

IV. Für Fragen und direkten Service stellt der Webhost für den Auftraggeber eine gebührenfreie Hotline in der Zeit Montag bis Freitag 9.00 Uhr bis 17.00 Uhr zur Verfügung.

V. Der Webhost archiviert einmal pro Tag alle auf dem Speicherplatz hinterlegten Daten. Der Auftraggeber erhält wöchentlich die archivierten Daten sowie Auswertungenstatistiken des Zugriffsverhaltens auf CD.

### **§ 3 Mitwirkungspflichten des Auftraggebers**

I. Der Kunde ist verpflichtet, die Zugangsdaten gegenüber unbefugten Dritten geheim zu halten. Insbesondere sind Benutzername und Passwort so aufzubewahren, dass unbefugte Dritte nicht auf sie zugreifen können.

II. Der Kunde versichert, dass er keine Inhalte auf dem vertragsgegenständlichen Speicherplatz speichern und in das Wireless Internet einstellen wird, deren Bereitstellung, Veröffentlichung und Nutzung gegen geltendes Recht oder Vereinbarungen mit Dritten verstößt.

### **§ 4 Vergütung**

I. Die Vergütung beträgt monatlich:

Yen	xx.xxx,xx
zuzügl. 5% Ust.	xxx,xx
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Gesamt	xxx.xxx,xx
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II. Die Vergütung ist bis zum dritten Werktag eines jeden Monats auf des Konto des Webhosts zu überweisen.

### **§ 5 Haftung**

I. Der Auftraggeber sichert zu, dass er berechtigt ist, den Wireless Internet Service in der auf dem Speicherplatz hinterlegten Weise zu betreiben. Soweit an den verwendeten Materialien Urheberrechte, Markenrechte und/oder sonstige gewerbliche Schutzrechte Dritter bestehen, stellt der Kunde sicher, dass er im Besitz der erforderlichen Lizenzen ist, insbesondere, dass er berechtigt ist, Bilder, Grafiken, Filme und sonstige Darstellungen, Gestaltungen und Informationen zu digitalisieren, in die Wireless Internet Seite aufzunehmen und als deren Teil zu nutzen. Für Rechtsfolgen aus Verstößen gegen gewerbliche Schutzrechte übernimmt der Webhost keine Haftung.

II. Die Verantwortlichkeit für Inhalte des Wireless Internet Service trägt alleine der Auftraggeber. Der Webhost macht sich diese weder zu eigen, noch werden durch sie die Meinung des Webhosts wiedergegeben.

### **§ 6 Nutzungsüberlassung an Dritte**

Der Auftraggeber ist nur dann dazu berechtigt, den vertragsgegenständlichen Speicherplatz einem Dritten teilweise oder vollständig, entgeltlich oder unentgeltlich zur Nutzung zu überlassen, wenn der Webhost einer solchen Nutzungsüberlassung an Dritte schriftlich zustimmt.

### **§ 7 Änderungen**

Änderungen dieses Vertrages, insbesondere der in Anlage 1 aufgeführten Bestandteile können durch schriftliche Vereinbarung der Parteien erfolgen. Die Änderungen werden dann Bestandteil dieses Vertrages.

### **§ 8 Vertragslaufzeit und Kündigung**

I. Der Vertrag wird auf unbestimmte Zeit geschlossen.

II. Die Parteien können den Vertrag mit einer Frist von drei Monaten zum Monatsende ordentlich kündigen.

III. Aus wichtigem Grund können die Parteien den Vertrag außerordentlich kündigen. Ein wichtiger Grund liegt insbesondere vor, wenn trotz Mahnung und Fristsetzung die Vergütung nicht gezahlt wird oder wenn eine Partei ihre Pflichten in einer solchen Weise verletzt, dass die Durchführung des Vertrages gefährdet wird.

### **§ 9 Schlussbestimmungen**

I. Für diesen Vertrag gilt japanisches Recht.

II. Sollten einzelne hier getroffene Bestimmungen ganz oder teilweise unwirksam sein oder werden oder sollte eine Lücke gegeben sein, so wird hierdurch die Gültigkeit der übrigen Bestimmungen nicht berührt. Anstelle der unwirksamen Bestimmung gilt diejenige wirksame Bestimmung als vereinbart, die dem Zweck der unwirksamen Bestimmung am nächsten kommt. Im Falle einer Lücke gilt diejenige Bestimmung als vereinbart, die dem entspricht, was bestimmt worden wäre, wenn die Angelegenheit von vorne herein bedacht worden wäre.

Ort, Datum  
Unterschriften

# **Guidelines Concerning the Protection of Personal Data in Electronic Commerce in the Private Sector (alpha version)**

**Privacy Issues WG**

## **Chapter 1. Purpose of Guidelines**

### **Article 1. Purpose**

These guidelines have been prepared for the purpose of adequately protecting personal data handled in electronic commerce.

## **Chapter 2. Definitions**

### **Article 2. Definitions**

For the purposes of these guidelines, the meaning of the terms set forth in the following subparagraphs shall be provided for in the said subparagraphs.

- (1) The term "electronic commerce" means business transactions conducted on electronic networks and the act of performing advertising and publicity, either in part or wholly, to induce such transactions.
- (2) The term "personal data" means data relating to an individual, including name, date of birth, or other descriptions by which the individual can be identified from number, symbol, other mark, image, or sound assigned to the individual (including data from which the individual can be identified not only from the information, but also from collating various data with other information).
- (3) The term "manager" means a person with the authority to determine the purpose, method, etc. of collection, use, and disclosure of personal data in electronic commerce.
- (4) The term "recipient" means a person or enterprise to whom personal data is disclosed.
- (5) The term "consent of data subject" means the declaration by data subjects, to give consent for the handling of personal data concerning them through an explicit response given through a signed and sealed statement or oral agreement.

## **Chapter 3 Scope of Application of Guidelines**

### **Article 3 Personal Data to which Guidelines Apply**

These guidelines shall apply to personal data processed, either wholly or in part, using electronic computers, optical information processing devices or other

automatic processing systems in electronic commerce, including personal data processed in document form for the purpose of processing by an automatic processing system.

#### **Article 4 Extension of Guidelines**

Provisions to these guidelines may be added or revised according to the activities of the industry sector or enterprises in so far as these additions or revisions are in line with the purpose of adequately protecting personal data.

#### **Chapter 4 Measures Concerning the Collection of Personal Data**

#### **Article 5 Limitation on Collection of Personal Data**

The person implementing collection and use of personal data in electronic commerce shall specify clearly the purpose of the collection within the limit of legitimate business and implement it to the extent necessary to achieve the purpose.

#### **Article 6 Limitation on Methods of Collection**

The collection of personal data shall be conducted by lawful and fair means.

#### **Article 7 Prohibition Against Collection of Specific Personal Data of a Delicate Nature**

Personal data which includes the following types of data shall not be collected, used, or disclosed. This shall not apply, however, in cases where the data subjects have given their explicit consent to the collection, use, or disclosure of those data.

- (1) Race or ethnicity
- (2) Family origin or legal domicile (not including data relating to the metropolitan or prefecture of current residence)
- (3) Religion (including ideology and beliefs), political opinions or trade-union membership
- (4) Health, medical treatment, or sex life

#### **Article 8. Measures for Collection of Personal Data Directly from Data Subject**

When personal data will be collected directly from the data subject, the data subject shall be informed of all the information given below, or of equivalent information, and consent concerning the collection, use, and disclosure of the personal data shall be obtained. This shall not apply, however, in the case where it is clear that the data subject has been informed of the information given below or where the data has been collected from data that has been made public to large numbers of unspecified persons by the data subject.

- (1) The name, title, department and telephone number, or address, etc. of the manager or agent within holding enterprises concerned with the personal data.

(2) Purpose of collection and use of personal data.

(3) In the case that there is a plan to disclose personal data, the purpose thereof, the recipient of the data, and the type and character of the recipient's organization, and whether or not a contract has been concluded concerning the handling of personal data.

(4) The data subject voluntary participation concerning disclosure or non-disclosure of personal data.

(5) The existence of the right to request access to personal data and the right to request correction or deletion thereof will be exercised if the personal data are found to be erroneous following subject accuracy verification, which is the specific method by which the right is to be implemented.

#### **Article 9. Measures for Indirectly Collecting Personal Data Other than from the Data Subject**

In the case where personal data will be collected indirectly from a source other than the data subject, the data subject shall be notified of the information given in (1) through (3) and (5) of the preceding Article, and consent concerning the collection, use and disclosure of the personal data shall be obtained. This shall not apply, however, in the case given in (1) through (4) below.

(1) If personal data is collected from an enterprise that obtained the data subject's consent to disclosure at the time of the original personal data collection in accordance with (3) of the preceding Article.

(2) If personal data will be collected and disclosed from an enterprise with a guarantee that personal data will be handled in a manner equivalent to that of said enterprise through conclusion of a contract stipulating obligations to maintain confidentiality, prohibition against re-disclosure and assignment of responsibility when accidents occur in respect to personal data disclosure.

(3) If it is clear that the data subject has been notified of the information stated in (1) through (5) of the preceding Article, and if personal data is collected from data made public by the data subject to a large number of unspecified persons.

(4) If personal data will be collected in the case that it is not likely to infringe on the interests of the data subject worthy of protection within the limits of the legitimate business of holding enterprises.

#### **Chapter 5 Measures Concerning the Use of Personal Data**

#### **Article 10 Limitation on the Scope of the Use of Personal Data**

The use of personal data shall, in principle, be limited within the scope of the purpose of the collection except the case of Article 12.

### **Article 11 Measures for the Use of Personal Data within the Scope of the Purpose**

The use of personal data within the scope of the collection purpose shall be done solely in the cases given in (1) through (4) below.

- (1) If the data subject has given consent.
- (2) If use is necessary to permit the data subject to prepare for or to perform a contract to which he is a party.
- (3) If use is necessary for compliance with legal obligations to which enterprises are subject.
- (4) If use is necessary in order to protect the vital interests of the data subject including life, health, property, etc.

### **Article 12. Measures for the Use of Personal Data Beyond the Scope of the Purpose**

When the use of personal data exceeds the scope of the collection purpose or the use of personal data is done in cases other than any of the cases given in (1) through (4) of the preceding Article, it shall be carried out with the prior consent of the data subject secured by obtaining the prior consent of the data subject through notification of at least the information given in (1) through (3) and (5) of Article 8 or by giving the data subject an opportunity to refuse prior to use.

#### **Chapter 6 Measures Concerning the Disclosure of Personal Data**

### **Article 13 Limitation on Disclosure of Personal Data**

The disclosure of personal data shall, in principle, be limited within the scope of the of the collection purpose.

### **Article 14 Measures for Disclosure of Personal Data within the Scope of the Collection Purpose**

The disclosure of personal data within the scope of the collection purpose shall be carried out with the prior consent of the data subject secured by obtaining the consent of the data subject through notification of the information given in (1) through (3) and (5) of Article 8 or by giving the data subject an opportunity to refuse prior to disclosure. This shall not apply, however, in the case given in (1) through (4) below.

- (1) If personal data is to be disclosed to a recipient to whom the data subject has given consent that the data will be disclosed in accordance with (3) of Article 8, at the time the personal data were collected from the data subject.

(2) If personal data is to be disclosed to a recipient with an accompanying guarantee that the personal data will be handled in a manner equivalent to that of the original holder through conclusion of a contract stipulating obligations to maintain confidentiality, prohibition against re-disclosure of personal data, and assignment of responsibility when accidents occur in respect to the personal data disclosed.

(3) If it is clear that the recipient will take measures to obtain the data subject's consent through notification of the information given in (1) through (5) of Article 8 concerning the personal data.

(4) If personal data will be disclosed in the case where it is not likely to infringe on the interests of the data subject worthy of protection within the limits of legitimate business of enterprises.

### **Article 15 Measures for Disclosure of Personal Data beyond the Scope of the Purpose**

When the disclosure of personal data exceeds the scope of the purpose of the collection or the disclosure of personal data is done in cases other than any of the cases given in (1) through (4) of the preceding Article, the consent of the data subject shall be obtained through notification of at least the information corresponding to (1) through (3) and (5) of Article 8 concerning the recipient of the personal data. In such cases, "disclose" stated in (3) of Article 8 shall be amended to read "re-disclose". This shall not apply, however, in the case where it is clear that the data subject has been notified of the information and has given blanket consent.

## **Chapter 7 Obligation to Manage Personal Data**

### **Article 16 Ensuring the Accuracy of Personal Data**

Personal data shall be kept accurate and up-to-date to the extent necessary for the purpose of the use.

### **Article 17 Ensuring Security in the Use of Personal Data**

Reasonable security measures shall be taken through both technical and organizational means against such risks as unauthorized access to personal data or the loss, destruction, alteration, leakage, etc. of personal data.

### **Article 18 Obligation of Employees to Maintain the Confidentiality of Personal Data**

Persons engaged in the collection, use and disclosure of personal data shall perform, using sufficient care, the obligation to maintain the confidentiality of personal data in accordance with the provisions of laws, or regulations and instructions specified by the manager.

### **Article 19 Measures Concerning the Entrustment of Personal Data**

In entrusting personal data to an outside enterprise, one shall be selected who can handle the personal data at a sufficient level of protection, and it shall be guaranteed, through conclusion of a contract or other legal measure, that the instructions of the manager of the enterprise are observed, that the confidentiality of personal data is maintained, that re-disclosure of personal data is prohibited, and that responsibility when accidents occur is assigned, and the contract, etc. as a written document or magnetically-stored record shall be maintained for the period that the personal data are managed by the outside enterprise.

### **Chapter 8 Rights of the Data Subject Concerning Information Regarding Self**

#### **Article 20 Subject's Rights Concerning Personal Data**

Requests for access to personal data by the data subject for accuracy verification purposes shall, in principle, be accepted within a reasonable period of time. If the personal data is found to be erroneous following subject access, requests for correction or deletion of the personal data shall, in principle, be accepted within a reasonable period of time. In such cases, recipients of the personal data shall be notified to the extent possible.

#### **Article 21 (Right to Refuse Use or Disclosure of Own Personal Data)**

Refusals of the use or disclosure of personal data shall be accepted. This shall not apply, however, in the case where use is necessary for protecting the public interest, or for exercising authority or performing an obligation under law by the manager or a third party to whom the personal data is to be or has been disclosed.

### **Chapter 9 Management System**

#### **Article 22 Designation of a Manager**

One or more persons shall be designated from the persons who understand the contents of these guidelines and have the capacity to put them into practice, and shall function as the managers of personal data.

#### **Article 23 Duties of the Manager**

The manager of personal data shall understand and observe the provisions of these guidelines, and shall accept responsibility for causing employees to understand and observe these guidelines by providing training, establishing internal regulations, implementing security measures, establishing a compliance program and taking measures to ensure that the program is made known to everyone.

**Quelle:** Electronic Commerce Promotion Council of Japan (ECOM)



## Japanisches BGB -Auszug-

### Section II. Effect of Obligation

#### *Article 412* (Time for performance and delay by obligor)

1. Where a time certain is fixed for the performance of an obligation, the obligor shall be responsible for delay as from the time when such time has arrived.
2. If a time uncertain is fixed for the performance of an obligation, the obligor shall be responsible for delay as from the time when he has become aware of the arrival of the time for performance.
3. If no time is fixed for the performance of an obligation, the obligor shall be responsible for delay as from the time demand for performance has been made upon him.

#### *Article 413* (Obligee's delay in acceptance)

An obligee who refuses to accept performance of an obligation or is unable to accept it shall be responsible for delay as from the time when the performance has been tendered.

#### *Article 414* (Enforcement of performance)

1. If an obligor does not voluntarily perform his obligation, the obligee may apply to the Court for specific performance thereof; but this shall not apply to cases where the nature of an obligation does not so admit.
2. If, where the nature of an obligation does not admit of specific performance, the subject-matter of the obligation is an act, the obligee may apply to the Court to cause it to be done by a third party at the expense of the obligor; however, with regard to an obligation having a juristic act for its subject-matter, a decision of the Court may be substituted for a declaration of intention by the obligor.
3. With regard to an obligation having forbearance for its subject-matter, the obligee may demand that what has been done by the obligor be removed at the latter's expense and that reasonable precautionary steps be taken against future repetition.
4. The provisions of the three preceding paragraphs shall not prejudice a claim for damages.

#### *Article 415* (Claim for damages for non-performance)

If an obligor fails to effect performance in accordance with the tenor and purport of the obligation, the obligee may claim damages; the same shall apply to cases where performance becomes impossible for any cause for which the obligor is responsible.

**Article 526 (Time of formation of contract *inter absentes*)**

1. A contract *inter absentes* comes into existence at the time when notice of acceptance is despatched.

2. In cases where no notice of acceptance is necessary either by reason of a declaration of intention to that effect by the offeror or by reason of business usage, the contract comes into existence at the time when any event takes place which can be taken as a declaration of intention to accept.

**Article 601 (Lease)**

A lease becomes effective when one of the parties has agreed to allow the other party to use a thing and take profits therefrom and the latter has agreed to pay rent for it.

**Section VIII. Contract of Employment****Article 623 (Contract of employment)**

A contract of employment becomes effective when one of the parties agrees to render service to the other party and the latter agrees to pay him remuneration therefor.

**Section IX. Contract for Work****Article 632 (Contract for work)**

A contract for work becomes effective when one of the parties has agreed to accomplish certain work and the other has agreed to pay him remuneration for the result of such work.

**Article 633 (Time for payment of remuneration)**

The remuneration must be paid simultaneously with the delivery of the subject-matter of the work; but if no delivery of a thing is necessary, the provisions of paragraph 1 of Article 624 shall apply with necessary modifications.

**Article 634 (Contractor's warranty and rectification)**

1. If any defect exists in the subject-matter of the work, the person who ordered the work may fix a reasonable period and demand from the contractor the rectification of such defect; but this shall not apply if the defect is not material and its rectification would involve excessive expense.

2. The person who has ordered the work may claim damages in lieu of or together with rectification of the defect; in such cases the provisions of Article 533 shall apply with necessary modifications.

**Article 635 (Right of rescission)**

If the object for which a contract was made cannot be attained by reason of some defect in the subject-matter of the work, the person who ordered the work may rescind the contract; but this shall not apply to a building or any other structure on land.

**CHAPTER V. TORTIOUS ACT****Article 709 (General principle of tortious act)**

A person who violates intentionally or negligently the right of another is bound to make compensation for damage arising therefrom.

**Article 710 (Compensation for non-pecuniary damage)**

A person who is liable in damages in accordance with the provisions of the preceding Article must make compensation therefor even in respect of

**Gesetz über die Anwendung der Gesetze (Horei) - Auszug-**

**Article 7.** (1) The intention of parties shall determine what country's law will govern the creation and effect of a juristic act.

(2) If the intention of the parties is uncertain, the law of the place of acting shall govern.

**Jap.-HGB (Commercial Code of Japan) -Auszug-**

**Article 23.** (1) A Person who has permitted another Person to use his surname, full name or trade name for business purposes shall be jointly and severally liable with such other person to perform any obligation in favor of a third party arising from a transaction which the third party entered in the belief that he was dealing with the proprietor of the business.

## Japanisches Teledienstegesetz -Inoffizielle Übersetzung-

### LAW REGARDING THE LIMITATION ON THE LIABILITY OF SPECIFIED TELECOMMUNICATIONS SERVICE PROVIDERS AND THE DISCLOSURE OF SENDER DATA<sup>1</sup>

(Law No. 137/2001)

#### *Art. 1 (Purpose)*

This Act provides the limitation on the liability of specified telecommunications service providers and the right to request the provider to disclose the sender data in cases where a distribution of information in a specified telecommunication has infringed a right.

#### *Art. 2 (Definitions)*

In this Act, the terms listed in the items below are defined as follows:

1. Specified telecommunication: transmission of telecommunication (referred to as telecommunication in item 1 of Article 2 of the Telecommunication Business Act (Law No. 86 of 1984)) intended to be received by unspecified persons (excluding the transmission of telecommunication intended to be received by the public);
2. Specified telecommunications facilities: telecommunications facilities (referred to as telecommunications facilities in item 2 of Article 2 of the Telecommunication Business Act) for any specified telecommunication;
3. Specified telecommunications service provider: a person who intermediates communication of others through the use of the telecommunications facilities, or provides the telecommunications facilities for the use of communications of others;

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<sup>1</sup> *Tokutei denki tsūshin ekimu teikyō-sha no songai baishō sekinin no seigen oyobi hasshin-sha jōhō no kaiji ni kansuru hōritsu.*

4. Sender: a person who has recorded any data in the recording medium (limited to those whose recorded data will be transmitted to unspecified persons) of the specified telecommunications facilities used by a specified telecommunications service provider, or has inputted any data into the transmitting facilities (limited to those whose inputted data will be transmitted to unspecified persons) of such specified telecommunications facilities.

*Art. 3 (Limitation of Liability for Monetary Compensation)*

(1) In cases where another's right has been infringed through a distribution of information in a specified telecommunication, the specified telecommunications service provider who uses specified telecommunications facilities available for the specified telecommunication (hereinafter referred as "the provider" in this paragraph) shall not be liable for the damages unless it is technically possible to take measures to block the transmission of the data infringing the right to the public and it falls within the cases stipulated in the items below. However, this shall not apply to cases where the provider is the sender of the data infringing the right:

1. where the provider knew that the distribution of the data in the specified telecommunication was infringing another's right; or
2. where the provider knew of the distribution of the data in the specified telecommunication and there is a good ground that he could have known that the distribution of the data in the specified telecommunication was infringing another's right.

(2) A specified telecommunications service provider shall not be liable, in cases where he took measures to block the transmission of data in a specified telecommunication, for damages suffered by the sender of the data whose transmission was blocked by such measures, provided that the measures were taken only to the extent necessary to block the transmission to the public and it falls within the cases stipulated in the items below:

1. where the provider had good grounds to believe that another's right had been unduly infringed through the distribution of data in the specified telecommunication; or
2. where the person who insisted that his right had been infringed through the distribution of data in a specified telecommunication specified the data that had infringed his right (hereinafter referred to as "claimed infringing data"), the infringed right, and the reasons why he believed that the right had been infringed (hereafter referred to as "claimed infringing data, etc." in this item) and requested the provider take measures to block the transmission of the claimed infringing data (hereafter referred to as "transmission blocking measures" in this item), and

the provider made inquiries to the sender of the claimed infringing data, giving the claimed infringing data, etc., as to the sender's will to agree to the transmission blocking measures but did not receive a response from the sender that the sender did not agree to the transmission blocking measures within seven days after the date the inquiries had been made.

*Art. 4 (Request for the Disclosure of the Sender Data, etc.)*

(1) A person who insists that his right was infringed through a distribution of data in a specified telecommunication may request the specified telecommunications service provider who uses specified telecommunications facilities available for the specified telecommunication (hereinafter referred as "the disclosure-related provider") to disclose the sender data (name, address, and other data relevant to identify the sender of the claimed infringing data as stipulated in a Ministry of Public Management, Home Affairs, and Post and Telecommunications Ordinance; hereinafter the same) in the hand of the provider regarding the infringement of the right, provided that it meets the conditions stipulated in the items below:

1. it is obvious that the right of the claimant for the disclosure has been infringed through the distribution of the claimed infringing data; and
2. the claimant needs the sender data for the disclosure to claim the damages, or there are good grounds to be disclosed the sender data.

(2) Upon receiving the request to disclose in accordance with the provisions in the preceding paragraph, the disclosure-related provider should hear the opinion of the sender on whether to disclose unless he is not able to get in touch with the sender of the claimed infringing data in the request to disclose, or otherwise special circumstances exist.

(3) The person who has been disclosed the sender data in accordance with the provisions in paragraph 1 shall not use the data for improper purposes and unduly harm the reputation or the peace of the life of the sender.

(4) The disclosure-related provider shall not be liable for the damages suffered by the person who requested to disclose caused by the refusal to disclose in accordance with the provisions in paragraph 1 unless he acted in bad faith or was grossly negligent. However, this shall not apply to cases where the requested provider is the sender of the claimed infringing data related to the request to disclose.

## **Consumer Contract Act (CCA)**

### **Japan: Consumer Contract Act 2001**

**Chapter 1** General Provisions (Article 1 - Article 3)

**Chapter 2** Avoidance of the Declaration of Intent to Offer or Accept a Consumer Contract (Article 4 - Article 7)

**Chapter 3** Nullity of Consumer Contract Clauses (Article 8 - Article 10)

**Chapter 4** Miscellaneous Provisions (Article 11, Article 12)

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**Chapter 1 General Provisions**

**(Purpose)**

**Article 1.**

The purpose of this Act is to protect the interests of consumers, and thereby to contribute to the stabilization and improvement of the general welfare of the people's life and to the sound development of the national economy by permitting, in consideration of the gap in quality and quantity of information and in the negotiating power between consumers and business, the avoidance of declarations of intention to offer or accept contracts made by consumers when they are mistaken or distressed by certain acts of businesses, and by nullifying, in part or in whole, clauses that exempt businesses from liability for damages or that otherwise unfairly impair the interests of consumers .

**(Definitions)**

**Article 2.**

As used in this Act, the term "consumer" means individuals (however, the same shall not apply in cases where said individual becomes a party to a contract as a business or for the purpose of business).

2 As used in this Act, the term "businesses" means juristic persons, associations and individuals who become a party to a contract as a business or for the purpose of business.

3 As used in this Act, the term "consumer contract" means contracts concluded between consumers on the one hand and businesses on the other.

**(Efforts of businesses and consumers)**

**Article 3.**

Businesses drafting clauses of a consumer contract shall strive to make the rights and duties of consumers and such other things set forth in the consumer contract clear and plain to consumers and, in order to deepen consumer understanding when consumers are solicited to enter consumer contracts, to provide necessary information on consumer rights and duties and such other things set forth in the consumer contract.

2 Consumers entering a consumer contract shall strive to actively use the information provided by businesses and to understand their rights and duties and such other things set forth in the consumer contract.

**Chapter 2**

**(Avoidance of the Declaration of Intention to Offer or Accept a Consumer Contract)**

**Article 4**

Consumers may avoid their declarations of intention to offer or accept a consumer contract if made when being solicited to enter into such consumer contract by a business because said consumers make any of the specified mistakes set forth below as a result of any of the following enumerated acts by such businesses.

(1) To represent that which is not true as to a material item.

Mistake that the content of said representation is true.

(2) To provide conclusive evaluations of future prices, of amounts of money that a consumer should receive in the future and of such other uncertain items that change in the future with respect to goods, rights, services and such other things that are to be the subject of a consumer contract.

Mistake that the content of said conclusive evaluation so provided is certain..

2 Consumers may avoid their declarations of intention to offer or accept a consumer contract if made when being solicited to enter into such consumer contract by a businesses who represents to said consumers the advantages as to material items or things related to said material items but who intentionally fails to represent disadvantageous facts (limited to those facts that consumers would normally consider to be non-existent by such representation) as to material items because said consumers mistakenly believe the non-existence of such facts. Provided, however, that this shall not apply where the business attempts to make representations of such facts to said consumers if said consumers refuse such attempted representations.

3 Consumers may avoid their declarations of intention to offer or accept a consumer contract if made when being solicited to enter into such consumer contract by a business because said consumers are distressed as a result of any of the following enumerated acts by such businesses.

(1) To fail to leave a place where a consumer resides or does business in defiance of consumer's display to business of consumer's intention for said business to leave.

(2) To not allow a consumer to leave a place where the consumer is solicited to enter into the consumer contract by the business with respect to the conclusion of a consumer contract in defiance of the consumer's display to business of consumer's intention to leave.

4 The term "material items" as used in paragraph 1 section (1) and paragraph 2 means the following items in a consumer contract that would normally impact a consumer's decision to conclude a consumer contract.

(1) Quality, use and such other contents of goods, rights, services and such other things that are to be the subject of a consumer contract

(2) Price and such other conditions of a transaction of goods, rights, services and such other things that are to be the subject of a consumer contract

5 The avoidance of a declaration of intention to offer or accept by paragraph 1 to 3 may not be set up against a third party who has acted in good faith.

**(Third parties entrusted to intermediate and agents)****Article 5.**

The preceding article shall apply to cases where a business entrusts a third party to intermediate a consumer contract between the business and a consumer (which shall simply be referred to as "entrustment " for purposes of this paragraph), and the third party (which includes persons entrusted by such third party (which includes persons entrusted at a secondary or higher level). These persons shall be referred to as "entrusted etc." for purposes of the following paragraph) performs an act provided in paragraphs 1 to 3 of the preceding article with respect to a consumer. In such case, "the business " in the latter part of the second paragraph of the preceding article shall be deemed to read "the business or the entrusted etc. provided in the first paragraph of the following article".



2 Agents of consumers, businesses and entrusted etc. to conclude consumer contract shall be deemed consumers, businesses and entrusted etc., respectively, in application of paragraphs 1 to 3 of the preceding article (which includes the case provided in the preceding paragraph. The same shall apply in the next article and article 7).

**(Interpretation Provision)**

**Article 6**

The provisions from paragraphs 1 to 3 of article 4 shall not be interpreted to exclude the application of article 96 of Civil Code (Act No. 89, 1896) to a declaration of intention to offer or accept a consumer contract provided in these paragraphs.

**(Limitation of the Right to Avoid)**

**Article 7**

The right to avoid provided in paragraphs 1 to 3 of article 4 shall lapse (verfallen) by prescription (Verordnung), if not exercised within six months from the time when ratification (Unterzeichnung) became possible. The same shall apply if five years have lapsed from the time of the conclusion of a consumer contract.

2 Article 191 and 280-12 (and also the cases where these articles are cited in other Acts) of Commercial Code (Act No. 48, 1899) shall apply to the avoidance of the taking of shares or new-shares falling into a consumer contract provided in paragraph 1 to 3 of article 4. In such cases, "no person who has taken shares may claim nullity of his (her) subscription on grounds of mistake or noncompliance with any of the requirements of the application form for shares, nor may any person avoid his (her) subscription on the grounds of fraud or duress" in article 191 of the Act and "no person who has subscribed for new shares may claim the nullity of his (her) subscription on grounds of mistake or noncompliance with any of the requirements of the application form for shares or the preemptive right certificates for new shares, nor may any person avoid his (her) subscription on the ground of fraud or duress " in article 280-12 of the Act shall be deemed to be read as " no person may avoid his (her) subscription by application of paragraphs 1 to 3 of article 4 of Consumer Contract Act (which includes cases where article 5 of the same Act shall apply)" .

**Chapter 3 Nullity of Consumer Contract Clauses**

**(Nullity of clauses which exempt businesses from liability for damages)**

**Article 8**

The following enumerated clauses are void.

- (1) Clauses which totally exclude a business from liability to compensate damages to a consumer arising by business's non-performance.
- (2) Clauses which partially exclude a business from liability to compensate damages to a consumer arising by business's non-performance (such non-performance shall be limited to instances where the same arises by intent or gross negligence on the part of the business, the business's representative or employee).
- (3) Clauses which totally exclude a business from liability to compensate the damage to a consumer arising by a tort provided in the Civil Code committed on occasion of business's performance of a consumer contract.
- (4) Clauses which partially exclude a business from liability to compensate the damage to a consumer arising by a tort (such torts shall be limited to instances where the same arises by intent or gross negligence on the part of the business, the business's representative or employee) provided in the Civil Code committed on occasion of business's performance of a consumer contract.

(5) When a consumer contract is a contract for value, and there exists a latent defect in the material subject of a consumer contract (in case where a consumer contract is a contract for work, a defect should exist in the subject of the work. The same shall apply in the following paragraph), Clauses which totally excludes a business from liability to compensate the damage to a consumer caused by such defect

2 The clause provided in the fifth section of the preceding paragraph shall not apply in cases enumerated in the following sections.

(1) In case where the consumer contract provides that the business is responsible to deliver substitute goods without defects or repair the subject if any defect exists in the material subject of the consumer contract

(2) In case where a contract between the consumer and another business entrusted by the business or a contract between the business and another business for the benefit of the consumer, which is concluded before or simultaneously with the consumer contract, provides that the other business is responsible to compensate the whole or a part of the damage caused by the defect, deliver a substitute goods without defects or repair the subject if any defect exist in the material subject of the consumer contract

**(Nullity of Clauses which Stipulate the Amount of the Damages Paid by Consumer, and such other clauses)**

**Article 9**

The following enumerated clauses are void to the extent provided.

(1) As to clause which stipulates (vertraglich festlegen) the amount of damages in case of a rescission or fixes the penalty, when the total amount of liquidated damages in addition to the penalty exceeds the average amount of damages by the rescission of a contract of the same kind to the business in accordance with the reason, the time of the rescission and such other things, then the part of the clause which exceeds the average amount above-mentioned is void.

(2) As to clauses in a consumer contract which stipulate the amount of damages or fix the penalty in case of total or partial default (if the number of payments is more than one, every failure of payment is a default in this section) of a consumer who is over due, when the total amount of liquidated damages in addition to the penalty exceeds the amount calculated by deducting the amount of money actually paid by the appointed deadline from the amount of money which should have been paid and multiplying by 14.6% a year in accordance with the number of days from the appointed deadline to the day on which the money is actually paid, then the part of the clause which exceeds the amount calculated above-mentioned is void.

**(Nullity of Clauses that Impair the Interests of Consumers One-sidedly)**

**Article 10**

Clauses which restrict the rights of consumer or expand the duties of consumers beyond restrictions and expansions that would otherwise apply by application of the provisions of the Civil Code, Commercial Code and such other acts not concerned with public order and which, at the same time, impair the interests of consumers one-sidedly against the fundamental principle provided in the second paragraph of article 1 of Civil Code, are void.

**Chapter 4 Miscellaneous Provisions**

**(Application of Other Acts)**

**Article 11**

As to the avoidance of a declaration of intention to offer or accept a consumer contract and the validity of a clause of a consumer contract, the provisions of the Civil Code and Commercial Code shall apply in addition to this Act.

2 As to the avoidance of a declaration of intention to offer or accept a consumer contract and the validity of a clause of a consumer contract, if acts other than the Civil Code and Commercial Code provide special rules, they shall apply.

**(Exclusions)**

**Article 12**

This Act shall not apply to labor contracts.

Appendix

This Act shall be enforced from April 1<sup>st</sup>, in 2001, and apply to consumer contracts concluded thereafter.

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