the components used.

b) Altering the composition of goods intended for the market with regard to the corresponding administrative authorisations or registered declarations.

c) Non-compliance, at any stage in the distribution of goods or the provision of services of any kind, regulations concerning the origin, intensity, nature, quality, composition, quantity, weight, size and presentation by packaging, labels, signs, closures, seals or other relevant elements, as applicable, in accordance with the regulations or conditions in which they are offered to the market.

d) Providing any mark that, due to its appearance or configuration, might induce consumers into error, using or advertising it unduly or fraudulently.

e) Offering goods or services, through advertising or information of any kind and by any means, attributing to them qualities, characteristics, tests, certificates or results that differ from those that really correspond to the goods or services, and advertising them in any way that induces or might induce error, deception or confusion in the people to whom they are addressed and that omits mention of essential information that prevent them from understanding the true characteristics or nature of the good or service.

f) Advertising goods or services by any means so that the content of the advertising is confused with what is proper to the informative mission due to the way in which this advertising is expressed or disseminated.

g) Failure to comply with responsibilities towards consumers voluntarily undertaken through endorsements of codes of conduct.

h) Non-compliance with responsibilities derived from lack of conformity or legal guarantees established or offered to consumers, or imposing unjustified conditions, difficulties or delays in relation to such responsibilities, including goods offered as prizes or gifts.

i) Replacing parts unnecessarily in the provision of installation services or goods repair and home services and assistance in order to raise prices, even if the consumer has given their consent, induced by the supplier or provider; invoicing for work not done; and using materials of an inferior quality to that stated to the consumer.

j) Supplying consumers with durable goods without guaranteeing appropriate after-sales service to repair them, or spare parts in accordance with responsibilities or requirements, or not supplying them in the conditions and terms established by the legislation.

k) Offering prizes or gifts if their cost is reflected in the transaction price, if the quality or quantity of the principal object of the transaction is reduced or if, in any way, the consumer does not, really and effectively receive what they are promised in the offer.

#### Article 331-3

##### *Offences with regard to commercial transactions and prices*

The following are offences with regard to commercial transactions and technical conditions of sale and with regard to prices:

a) Non-compliance with provisions regulating information and announcements of prices of goods and services.

b) Selling goods or providing services at prices higher than the maximum authorised or legally established, advertised or announced.

c) Restricting or limiting the real quantity or quality of performance, or causing any kind of discrimination based on conditions, means or forms of payment for goods or services.

d) Pursuing, by action or omission, unfair commercial practices that cause or may cause consumers to engage in financial behaviour that they would not have done otherwise.

e) Offering or making transactions in which the express or tacit condition is imposed of buying a minimum quantity of the good requested or of other goods or services different from those that are the object of the transaction, unless these comprise a sales unit or there is a functional relation between them.

f) Hoarding and withdrawing goods and services from the market in order to increase prices or to wait for foreseeable price rises, to the detriment of consumers.

g) Failing to provide contractual documentation, invoices or proof of sale of goods or provision of services, or charging or increasing prices for the provision of these.

h) Unjustifiably refusing to satisfy consumers' demands or making any kind of discrimination with regard to these demands.

i) Raising costs stated in estimates without the express agreement of the consumer.

j) Raising the price of spare parts or parts used in the repair or installation of goods.

k) Charging more than double the estimated average costs for labour, transport or visits for the respective sector.

#### Article 331-4

##### *Offences with regard to standardisation, documentation and conditions of sale and with regard to the supply or provision of services*

The following are offences with regard to standardisation, documentation and conditions of sale and with regard to the supply or provision of services:

a) Failure to provide consumers with the insurance, warranties or other guarantees stipulated by regulations.

b) Non-compliance with provisions governing the standardisation or classification of goods or services that are sold or exist on the market.

c) Failure to comply with provisions regulating the marking, labelling and packaging of products.

d) Stocking goods for sale which have past their best-by date.

e) Non-compliance, concerning consumer protection, with regulations governing documentation, information and registers established compulsorily for the correct functioning and operation of the establishment, company, facility or service.

f) Non-compliance with provisions governing the conditions for consumer relations, in all their forms, and conditions for invitations to purchase.

g) Non-compliance with the system established for the provision and changing of promotional or promoted goods and services.

h) Failure to provide estimates, if these are compulsory, or charging for them, if this is prohibited.

i) Failure to provide consumers with a receipt for the deposit of goods for any kind of intervention or operation.

j) Failure to provide consumers with a written guarantee if legislation makes this compulsory, or charging for repairs that are included in this.

k) Failure to provide consumers with instructions for use or maintenance, or any other documents required by law in order to use, occupy, maintain or conserve goods.

l) Failure to inform consumers about the trial or withdrawal period, if this is compulsory under the legislation.

m) Failure to provide official complaint forms or to inform about their availability.

n) Failure to inform consumers about opening hours.

o) Carrying out or invoicing repair or installation work, or similar, if not expressly requested or authorised by the consumer.

p) Dispatching goods or providing services not previously requested by the addressee, and sending unrequested offers or advertising if these entail costs to the receiver.

q) Considering that an addressee's failure to reply to an offer or advert denotes acceptance of the goods or services offered.

#### Article 331-5

##### *Offences for failure to comply with legal contractual obligations or prohibitions*

The following are offences for failure to comply with legal contractual obligations or prohibitions:

- a) Including unfair clauses in agreements or pursuing unfair practices aimed at consumers.
- b) Pursuing practices aimed at excluding consumers or reducing their freedom to contract any particular services.
- c) Including clauses in agreements or pursuing practices that exclude or restrict consumer rights.
- d) Including in agreements with consumers general conditions or characteristics contained in documents that are not provided prior to or at the same time as the signing of the agreement, without allowing the subscriber the effective opportunity of learning about its existence, scope and content at the moment of making the agreement, except in the case of references to legal or regulatory texts.
- e) Including in agreements a format, a font size or a contrast that does not facilitate reading and understanding or is contrary to specific applicable legislation.

#### Article 331-6

##### *Other offences*

In addition to those typified in articles 331-1 to 331-5, the following are also offences:

- a) Failure to supply or provide data or information required by the competent authorities or their representatives in pursuance of their duties of information, surveillance, investigation, inspection, processing and implementation with regard to the issues regulated by this law; supplying inexact or incomplete information of false documentation; preventing or impeding access by inspection personnel to premises in order to carry out inspection and control visits; and pursuing any action that harms or obstructs inspection services and which, in consequence, makes it wholly or partially impossible to fulfil the work assigned to them by law or regulation.
- b) Failure to permit inspectors' access to trade, industrial and accounting documentation or any other documentation possessed by companies under inspection.
- c) Non-compliance with requirements, summonses and measures adopted by the Government, including provisional measures.
- d) Handling, moving, destroying, concealing or trading in samples provided in accordance with regulations or goods immobilised by competent public servants as a precautionary measure, or disposing of them without authorisation, or acting without due diligence with regard to the obligation to ensure the safekeeping of immobilised goods.
- e) Coercing or threatening civil service personnel charged with the functions established by this law, companies, individuals or organisations representing customers and traders that have begun or intend to begin legal action, that have lodged complaints or take part in proceedings already initiated, or exercising reprisals or any other form of pressure.
- f) Failing to possess the documentation legally required or possessing this documentation in defective state, if this affects the determination or qualification of an offence.
- g) Refusal or resistance to provide official complaints forms to consumers so requesting, or providing forms that are not official.
- h) Failure to comply with legally-established responsibilities to provide assistance to consumers.
- i) Imposing on consumers the obligation of appearing in person to exercise their rights or making charges, payments or similar; requiring unnecessary forms to be filled in and information to be provided and preventing, impeding or otherwise causing difficulties to consumers in exercising their rights.
- j) Failure to comply with agreements reached with consumers in mediation processes, or non-compliance with arbitration decisions within the time established, except by agreement between the parties.
- k) Violating consumers' language rights or failing to comply with language obligations established by law.

l) Non-compliance with the requirements, responsibilities or prohibitions established by this law and other consumer protection provision.

## CHAPTER II

### *Classification of offences*

#### Article 332-1

##### *Classification of offences*

The offences typified by this law are classified into minor, serious and very serious offences.

#### Article 332-2

##### *Minor offences*

1. Actions or omissions typified as offences to consumer rights are initially classified as minor, unless they can be qualified as serious or very serious in accordance with the provisions of this chapter.

2. Offences that are classified as serious must be qualified as minor if, due to their slight importance or impact, it is demonstrated in the administrative disciplinary proceedings that there is a clear disproportion between the applicable penalty and the effects of the offence committed.

#### Article 332-3

##### *Serious offences*

1. The offences typified by the following articles are classified as serious:

- a) Articles 331-1 and 331-2.
- b) Sections *a, b, c* and *d* of Article 331-3.
- c) Section *a* of Article 331-4.
- d) Sections *a, b* and *c* of Article 331-5.
- e) Sections *a, b, c, d* and *e* of Article 331-6.

2. Offences classified as minor must be classified as serious if any of the following circumstances apply:

- a) They were committed consciously or deliberately or without complying with the required basic obligations of diligence.
- b) The offences are constant or habitual practices.
- c) They cause great impact on the market, affecting a large number of consumers.
- d) The damage caused as a direct or indirect consequence of the offence exceeds the maximum established for sanctions applicable to offences classified as minor.
- e) A minor offence is repeated.
- f) The principles of responsible consumption are violated.
- g) The offences concern illicit practices of the same type, found generally in a particular sector.
- h) They present a risk to consumer health or safety, unless the risk forms part of the type of offence.
- i) Official brands or marks are used fraudulently.

#### Article 332-4

##### *Very serious offences*

Offences classified as serious according to Article 332-3 must be qualified as very serious if any of the following circumstances apply:

- a) That they cause serious social concern, alarm or mistrust amongst consumers, or cause generalised damage to them with regard to an economic sector.
- b) That they were committed whilst taking advantage of a particular state of imbalance of vulnerability of certain specially protected consumers or groups.
- c) That they were committed whilst taking advantage of certain people's needs for goods and services of ordinary, general consumption.
- d) That they created or led to situations of need amongst consumers.

e) That those who committed the offences took advantage of their position of dominance over a sector of the market to do so.

f) That they reflect a repeat in serious offences, unless it is also the consequence of repeated minor offences.

g) That they created a situation of supply shortage in a market sector or segment.

h) The profits that were obtained as a direct or indirect consequence of the offence are higher than the maximum fine established by sanctions applicable to offences classified as serious.

## CHAPTER III

### *Penalties*

#### Article 333-1

##### *Classification of Penalties*

1. The penalties applicable to offences typified by this law are as follows:

a) For minor offences, a fine of up to 10,000 euros.

b) For serious offences, a fine of between 10,001 and 100,000 euros, which can be increased up to five times the value of the goods or services concerned in the offence.

c) For very serious offences, a fine of between 100,001 and 1,000,000 euros, which can be increased up to ten times the value of the goods or services concerned in the offence.

2. In cases stipulated by this law and complementary to the main sanctions established in Section 1, it may be agreed to impose the following additional sanctions:

a) Confiscation and destruction of goods.

b) Temporary closure of the offending company.

c) Public rectification.

d) Publication of the penalty.

#### Article 333-2

##### *Degree of penalties*

1. In order to determine the amount and extension of penalties within the minimums and maximums established, the following attenuating, aggravating and mixed circumstances.

2. The following are aggravating circumstances:

a) Recidivism or repetition of the unlawful conduct.

b) Failure to comply with earlier warnings or notices to correct the irregularities detected issued by the Government.

c) The prominence of the offender's market position.

d) The fact that those affected are especially protected groups.

3. The following are attenuating circumstances:

a) Diligent total or partial repair or amendment of the irregularities or damages that led to the initiation of penalty proceedings.

b) Acceptance of the facts during consumer arbitration.

4. The following are mixed circumstances:

a) Business turnover in relation to the facts concerned in the offence, and the company's financial means.

b) The amount of the profit obtained.

c) The amount of damage caused to consumers.

d) The number of consumers affected.

e) The degree of intentionality.

f) The period during which the infringement was committed.

5. Aggravating or attenuating circumstances should not be taken into account if this law includes them in the type of offence or if they were taken into account in classifying the gravity of the offence.

6. Sanctions must be imposed so that committing the offence does not result more beneficial to the offender than compliance with the laws infringed.

#### Article 333-3

#### *Recidivism and repetition*

1. Recidivism is understood to have occurred if the subject that commits an offence typified by this law has already been penalised for an offence of the same nature by a final decision passed down within the year previous to the commission of the new offence. Offences typified by the same article in Chapter I are offences of the same nature.

2. There is understood to be repetition if, within the year previous to the commission of the new offence, the offender has been sanctioned by a final decision for the commission of another offence typified by this law or by other laws in which the legally-protected rights are the interests of consumers, or if the offender has been formally sentenced for an offence in which subjects have suffered damages in their condition as consumers.

#### Article 333-4

##### *Confiscation and destruction of goods*

1. The authority responsible for resolving the case may decide, as an accessory penalty, the confiscation of immobilised goods that pose an unacceptable risk to consumers' health, safety, economic interests or right to information. These goods must be destroyed if their use or consumption entails a danger to consumer safety. In any case, the sanctioning agency must decide the way in which confiscated goods must be disposed of finally.

2. Costs generated by intervention, storage, confiscation, transport and destruction operations concerning goods object of sanctions are payable by the offender.

#### Article 333-5

##### *Closure or ceasing of offending activity of a company*

1. In the case of offences classified as very serious, the closure of the offending company, facility or factory can be declared as well as the cessation of their activities for a maximum period of five years.

2. Closure or cessation of activity may entail the adoption of complementary measures in order to ensure that the decision adopted is fully effective.

3. The penalised company must be informed of the decision to close or cease activities, and the local authority in the municipality where the company is located must also be informed.

4. The agreement to close the company must be taken by the competent authority once the sanction resolution is final.

#### Article 333-6

##### *Restitution of unduly obtained income*

In the case of prices applied that are higher than those authorised, communicated, estimated or announced, and independently of the penalties established by this law, the sanctioning body shall impose upon the offender the obligation of immediately reimbursing the amount obtained unduly.

#### Article 333-7

##### *Indemnities for proven damages*

Independently of the sanctions established by this law, the decision may be taken in sanctions proceedings to require the offender to restore the situation altered by the offence to its original state and, if applicable, to indemnify for proven damages to consumers, which must be determined by the competent body to impose the penalty. If the offender fails to comply with this resolution voluntarily, the appropriate legal channel becomes open.

#### Article 333-8

##### *Public rectification*

In the case of offences related to advertising, the competent agency may require the offender to publish a communication rectifying this in the same or similar conditions as the communication that was the object of the penalties. Public rectification must be made only once the sanctions decision is final.

#### Article 333-9

##### *Publication of sanctions*

1. Sanctions decisions may include, as an accessory penalty, by way of example and in the prevision of future unlawful conduct, to publish the sanctions imposed in accordance with this law. Sanctions must be published only once the sanctions decision is final.

2. Publications of sanctions shall state the names and surnames of the natural persons responsible, the name or trade name of the legal persons responsible, the class and nature of the offences and the penalties imposed, and shall be made in the Official Gazette of the Government of Catalonia (*Diari Oficial de la Generalitat de Catalunya*) and appropriate social media. The person or company sanctioned is responsible for payment of the cost of publishing decisions.

#### CHAPTER IV

##### *Responsibility for offences*

#### Article 334-1

##### *Subjects responsible*

1. Those responsible for offences typified by this law are physical or legal persons that, by action or omission, have taken part in them, with the particularities established by this chapter.

2. The physical or legal persons that commit them are responsible for offences typified by this law as their authors.

3. If different subjects intervene in the production, manufacture or sales chain for the goods or services, each is responsible for any offences they may have committed.

4. Persons that cooperate in the commission of an unlawful act or cover up for it are jointly responsible for offences.

5. If a legal person is accused of an offence, the people who form its governing or managing bodies may also be considered responsible. Under this law, the members of such governing or managing bodies are understood to be the people named in public registers as such, those that have demonstrated publicly to be such and those that have acted as if they were such.

6. In the case of offences committed by legal persons that cease trading before they can be sanctioned, the physical people that, from its governing bodies, determined, through misconduct or negligence, the commission of an offence, shall be held administratively responsible.

7. The sanctions imposed before the legal person ceases trading, if not satisfied in the liquidation, are transferred to shareholders, who must respond jointly and up to the limit of the share in the liquidation awarded to them.

#### Article 334-2

##### *Identified goods*

1. In offences committed that are related to packaging or labelling, the firm or company identified on the label or identification is considered responsible, unless it is demonstrated that this has been falsified or that another member of the distribution or sales chain is responsible for this offence.

2. The first vendor to market labelled or identified goods in Catalonia may be considered responsible for the offence committed.

#### Article 334-3

##### *Unidentified goods*

In accordance with the legislation, if the goods do not contain the information necessary to identify the person responsible for the offence, then those who have marketed the goods are considered responsible, unless the responsibility of a member of the previous distribution or sales chain is demonstrated.

#### Article 334-4

##### *Services*

1. In offences committed that relate to the provision of services, the company or trade mark obliged to provide them, legally or by agreement with the consumer, is considered responsible.

2. If lack of due diligence by an intermediary in the provision of a service can be demonstrated, then they are considered responsible.

## CHAPTER V

### *Prescription of offences and sanctions*

#### Article 335-1

##### *Prescription of offences*

1. Offences typified by this law prescribe:

a) In the case of minor offences, at the end of a period of two years, calculated from the day when the offence was committed, or from the end of the period during which the offence was committed in the case of continued offences.

b) In the case of serious offences, at the end of a period of three years, calculated from the day when the offence was committed, or from the end of the period during which the offence was committed in the case of continued offences.

c) In the case of very serious offences, at the end of a period of four years, calculated from the day when the offence was committed, or from the end of the period during which the offence was committed in the case of continued offences.

2. In exceptional cases, if the facts are completely unknown due to lack of external indications, the prescription period can begin to be calculated from the moment when the facts are manifested or become known.

3. Penal law action and other administrative sanctions proceedings, if they prevent the initiation or continuation of proceedings to sanction offences typified by this law, interrupt the term for the prescription of offences. The period is also interrupted by the initiation of sanctions proceedings and other actions that legally cause interruption.

#### Article 335-2

##### *Prescription of penalties*

Penalties prescribe at the end of a period of four years after the day when the sanction decision becomes final.

#### Article 335-3

##### *Prescription of penalties execution*

1. Action to require payment of fines prescribes at the end of a period of four years after the day when the sanction decision becomes final.

2. In accordance with Article 333-5.3, action to close commercial establishments prescribes at the end of a period of six months after the date when the competent authority receives the order to execute the decision.

3. The publication of information as referred to in Article 333-9 prescribes at the end of a period of six months after the date when the sanction decision has been made final by the competent authorities.

## TITLE IV

### *On sanction proceedings*

## CHAPTER I

### *Sanction proceedings*

#### Article 341-1

##### *Initiation*

1. Sanctions proceedings are officially initiated as a consequence of certificates issued by inspection services, the communication of an administrative authority or agency or a complaint lodged by consumer organisations or private individuals about facts or conduct that may constitute an offence.

2. If the alleged offence falls under the jurisdiction of other agencies, the authority initiating proceedings must notify the department and agencies concerned of this fact so that they can act in accordance with their powers or, if applicable, issue the appropriate report.

3. If the actions that constitute an administrative offence under this law may also be considered to constitute a penal offence, the competent agency for officially initiating proceedings, or at the request of the examining magistrate, must inform to authorities of the penal jurisdiction. Particularly, in cases of repeated conduct in placing on the market products that generate a serious risk to consumers, authorities of the penal jurisdiction must be notified as soon as possible, stating all the information available to the government agency to identify the persons responsible. In both cases, if the administrative proceeding has begun, it must be agreed to suspend this until the corresponding judicial decision has been announced, and appropriate precautionary measures can be adopted through decisions announced to the interested parties.

#### Article 341-2

##### *Preliminary enquiries*

1. Before agreeing to initiate sanction proceedings, preliminary enquiries can be ordered in order to ascertain the circumstances surrounding the facts and the subjects responsible.

2. If regulatory samples are taken, proceedings can be initiated as a result of the initial analysis.

3. The authorities competent to decide the initiation of proceedings or, if applicable, to close the enquiries carried out during inspection, must be established according to regulations.

4. Preliminary enquiries are confidential in nature.

#### Article 341-3

##### *Precautionary measures*

1. If goods are confiscated as an accessory penalty, the competent agency may adopt the urgent precautionary measures established in Article 323-1 to ensure that the decision is put into effect, without prejudice to the fact that it may establish final confiscation or nullify the measures adopted.

2. Precautionary measures must be maintained until the final confiscation has been executed.

#### Article 341-4

##### *Summary proceedings*

In the case of offences that must be classified as minor, summary sanctions proceedings can be adopted, on condition that the offence is flagrant and that the facts have been included in the appropriate certificate or complaint by the competent authority.

#### Article 341-5

##### *Testing*

1. The complete or partial lack of documentation required by regulations, or the existence of documentation kept in a defective way, if it affects determination of the alleged facts or their classification, constitutes an alleged offence.

2. The interested party may, within the procedure, propose to carry out the test for which they attempt to defend their rights. In any case, the Government must consider the test carried out in the sanction proceedings and must evaluate its overall result.

#### Article 341-6

##### *Expiry of proceedings*

1. The term for notifying the express decision over sanction proceedings is twelve months from the notification of the agreement to initiate proceedings, except in the case of summary proceedings, when the expiry term is six months. If these terms are exceeded without notification of the decision, the proceedings are judged to have expired.

2. Applications to carry out new technical tests or a counter-analysis and the agreement by which it is decided to carry out a nullifying analysis suspend the expiry term for the proceedings until the competent agency is informed of the results.

3. If service by publication is necessary for any of the formalities in proceedings, the terms established in Section 1 are extended by the time between the first attempt at notification and the final publication on the appropriate notice board.

#### Article 341-7

##### *Competent authorities for imposing sanctions*

The competent authorities for imposing the sanctions established by this law are as follows:

- a) For very serious offences and closures of establishments or cessations of activities: the Government and the competent minister for consumer affairs.
- b) For minor and serious offences: the department or agency with assigned powers related to consumer protection.
- c) For minor and serious offences: mayors, within their powers according to local authority law, according to the amounts established. Mayors may also impose penalty payments.

#### Article 341-8

##### *Effect of penalties*

1. The imposition of serious and very serious penalties results in restrictions on contracting with the Government in the cases and conditions established by legislation governing contracts.

2. In the case of serious and very serious offences, the sanctioning body may propose, to the corresponding authority, the suppression, cancellation or suspension of credits, grants, tax allowances and other official aid that the sanctioned company has been granted or has applied for.

3. If the Catalan Government is responsible for awarding aid applied for by a company that has been the subject of a final penalty for a serious or very serious offence, the body charged with resolving the application may refuse to grant the aforementioned aid if the record has not been expunged.

4. The penalties imposed, once made final through administrative channels, must be executed immediately. Nonetheless, if a decision that has exhausted the administrative channel is subject to an administrative appeal, the competent agency may agree to suspend the procedure on the grounds and to the effects established by the legislation on common administrative proceedings.

## CHAPTER II

### *Coercitive fines*

#### Article 342-1

##### *Competence of the Administration*

Once the summons for execution of procedures has been issued and the administrative decisions aimed at conforming to the provisions of this law and other provisions related to market regulation and the protection of consumer interests have been taken, the competent authorities for consumer affairs may impose coercitive fines.

#### Article 342-2

##### *Notification and compliance with summonses*

The competent agency must notify the summonses referred to in Article 341-1 in writing, and must inform the person summonsed of the terms for complying with it and the amount of the fine that, should they not comply, may be imposed on them. In any case, this term must be sufficient for compliance with the obligation, and the fine may not exceed 3,000 euros or 10% of the amount of the obligation, if this is quantifiable.

#### Article 342-3

##### *Repetition of fines*

1. Having noted failure to comply with what it has ordered, the Government may repeat fines, in accordance with the provisions of Article 342-2, by periods sufficient to comply. The new terms may not be inferior to those stated in the first summonses.

2. The fines referred to in Section 1 are independent of any that might be imposed as sanctions, and are compatible with these.

## ADDITIONAL DISPOSITIONS

### First

#### *Assessment reports*

The Catalan Consumer Agency should periodically assess the validity, application and enforcement of this law, according to the purpose and objectives set forth in the preamble. Considering the data obtained, the Catalan Consumer Agency must formulate and propose to the Government every five years, the modifications to be introduced to the concepts used by this law.

### Second

#### *Modification of Law 9/2004*

1. Article 12 of Law 9/2004 of December 24, creating the Catalan Consumer Agency, is modified to read as follows:

“Article 12. Territorial de-concentration.

The structure of the Catalan Consumer Agency, to achieve its objectives and the exercise of its functions and powers, is made up of central and territorial agencies.”

2. A new article, number 22, is added to Law 9/2004, with the following text:

“Article 22. Treatment of personal data.

1. The Catalan Consumer Agency can collect and process consumers’ and traders’ personal data that are necessary to carry out the duties established by Article 3.

2. The filing of a complaint, claim or accusation with the Catalan Consumer Agency implies the express consent of the person affected for the processing of the personal data that is communicated and, if appropriate, the transfer of data to other government agencies, other member states of the European Union or other countries, in order to continue processing activities.

3. In the treatment of consumers’ and traders’ data, security and confidentiality must be ensured, with full respect for the law on protection of personal data.”

## TRANSITORY PROVISIONS

### First

#### *Procedures for processing and applying the most favourable legislation*

1. The precepts of this law do not apply to proceedings brought before its entry into force, without prejudice to their retroactivity if more favourable to the alleged offender.

2. This law, with respect to offences, applies only to those committed after its entry into force.

### Second

#### *Adaptation of business and organisations*

The obligations laid down in the second book and which did not form a part of the previous regulations are required for affected companies and organisations six months from the publication of this law. For this purpose, for traders who are considered micro, small or medium businesses, according to the recommendation CE/2003/361 of 6 May, the adaptation period is one year.

### Third

#### *Transitional arrangements for inspections*

Until the rules concerning the matters referred to in letter *b* of the third final provision are implemented, inspections must comply with the provisions of Decree 206/1990 of 30 July on inspection of market regulations and consumer affairs.

#### Fourth

##### *Transition of the penalising agencies*

1. Until the rules concerning the matter referred to in letter *c* of the third final provision are implemented, the applicable legislation shall be the provisions of Decree 108/1997 of 29 April, which establish the competent agencies for the imposition of penalties and other measures in defence of consumers and users, and measures to ensure the safety of products destined for market, according to the modifications made in section 2.

2. Articles 1 to 5 of Decree 108/1997 are amended as follows:

##### “Article 1

Infractions concerning consumer and service user protection shall be penalised with the corresponding penalties, which are imposed, according to the provisions of this decree by:

a) The directors of the territorial services of the department responsible for consumer affairs.

b) The Deputy Director or General Deputy Director of Market Regulations of the Catalan Consumer Agency.

c) The Director of the Catalan Consumer Agency.

d) The Minister of the department responsible for consumer affairs.

e) The Government.

##### Article 2

The following functions correspond to the directors of the territorial services of the department responsible for consumer affairs and the Deputy Director or General Deputy Director of market regulations of the Catalan Consumer Agency:

a) Impose penalties for minor infractions.

b) To impose coercive fines of up to 1,500 euros or up to 5% of the amount of the obligation.

##### Article 3

The following functions correspond to the Director of the Catalan Consumer Agency:

a) Impose sanctions for serious infractions.

b) Impose penalty fines of up to 3,000 euros or up to 10% of the amount of the obligation.

##### Article 4

The Minister of the department responsible for consumer affairs has the function of imposing penalties of up to 500,000 euros for very serious offences, and ordering the closure of the infringing company or the termination of its activity.

##### Article 5

The Government has the function of imposing fines from 500,001 euros for very serious offences, as well as ordering the closure of the infringing company or the termination of its activity.”

#### Fifth

##### *Creation and operation of county-wide public consumer services*

The counties (or administrative regions) that, according to Article 126-10.3, at the time of entry into force of this Act do not have a public consumer affairs service must create one and put it into operation within three years after such entry into force.

#### REPEALING PROVISION

Law 3/1993, of 5 March, of the Consumer Statute, and the provisions of equal or inferior to rank that conflict with the provisions of this law are repealed.

#### FINAL PROVISIONS

##### First

*References to Laws 1/1998 and 1/1990*

In the area of consumer affairs, the references made to Law 1/1998, of 7 January, on language policy, and Law 1/1990, of 8 January, on market regulation and protection of consumers and service users, are understood to conform to this law.

Second

*Regulatory implementation*

The Government, within one year from the date of entry into force of this Law, must approve the regulatory implementation to regulate the following matters:

a) The mediation proceedings. The rules for the beginning, development and closure for the procedure of mediation must be established, and the effects of mediation in consumer affairs.

b) The procedure for practicing making regulatory samples and the authority responsible for the making precautionary seizures and other inspection actions.

c) The agencies of the Government of Catalonia with competency to initiate, carry out and resolve disciplinary proceedings in defence of consumers established by this law; the agencies that may take appropriate measures to ensure the safety of products intended for market, and the procedure for carrying out the compensation for damages established in Article 333-7.

d) The organisation and operation of the Registry of Public Consumer Services of Catalonia, in accordance with the provisions of Article 126-11.

e) The requirements, documentation and procedures for consumer organisations to register with the Registry of Consumer Organisations of Catalonia and to unsubscribe, and also control mechanisms.

f) The procedure for the granting and withdrawal of the status of most representative organisation in accordance with Article 127-7.

Third

*Entry in force*

This Law enters into force one month after its publication in the Official Gazette of the Generalitat of Catalonia.

I therefore order that all citizens to whom this Law may apply to cooperate in its enforcement and that the courts and authorities enforce it.

Palau de la Generalitat, 20 July 2010

JOSÉ MONTILLA I AGUILERA  
President of the Government of Catalonia

ANTONI CASTELLS  
Minister of Economy and Finances  
(10.196.041)