

E-Commerce in the UK

Introduction

Carrying out business via an e-commerce solution in the UK is fairly easy to set up and there is a myriad of businesses that will set up an e-commerce site that will suit most clients' needs. Most of them will provide an integrated solution including a payment gateway, and the site content can either be amended by the client or the provider. Most are based on a database or spreadsheet model for displaying the information and have the facility for displaying pictures of products.

Fees vary wildly and can be based on a fixed fee for developing the site plus a percentage of the sales value to more complicated models based on site traffic etc.

Sales via E-Commerce Sites

These sales are caught under the Consumer Protection (Distance Selling) Regulations ("DSRs") in the UK which implement the European Council Directive (97/7/EC). The DSRs are monitored by the Trading Standards Departments of local councils and Consumer Direct (www.consumerdirect.gov.uk) as well as by the Office of Fair Trading nationally. The aim of both the EU and the UK legislation is to provide consumers with the same minimum level of protection, regardless of where the supplier is based in the EU.

The DSRs do not apply to contracts for sales of land or for contracts for construction services where the right to the land is to be sold as part of the building, financial services sold to consumers, conditional sales, hire purchase, and goods from vending machines or automated commercial premises such as photo booths. In addition they may not apply if a customer has examined the goods in a retail premises and then orders online from the same retailer or where a retailer receives occasional orders electronically, but advice should always be sought if these situations arise.

Information required to comply with DSRs

- Sufficient information for consumers to identify who they are doing business with e.g. Company registration number, trading address, contact details;
- Description of the goods or services that are being offered;
- The price of the goods or services including all taxes;
- Details of how payments can be made
- Geographical address if payment is made in advance
- Arrangements for the delivery of goods or performance of services. The "contract" must be performed within 30 days of placing the order, unless the parties come to a different agreement.
- Information about the customer's right to cancel
- Cost of any premium rate telephone calls including all taxes and advice as to whether this may differ according to the network provider;

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- How long the price or any offer remains valid;
- The minimum duration of the contract where goods or services are to be provided permanently;
- The fact that the supplier will pay the cost of returning any substitute products where they are supplied because the original products were not available;
- Where goods and services are sold purely over the internet, the following additional rules apply:
 - The order must be acknowledged immediately;
 - Customers must be able to correct any input errors before the order is placed
 - If the service is that of information provision, details of any regulatory, professional or authorising body must be provided and contact details including e-mail addresses must be included on the site.

Customer Rights

- All contracts must be concluded within 30 days of placing the order, unless both parties agree differently;
- The cancellation policy must be shown on the website and customers must be made available in a durable medium (including e-mail);
- If a customer is not satisfied with the product, they have seven working days from the day after delivery or conclusion of the contract in order to cancel the contract (unless the cancellation rights were supplied after the delivery/conclusion of the contract), in which case the customer must notify their intention to cancel within 3 months.
- The cost of returning goods where an order is cancelled must be stipulated in the written information required when the order is placed. Otherwise the supplier is liable to bear the costs of returning the goods;
- Where substitute goods have been provided and these are not satisfactory, the cost of returning them is always the responsibility of the supplier;
- Once an order is cancelled, the customer must receive a repayment of the money paid in advance within 30 days of cancelling the order.

VAT

- UK VAT is due at 20% on most goods and services. Exceptions to this are some food products, sales of new dwellings, books, newspapers and magazines, some printed matter, children's clothing. In addition there is a reduced rate of VAT for items such as children's car seats, women's sanitary products and contraceptives.



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Supplies to businesses

Where goods or services are provided to businesses in the UK, there is a legal requirement to provide a tax invoice for the supplies and this should be provided at the time the contract is fulfilled. However, where goods and services are provided to businesses outside the UK, no UK VAT is due and, within the EU, the supply of most services would require the customer to account for VAT in the Member State of receipt. Outside the EU, there may be a requirement for the supplier to register for VAT in the country of receipt, if there is a VAT or Goods and Services Tax regime ("GST").

Supplies to Non-Taxable Persons

"Non-taxable persons" is a term that covers not only individuals but businesses that are not registered for VAT and entities that are not in business e.g. some charities. Where goods and services are supplied to such persons in the EU, suppliers need to be aware that there are different thresholds that would require VAT registration in individual Member States. This scheme applies across the whole of the EU. Until the thresholds are exceeded, suppliers selling via e-commerce in the UK should include UK VAT in their selling prices and should keep a record of the value of supplies made to non-taxable persons in each Member State. Once the threshold in any Member State is exceeded, the supplier must apply for VAT registration within an appropriate amount of time to enable the future supplies to be taxed in that Member State and, from the date of registration, account for VAT at the appropriate rate for that Member State within the selling price to the customer.

As an alternative, a supplier can opt to register in the individual Member States before the thresholds are exceeded. If a supplier wishes to exercise this option, it must notify HM Revenue and Customs of this intention and then must notify the relevant Member State within 30 days of making the first supply under this option and register for VAT there. In addition, the supplier must show HM Revenue and Customs that the relevant tax authority in the Member State of destination has been notified that the supplies will be taxed under the latter's tax regime. It is possible to revert the place of supply back to the UK and charge UK VAT once the above option has been exercised, but this cannot be done before 1 January following the second anniversary of the first supply following the exercising of the option (i.e. two calendar years have elapsed since the first supply was taxed under the regime of the Member State of destination) and also 30 days after the receipt by HM Revenue and Customs of the notification of the withdrawal from the option.