



## How to set up an online store

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## 1. Business registration

In order to operate a business in Poland in the form of a sole proprietorship or ordinary partnership, it is necessary to register with the Central Registration and Information on Business, which is maintained by the Ministry of Economy. Now this can be done online. In order to operate in the form of a commercial company, however, it is necessary to register the company with the local district court, as well as register with the statistical office and obtain a REGON statistical number.

## 2. Rights to domain name

After selecting the name under which the store will operate online, it is necessary to insure that the name is available for registration as a domain name. The WHOIS database may be used for this purpose. It groups domain names with national extensions, such as .pl, .com.pl, net.pl, org.pl, info.pl, waw.pl (<http://dns.pl/>) and other extensions (<http://www.whois.sc/>).

There are numerous domain registration services operating online, offering search tools to locate domain names that are available. For the most creative domain names, with the extensions .fm, .tv, .mobi or .to, users should look for a registration service that uses the specific extension.

Sometimes registration is available free or at a nominal fee. This typically covers the first 12 months, after which the registration service may seek an additional fee to maintain the domain. It is important to review the terms offered by the registration service.

## 3. Creating a website

Technical implementation of the project should be entrusted to an IT specialist, who will create a website reflecting the technical requirements and functionalities needed for the planned business.

It should be borne in mind that creation of a website involves coding all of the essential specifications in programming language, which may result in creation of a computer program that is protected by copyright. It is thus important that the agreement with the creator of the site appropriately secure the interests of the merchant. The agreement should assure access to the source code and the right to modify the code after the end of the cooperation with the original author of the site. It is also important to reserve rights to the interface, i.e. the external appearance of the site, made up of such elements as graphics, colour scheme and layout.

Any attempt to model your own site on an existing site may backfire. If a new site is launched that is confusingly similar to an existing site, particularly a site operating within the same industry, it may give rise to claims for copyright infringement (plagiarism).

When outsourcing comprehensive services under which the contractor creating the website is also required to register and maintain the domain, it is important to secure the interests of the merchant in the event that the cooperation ceases. In such situations, it is crucial for the owner of the online store to retain rights to the domain, which functions as the online presence of the business.

## 4. Identifying the seller

The website must identify the seller—the entity with whom the customer will conclude a contract of sale. The designation must include, at a minimum, the name of the business entity, its registered address, information about entry in the relevant register (Central Registration and Information on Business, or National Court Register), tax number (NIP) and e-mail address.

## **5. Agreements with subcontractors and service providers**

Because the business will be operated online, it is crucial to assure that the website functions properly, without downtime. If the business lacks its own knowhow and infrastructure, it is necessary to enter into an agreement with an outside service provider for this support. The agreement should clearly define the service provider's liability for any negligence that may result in a breakdown or business interruption, and the lost profit or harm to the reputation of the seller that could ensue.

It is equally important to assure effective delivery of goods to customers. To this end, the business should enter into an agreement for logistics (storage and packaging of goods) and shipments. In these agreements it is also crucial to precisely define the responsibility for proper, timely performance of the services as well as responsibility for the goods themselves (in the event of loss or damage).

Depending on the type of goods sold and the related risks, a civil liability insurance policy covering the business should also be considered.

## **6. Agreements with suppliers of goods**

In the case of suppliers with whom the store will cooperate regularly, a supply agreement should be concluded. The agreements should clearly define the rules for ordering products, the time for filling orders, and procedures (including payment rules) if there is a complaint about a product from the customer. If the supplier fails to provide the goods on time, the seller may face liability to the customer. The seller will also be liable to the consumer for product defects. For these reasons, it is important to provide a mechanism that enables the seller to seek reimbursement from the supplier for any costs of satisfying claims by customers that are ultimately attributable to the supplier.

## **7. General Terms of Sale**

- Are consumers properly informed of the subject and terms of the offer?

The law defines the specific information about the subject and terms of a contract of sale that must be provided to consumers, including (i) identification of the seller, (ii) specification of the item being sold, (iii) specification of the essential characteristics of the item, (iv) price and payment method, (v) time and method of delivery, and (vi) complaint procedure.

In practice, the offer is typically presented to the consumer in two sections.

One section provides information concerning the specific product (characteristics and price) and is displayed with the product presentation.

The other section includes the other elements of the contract of sale, and is typically included in a standard form, often called the General Terms of Sale. The General Terms of Sale specify such items as the rules for submission, acceptance and confirmation of orders (concluding the contract), the rules and methods for payment, the time and rules for making deliveries, and the rules for making complaints. It is also worthwhile to address other issues, such as the procedure for consideration of complaints and claims based on mandatory or voluntary warranty, the procedure to be followed if the consumer cancels the contract within 10 days, the rules for return of the goods in the case of a voluntary returns policy, the procedure followed if the product ordered is temporarily unavailable, the rules and limits on the seller's liability for non-performance or improper performance of the contract, and so on.

- Confirmation of conclusion of contract and performance of the contract

The rules and time for confirming conclusion of the contract by the seller are specified by applicable law. Confirmation should be made in writing, no later than upon tendering performance of the contract. If the consumer cancels a distance contract within 10 days, the seller is required to acknowledge receipt of the cancellation in writing.

- Informing the consumer of specific rights

For example, information that the consumer has a right to cancel a distance contract within 10 days at the customer's discretion and without stating any grounds should be provided to the consumer together with information about the essential terms of the contract, before the contract is concluded.

- Compliance with all consumer rights

The consumer's rights include, for example: (i) the right to cancel a distance contract at the customer's discretion, without stating any reasons, within 10 days after receiving the product or concluding a contract for a service, (ii) the right to refund of the price, together with shipping costs, if the consumer cancels the contract, and (iii) the right to exercise warranty claims for product defects within 2 years after the date of the sale.

- Do the General Terms of Sale contain "abusive" clauses impermissible in trade with consumers?

It should be verified whether any specific provision establishes the rights and obligations of the consumer in a manner that is contrary to good practice or grossly violates the consumer's interests. For this purpose, the seller may refer to the register of impermissible clauses published at the website of the Office of Competition and Consumer Protection.

It should be borne in mind in this respect that if impermissible clauses are used, they are not binding on the consumer, but may result in instigation of proceedings for violation of the collective interests of consumers and imposition of related administrative fines.

## **8. Terms & Conditions for Use of the Site**

- Do the Terms & Conditions for Use of the Site contain all required elements?

The necessary elements of the Terms & Conditions are defined by applicable regulations. They must contain, among other items, (i) a specification of the services performed electronically, (ii) the requirements that must be met to enable use of the services (e.g. technical requirements for the consumer's IT equipment necessary to interface with the seller's IT system), (iii) rules for concluding and terminating contracts for electronic services, and (iv) rules for making complaints. The consumer should also be informed of potential threats arising out of the use of services of this type and programming used for performing the services.

- Are the Terms & Conditions for Use of the Site properly accessible?

The Terms & Conditions need to be accessible to all current and potential users of the online store, without cost, prior to conclusion of a transaction. The Terms & Conditions must also be made available at a later time upon demand by the consumer. The Terms & Conditions should be made available in a form enabling the consumer to record or save them on his own computer.

## **9. Privacy Policy and protection of customers' personal data**

- Is the consumer duly informed about collection and processing of his personal data?

If the consumer provides his personal data to the seller, it is necessary to inform the consumer of (i) the seller's name and registered address, (ii) the purpose for collecting the data, (iii) the right to review and correct his data, and (iv) the voluntary nature of providing the data.

This document, typically referred to as a Privacy Policy and available to the consumer, should contain the information referred to above and also describe in more detail how the personal data of customers are protected.

- Are the consumer's personal data being processed within the permissible bounds?

The consumer's personal data may be processed only within the scope and for the purpose for which the consumer provided them. For example, if the consumer provided his data only for the purpose of performing a specific contract of sale and did not provide the data for marketing purposes, the consumer's data may not be used to send the consumer offers or other promotional materials. Moreover, if the reason for processing the data no longer exists (e.g. the contract of sale has already been performed), the consumer's personal data should be deleted.

- Do the equipment and security measures used meet the applicable data protection requirements?

The technical solutions used must meet the requirements set forth in the regulation on this issue issued by the Minister of Interior, dated 29 April 2004.

- Has a data protection officer been appointed?

A data controller is required to appoint an individual within its own organisation designated as the data protection officer and responsible for the security of personal data processing. This person must be provided with the means and competencies necessary to assure data protection.

- Creation and implementation of a data protection policy and instructions for administering the IT system for processing personal data functioning at the online store

A data controller is required to develop and implement a data protection policy and instructions for administering the IT system used for processing the data, which together will assure the security of the data processed. The minimum contents of these documents are set forth in the regulation on this issue issued by the Minister of Interior, dated 29 April 2004.

- Is the consumer informed about cookies or other instruments used to collect the consumer's personal data other than through conscious, deliberate provision of the data by the consumer?

Use of tools for targeting offers to the user based on his previous online searches, using "cookies" (tools for the server to store information on the user's computer which may be opened by connecting to the server), does not require the consent of the user. It is sufficient to indicate on the website that this function may be turned off.

*Note: Work is currently underway on legislation that would modify the current rules in order to require the user's consent to activate the tools necessary for targeting.*

- Must the personal data filing system be registered with the Inspector General for Personal Data Protection?

Generally, filing systems of personal data are subject to registration with the Inspector General for Personal Data Protection. If sensitive data (e.g. concerning the individual's health, race, political beliefs and the like) are not processed, processing may begun upon meeting the conditions set forth in the Personal Data Protection Act and filing an application with the Inspector General for Personal Data Protection to register the filing system. If sensitive data are to be processed, however, processing cannot begin until the filing system is registered.

Some filing systems need not be registered even though they contain protected personal data (for example, personal data of employees collected by the employer for purposes set forth by employment law). If however the filing system contains personal data of consumers buying goods at the online store, the filing system will be subject to registration with the Inspector General for Personal Data Protection.

#### **10. Assure that customers review the Terms of Sale, the Terms & Conditions for Use of the Site, and the Privacy Policy**

The customer should have an opportunity to review the terms and conditions at an early stage of ordering goods—not, for example, waiting until making payment. It is preferable if review of the terms and conditions is confirmed actively (e.g. in an “opt-in”, by clicking to demonstrate acceptance) rather than only passively (e.g. through a reference to the terms and conditions).

The technical structure should enable the online seller to recreate the whole process of order placement (including acceptance of the terms and conditions) and prove, if necessary, that the consumer had the relevant information when ordering the product and accepted the terms and conditions under which the product was offered.

#### **11. Selection of accepted method of payment**

Under applicable regulations, the consumer must be able to pay for a product or service not only before the product is delivered or the service is performed, but afterwards instead.

There are various acceptable methods of payment: credit card, bank transfer, gift vouchers, online payment, “payment integrators,” and so on.

In order to enable customers to make cash-free payments using various payment instruments, the merchant should enter into a contract with an “acquirer,” which will settle cash-free transactions at the online store and guarantee that the seller receives payment for the transactions.

It is also possible to establish more advanced payment methods, e.g. prepaid virtual accounts for customers. However, before adopting such solutions it is important to analyse the payment services regulations to determine whether the specific solution for customers requires the merchant to obtain additional permits.

#### **12. Proper documentation of sales for accounting and tax purposes**

- Method of documenting sales may vary depending on the buyer

If the buyer of a product or service is a business entity, the seller is generally required to issue a VAT invoice.

In the case of sales to consumers, the rule is documentation of the sale by a cash register receipt, unless the consumer requests a VAT invoice. The merchant may also decide to document every sale, even to consumers, with a VAT invoice. This solution does not release the merchant from the obligation to have a cash register, however. The merchant may dispense with a cash register only if there is an applicable exemption for mail orders, but this requires additional documentation to be maintained.

- Offering electronic invoices

A merchant may offer customers the option of receiving an electronic invoice. A secure electronic signature is no longer required for this purpose. Any form may be used for an electronic invoice (e.g. .pdf or .jpg), so long as it assures integrity of content and authenticity of origin. It is important to bear in mind, however, that an electronic invoice may be issued only when the buyer consents to receiving an invoice in this form.

- Sales territory

Sale of goods to other EU countries may give rise to certain tax obligations in the other countries once certain value thresholds are crossed (in accordance with the internal regulations of the specific countries).

In the case of sales outside the EU, taxation of sales may differ from domestic sales or sales to other EU countries.

### **13. Are product prices (including discounts for clearance or promotion) properly presented?**

Merchants do not have complete leeway in how they present prices. This issue is addressed in detail by the law. For example, alongside the price for an item, the seller is also required to state the unit price (e.g. per litre, or 100 ml, or 100 g), which enables consumers to make a fair comparison of prices. The price stated must be the final price, including all taxes and fees related to the sale.

In the case of a reduced price, it is necessary to provide the original price, crossed out, as well as the current price. It is not necessary to state the amount of the discount in percentage terms, but the reason for the price reduction must be stated (e.g. end-of-season clearance or promotion).

### **14. Does advertising violate principles of fair competition or constitute unfair market practices?**

An act of unfair competition is an action contrary to law or good practice that threatens or violates the interests of another business entity or a customer. The Act on Combating Unfair Competition specifies what types of behaviours and practices may constitute an act of unfair competition. Thus, for example, in order to use comparative advertising referring to another retailer, the conditions must be determined under which such advertising will constitute fair competition. Violation of principles of fair competition may subject the business to civil claims by competitors, for example to forfeit ill-gotten gains or to compensate for injury to the competitor.

Dishonest market practices are practices employed in dealings with consumers that are contrary to good practice and significantly distort the market behaviour of the average consumer before, during or after entering into a contract of sale. Thus, when establishing tools for communicating with consumers, such as advertising and promotional materials, it should be checked whether the planned actions constitute dishonest market practice under the applicable law. A business that violates the prohibition against such practices may be subjected to civil claims by consumers, including claims for compensation (including cancellation of the contract of sale, return of the product and reimbursement of the price paid).

### **15. Do specific marketing tools require additional administrative permits?**

Contests and promotional lotteries are popular tools for promoting sellers or specific products. The construction of the specific promotional initiative (typically reflected in the contest rules) determines whether or not the winner of the promotion is selected with an element of chance.

If the promotional initiative is structured so that the prize is awarded for completing a specifically defined task and is not dependent on chance, then the contest is regarded as organised under the rules for a public undertaking. Promotional actions of this type do not require any permits.

If, however, the award is given based on an element of chance (even if only in a supplementary way or at one of several stages of the initiative), the regulations governing promotional lotteries will apply. In order to conduct such a lottery, it is necessary to obtain an administrative permit.

**16. Are the products offered duly admitted to the market, with proper quality and labelling?**

The quality and labelling of specific groups of products are governed by applicable regulations. For example, marketing of medicinal or biocidal products requires a permit from the competent administrative authority. Thus it should be checked whether the required permits have been issued for the products offered.

Other products must comply with general safety requirements, or essential requirements in the case of products subject to CE marking.

Placement of the CE mark on products, by the producer or importer, certifies that the products comply with essential requirements and thus may be offered on the market. In the case of products subject to CE marking (e.g. electronics equipment, toys, ceramics, and materials and products intended to come into contact with food), the distributor and the retailer must also maintain documentation demonstrating that the product is of the proper quality and meets the legal requirements (declaration of conformity). Such documentation should be obtained from the producer or distributor.

It should be checked whether the products offered are labelled in accordance with specific requirements for the given product category, as well as requirements under the Polish Language Act and the Business Freedom Act.

The seller is responsible for the quality and correct labelling of the product, even if the supplier delivers a product that is already manufactured and labelled. Proper quality and labelling of products may be monitored by trade inspectors. If irregularities in product quality or labelling are found, the seller may face administrative sanctions.

**17. Is the consumer supplied with all information required by law?**

Regulations governing specific categories of products stipulate the manner in which products must be labelled. For example, labelling of cosmetics is governed by the Cosmetics Act, and labelling of electrical equipment by the Regulation on Essential Requirements for Electrical Equipment.

Regulations governing electronic services require only that the basic characteristics of the services be defined.

The fact that the consumer has a right to return a product without giving any specific reason within 10 days after receipt supports the position that general information about the product is sufficient. If, on the basis of the physically available packaging (and complete labelling) the consumer decides that the product does not offer the features that the consumer expected, the consumer may return the product.

**18. Implementation of procedures enabling recall of an unsafe product**

With respect to certain products (e.g. toys and products and materials intended to come into contact with food), the regulations directly impose a "traceability" requirement. This means that because of the seriousness of the danger that may be presented by a specific type of product that does not meet safety requirements, the seller is required to collect and store information about the suppliers and recipients of specific products. This information may then be used to identify distribution channels if a need arises to recall a specific product from the market.

Nonetheless, the need to recall an unsafe product from the market may arise in the case of any type of product. For this reason, it is recommended to maintain a system for collecting information about products bought and sold, their quantities, suppliers and recipients.

This guide is up-to-date based on the state of the law in force in Poland as of 27 January 2012.



### **Experience of Wardyński & Partners**

In the firm's practice, we have advised clients in opening online stores, for example for a European chain of perfumeries, producers of famous-brand sportswear, and producers of photographic equipment.

### **Services offered by the firm**

The services we offer include:

- Review of online shopping sites to verify that they contain all information required by law
- Drafting and review of general terms of terms of sale and terms and conditions for use of the site for compliance with consumer rights
- Drafting and review of privacy policies and rules for data protection compliance
- Advice and negotiation of contracts with suppliers of IT infrastructure, suppliers of goods, and subcontractors
- Assessment of marketing initiatives
- Advice on presentation of goods
- Advice on compliance with requirements for product quality and labelling
- Identification of specific risks related to online selling, depending on the sector.

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