

A large, dark blue, stylized lowercase letter 'e' is the central focus on the left side of the page. It is set against a background of lighter blue concentric circles and a dark blue arrow pointing towards the right. The overall background is a solid dark blue.

eCOMMERCE GUIDES FOR BUSINESS

mca 
MALTA COMMUNICATIONS AUTHORITY



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DISCLAIMER.

The purpose of these Guides is to provide information and not to replace legal advice. Complying with what is stated in these Guides does not exempt a trader from compliance with its obligations at law. Every effort has been made to avoid inconsistencies with existing laws. However, if there is a variation, the law has precedence over the Guides.

Traders should not rely on the Guides as a definitive statement of legal requirements since not all legal provisions relevant to electronic commerce may be reflected in the Guides.

For the purpose of these Guides the word 'trader' refers to any person or entity carrying out an economic activity in Malta for purposes relating to his/her trade, business, craft or profession.



**PURPOSE
OF THE GUIDES.**

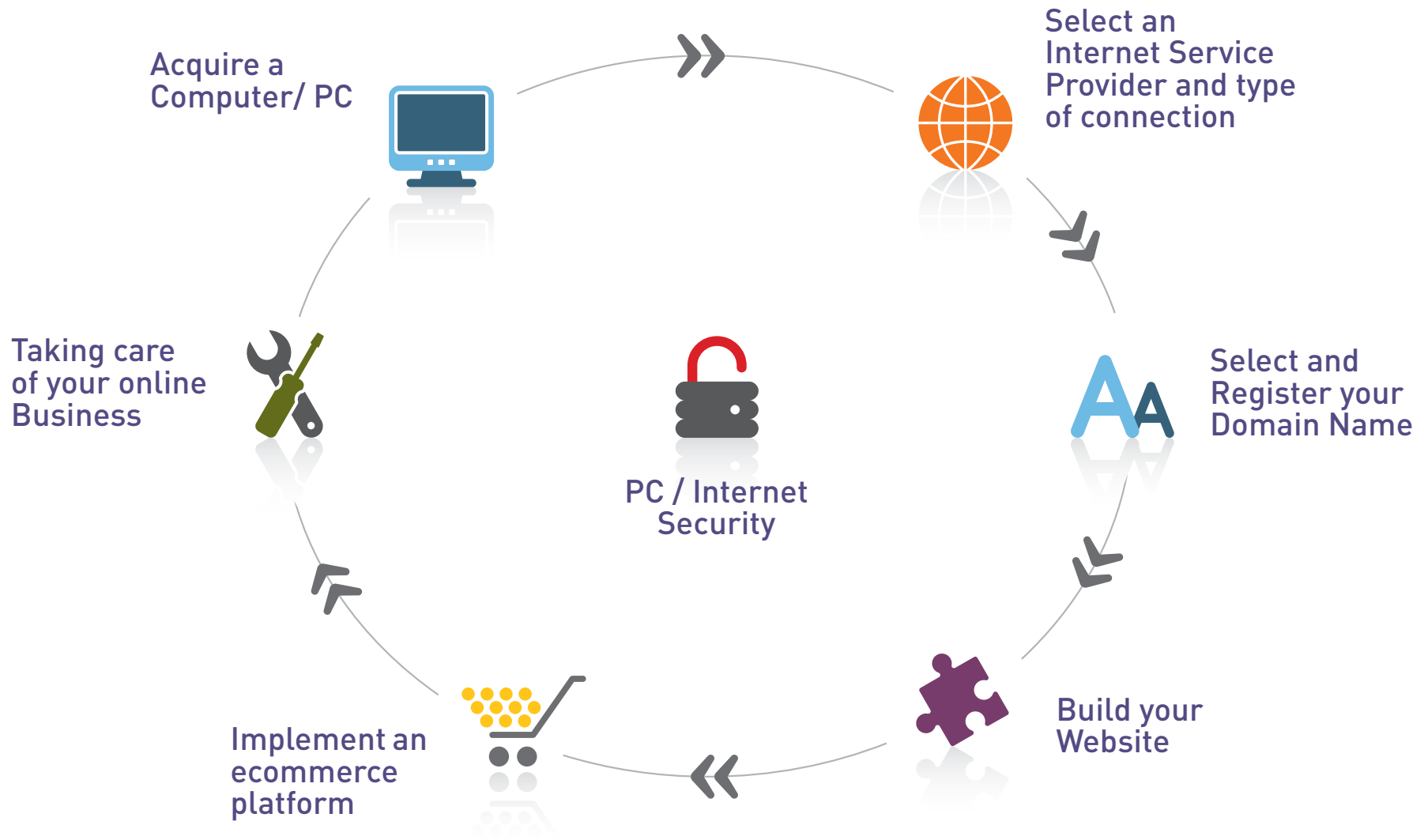


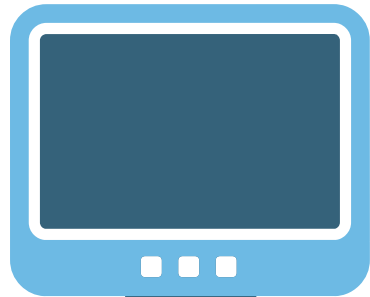
These guides are aimed at traders who sell goods and/or services online and those who intend setting up their own online business. They are designed to assist online traders to:

- Better fulfil their eCommerce obligations at law and thereby minimise costs that might result from non-compliance;
- Become aware of the regulatory authorities having competencies relevant to the field of online business;
- Become acquainted with the basic requirements for setting up an online business;
- Better address online security issues;
- Select a payment gateway that best suits their business;
- Implement best business practices.



THE eCOMMERCE PROCESS





Acquire a Computer/ PC

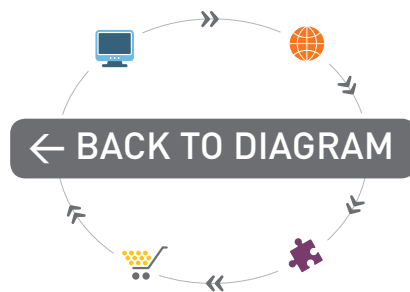
Selecting the right hardware and software is crucial for your business!

Some things to consider:

- Desktop PC or laptop? A desktop PC can be normally purchased at a cheaper price and is easier to upgrade. However, a laptop offers more mobility and consumes less electricity.

- **HARDWARE:**
 - Processor (select a fast processor);
 - Main Memory (at least 1 GB memory);
 - Disk (at least 200GB but depends on amount information);
 - Removable media (required for backups);
 - Monitor/ screen (at least 17" screen);
 - Modem/ network card to connect to Internet (at least 100MB NIC).

- **SOFTWARE:**
 - Off – the shelf or tailor – made for your needs?;
 - Operating System;
 - Office Automation Applications;
 - Support costs and license costs;
 - Will it support your future business needs?





Select an Internet Service Provider and type of connection

BROADBAND INTERNET CONNECTION

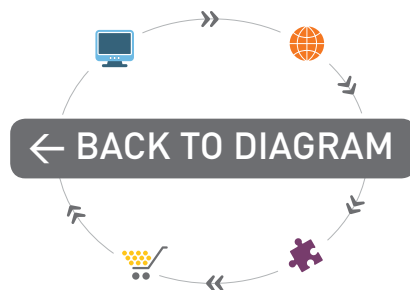
The most adequate type of connection for conducting business via the internet since:

- You're always connected;
- You only pay a flat monthly fee;
- Doesn't interfere with your existing telephone connection;
- Permits large download limits;
- Provides high connection speeds.

Different types of Broadband Internet:

- ADSL
- Cable
- Wireless

For more info you may wish to consult with the Consumer Guides 2008 – Choosing your Internet Service Provider available on the MCA website.



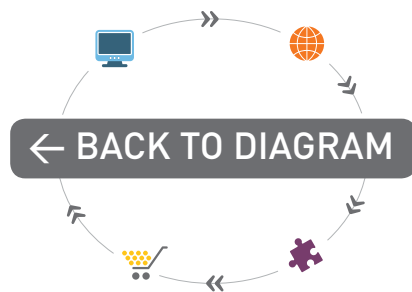


Select and Register your Domain Name

BEFORE YOU CAN USE YOUR SELECTED DOMAIN NAME YOU NEED TO:

- Register your domain name with the Network Information Centre (NIC) at

<http://www.nic.org.mt>





Build your Website

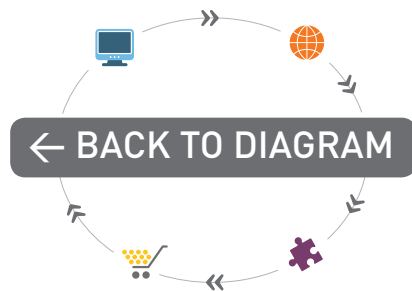
A well planned website can attract the right users!

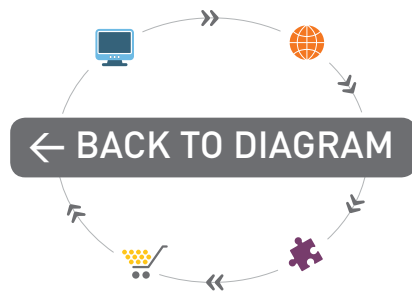
WHEN PLANNING YOUR WEBSITE, IT IS IMPORTANT TO:

- Be clear about what you want to achieve;
- Know your customers and understand their needs;
- Make your products and services easy to find;
- Make it easy for customers to buy from your site.

SOME QUICK TIPS:

- Avoid using too many colours;
- Limit the amount of graphics to the minimum necessary;
- Make sure that your website ranks highly in search engine results;
- Ensure that the website is easy to navigate;
- Ensure that the links to other pages are obvious.





Implement an ecommerce platform

TO ENABLE CONSUMERS TO PURCHASE FROM YOUR WEBSITE:

- Select & implement a Shopping Chart that best suits your business' needs;
- Open an Internet merchant account with an acquiring bank and implement a payment gateway (ensuring that it employs a high level of security such as encryption of credit card details) to allow for payments by credit/ debit cards; and/or
- Register with a reliable third party processing service (such as PayPal, Intabill etc.) for handling payments.

SOME QUICK TIPS:

- Ensure that your site is well organised and easy to navigate to find products/ services;
- Provide sufficient product/ service information to allow consumers to take informed decisions;
- Ensure that appropriate consumer service mechanisms are in place;
- Provide e – mail confirmation of orders;
- Clearly indicate the total cost before consumer commits to the sale.



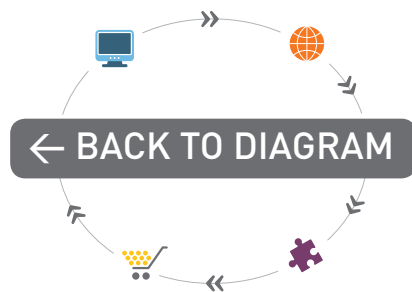


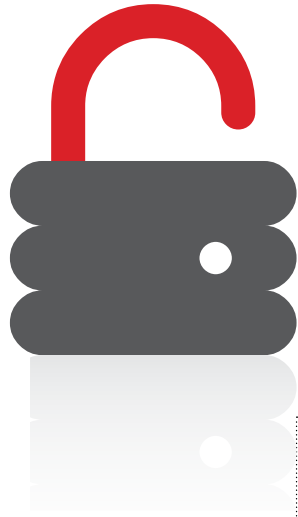
Taking care of your online Business

Taking care of an online store is an ongoing commitment!

IT IS IMPORTANT TO:

- Keep your website updated;
- Encourage consumer feedback;
- Promote your site – develop an eMarketing plan;
- Implement effective security controls;
- Identify ecommerce threats and vulnerabilities and implement effective security mechanisms;
- Consider risks and threats to your online store and prepare a fall back plan to ensure continuity of your business should something go wrong.





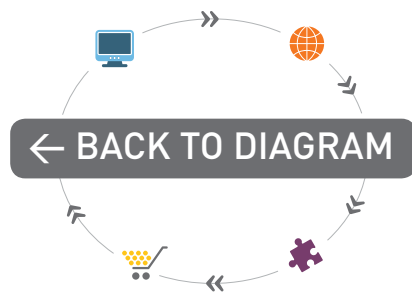
PC / Internet Security

BE AWARE OF THE SECURITY RISKS POSED BY ECOMMERCE SYSTEMS!

- Virus infections or attacks by hackers;
- Theft of confidential data;
- Attempts by others to pass themselves off as a representatives of your business;
- Interception of consumer transactions;
- Credit card fraud.

SOME QUICK TIPS:

- Take the time to ensure your online activities are secure – this will guarantee the long – term security of your business;
- Basic e- security precautions are extremely important for the survival of an online business;
- Threats posed by hackers can be combated by implementing a correctly configured firewall and up-to-date anti-virus software.



WHAT IS ELECTRONIC COMMERCE?

What is eCommerce?

Simply defined, eCommerce is trade conducted over the Internet. This occurs when a person buys or sells a product or service via a website. It usually involves goods and/or services being selected, ordered and paid for via the Internet. The payment however, may at times, be effected either physically, on delivery or using other methods which do not involve online payment transactions. eCommerce can also involve various services, electronic processes and transactions that occur within and between businesses.

Who can provide eCommerce services?

Any trader can do eCommerce. The Internet has certainly brought about opportunities for both existing and new traders, in a variety of ways. Existing traders cannot afford to ignore the technological developments and breakthroughs made possible by the Internet. They could be losing out to more internet-savvy traders! Consumers' expectations are inevitably changing and traders must be able to match these expectations if they want to gain an advantage over their competitors.

What are the costs of not going online?

- Loss of consumers to competitors who have an online presence and interact electronically with consumers;
- Miss out on a very strong marketing medium;
- Loss of potential revenue from selling online;
- Extra costs incurred due to inefficient traditional selling practices;
- Negative perceptions of consumers who are starting to expect traders to have an online presence.



BENEFITS OF eCOMMERCE



Investing in an eCommerce system could potentially result in a number of advantages for a trader:

- No need for a brick and mortar storefront, bringing about less fixed and overhead costs for both existing and new businesses;
- Consumer orders can be automated, reducing costs related to order-processing;
- The sale of goods and/or services with no barriers of time or distance;
- a 24 x 7 showcase for products and services - providing consumers with the opportunity to browse and shop at their convenience, anywhere and anytime, thus eliminating the time constraint problem;
- Smaller enterprises can compete with large companies on a more level playing field;
- Reductions in marketing and advertising costs;





- Amendments and editing of catalogues, anytime and at reduced expense - no printing costs will be incurred when these are simply made available online;
- Traders can provide consumers with more real-time, up-to-date information about their products and services and related offers, than what is possible through brochures;
- Traders can offer a personalised consumer service at reduced cost - they can track the interests and preferences of their consumers, allowing them to tailor their products and services to meet their consumers' needs. For example, a trader can recommend other items to his/her consumers, based on the knowledge of previous purchases;
- Traders can promote their products and services directly to particular segments of the market - they can target their audience by means of email, or via a link through another website by means of affiliate marketing¹;
- Traders can expand their market whilst lowering costs.

1. Affiliate marketing is a revenue sharing venture between a website owner and an online trader whereby the former will place advertisements on his websites to either help sell the trader's products or to send potential customers to the trader's website, all in exchange for a share of the profits - <http://www.wisegeek.com/what-is-affiliate-marketing.htm>



RISKS IN ECOMMERCE



All business ventures, whether a brick and mortar (traditional store), click and mortar (traditional store with an online presence), or a purely online store, can be affected by varying degrees of risks. Traders need to be aware of such risks especially if their aim is to establish a fruitful eCommerce business. By carefully assessing and addressing the implications that threats pose on businesses, traders will be in a better position to effectively tackle any risks or hazards that might arise. If a trader's website is not available for any particular reason, online consumers will quickly and easily shift to his/her competitors.



The following, are some common risks to eCommerce systems:

- Physical damage, such as a fire, flood that could damage the eCommerce server location;
- Data threats, such as viruses that destroy or harm software and information;
- Technical failures, such as hardware and software malfunctions, power failure;
- Credit card payment fraud;
- Internal or external malicious attacks;
- Infrastructure failure, such as server crashes.

These risks and threats not only cause the business to suffer loss of sales, but also trigger brand reputation damage. These risks can be counteracted with a careful risk assessment exercise that determines the potential threats that a website might endure. This exercise should be conducted, both during the developmental phase of the website to ensure that the appropriate safeguards are put in place and also as an ongoing task during the lifecycle of the virtual business. Traders should discuss these and other potential threats with their eCommerce developers so that they are catered for proactively.



DIFFERENT TYPES OF WEBSITES



Websites may be intended and used for an infinite range of purposes. They may, for example, be intended to be entertaining, or informative. Whilst some seek to facilitate communication, others are used for commercial purposes. Different types of commercial websites exist and a trader must be knowledgeable of the various models available in order to select the one that best suits his/her business' current and future requirements. The following are some of the most commonly-found types of commercial websites:

→ Information Delivery Sites or Online Brochure Sites

These sites generate sales by promoting a trader's business and allowing potential consumers to familiarise themselves with the trader's products at their convenience. Whilst portraying a professional presence on the Internet, the sites provide information about the product or service, as well as information on how to proceed with a purchase. They are less expensive to design and maintain than the transactional site and are ideal for all types of businesses.

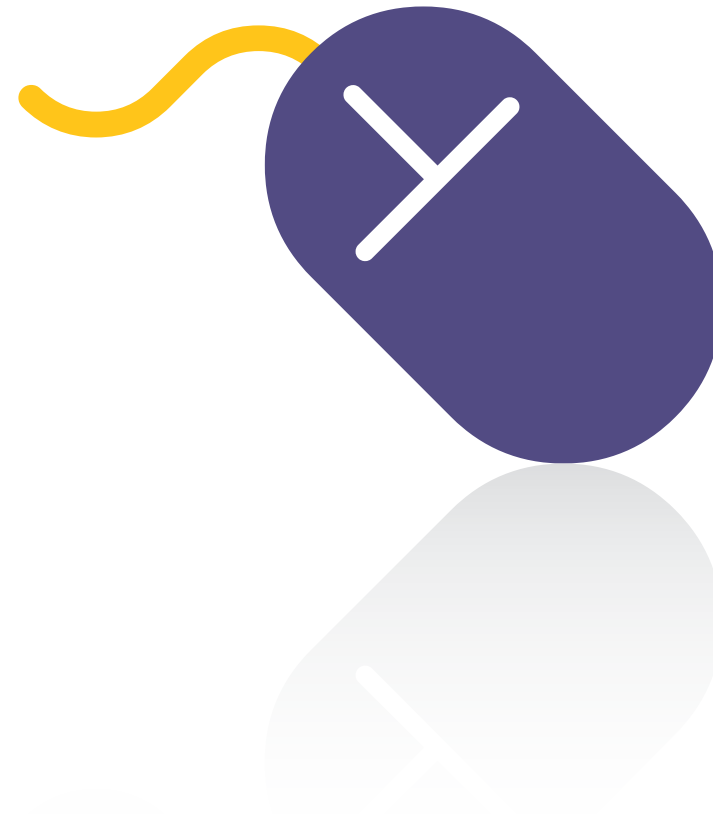


→ Transactional Sites or eCommerce Sites

These normally include the features found in Information Delivery Sites and much more. They allow consumers to place and pay for orders online, whilst also providing facilities for consumers to contact the trader for after-sales service. Additionally, they also permit the trader to add and update product details and some may include features such as automated stock control².

→ eMarketplace Sites

These bring a number of buyers and sellers together to facilitate transactions. In such cases, it is not the trader who owns the website but a third party and the former would need to pay fees to be able join in. Examples of this type of websites are eAuction sites and eMalls.



2. This allows for stock to be automatically updated as soon as consumers buy products, whilst also indicating whether an item is available in stock or not.



LEGAL FRAMEWORK: eCOMMERCE & LICENSING



ELECTRONIC COMMERCE ACT & REGULATIONS

The Electronic Commerce Act³ (hereinafter referred to as the eCommerce Act) and the Electronic Commerce (General) Regulations⁴ (hereinafter referred to as the eCommerce Regulations) were brought into force on 10th May 2002 and 26th October 2006 respectively, with the aim of facilitating eCommerce take-up. These laws establish the local legal framework for eCommerce and are mainly modelled on the UNCITRAL (United Nations Commission on International Trade Law) Model law for electronic transactions and the EU Directives for Electronic Commerce and Electronic Signatures, and apply to all those who sell or intend to sell products and/or services online.

3. Chap. 426: <http://www.mca.org.mt/infocentre/openarticle.asp?id=986&pref=37>

4. LN 251 of 2006: <http://www.mca.org.mt/infocentre/openarticle.asp?id=1263&pref=37>



In essence, the eCommerce Act establishes the:

- Legal validity of electronic transactions taking place via electronic communications;
- Legal validity of communications via electronic means;
- Legal validity of electronic signatures;
- Parameters within which electronic contracts are to be concluded; and
- Regulatory framework for the provision of electronic signature certification and intermediary services.

Who is responsible for enforcing eCommerce legislation?

The Malta Communications Authority (MCA) has been designated as the supervisory body, responsible to monitor and ensure compliance with the eCommerce Act & eCommerce Regulations⁵.

Do electronic transactions have the same legal bearing as paper-based transactions?

Yes. The eCommerce Act ensures that electronic transactions have the same legal validity as paper-based transactions. Additionally, the Act establishes that information in the form of electronic communications, electronic documents and electronic records satisfy legal requirements to provide information in material form.

What are Information Society Services and who provides such services?

This is the term used under the eCommerce Act to describe eCommerce services. The Act defines Information Society Services as services provided:

- **At a distance** – that is, where the seller and the consumer are not simultaneously in the same place when the transaction takes place;
- **By electronic means** – that is, where the service is provided electronically by means of electronic equipment for the storage and the processing of the information; and



→ **At the individual request of a recipient of the service** – that is, when the consumer is requesting the service.

This means that if a trader is accepting online orders or selling goods or services via the Internet, the services provided fall under this definition. Therefore all transactional and eMarketplace type of sites are considered to offer Information Society Services. Additionally, even sites which are commercially operated and which offer services to consumers, even where the consumer does not pay for the service, such as online newspapers or certain search engines, fall within this definition. In fact, the eCommerce Directive⁶ clearly states that Information Society Services **'extend to services which are not remunerated by those who receive them, such as those offering online information or commercial communications, or those providing tools allowing for search, access and retrieval of data; information society services also include services consisting of the transmission of information via a communication network, in providing access to a communication network or in hosting information provided by a recipient of the service;'**

Do orders concluded via email fall within the definition of Information Society Services?

No, even though such orders could meet the three criteria previously discussed, the eCommerce Act, clearly specifies that such orders do **not** fall under the definition of Information Society Services and therefore the obligations which apply to information service providers would not be relevant in this case.

If a trader only displays a catalogue of products/services and other information related to the business on the site, without generating any direct revenue from the website, is s/he an Information Society Service Provider?

No, information-delivery sites, which do not generate direct revenue, are not considered to offer Information Society Services. Nonetheless, abiding by the obligations set out in the eCommerce Act is always beneficial, since it reassures consumers that the company is reliable and trust-worthy.



What information should an online trader make available to consumers?

(See also 'Are there any contractual obligations that a trader must fulfil?' under the 'Legal Framework – Electronic contracts & Advertising' section and 'Which are the obligations set out in the Distance Selling Regulations that an online trader must abide by?' under the 'Legal Framework – Obligations towards Consumers' section)

The eCommerce Act requires a trader to make available the following information, in an **easy, directly and permanently accessible manner**:

- The name of the business/retail shop;
- The geographic address where the trader is established. This is normally the address of the business/retail shop. However, in cases where there is no physical store/shop, the address would refer to the personal residence of the individual who appears on the license;
- The details through which the consumer can contact the trader for information, queries or any complaints. This information should include the electronic mailing address, telephone number

or any other means that allows the trader to be contacted rapidly and communicated with, in a direct and effective manner;

- Prices should be clearly indicated and inclusive of tax & delivery costs;
- If the trader is registered in a trade or similar public register – the name of the register as well as the registration number or any equivalent means of identification in that register;
- Where the trader is subject to an authorisation scheme, the particulars of the relevant supervisory public authority;
- In case the trader offers services which are part of a regulated profession – the professional body or institution with which the trader is registered (for example an Internet Service Provider would be authorized by the Malta Communications Authority, a hotel would be authorized by the Malta Tourism Authority, etc.). The trader must provide a reference to the applicable rules in the Member State of establishment and the means to access them via a link to the website or even a copy of the official document which can be downloaded through the website;



- Value Added Tax number;
- When a trader sends unsolicited commercial communications there should be details as to how the user can opt in or opt out of such service. These details should be visible at every point where the users of the service are asked to provide information when accessing the website of the trader.

Example of an information notification of a company

Name	ABC Telecommunications Ltd
Address	Building 1, DEF Road, Valletta, VLT1234
Contact	abc@abctelecommunications.com.mt; Tel: 21345678; Fax: 23456789
Vat No	123456789
Company	
Registration no.	C9876450
Trade Register	abctelecommunications.com.mt is licensed by XYZ under the terms of the general authorization.
Reference number	123456.
Authority details	XYZ and a link to XYZ website

It is recommended to make the information listed previously, available either on the home page of the website or through a dedicated section (for example 'About us' or 'Who are we') which is linked to the home page.

What are commercial communications and can a trader make use of these to advertise his/her products?

These are forms of communications aimed at promoting goods and services. Therefore, if a trader intends advertising on the Internet, or by email or SMS, the eCommerce Regulations⁷ stipulate that these must be clearly recognisable as being commercial communications and must visibly identify the person on whose behalf the marketing communication is being sent, together with any promotional offer.



TRADING LICENCES ACT

Does a trader require a special licence to conduct online trading?

No. In commerce, no distinction is made between an online and an offline trader. This means that anybody trading online requires the same licence/s or authorisation/s that is/are necessary for a traditional business.

What licence is required for trading?

The Trading Licences Act⁸ requires anybody carrying out a commercial activity to obtain a trading licence, unless the nature of the business falls under the remit of a specific Authority. In such a case, the licence will need to be obtained from the Authority that regulates that specific sector.



LEGAL FRAMEWORK: ELECTRONIC CONTRACTS & ADVERTISING



This section is intended to outline the different pieces of legislation that a trader needs to be familiar with when offering consumers the possibility of buying via the Internet. The main laws governing online contracts are the eCommerce Act⁹ and the eCommerce Regulations¹⁰. However, it is advisable for a trader to also be aware of other legislation that may come into play. These include the Commercial Code¹¹, the Civil Code¹², the Consumer Affairs Act¹³, the Distance Selling Regulations¹⁴ and the Data Protection Act¹⁵. Although these are not directly linked to online selling, they are important for any person or entity carrying out any form of trade. The last three mentioned laws are explained in more detail in the 'Legal Framework - Consumer Protection' section.

9. Chap. 426 - <http://www.mca.org.mt/infocentre/openarticle.asp?id=986&pref=37>

10. LN 251 of 2006 - <http://www.mca.org.mt/infocentre/openarticle.asp?id=1263&pref=37>

11. Chap. 13 - http://docs.justice.gov.mt/lom/legislation/english/leg/vol_2/chapt13.pdf

12. Chap. 16 - http://docs.justice.gov.mt/lom/legislation/english/leg/vol_2/chapt16.pdf

13. Chap. 378 - http://docs.justice.gov.mt/lom/legislation/english/leg/vol_10/chapt378.pdf

14. LN186/2001 - <http://www.eccnetmalta.gov.mt/filebank/imagebank/pdf/378/08.PDF>

15. Chap. 440 - http://docs.justice.gov.mt/lom/legislation/english/leg/vol_13/chapt440.pdf



ELECTRONIC CONTRACTS

What are electronic contracts?

Contracts are normally made up of an offer, acceptance, and intention to create a legal relationship, whether in writing, or in some other tangible form, in this case in electronic form. Contracts entered into electronically are legally binding if they are in accordance with the requirements established at law primarily those under the Civil Code, the Commercial Code and the eCommerce Act. Moreover, the eCommerce Act further strengthens the legal framework for electronic contracts by establishing precise rules, in line with the EU eCommerce Directive¹⁶. The eCommerce Act makes specific reference to the formation of contracts with consumers, introducing a number of provisions aimed at safeguarding consumers entering into contracts electronically and facilitating the uptake of eCommerce since it allows for trade to occur at a distance without the need for the trader and the consumer to be at the same physical location.

Are online contracts legally binding?

Yes. The eCommerce Act establishes that contracts concluded electronically are valid at law. Online contracts are legally valid, not only in cases where both the offer and the acceptance are communicated by electronic means, but also where only the offer or only the acceptance is communicated electronically. However, there are exceptions. Contracts related to the following fields cannot be entered into electronically:

- The field of taxation;
- Data Protection issues which are covered by the Data Protection Act;
- Questions in relation to agreements or practices governed by competition law;
- Activities of notaries, representation of a client and defence before the courts and gambling activities including lotteries and betting;
- Contracts that create or transfer rights over immovable property excluding leasing contracts;



- Contracts of suretyship¹⁷ granted and on collateral security furnished by persons acting for purposes outside their trade, business or profession;
- The law governing the creation, execution, amendment, variation or revocation of a will or testament, a trust or a power of attorney;
- The making of an affidavit or any solemn declaration;
- Any rules and practices of a court or tribunal;
- Evidence for criminal proceedings;
- Any law relating to the protection of public health or consumer interests.

When is a contract concluded?

The eCommerce Act provides that an electronic contract is concluded when the consumer has received electronically, from the trader, an acknowledgement of receipt of the consumer's order. The Act states that a

contract is concluded when the consumer can actually access and view the trader's acknowledgement. It is to be noted that the trader is required to acknowledge receipt of the order without undue delay and by electronic means. The acknowledgement referred to here is the email that the online trader sends to the consumer confirming the order, which is normally sent automatically by the trader's ordering system.

- See 'Order Confirmation template' – in Appendix I: this is intended for guidance purposes only and is provided as a specimen.

Does a consumer have a right to withdraw from a contract?

Yes, the Distance Selling Regulations empower the consumer to cancel a contract “**within fifteen days**” from the date of the delivery of the good/s or from conclusion of the contract in the case of services, without incurring any penalty. The consumer is not obliged to justify the returning back of the goods or the cancellation of the contract. However, it is normally the consumer who bears the cost for returning back the goods.

17. Civil Code (Chap. 16) – Art. 1925: When a person agrees to be responsible for the debt or obligation of another - http://docs.justice.gov.mt/lom/legislation/english/leg/vol_2/chapt16.pdf



What happens if the delivered good is not as specified in the contract of sale?

The trader is obliged to honour the contract and deliver the good as specified in the agreement with the consumer. Therefore, in cases where the delivered good does not conform to the specifications agreed upon during the purchasing process, the Consumer Affairs Act provides the consumer with various remedies for rectifying the matter. The consumer may demand a replacement or repair of the product free of charge unless this solution is impossible or disproportionate. If the product cannot be repaired or replaced within a reasonable time, or only at significant inconvenience to the consumer, or cannot be repaired or replaced at all, the consumer may opt to either have an appropriate reduction in price or to have the contract revoked. The Consumer Affairs Act allows the consumer a time frame of two years within which s/he can seek redress from the trader in case of non-conformity with the contract.

Is there a stipulated period of time within which the trader must deliver the product or service?

Yes, unless otherwise agreed, the Distance Selling Regulations establishes that a trader must execute an order within a maximum of thirty (30) days from the day after a contract was concluded. Therefore, a trader must inform the consumer if a product or service is unavailable and the latter is then entitled to a refund by the trader of any payment made in the shortest time possible and in any case, by not later than thirty (30) days.



Are there any contractual obligations that an online trader must fulfil?

- (See also 'What information should an online trader make available to consumers?' in the 'Legal Framework: eCommerce & Licensing' section and 'Which are the obligations set out in the Distance Selling Regulations that an online trader must abide by?' in the 'Legal Framework: Obligations towards consumers' section)

Yes. Besides those already mentioned under the Legal Framework: eCommerce & Licensing' section, the eCommerce Act further establishes that a trader must provide the consumer with the following information:

- The technical means for identifying and amending the order details (for example quantity, size, etc.) prior to placing the order. This will ensure that consumers are able to amend mistakes they make;
- The different steps to follow to conclude a contract so that consumers are aware of the process involved and the stage at which they will commit themselves;
- Whether the concluded contract will be filed by the trader and whether it will be accessible by the consumer;

- In cases where the trader is subscribed to any codes of conduct, s/he must provide consumers with information on how to access these codes;
- Any applicable terms and conditions available in a way which permits the consumer to store and reproduce them;
- The language/s in which the contract may be concluded.

It should be noted that these requirements do not apply to contracts concluded exclusively by exchange of email or by some other similar technology. Such contracts are governed by normal contract law and are not addressed in these guides.

Which are the essential terms and conditions that are normally included in a contract?

Generally, as a minimum, a contract for goods or services should provide terms and conditions which address the following:

- Description of goods or services being supplied;
- Price and payment structure;



- Delivery details, including the time, place and who is responsible for delivery;
- Rights of either party to terminate the contract;
- Return and refund policy;
- Confidentiality provisions, particularly if the contract is of a sensitive nature.

It is advisable to provide consumers with a clickable icon or hyperlink on the website displaying the terms and conditions and other relevant information. The icon must, however, be clearly visible to the consumer before the contract is concluded. It is further recommended that special emphasis is made with the consumer to view the link before confirming the order. Many traders address this requirement adequately by requiring the consumer to scroll through the terms and conditions and tick an “I agree” or “I have read” box before s/he can proceed with the order, to indicate acceptance or otherwise to the terms and conditions.

Are there any other laws, besides the national legislative framework, which a trader would need to abide by if s/he is selling products/services to consumers in other member states?

A trader established in Malta¹⁸ is only required to comply with national rules relating to eCommerce, even if s/he provides services to other member states. This rule is premised in the European framework for eCommerce¹⁹ which is intended to ensure that traders are not burdened unnecessarily if they choose to conduct cross border trade within the European Community. Notwithstanding, it is advisable for online traders to become familiar with legislation underpinning eCommerce and consumer protection in the other member states.

18. VAT Act (Chap.406): http://docs.justice.gov.mt/lom/legislation/english/leg/vol_12/chapt406.pdf

The Act defines the term “established” in Article 2 stating that a taxable person (individual or company) is considered as established in Malta when his economic activity is rooted in Malta or has a fixed place of establishment from which he carries out that economic activity in that country. In the case of business conducted in Malta but where there is no physical fixed establishment for conducting business, the business legal representative’s individual’s permanent address is considered to be the place of establishment.

19. 2000/31/EC: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2000:178:0001:0016:EN:PDF>



ADVERTISING

When is advertising considered to be misleading?

The Commercial Code²⁰ defines misleading advertising as advertising that deceives or is likely to deceive consumers with the result of affecting their economic behaviour or damage a competitor of the advertiser. To this end, the Code prohibits any form of misleading advertising. When determining whether an advertisement is misleading or not, the following are taken into consideration:

- Particular features of the good or service, including nature, composition, date of manufacture or provision etc.;
- Price and the manner in which the price has been calculated;
- Nature, attributes and rights of the advertiser.



What is comparative advertising?

Comparative advertising occurs when a trader, for advertising purposes, specifically mentions competitor/s by name with the intent of showing why his/her products or services are better than those of his/her competitor/s.

Does the law allow comparative advertising to take place?

Yes, but the Commercial Code establishes strict parameters within which a trader is allowed to resort to comparative advertising. Following are some of the conditions that must be met:

- The advertisement is not misleading;
- Comparison is done between goods and services that satisfy the same needs or are meant for the same purpose;
- Relevant, verifiable and representative features of product or service are objectively compared;
- It does not discredit or denigrate a competitor's trademark, trade names products, activities or circumstances.

What can a trader do if s/he falls victim to misleading or unlawful comparative advertising?

If there is breach of any of the provisions regulating misleading or comparative advertising by a trader, the Commercial Code entitles the injured trader to choose either to:

- Sue the non-compliant trader for damages (including any interests) s/he may have suffered as a result of the non-compliant trader's breach, or
- Request the Court for the imposition of a penalty payable to the injured party. In this case, the award of the penalty cannot exceed €4,658.57 (Lm 2,000). In establishing the quantum of the penalty to be awarded, the Court will take into consideration the seriousness, malice, if any and continuance of the breach.

Furthermore, when seeking redress before the Court, the injured trader may also ask the Court, that anything done contrary to the provisions of the law be destroyed, or that remedies are granted to remove the Act which constitutes unlawful competition (e.g. discontinuance of misleading adverts).



LEGAL FRAMEWORK: OBLIGATIONS TOWARDS CONSUMERS



Respecting consumers' rights over and above what is obligatory at law, 'makes good business sense'. Whenever eCommerce activities are targeted at consumers, traders must abide by any applicable consumer protection legislation and it is important that they familiarise themselves with the provisions of this set of laws. Although Maltese legislation is in line with EU Directives, if a trader intends to trade outside of Malta, it would be wise that s/he becomes acquainted with consumer rights in the countries where s/he will be offering his/her services.

CONSUMER AFFAIRS ACT

The Consumer Affairs Act²¹ and regulations deal with various aspects of consumer protection including notably distance selling, unfair commercial practices, the use of unfair terms in consumer-trader contracts, and the sale of goods to consumers amongst others.



Distance Selling Regulations²²

These regulations which came into force in September 2001 purport to provide safeguards to consumers buying at a distance, taking into account that these cannot inspect goods or services before they commit to buy.

These regulations also set out the information that traders must make available to their clients, prior to the conclusion of a distance contract. This information must be provided **“in a clear and comprehensible manner”**.

The regulations also stipulate that a consumer can opt out of a contract without incurring any penalty within fifteen (15) days from the date of delivery and establishes that a trader must execute an order within a maximum of thirty (30) days from the day after a contract is concluded.

The following contracts fall outside the scope of the Distance Selling Regulations:

- Products bought from vending machines (for example bars of chocolate or cans of drink) or automated commercial premises such as photos taken by automated photo booths;
- Concluded with a telecommunications operator in respect of a telephone call from a public pay phone;
- Concluded for the construction and sale of immovable property or relating to other immovable property rights. However, the Distance Selling Regulations apply to rental agreements.
- Concluded at an auction;
- Related to financial services.



Which are the obligations set out in the Distance Selling Regulations that an online trader must abide by?

→ (See also 'What information should an online trader make available to consumers?' under the 'Legal Framework – eCommerce & Licensing' section and 'Are there any contractual obligations that a trader must fulfil?' under the 'Legal Framework – Electronic Contracts & Advertising' section)



The Distance Selling Regulations establishes that a trader is duty bound to provide the following information to his/her consumers prior to the conclusion of an online contract:

- Name & address of business and email;
- Description of product/service;
- Price of product/service, including taxes & other additional costs;
- Delivery costs, where applicable;
- Payment method/s;
- Delivery arrangements;
- Cancellation;
- Duration of offer/quotation;
- Minimum duration of contract.



UNFAIR TERMS²³

What constitutes an unfair term?

The Consumer Affairs Act defines an unfair term as that provision in a consumer contract that creates a significant discrepancy between the contracting parties' rights and obligations, putting the consumer at a disadvantage, causing the performance of the contract to be considerably different from what the consumer could reasonably expect and which conflicts with the requirements of good faith.

Therefore, contracts containing unfair term/s can be deemed null, unless the contract is capable of existing without that unfair term/s. Terms that:

- Mislead consumers about the contract or their legal rights;
- Deny consumers full redress if things go wrong;
- Bind consumers into the contract unfairly;
- Exclude or restrict liability for breaches of contract or for traders' failure to fulfil his/her obligations;

- Unfairly denies refund on prepayments if the contract is cancelled by trader;
- Vary the terms and conditions of contract after they have been agreed to, for example, providing a different product, raise the price, or reduce consumers' rights;
- Subject consumers to unfair penalties;
- Establish an unreasonable short period of time for notifying trader of any defects;

are all deemed to be **unfair**. However, it must be noted that this is not an exhaustive list and there may be other terms that could be deemed unfair.

The Act also sets out the basis on which the unfairness of terms is assessed and this includes the nature of the goods or services, the time of conclusion of contract, the ability of a consumer to bargain, whether a consumer was subject to excessive pressure and whether any advantage was taken of consumer's lack of knowledge or skill.



UNFAIR COMMERCIAL PRACTICES

What are unfair commercial practices?

The Consumer Affairs Act lists those commercial practices²⁴, which due to their inherent unfair nature, are prohibited in all circumstances, whilst defining what makes other commercial practices unfair, that is, when:

- A trader acts in contrary or different to what is reasonably expected towards consumers, going against ‘**honest market practices**’ and ‘general principle of good faith’;
- The practice effects the behaviour of the typical consumer in that s/he takes a decision which s/he would not have taken otherwise;
- The practice is aggressive, whereby it threatens or exploits a consumer, restricting his/her ability to make free or informed choices and is therefore likely to cause him/her to take a different decision.

A commercial practice can be considered misleading if it:

- Provides false information;

→ Is deceiving in presentation, in spite of the information being factually correct, in relation to:

- Nature of the product;
 - Main features of the product;
 - Extent of the trader’s commitments;
 - Motives behind the commercial practice;
 - Nature of the sales process;
 - Any statement or symbol related to direct or indirect sponsorship or approval of the trader or the product;
 - Price or the manner it is calculated or the existence of a specific price advantage;
 - Need for a service, part, replacement or repair;
 - Nature, attributes and rights of the trader or his agent (such as identity, qualifications, etc);
 - Consumer’s rights or the risks s/he might face.
- Causes the consumer to commit to a product or service which s/he wouldn’t have considered otherwise. This could be due to marketing of a product, including comparative advertising with the result of causing confusion with products, trademarks and other distinctive marks or failure by the trader to honour commitments contained within a code of conduct to which s/he claimed to be bound;



→ It omits, hides or provides information in an unclear, incomprehensible, vague or untimely manner and therefore depriving the consumer from making an informed decision.

Moreover, the Consumer Affairs Act obliges traders making invitations to purchase (including marketing and advertising), to provide consumers with the following information defined in the Act as 'material', unless it is evident from the product itself:

- The main features of product;
- The identity and geographical address of trader;
- The price of the product, including taxes or how the price will be calculated;
- Additional charges such as delivery, freight or postage costs – when these cannot be calculated in advance, the trader has to indicate that charges may be payable;

→ Payment, delivery and performance (the manner in which any work or a service is to be provided) arrangements;

→ Complaint handling policy;

→ The existence of any cancellation rights.

COMMERCIAL GUARANTEES

What is a commercial guarantee?

A commercial guarantee is a guarantee that a trader may offer consumers over and above the protection established at law, granting the consumer the right for reimbursement, replacement or repair if the goods fail to conform to the contract. Furthermore, the Consumer Affairs Act²⁵ states that a commercial guarantee must be **'in written form in a clear and legible manner, in plain language...'** and it must satisfy a set of criteria outlined in the Act.



COMPLIANCE ORDERS

What are compliance orders?

The Consumer Affairs Act²⁶ empowers the Director of Consumer Affairs to issue compliance orders to traders that operate in breach of the Act, such as:

- The inclusion of unfair terms in consumer contracts;
- The absence of terms in consumer contracts that are considered to be necessary for the better information of the consumer or to address a significant discrepancy between the contracting parties' rights and obligations in favour of the consumer;
- Any unfair commercial practice.

Additionally, the Act also specifies the process involved in the issuing of compliance orders and the related timeframes.

CURRENT REDRESS MECHANISMS AND DISPUTE RESOLUTION PROCESS

Disputes between consumers and traders are inevitable, whether the transaction occurred online or offline.

Consumer confidence in using the Internet for shopping can increase if consumers experience at least the same level of support as when buying in person from a store.

An internal complaint handling process is effective when it guarantees confidentiality, is free to use and easy to access and operate. It is a basic requirement of any consumer relationship management programme, since efficient and effective handling of consumer complaints at the earliest stage can bring benefits to businesses and consumers alike, alleviating the need for recourse to possibly costly and time-consuming redress mechanisms.

How can an online trader implement an effective and efficient in-house complaint mechanism?

It is recommended that traders compile a step-by-step complaints handling process, which is in conformity with the local laws and where applicable, codes of conduct. It should be available on the trader's website to guide consumers when forwarding their queries or



complaints. Every effort should be made to resolve complaints to the satisfaction of the consumer within a specified time frame. This time period should not normally exceed thirty (30) days from receipt of the complaint. Traders should inform the consumer in good time of any necessary extension to the specified time period. They should also record and monitor complaints to ensure prompt and fair resolution. Additionally, traders should inform consumers of any Alternative Dispute Resolution Systems to which they may refer a complaint for resolution if s/he wishes to do so²⁷.

What is the European Consumer Centre (ECC)²⁸?

To instil consumer confidence in cross-border purchases, the EU has set up a network of consumer centres in 29 European countries. These provide consumers with information on their rights under European legislation, whilst giving advice and assistance in the resolution of cross-border disputes. The local office handles complaints that are lodged by consumers in Malta against traders in other Member States. Likewise, a consumer in another Member State having problems with a trader in Malta can register his/her complaint with his/her country's ECC, who will in turn, liaise with the centre in Malta. In both instances, it is the ECC who will communicate with the trader concerned on behalf of the consumer.

What are Alternative Dispute Resolution (ADR) mechanisms?

Alternative dispute resolution (ADR) mechanisms provide out-of-court settlement of disputes, free from jurisdictional barriers, high costs or protracted delays. In addition, they offer traders involved in cross-border eCommerce, a practical way of dealing with disputes. ADR mechanisms can be more flexible, creative, timely and cost efficient than traditional courts in finding solutions that satisfy both parties. A typical example is the Online Dispute Resolution (ODR) that aims to provide easier access to justice, reachable from the consumer's PC itself and is becoming an increasingly popular way of resolving conflicts.



27. Putting it Right: best practices for customer redress in online business – ICC – Published in November 2003: <http://www.iccwbo.org/uploadedFiles/ICC/policy/e-business/pages/Puttingitright.pdf>

28. ECC - <http://www.eccnetmalta.gov.mt>



Which are the Alternative Dispute Resolution mechanisms available in Malta?

→ Malta Communications Authority²⁹

The Malta Communications Authority (MCA), with the power conferred to it by the eCommerce Regulations³⁰, can hear disputes between consumers and online traders. However, prior to considering whether to proceed with a complaint made by a consumer, the MCA must ensure that the consumer has already lodged the complaint with the trader, but has failed to reach a satisfactory solution. The Authority has the right not to accept the dispute if it is of the opinion that other means for resolving the matter in a timely manner are available to the parties or if legal proceedings have already been initiated by any of the parties or if another Authority is already investigating the case.

→ Online Dispute Resolution (Euro-Label)³¹

Through the eCertification scheme for online traders, known as the Euro-label, consumers have the opportunity to lodge complaints against a trader that has been awarded this trust mark. The complaint is then handled by the 'Complaints Committee Board', comprising representatives of the MCA, the Ministry for Infrastructure, Transport and Communications, the Consumer and Competition Division as well as from the Malta Chamber of Commerce and Enterprise.

→ Consumer Affairs Directorate – Consumer and Competition Division³²

In the event of a dispute, whereby no agreement is reached between a trader and the consumer, the latter can register his/her complaint with the Consumer Affairs Directorate. After obtaining all the necessary information from the complainant and after evaluating the case, a mediation process is set in motion. However, should this fail to produce the desired outcome, the consumer can then opt to take his/her case to the Consumer Claims Tribunal.

29. MCA - <http://www.mca.org.mt>

30. LN 251 of 2006 - <http://www.mca.org.mt/infocentre/openarticle.asp?id=986&pref=37>

31. Euro-Label: <http://www.eurolabel.gov.mt>

32. CCD - <http://finance.gov.mt/page.aspx?site=CCD&page=default>



LEGAL REDRESS

In the event of a dispute persisting after complaint handling and alternative dispute resolution systems have failed, legal remedies exist for the consumer to seek redress.

→ Consumer Claims Tribunal³³

This tribunal has jurisdiction to hear and determine claims by consumers against traders whenever a consumer fails to obtain redress for claims whose value does not exceed €3494 (Lm1,500). However, it is also possible for the trader to make counter claims against a consumer regarding an action brought against him by the consumer in front of the Tribunal. Moreover, the tribunal may award the consumer, up to €233 (Lm100) compensation as moral damages for any pain, distress, anxiety and inconvenience. Additionally it can order either party to pay the other party a penalty of not more than €117 (Lm50) if a claim or defence thereto is considered vexatious or frivolous. It is important to note that before a consumer can submit his claim before the Tribunal, he must have first lodged his claim with the Director of Consumer Affairs or with a registered consumer association.

→ Small Claims Tribunal³⁴

This tribunal, which falls under the jurisdiction of the Maltese law courts, can hear and determine claims submitted by any individual or entity, where the value of the claim does not exceed €3,494 (Lm1,500).

In either case, if the monetary value exceeds €3494 (Lm1,500) then the aggrieved party has to file his claim before the Court of competent civil jurisdiction, being the Court of Magistrates if the amount exceeds €3494 (Lm1,500) or the Civil Court if the amount exceeds €11,650 (Lm5,000).

33. Consumer Claims Tribunal Rules - <http://docs.justice.gov.mt/lom/Legislation/English/SubLeg/378/01.PDF>

34. Small Claims Tribunal Act - http://docs.justice.gov.mt/lom/legislation/english/leg/vol_11/chapt380.pdf



DATA PROTECTION ACT

The technological changes brought about by the Internet have increasingly facilitated the collection, collating, manipulation and use of data, whilst simultaneously adding risks of abuse of the same information. The very nature of eCommerce enables traders to collect information about consumers in a cost-efficient manner. Online traders must effectively implement a bold data protection strategy to ensure the correct use and protection of data they process. This will help to build trust in their services and overcome consumer fears when sharing personal data, in particular credit card details with traders.

The Data Protection Act³⁵, which was enacted in December 2001 and brought fully into force in July 2003, seeks to protect individuals against the violation of their privacy by the processing of personal data, held electronically or in manual form. Personal data is defined as any information that relates to an identified or identifiable individual, distinguishing him/her from any other person. Therefore, according to the Act, if an individual can be **'identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his physical, physiological, mental, economic, cultural or social identity'** then that information is classified as personal data.

Which criteria underpin the Data Protection Act?

The Act establishes that personal data shall:

- Be processed fairly and lawfully;
- **Always** be processed in accordance with good practice;
- **Only** be collected for specific, explicitly stated and legitimate purposes;
- **Not** be processed for any purpose other than that for which the information is collected;
- Be adequate and relevant in relation to the purposes of the processing;
- Be processed correctly and, if necessary, kept updated;
- Be processed no more than is necessary;
- **Not** be kept for a period longer than is necessary³⁶.

35. Chap. 440: http://docs.justice.gov.mt/lom/legislation/english/leg/vol_13/chapt440.pdf

36. Chap. 440 - Art. 7: http://docs.justice.gov.mt/lom/legislation/english/leg/vol_13/chapt440.pdf



Under which circumstances does the Act allow the processing of personal data?

The Act establishes that personal data may only be processed if it meets any one of these criteria:

- When a consumer has **explicitly** given his/her consent; or
- For the performance of a contract to which a consumer is party; or
- To comply with a legal obligation; or
- To **safeguard** the vital interests of a consumer; or
- For the performance of an activity that is carried out in the **public interest**; or
- For a purpose that concerns a legitimate interest of the trader or of a third party.

Can personal data be processed for the purpose of direct marketing?

Yes, however the Data Protection Act distinguishes between the processing of personal data for the purposes of direct marketing sent by conventional means, that is by normal post or by telephone and those sent by electronic means, that is, by email or fax.

In cases where the trader opts to send the marketing material by conventional means, then the **OPT-OUT**³⁷ regime applies, which means that the trader can send the communication but is duty bound to appropriately inform the consumer of his/her right to oppose such processing. Therefore, if the consumer notifies the trader that s/he opposes such processing, it would be unlawful to proceed with the processing of such data³⁸.

On the other hand, if a trader opts to send the marketing communication by electronic means, such communication cannot be sent unless³⁹:

- The consumer has given his prior explicit consent in writing to the receipt of such communication (**OPT-IN**); or

37. LN 16 of 2003 - Reg. 10 (3): <http://www.dataprotection.gov.mt/dbfile.aspx/LN16-2003.pdf>

38. Chap. 440 - Art. 10: http://docs.justice.gov.mt/lom/legislation/english/leg/vol_13/chapt440.pdf

39. LN 16 of 2003 - Reg. 10: <http://www.dataprotection.gov.mt/dbfile.aspx/LN16-2003.pdf>



- The consumer has already submitted his/her contact details to the trader in relation to the sale of a product or service. In this case, the trader may only use such details for direct marketing of its own similar products or services.

In any of the two preceding points, the trader is also obliged to inform the consumer of his right to oppose the receipt of such marketing communications.

Notwithstanding, it must be noted that it is illegal for a trader to send direct marketing via email if s/he disguises or conceals his/her true identity from the consumer.

Does a consumer have the right to object to personal data processing?

Yes, the Act allows the consumer at any time to oppose or withdraw consent to personal data processing for the purpose of an activity that is carried out in the public interest or that concerning a legitimate interest of the trader, if s/he has undeniable valid grounds to object to the processing of such data⁴⁰.

What information should a trader provide to a consumer from whom s/he is requesting personal data?

The trader is obliged to provide a consumer from whom s/he has requested personal data, with at least the following information⁴¹, unless it has already been made available to the consumer:

- The trader's identity and business location, and of any other person authorised by the trader on his/her behalf;
- The purpose for which the consumer's personal data is being collected;
- Information about the receivers of the consumer's personal data;
- Whether the information requested by trader is mandatory or voluntary and the consequences of failure to reply;
- The right to access, amend and where applicable, to remove data concerning the consumer.

40. Chap. 440 - Art. 11: http://docs.justice.gov.mt/lom/legislation/english/leg/vol_13/chapt440.pdf

41. Chap. 440 - Art. 19: http://docs.justice.gov.mt/lom/legislation/english/leg/vol_13/chapt440.pdf



What obligations does a trader have when s/ he obtains personal data from sources other than the consumer himself?

In the event that a trader obtains personal data of a consumer from sources other than the consumer himself, the trader is obliged to provide the consumer with the following information unless the consumer is already in possession of:

- The trader's identity and business location and of any other person authorised by the trader to act on his/her behalf;
- The purpose for which the consumer's personal data is being collected⁴²;
- Any additional information relating to the type of data, the recipients and the right to access, amend and where applicable to erase the personal data of the consumer.

However, the above information need not be provided, if the personal data requested is only used for statistical or historical purposes or if such information would be impossible or would involve a disproportionate effort⁴³.

What happens if the personal data is not processed in accordance with the requirements in this Act?

In such cases, the trader will be legally responsible, at the request of the consumer, to immediately rectify, block or erase such personal data. Besides, the trader must notify any changes or deletions to third parties to whom the data has been disclosed, unless this proves impossible or would involve a disproportionate effort⁴⁴.



42. Chap. 440 - Art. 20: http://docs.justice.gov.mt/lom/legislation/english/leg/vol_13/chapt440.pdf

43. Chap. 440 - Art. 20 (4) : http://docs.justice.gov.mt/lom/legislation/english/leg/vol_13/chapt440.pdf

44. Chap. 440 - Art. 22: http://docs.justice.gov.mt/lom/legislation/english/leg/vol_13/chapt440.pdf



Under which circumstances can sensitive personal data be processed?

Sensitive personal data⁴⁵ is data that reveals race or ethnic origin, political opinions, religious or philosophical beliefs, membership of a trade union, health, or sex life and may only be processed if the consumer has given his/her unambiguous consent to processing or has made the data public. Notwithstanding, such data may only be processed **'if the appropriate safeguards are adopted'** and if the handling of this data is necessary:

- For the trader to be able to comply with his/her duties or exercise his/her rights under any law regulating the conditions of employment; or
- For protecting the vital interests of a consumer, especially if the consumer is physically or legally incapable of giving his/her consent;
- For legal claims to be established, exercised or defended.

Why should a trader include a Privacy Policy statement on his/her website?

It is strongly recommended that websites that collect and process personal data should have a policy that sets out how a customer's personal information will be treated. It is simply a way of communicating the business' position regarding data protection, for example, whether it treats personal data as strictly confidential or whether it trades in personal data. It is also the logical place to explain the purposes for which the organisation uses personal data and any likely disclosures. This will provide consumers with further reassurance about the way in which information is being collected and used. In addition, a trader would be satisfying the obligation set out in the Data Protection Act⁴⁶ (refer to 'What information should a trader provide to a consumer from whom s/he is requesting personal data?'), whilst protecting his/her business from legal challenges and unnecessary problems.

- See 'Privacy Policy Statement' template – In Appendix II. This template is only intended as guidance. It is strongly suggested to seek legal advice to ensure compliancy with the appropriate legislation.

45. Chap. 440 - Art. 12 - 18: http://docs.justice.gov.mt/lom/legislation/english/leg/vol_13/chapt440.pdf

46. Chap. 440 - Art. 19: http://docs.justice.gov.mt/lom/legislation/english/leg/vol_13/chapt440.pdf



TAX IMPLICATIONS IN MALTA - VAT

A brief overview of the tax implications for traders operating from Malta.

In principle, the value added tax (VAT) is the consumption tax applicable on most goods and services, bought and sold for consumption in Malta and across the European Union. Therefore, broadly speaking, all traders operating from Malta, whether physically selling from a shop or via the Internet are subject to VAT for the supply of goods and/or services, as set out in the Value Added Tax Act⁴⁷. Traders whose turn-over does not exceed a certain threshold may opt to register as “exempt persons”.

VAT charged on Goods

As a general rule, the VAT applicable on goods sold at a distance⁴⁸, for example via the Internet, is that of the place of origin. For example, a trader selling goods to a non-taxable consumer in Germany will charge the latter the VAT that is pertinent to Malta. However, traders exceeding the distance selling threshold⁴⁹ in any one Member State (MS) would need to charge the VAT applicable in that particular MS. That is, if a trader’s total sales turnover, for example, in Sweden supersedes the threshold for that country, the trader would need to register for VAT in Sweden. Nevertheless, a trader can, out of his/her own free will, even opt to register for VAT in a particular MS, irrespective of whether the threshold in that MS is exceeded or not. In such cases, it is recommended that the trader consults with the VAT authorities⁵⁰, both in Malta and in that

47. Chap. 406 - http://docs.justice.gov.mt/lom/legislation/english/leg/vol_12/chapt406.pdf

48. Chap. 406 – Art. 7 - http://docs.justice.gov.mt/lom/legislation/english/leg/vol_12/chapt406.pdf

49. Distance Selling Thresholds: http://ec.europa.eu/taxation_customs/resources/documents/taxation/vat/traders/vat_community/vat_in_EC_annex1.pdf

50. VAT Authorities within the EU - http://ec.europa.eu/taxation_customs/common/links/tax/index_en.htm



particular MS, since they are the most reliable official source of information on VAT, especially in relation to the rates applicable to specific goods. When a trader sells goods to non-taxable consumers residing outside the EU, no VAT will be charged, given that the trader registers such sales as export⁵¹.

VAT charged on Services

When it comes to tax on services, the matter tends to be a bit more complex. Generally, the tax applicable on a service is that of the trader's place of establishment⁵². However, there are exceptions and in a number of cases the VAT treatment of a service will be dealt with according to place of supply rules, specific to the particular type of service. These may include services related to immovable property, transport of passengers or goods, cultural, artistic, sporting, scientific, educational, and entertainment services⁵³ and others. For example, if a trader provides architectural services in relation to a property in Italy, then the tax chargeable, if applicable, would be that of Italy.

VAT charged on Electronically Supplied Services

Electronically supplied services rendered to customers established outside the EU are deemed to take place where the consumer is established and therefore not subject to Maltese value added tax. For example if a trader sells music, films etc. electronically to a consumer in the US, then no Maltese value added tax would be applicable. On the other hand, if a trader in Malta provides electronically supplied services to a non-taxable consumer established in the EU, for example in Spain, Maltese value added tax would apply.

It is important to note that the value added tax rules governing online sales between a trader and a taxable consumer differ from the above, and are not within the scope of this document.

The above is only intended for guidance and in no way does it replace the provisions of the VAT legislation. It is recommended that whoever is interested in setting up an online shop in Malta, consults with the VAT Department in Malta for more case-specific information.

51. Chap. 406 – Art. 9 - http://docs.justice.gov.mt/lom/legislation/english/leg/vol_12/chapt406.pdf

52. Chap. 406 – Art. 7 - http://docs.justice.gov.mt/lom/legislation/english/leg/vol_12/chapt406.pdf

53. Chap. 406 – Art. 7 - http://docs.justice.gov.mt/lom/legislation/english/leg/vol_12/chapt406.pdf

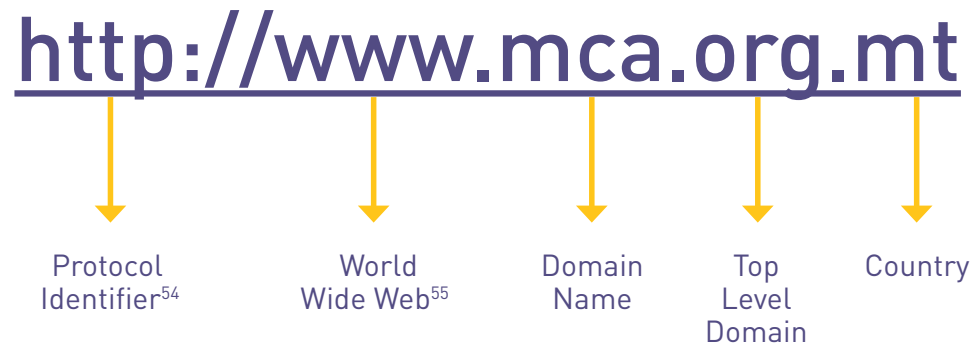


SELECTING A NAME FOR YOUR WEBSITE

What is a domain name?

The domain name is the birth-name of any website and as in the below example, the domain name of the website is “mca.org.mt”. To get a domain name, a trader has to register for the right to use that name. It is similar to registering a business name in the brick-and-mortar world. However, having that business name does not necessarily mean that you also have the shop premises to go with the name! Similarly, by acquiring a domain name, a trader is only getting a name not a website!

The domain name also referred to as the website address or the URL (Universal Resource Locator), enables consumers to find online traders. A typical URL will look as follows:



54. This indicates that this address refers to an Internet site.

55. It is the most widely used system for accessing the Internet.



In the above scenario, 'mca' is the domain name, distinguishing the Malta Communications Authority from other organisations, whilst the '.org' is the suffix which indicates to which top level domain (TLD) it belongs whilst '.mt' denotes the country. There are only a limited number of such TLDs and the ones used in Malta are:

- **.gov** for Government agencies
- **.edu** for Educational institutions
- **.net** for Internet Service Providers
- **.org** for Organizations (non-profit)
- **.com** for Commercial businesses

Domain names are necessary as otherwise it would be extremely difficult, if not impossible, for consumers to remember the multitude of IP (Internet Protocol) addresses associated to the different websites (as an example, cnn.com can also be accessed using its IP address 157.166.224.25). IP addresses are unique identifiers made up of numbers that are used by the Internet for distinguishing between the different computers connected to it.

It is then the Domain Name System (DNS)⁵⁶, which is like a directory that translates the domain names into IP addresses⁵⁷, allowing computers to communicate between them and thereby permitting consumers to access a trader's website. Therefore, it is very important for a trader to choose a domain name that best reflects his/her business so as to be easily traced by consumers.

Why does a trader need a domain name?

- If a trader ever changes his web host (this is the company that provides space on a server it owns or leases, to host its clients' websites), his/her domain name goes with him/her. Regular visitors or customers who know a trader's site name such as www.mca.org.mt (for example), would not have to be informed about this change. They would simply type the trader's domain name and they would be brought to the new site.
- It provides traders with credibility whilst boosting their brand name.

56. An Internet service that translates domain names into IP addresses -

<http://www.internic.net/>

57. Any PC which is connected to the Internet has a unique identifying number, called an IP Address, e.g. 208.87.188.199 - <http://computer.howstuffworks.com/question549.htm>



- A domain name that describes a trader's business can help people remember the name easily and can return to a trader's site without having to use a search-engine. In fact, if a trader gets a good name that describes his/her products or services, s/he might even get people who were trying their luck by typing, for example "www.mca.org.mt" in their browser.

How can a trader choose a good domain name?

A good domain name will describe who the trader is, what the business is and where it is located. The company name might not necessarily be the best domain name for a trader's website, unless it is widely known or it is a household name. Moreover, many website owners believe that a short, simple domain name might be better than a longer one. However this might not always be the case. Consumers are getting more familiar with domain names, and besides, it is also possible to bookmark sites - consumers can easily access a site by clicking on the name in the bookmark directory. Choosing a descriptive domain name is key to a successful commercial website. Unless it is full of keywords that a potential consumer might type into a search phrase, traders will increase the risk of being ignored by search engines. Moreover, some

traders even go a step further by registering possible combinations of their domain names to ensure that they don't miss out on any consumers.

Where can a trader register for a domain name in Malta?

Getting a domain name involves registering the name you want with an organisation called InterNIC⁵⁸ through a domain name registrar. It is the same as if you were registering the name of a new born child. For example, if you choose a name like "mynewdomainname.org", you will have to go to a registrar, pay a registration fee that ranges between €20 to €30 for a name. That will give you the right to the name for two years and you will have to renew it before it expires. The accredited body that has the responsibility of managing the registration of domain names in Malta is the Malta Internet Foundation, more commonly known as NIC (Network Information Centre), a Committee that was inaugurated in January 1999.

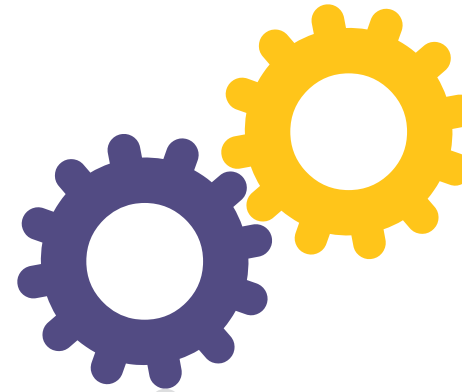


What is the process for applying for a domain name?

- A trader needs to think of a few good domain names that would suit his/her business and not limit to just one domain name. At the time of writing of this text, the number of registered domains was in excess of 128 million⁵⁹, so most likely the domain that a trader will select could have already been taken!
- A trader needs to obtain from his/her web host company, the DNS IP addresses and names of his/her primary and secondary name servers. S/he need not worry if s/he doesn't understand what these things mean. All s/he needs to do is save the information somewhere. The information can usually be obtained from the web host company's FAQs or other documentation on their site, usually under a category like "domain name" or "DNS" or "domain name transfer" and similar.
- Go to <https://www.nic.org.mt> and follow the steps on the website.



ONLINE PAYMENT MECHANISMS



One of the most tangible benefits of eCommerce is interactivity and speed - the ability of enabling businesses to sell and shoppers to buy products from anywhere in the world at any time and the ability to conclude a transaction instantly. Having to mail a cheque or pay in person could discourage consumers from concluding a purchase. Traders need to bear in mind that impulse buying is a common trait amongst eCommerce users.

One of the biggest challenges facing the eCommerce revolution still lies in the ability of merchants to provide a payment mechanism that consumers perceive as secure and convenient, reliable and easy to use. This requires a holistic approach to security: traders need to employ a secured system that makes consumers feel at ease when using their credit/debit cards online. This will enhance the trader's credibility, especially if his/her website is certified and authenticated by agencies dealing with online security. The payment options accepted by the website should be properly explained in simple terms, making them easy for consumers to select the method that best suits their needs. Moreover, these should be periodically reviewed in order to guarantee their reliability, accessibility, and security (see also 'Engendering Buyers' Trust' in the 'Online Security – Trading Safely over the Internet' section).



BANK PAYMENT GATEWAY

This system enables traders to accept credit/debit card payments on their eCommerce sites. Besides simplifying the payment process, this also replaces more cumbersome methods, such as cash on delivery and invoicing. Accepting credit/debit cards also helps attract consumers from all over the world, since traders can conduct dealings even when they cannot see the cardholder or the card and hence no signature is available. Although the acceptance of payment by credit/debit card can be of concern to traders, credit cards offer protection from fraud⁶⁰ through the Card Security Code (CSC) (sometimes also referred to as card verification value [CVV] or card verification code [CVC]), the three-digit security code, which is mostly found in italics on the reverse of the card. This implies that the person making the transaction has access to the genuine card. The Card Security Code introduced by the banking industry, helps fight Card-Not-Present (CNP)⁶¹ fraud and provides an extra safeguard against fraudulent activity, whilst saving businesses the cost of charge-backs.

Notwithstanding, it is recommended that traders become familiar with the risks associated with card-not-present (CNP) transactions and the necessary rules for their acceptance.

→ (See also 'Fraud Prevention' in the 'Online Security - Trading Safely over the Internet' section).

Remember: CSC numbers must **never** be stored by the trader⁶².

What are the requirements for a trader to be able to accept credit/debit card payments on his/her website?

A trader needs to apply for an eCommerce Merchant Account with a bank. This is a special account provided by banks that allows a trader to accept credit/debit card payments and deposit them, at a charge, to a bank account. However, a trader needs to satisfy a set of criteria before s/he is granted such an account by the banks. Generally speaking, if s/he already accepts credit/debit cards in his/her brick-and-mortar store and has a sound history with the bank, the process should be quicker.

60. Card-not-present Security - <http://www.visaeurope.com>

61. When neither the card nor its owner are present at the point-of-sale

62. PCI Security Standards Council - <https://www.pcisecuritystandards.org>



When applying for an eCommerce Merchant Account, a trader would generally need to supply the following information:

- Outline business plan - including details of cash flow and marketing activities;
- Website address;
- Details of the product or service;
- Suppliers' details;
- A description of how the product or service will be delivered;
- The terms and conditions for online trading;
- The expected average online transaction values, the estimated turnover from online sales and the number of credit and debit card transactions;
- Details of the secure server to be used (the Payment Gateway **must** be PCI DSS⁶³ compliant);
- Audited business accounts available;
- Bank details and authority to carry out a check with credit reference agencies;
- A history of his/her trading activities;
- Details of the directors or partners in the business - including full contact details.

However, it must be noted that the above requirements may vary between banks.

63. Payment Card Industry Data Security Standard is a set of comprehensive requirements for enhancing payment account data security, was developed by the founding payment brands of the PCI Security Standards Council, including American Express, Discover Financial Services, JCB International, MasterCard Worldwide and Visa Inc. Inc. International, to help facilitate the broad adoption of consistent data security measures on a global basis. PCI DSS aims to ensure that valuable cardholder account data is stored, transmitted and processed securely. Traders that capture or store card payment information are responsible for the protection and storage of this data. Failure to do so will result in financial and reputational consequences. - <https://www.pcisecuritystandards.org>



What are the costs involved for applying and maintaining an eCommerce merchant account?

Different banks might apply different charges. Normally, the ongoing costs would include either a percentage of the transaction value or a flat fee per transaction. Other charges could include set-up fees (one-time payments) and monthly administration fees for refunds and charge backs. These will vary from one bank to another and therefore, it would be a good idea for a trader to shop around, in order to determine which bank best suits his/her needs. These costs normally equate to a very small percentage of the sale and should not hinder traders from implementing online payments in their websites.

What is a 'charge back'?

A 'charge back' is the process that returns funds to a consumer's card account when the latter has successfully disputed a payment. This usually occurs after the legitimate cardholder reports a fraudulent transaction made using his/her card, to the bank (although sometimes the trader may already have detected the fraudulent transaction). However, since cardholders do not usually check their transactions until they receive their monthly statement, the chargeback process may begin quite some time after the original purchase has been made.

Common reasons for charge backs:

- Consumer's card is stolen and used fraudulently;
- Item did not meet expectations;
- Item was not delivered;
- Item was damaged.



How can charge backs be avoided or kept to a minimum?

To help prevent or reduce charge backs, traders should:

- Provide **contact information** on their website, making it easy for consumers to contact the company in case of any problems;
- Provide **quick and professional feedback** to charge back claims;
- **Not** impose any extra charges on payments done by credit cards;
- Include **taxes and shipping fees** in the total cost and not collect them separately;
- **Immediately inform** consumers of 'out of stock' items and advise expected delivery date. However, if an item remains unavailable, consumers should have the option to either purchase a similar item or cancel the order completely;

- Provide consumers with **accurate descriptions** and images of products;
- Provide a **clear return/refund policy** and make it easily accessible on the website.

THIRD PARTY PAYMENT SERVICE

Third Party Payment Service (TPPS) or ePayment service is an online payment method that permits traders to receive money through the Internet. Consumers sign up with the payment service provider for an account and select their preferred method for funding their payments. They can either place money into that account, or alternatively use their credit card, or their bank account. Whichever they choose, their credit card or account number is never exposed. Paypal is an example of this type of payment service. TPPS offers online traders the opportunity to accept different types of payments such as single-item or multiple-item payments, donations, recurring payments, as well as the possibility of integrating the shopping cart with the preferred ePayment service.



What should a trader look out for when selecting a third party payment provider?

When deciding whether to opt for a third party payment service (TPPS), a trader should check about the charges and other conditions that may be associated with the service. Charges may include:

- An application charge, which would apply, regardless of whether an application is successful or not.
- Fees associated with establishing the account, such as set-up fees.
- A monthly charge for issuing statements on all transactions;
- A percentage deducted for each product sold which is known as the discount rate;

- A higher rate for transactions that do not qualify for the discount rate;
- A flat rate on each transaction, in addition to the discount rate;
- A monthly minimum charge, regardless of the level of sales each month;
- Some providers may require the trader to maintain a certain level of liquidity in their account to cover chargeback fees;
- A charge back fee.

PAY ON DELIVERY

An online trader can decide not to offer online payment on his/her website and instead collect money on delivery. However, this limits a trader's consumer-reach in the local market.



ONLINE SECURITY: TRADING SAFELY OVER THE INTERNET



In traditional as well as electronic markets, exchanges are often carried out among participants that have never met before and may have little or no idea about each other's reliability and trustworthiness. Just as a trader installs alarms and CCTVs in his physical store to eliminate risks, similarly, security measures need to be employed to protect one's online business. Online security is all about implementing the appropriate security measures with the aim of reducing the risks of cyber crime⁶⁴, computer viruses⁶⁵, online fraud and hacking⁶⁶. Any business, big or small, can be the target of sophisticated and malicious online attacks which can shutdown the entire online store or website for several hours or even days. Traders should understand the financial and reputational risks that may be associated with security or privacy breaches and take the necessary steps to mitigate the risk and potential loss.

Which are the most common threats faced by online traders?

Traders need to be aware of a host of new cyber threats and how to mitigate the repercussions of such events.

64. Manipulating a computer network to carry out illegal activities, such as stealing intellectual property and data, fraudulent behaviour, hacking, violating privacy and virus attacks.

65. Malicious computer programs that can reproduce themselves and infect a computer without the permission or knowledge of the owner. These can be transmitted as attachments in emails or by downloading infected software from other websites.

66. Persons who attempt to gain unauthorised access to a computer system for fraudulent purposes.



Hackers can:

- Carry out denial-of-service (DOS)⁶⁷ attacks that prevent authorised users of a website from accessing the site and therefore force the online trader to offer a reduced level of service, or in a worst case scenario, cease operation altogether;
- Access and effect changes to, or intercept sensitive data;
- Alter a trader's website causing damage to his/her brand image or directing consumers to another site;
- Obtain confidential information about a trader's business or consumers with the intent of committing fraud;
- Use viruses to corrupt a trader's business data.

Cyber attacks affect the entire business, thus, managing online risk must be integrated with the company's overall risk management plan.

What are the implications that traders could face due to electronic security breaches and loss of data?

Most traders store data on their computer systems and therefore it is important that they are aware of the consequences that loss of data could bring about.

These are just some of the effects of loss of data:

- Loss of productivity, loss of business and in extreme cases even closure of business;
- Loss of reputation, especially when consumer sensitive data is stolen;
- Loss of data to competitors;
- Possible legal repercussions under the Data Protection Act;
- Possible card scheme fines and reimbursement fees for traders that are not PCI DSS⁶⁸ compliant at the time of compromise.

67. A type of attack on a network that is designed to flood the network with useless traffic - <http://www.webopedia.com>

68. Payment Card Industry Data Security Standard is a set of comprehensive requirements for enhancing payment account data security - https://www.pcisecuritystandards.org/pdfs/pci_dss_saq_navigating_dss.pdf



ENGENDERING BUYERS' TRUST

Building trust in eCommerce is essential for any online trader. Statistical data confirms that one of the main barriers to take up of eCommerce by consumers is the concern of unauthorised access to personal and in particular, card details. The anonymity of card-not-present (CNP) transactions tends to increase the propensity for fraudulent activities, such as internet phishing⁶⁹ or identity theft⁷⁰. This not only threatens consumers, but also the security and the reputation of traders. Security breaches undermine consumer trust in online transactions and can have far-reaching financial consequences for all parties involved.

What can traders do to ensure Account Information Security?

A trader that captures and stores consumer personal details, especially if these relate to card payment information, is responsible for the safe keeping of this information. S/he must adopt a number of security measures aimed at protecting cardholder databases, so as to prevent unauthorised disclosure of consumer information. Besides, a trader should immediately and appropriately dispose of any personal data after it is no longer required.

Traders can safeguard consumer details by:

- Ensuring that all communication containing sensitive consumer data, such as card payment details or transaction information is conducted over a **secured protocol** in accordance with the **Payment Card Industry Data Security Standard (PCI DSS)**⁷¹, a comprehensive standard intended to help organizations proactively protect consumer account data.
- **Encrypting** sensitive data, controlling and auditing access;
- Installing and maintaining a firewall⁷² configuration to **protect** their internal networks;

69. Phishing is the criminally fraudulent process of attempting to acquire sensitive information such as usernames, passwords and credit card details by sending an email to a user falsely claiming to be an established legitimate enterprise in an attempt to scam the user into surrendering private information that will be used for identity theft.

70. Identity theft is a term used to refer to fraud that involves someone pretending to be someone else in order to steal money or get other benefits.

71. Payment Card Industry Data Security Standard is a set of comprehensive requirements for enhancing payment account data security, which was developed by the founding payment brands of the PCI Security Standards Council, including American Express, Discover Financial Services, JCB International, MasterCard Worldwide and Visa Inc. Inc. International, to help facilitate the broad adoption of consistent data security measures on a global basis. PCI DSS aims to ensure that valuable cardholder account data is stored, transmitted and processed securely. Traders that capture or store card payment information are responsible for the protection and storage of this data. Failure to do so will result in financial and reputational consequences - https://www.pcisecuritystandards.org/pdfs/pci_dss_saq_navigating_dss.pdf

72. A system designed to prevent unauthorized access to or from a private network - <http://www.webopedia.com>



- Implementing router⁷³ security functions to **safeguard** the consumer from being re-directed to unauthorised websites, as in pharming⁷⁴;
- Tracking and monitoring all **access** to network resources and cardholder data;
- Developing and maintaining **secure** systems and applications;
- **Never** storing the card security code (CSC)⁷⁵;
- **Regularly updating** anti-virus and anti-spyware software⁷⁶.



FRAUD PREVENTION

The best way for a trader to mitigate the threats and hazards present in an online environment is by developing risk management policies within the business. It is vital for a trader to have a clear understanding of the risks posed by eCommerce systems and associated business processes and to be aware of the potential implications, should a security incident take place. Therefore, it is recommended that a trader conducts a risk assessment and ensues with formulating an online security policy that details how the business intends to protect its IT assets, including its eCommerce systems and proceed in the case of an incident. For this to be effective, the policy needs to be continually revised to reflect changes in technology (e.g. the introduction of new equipment, users and business systems) and in internal policies and procedures (e.g. employees leaving the company)⁷⁷.

73. A device that forwards data packets along networks. A router is connected to at least two networks and is located where two or more networks connect - <http://www.webopedia.com>

74. Pharming is a hacker's attack aiming to redirect users to a false website, even if they type the right Web address of their bank or other online service into their Web browser.

75. The card security code is a unique three number printed on the back of the debit/credit card. The number is not embossed on the card so that it cannot be printed on receipts - making it difficult for anyone other than the genuine cardholder to know it - https://select.worldpay.com/global3/payment/default/help_securitycode_en.html

76. Spot & Stop Card-Not-Present Fraud - <http://www.cardwatch.org.uk>

77. Securing your eCommerce systems - <http://www.businesslink.gov.uk>



Inevitably, card-not-present (CNP) transactions pose additional risks to a trader as neither the card nor the cardholder are present and the cardholder's written signature is not possible. In addition, the card issuer (normally the bank) can only confirm that the card has not been reported stolen or lost and that there are sufficient funds available in the account.

Therefore, for these reasons it is advisable for a trader to:

- **Never** accept payment with expired cards;
- **Be wary** of consumers that demand next-day delivery without showing regard for the extra costs involved;
- **Verify** transactions prior to shipping product/s or rendering service/s;
- Request the **card security code** (CSC);
- **Watch out** for any warnings issued by the bank.

Additionally, the trader should **ensure** that the following information **is transmitted** in a **secure manner**, when accepting CNP payments:

- Card account number;
- Cardholder's name, as it appears on the card;
- Card expiry date, as it appears on the card;
- Cardholder's billing address;
- Cardholder's address for delivery of goods;
- Card issue number and start date (if available);
- Contact phone number (preferably not a mobile number);
- The name of the issuing bank, building society or other financial institution that issued the card.





ATTENTION!

A trader is responsible for ensuring that the CNP transaction is not fraudulent. If it is, the trader might be liable for the loss incurred in the absence of appropriate security controls, such as 3-D Secure⁷⁸ (this is used as an added layer of security for online credit and debit card transactions and it provides higher coverage against fraud losses since 3-D Secure traders will not be held liable for fraud-related charge backs).

SAFEGUARDING ONE'S BUSINESS

Despite the number of precautions taken to protect one's business, a trader needs to be constantly vigilant of the potential perils that might threaten his/her operations. As well as being aware of the external dangers, it is also important for a trader to be conscious of attacks from within the organisation (such as disgruntled employees or partners). These tend to occur more frequently than attacks from unauthorised users.

What can traders do to minimise risks?

The following are some precautions that traders can adopt to limit fraudulent activities aimed at their business:

- **Ensure compliance** with information security and ethical use policies by employees and/or partners;
- Always **obtain further authorisation** for repeat orders prior to processing and shipping;

78. 3-D Secure stands for Three Domain Secure - the payment industry's internet authentication standard which has been developed by the major card schemes. Visa has called their version of the scheme 'Verified by Visa' and MasterCard have called their equivalent initiative 'MasterCard Secure Code'. These are both collectively referred to as 3D Secure. - http://en.wikipedia.org/wiki/3D_secure



- Be more **vigilant** when dealing with new or unknown consumers - it is important for a trader to authenticate the details provided by a new consumer;
- Implement **cardholder verification methods** such as card security code validation and 3-D Secure;
- Keep in mind that significant time may elapse before **fraud** is discovered;
- Be **wary** of consumers who change the delivery address at short notice;
- **Maintain records** of any fraudulent activity – this can be an effective way of identifying patterns and exposing areas of potential risk, such as:
 - Orders made on different credit/debit cards but shipped to the same address;
 - Multiple transactions on one credit/debit card over a short period of time;
 - Multiple transactions on one credit/debit card but different shipping addresses;
 - Multiple credit/debit cards from a single IP address⁷⁹.
- **Avoid** delivering goods to hotels or guest houses;
- **Always** register/record goods sent by post or use a reputable courier;
- **Ensure** that all transactions are properly recorded;
- Carry out post transactional analysis – this can help detect potential fraudulent activity, for example an IP address shows inconsistent cardholder details;
- Keep software up-to-date;
- Retain a back-up of all business data and store in a safe place, ideally away from one's home or business premises for disaster recovery purposes;
- Develop a contingency plan to ensure business continuity in the event of a disaster.

79. This is a unique identifier made up of numbers that are used by the Internet for distinguishing between the different computers connected to it.



Which are the warning signs that warrant more in-depth checks?

The following should alert traders to carry out more thorough checks:

- Inconsistent cardholder information provided by consumer;
- CSC/CVV/CVC does not match;
- Returned back items due to recipient not known at property or building was empty;
- Cardholder makes direct contact about a transaction s/he did not authorise;
- Unusually large orders – stolen cards or account numbers have a limited time-span and thus fraudsters need to maximise the size of the purchase;
- Different credit card and delivery addresses;
- Orders requested to be shipped overnight or as soon as possible - fraudsters are not concerned with paying a higher price as long as they get the item/s fast.

What can traders do in the event of a suspicious order or transaction?

When in doubt on the validity of the transaction, traders should:

- Call the acquiring bank (the bank that has issued the card) to confirm the cardholder's authority for the placed order;
- Ask the consumer for additional information such as telephone number that a trader could call to contact him/her to verify the authenticity of the person that has initiated the purchasing process;
- Request a utility bill/statement indicating the delivery address.

It is advisable for traders to establish effective procedures for cardholder verification. This not only reduces the risk of fraud, but also builds consumer confidence and loyalty. Consumers will feel reassured that the trader is adopting all the necessary measures to ensure the security of transactions.



What can traders do to protect their online store?

Following are some safety measures that traders can adopt to ensure that their online presence is protected:

- Use **strong passwords** throughout the system – passwords of at least 8 or more characters long utilising a combination of different cases, numbers and special characters are recommended, such as 13@#FY?&9!;
- **Change passwords** regularly, for example once a month;
- Utilise **different passwords** for different accounts;
- **Monitor log files** carefully to detect any attempts of malicious behaviour;

- **Implement** transport layer security (TLS)⁸⁰ protocols;
- **Scan** the website (by a qualified security assessor⁸¹) for any possible Trojans⁸² and to identify any weaknesses and vulnerabilities that would need to be addressed.

The above information is only meant as guidance and we strongly recommend traders to seek expert advice prior to undertaking any online project. For more information about online security, following are some useful links that traders may wish to access:

ISACA - <http://www.isaca-malta.org/>

Malta Info Security - <http://maltainfosec.org/>

MITA - <http://www.mita.gov.mt/>

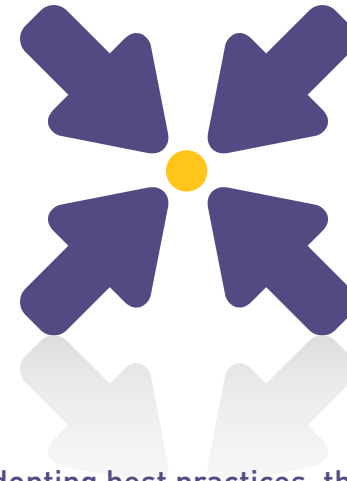
80. Encryption protocols that provide security and data integrity for communications over the Internet - <http://www.webopedia.com>

81. For qualified security assessors please visit: https://www.pcisecuritystandards.org/gsa_asv/find_one.shtml

82. A malicious software that appears, to the user, to perform a desirable function but in fact, facilitates unauthorized access to the user's computer system.



BEST BUSINESS PRACTICE



When it comes to adopting best practices, the best approach is for a trader to place him/herself in the consumer's shoes and carefully think about what would motivate a consumer to choose to do business with him/her. A trader should act proactively by adopting policies that generate a safe environment for consumers whilst ensuring that these policies are honoured. This will greatly contribute towards building consumer's trust. The more consumers know how a business operates, the more they will be inclined to make purchases from a trader's online store. Moreover, it is recommended that a trader has the policies examined by a legal adviser before placing them on the website.

'About Us' or 'Who Are We' section

Traders should aim to populate this section with clear information about their business, informing consumers what their company does, including the products and services they offer. This section should be placed in a prominent place on the website. (See also 'What information should an online trader make available to consumers?' under the 'Legal Frameworks: eCommerce and Licensing' section).



Privacy Policy Statement

This will reassure consumers that their personal data is being handled in an appropriate and safe manner.

Particularly a privacy statement will specify:

- The type of information that the trader may collect;
- What the trader may do with the data;
- Where and how the trader will store the consumer's data;
- How consumers can access and correct any information submitted to the trader;
- The type of security measures adopted to protect the loss, misuse, or alteration of the data under the trader's control;
- How a person can complain if they believe their data has been compromised or mismanaged.
- (See also Data Protection under the 'Legal Framework: Obligations towards Consumers' section)

Online Catalogue

A comprehensive description of the product or service will help reduce misunderstandings whilst making the product or service more appealing than those of other less professional competitors. A quick and easy to browse online catalogue with the facility to search by keywords and phrases, will be more appealing to consumers, making it more likely that they will make a purchase. In addition, the design of the store front should be in such a way that it is possible for consumers to know, at all times, at what stage of the buying process they are.

Terms & Conditions

A contract's terms and conditions must be clearly specified and it is advisable to provide a 'click-through' confirmation for important elements within a contract, especially for non-refundable products, such as concert tickets. Ideally, consumers should be able to click on a button 'I Accept' or 'I Agree' so that they fully understand that they cannot cancel their order once completed.



Handling Orders

The manner in which a trader handles orders can greatly impact consumer satisfaction whilst encouraging consumers to repeat business with that trader.

- Immediate acknowledgement of orders is recommended, with the trader sending an email confirmation and order summary within one business day. Consequently, orders should be promptly processed.
- Traders should be extra vigilant when inputting prices on their websites to avoid any typing errors. However, should this occur, for example an item is marked €2 instead of €200, it is recommended that the email sent to the consumer clarifying matters and explaining the error, should be polite and clear. Consumer service at this point is crucial!

- Traders should seek to inform consumers as quickly as possible whether an item is in stock or not. Delay in advising consumers that the product/s they ordered is not available might be inconvenient for them since they could have selected other item/s had they known of the unavailability. Moreover, when an item is out of stock, traders should offer consumers the possibility of either waiting for the item to be in stock (informing them of an approximate time frame) or to select a similar item, or to cancel the item from the order.

Commercial Guarantee

This is a written assurance that guarantees the quality and reliability of a product in terms of correcting any justifiable problems with the product at no additional cost, for a definite period of time.

- (See also 'What is a Commercial Guarantee' under the Legal Framework – Obligations towards Consumers' section)



Security

This topic is discussed more at length in the 'Online Security: Trading Safely Over the Internet' section. From various research studies conducted, it transpires that most consumers seek some form of security assurance before proceeding with a purchase. Therefore, it is advisable for traders to display any security or accreditation logos on their website since this will help mitigate any security concerns that consumers might have. Moreover, it also pays traders to inform consumers that they are handling their personal and financial data in a secure manner, by informing them about their business practices and the way in which they intend to process the information submitted.

Return and Refund Policy

Consumers tend to prefer sites which have a clear Return and Refund policy. Therefore, it is important that it is easily accessible and, ideally, it should be included in all communications with the consumer. However, the trader needs to clearly specify the terms under which returns are accepted (e.g. who will bear the cost of returning the product/s, etc.) and the circumstances that would merit a refund, prior to the conclusion of the contract. The absence of such a policy is likely to deter consumers from buying from a trader's website.

Consumer Service

- **Establish a good relationship with the consumer**
There are different ways how this could be approached, depending on the frequency at which consumers buy and the opportunities available for suggesting complimentary purchases.
- **Provide an excellent level of consumer service**
 - Consumer-service emails and phone calls should be answered within a maximum of two business days.
 - Queries should be immediately acknowledged and dealt with in a timely manner.
- **Encourage feedback from consumers**
Traders should encourage consumers to leave reviews about their shopping experience since these can reassure new consumers, whilst help identify future product and service development.



Records

Traders should advise and encourage consumers to keep a copy of the order confirmation and receipt of payment, whilst also emailing a copy of the receipt to consumers.

- (See also 'When is a contract concluded?' in the 'Legal Framework: Online Contracts and Advertising' section)



Delivery

Delivering the product on time is another important aspect of consumer satisfaction. A satisfied consumer will be more willing to repeat business with the trader and to post positive feedback on the trader's website. Therefore, it is in the interest of the trader to:

- Provide easy access to the delivery policy on the website, describing the different delivery methods and the respective prices;
- Clearly define delivery schedules and make every effort to meet those timeframes. Therefore, it is important that a trader establishes realistic timelines which factor in any unforeseen delays;
- Immediately advise consumers, in writing, of any delays in the delivery of products or services and of the new expected delivery or service date.
- Ensure that prices quoted to consumers are correct and no additional costs are charged on delivery. Prices should not differ from those communicated to consumers. In the event that a trader identifies circumstances where costs may vary before the goods are dispatched or services are rendered and the variance cannot be borne by him/her, s/he must



ensure that consumers are informed prior to the conclusion of the transaction. Should additional costs arise after the contract has been concluded, the trader must seek to attain the consumer's renewed confirmation of the order before the goods are dispatched or services rendered.

- Plan ahead for deliveries during festive seasons such as Christmas, to avoid consumer frustration.



Trust mark – Euro-Label

The very nature of the Internet and the fact that online transactions are conducted at a distance without the trader and the consumer ever meeting, leads to the perception that online buying is risky and the data transmitted as part of a financial transaction can be leaked to a third party with malicious intent. Other common concerns of consumers relate to the authenticity of the products, the ability of the trader to deliver the goods ordered in time and the availability of a redress mechanism should the online experience fall short of the consumer's expectations. With a view to dispel these concerns and to enhance a general trust in Maltese eCommerce service providers, the Ministry for Infrastructure, Transport and Communications, in collaboration with the Malta Chamber of Commerce and the Malta Enterprise, launched a trust mark scheme. Through this scheme, the Euro-Label is awarded to those businesses that register with the scheme and comply with the European Code of Conduct. Consumers will feel comfortable doing business with traders who display this logo on their website since they will be reassured that they would be receiving reliable and trustworthy services. For more information and to register for this trust mark, traders can access the Euro-Label website using the following link: www.eurolabel.gov.mt.



Frequently Asked Questions (FAQs)

One of the most popular means of providing consumers with the information they require is a section entitled 'Frequently Asked Questions' or 'FAQs'. Good FAQs help consumers orient themselves with a trader's online store, whilst simultaneously answering almost all of the most common questions concerning a website's policies, content or procedures. They are usually written in a question and answer format and may be separated into different categories for ease of reference. Effective FAQs considerably reduce requests for information by email.

Provide Value for Money

Traders need to ensure that they are competitive by monitoring competition, getting listed on price comparison sites and keeping consumers well-informed of any special offers.

Digital Products

If a trader is selling digital products, s/he must inform consumers of the program/software they need to have in order to be able to view/operate the product, prior to the conclusion of the contract.

Ethical Approach towards Children

Children are vulnerable to certain kinds of deception. Therefore advertising targeted at children should be evaluated from a child's and not an adult's point of view. Traders must take special care when collecting information from children, especially since these are exposed to a number of dangers when browsing the Internet and buying online. It is advisable, especially for traders whose business is either directly targeted at children or whose products or services might attract children, to include a children's privacy policy.

Traders who are interested in ensuring appropriate use of marketing and advertising practices directed at children can consult with the "Self-Regulatory Program for Children's Advertising" issued by the Children's Advertising Review Unit at <http://www.caru.org/guidelines/guidelines.pdf>. This is a self-regulatory program aimed at promoting responsible children's advertising.



APPENDIX I

Order Confirmation Template

Dear Mr/Ms [customer's name]

Thank you for shopping at [company's name]

We have received and are processing the following order:

Order Number: [customer order no.]

Order Date: [date and time of when order was received]

Ship To: [customer's contact details such as name, address, tel. no. & email]

[Include the customer's order indicating the order features such as item description (indicating colour and size, where applicable), quantity, unit price, delivery charges, taxes and total price, such as the below]:

REFERENCE	DESCRIPTION	QUANTITY	PRICE	COST
123456	ABCDEF (Blue) Size S	2	€x	€x
987654	ZYXWV (Red) Size M	1	€x	€x
			Subtotal:	€x
			Shipping:	€x
			VAT:	€x
			Total:	€xx



[It is important to indicate whether the order has been processed or not and hence it is recommended to include something on the following lines]:

Please note that the order and has not yet been processed by our dispatch department. No contract for the sale of any product will subsist between you and XYZ until XYZ dispatches the product(s) ordered. We will confirm that the product(s) have been dispatched by a confirmation email.

[It is also recommended to provide customer with access to the terms and conditions (either by indicating location or by providing a link)]:

By receiving this email from XYZ you are accepting our terms and conditions, a copy of which can be found on the website at: <http://www.companyname.com> or by clicking on the following link <http://www.companyname.com/terms>

[Insert your company's contact details such as company address and email and provide access to customer should s/he require assistance]:

If you have any queries in relation to the above order please visit our web site at <http://www.companyname.com>, where you are able to find assistance about:

- Your order details
- Cancellation of order
- Change delivery and invoice address on open or future orders
- Returns policy
- Delivery



APPENDIX II

Privacy Policy Template

Suggested draft privacy policy statement for the consideration of interested parties (in any case interested parties may always seek advice from the Office of the Data Protection Commissioner or independent legal advice – this draft is only intended to suggest some points to include in similar privacy statements).

The data controller of this website is XYZ Ltd. [10, Bath Street, Valletta, Malta, and customerservice@xyz.com.mt, +356 21 100276]

XYZ (“We”) commit ourselves to protecting and respecting your privacy when visiting our website. We undertake to collect your data by means that are fair, legal and transparent.

This privacy policy sets out how we shall process and use the personal data that you submit on our website, or that we may collect as a result of visiting URL⁸³.

Please read the following information to understand our practices with regards to your personal data and how we will treat it.

83. This stands for Uniform Resource Locator which is the global address of documents and other resources on the Internet, such as www.mca.org.mt



INFORMATION WE MAY COLLECT FROM YOU

We may collect and process the following data about you:

- Any information that you provide by filling in forms on our site. This includes any information provided at the time of registering to use our site, posting material, requesting further services or subscribing to any service offered by us on the site. In order to assist you better we may request further information if you report a problem with our site.
- We may keep a record of any correspondence with you if you contact us.
- Details of the resources you access and of your visits to our site.
- Details of transactions you may carry out through our site and of the completion of your orders.

Where we collect your data from sources other than yourself, we undertake:

- to do so only by legal means;
- to do so only with your consent; and
- to declare to you what sources we use, and under what circumstances.

We undertake to declare the purpose of collection of data in a manner which is clear and meaningful, and to avoid vague, highly inclusive statements such as 'to support our operations'.



IP ADDRESSES AND COOKIES

We may collect information about your computer in the form of statistical data concerning your browsing actions and which will not personally identify the user. This information includes your Internet Protocol (IP) address, where available, operating system and browser type, for system administration. We may also collect information about your general internet usage using cookie⁸⁴ files stored on the hard drive of all computers. The cookies contain valuable information that is transferred to your computer's hard drive. In collecting this information we are able to improve our site and deliver a better and more personalised service.

You can refuse to accept cookies but note that in doing this you may be unable to access certain parts of our site. You can do this by activating the setting on your browser which allows you to refuse the setting.

[Our advertisers may also use cookies but please note that we have no control over this]

WHERE WE STORE YOUR PERSONAL DATA

We undertake to store and, or to transmit your data in a manner that ensures security against unauthorised access, alteration or deletion, at a level commensurate with its sensitivity.

To ensure that your data is treated securely and in accordance with this privacy policy we will endeavour to take all reasonable necessary steps in protecting your privacy.

We will do our best to protect your personal data; however we have no control over the transmission of information over the internet and therefore cannot guarantee the security of data transmitted to our sites. Any transmission of data is at your own risk.

84. A cookie consists of one or more name-value pairs containing bits of information such as user preferences, shopping cart contents, the identifier for a server-based session, or other data used by websites.



WHY WE PROCESS YOUR PERSONAL DATA

We undertake to use your data only for:

- notifying you of any changes to our service;
- ensuring that the content of our site is presented in the most effective manner for you and your computer;
- providing you, where you have consented to be contacted, with the information, products and services requested from us or in the event that we believe that such information may be of interest to you;
- allowing you to participate in interactive features of our service, should you choose to do so;
- the purposes for which the information was collected;

- such other purposes as are subsequently agreed between yourself and us;
- such additional purposes as may be required by law. In these circumstances, we shall take all reasonable measures available to us to communicate to you that the use has occurred, unless this will involve a disproportionate effort.

DISCLOSURE OF YOUR INFORMATION

We undertake to solely disclose your personal data for the provision of the requested service/s. Where such services are sub-contracted, we undertake to regulate the relationship which the contractor by means of a contractual agreement in order to bind the third party to process your data in accordance with our instructions. Your personal data may also be disclosed to other third parties, including Government and regulatory authorities, where this is strictly required by law. Your personal data shall not be disclosed for any other reason apart from those mentioned above, without your express consent.



Data Retention and Destruction

We undertake:

- to retain your data for no longer than necessary having regard to the purpose of processing, unless this is strictly required by a specific law; and
- to destroy your data when its purpose has expired, and to do so in such a manner that your data is not subsequently capable of being recovered.

THIRD PARTY WEBSITES

From time to time our site may contain links to and from the websites of our partner networks, advertisers and affiliates. If you visit any of these sites please note that they may have their own privacy policies. Therefore, you should check these before submitting any personal data. We cannot accept any responsibility or liability for any policies made by third parties.

YOUR RIGHTS

As an individual you may exercise your right to access the data held about you by XYZ by submitting your request in writing to the data controller.

Although all reasonable efforts will be made to keep your information updated, you are kindly requested to inform us of any change referring to the personal data held by the association. In any case if you consider that certain information about you is inaccurate, you may request rectification of such data. You also have the right to request the blocking or erasure of data which has been processed unlawfully.



Changes to These Privacy Undertakings

We undertake:

- not to materially change these Terms in a manner that reduces protection for your data;
- where it makes changes to these Terms, to ensure that the differences between successive versions are readily accessible;
- to maintain all prior versions of these Terms in such a manner that they are dated, and readily accessible.

CHANGES TO OUR PRIVACY POLICY

We shall, where it is deemed appropriate, to notify you by email of any changes made to our privacy policy and these changes will also be posted on this page.

CONTACT

Thank you for taking the time to read our privacy policy.

Any comments or suggestions that you may have and which may contribute to a better quality of service will be welcomed and greatly appreciated. These may be emailed to [customerservice@xyz.com.mt]





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Valletta FRN 1913, Email: info@mca.org.mt
Malta Web: www.mca.org.mt

