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Terms, contract law and consumer rights in e-commerce

Rahul Dev Sep 10, 2013

- **Website terms create a binding contract between the buyer and the seller**
- **Although the terms are drafted to secure seller's interest, consumer rights shouldn't be ignored**



CONSUMERS have been switching to digital channels for buying products and with every purchase, the retail sites are accomplishing greater market penetration. Every site is trying hard to win this fight by getting more visitors than their competitors and convincing them to spend their dollars.

In Asia Pacific, the rapidly expanding middle class and their access to the Internet is the largest factor for e-commerce growth as consumer demands are increasing with the latest technology.

However, while executing their business plans, most companies ignore a very crucial aspect of online business: The website terms and conditions of use. Since the transactions happen online, such terms and conditions govern the purchase between the consumers and the businesses.

Effectively, such terms and conditions are governed by Contract Law. The terms are generally drafted to create a binding contract on the buyer that protects the seller, but while doing so, many companies miss the basic rights of the consumers.

For example, Indian e-commerce giant Flipkart announced its marketplace in April, wherein it opened up the platform for various third-party sellers to sell their products. However, as per user terms, all commercial/ contractual terms are offered by and agreed to between Buyers and Sellers alone, and Flipkart states that it does not have any control of such commercial/ contractual terms between the Buyers and Sellers. Detailed terms may be seen [here](#).

But while stating that the company has no control over transactions between buyers and sellers, companies like Flipkart forget that consumers have basic legal rights, and since buyers are paying money to sellers through Flipkart, they are equally responsible towards buyers.

But it does not end here, Flipkart goes one step ahead in arm-twisting its consumers by stating that it is not responsible for any non-performance or breach of any contract entered into between Buyers and Sellers; Flipkart cannot and does not guarantee that the concerned Buyers and/ or Sellers will perform any transaction concluded on the website; and Flipkart shall not and is not required to mediate or resolve any dispute or disagreement between Buyers and Sellers.

In simpler terms, if a seller sends a wrong item, it is the sole responsibility of the buyer to handle this. Although it offers a 30-day replacement guarantee, this does not allow Flipkart to be oblivious to the rights of consumer in accordance with Indian consumer laws. Since sellers sell through

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Flipkart's marketplace, they need to strictly regulate and monitor all the transactions and take full responsibility for resolving consumer's issues, rather than blatantly ignoring those.

Comparing this approach with that of Amazon, which [sells in India](#) through a marketplace model, the terms are very well balanced, consider basic consumer rights, and offer detailed provisions for every step of the transaction.

In case any seller fails to abide by his commitment towards the buyer, the buyer can request for a refund. Subsequently, if a seller does not refund within three business days, Amazon states that the buyer can make an A-to-Z Guarantee claim to Amazon whereby Amazon will stand by the claim and help the buyer recover the payments made to the seller if the claim is valid.

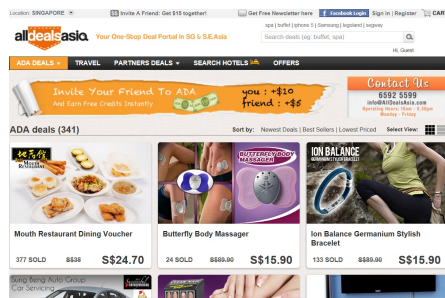
In addition to the above, Amazon clearly states Conditions Of Sale (between Sellers and the Customer), wherein it is interesting to note that the entire terms are drafted to bind sellers and buyers with a legal agreement.

Effectively, Amazon specifies its role as a marketplace and strictly regulates both sellers and buyers, which is in stark contrast to Flipkart's approach of not regulating the marketplace, leading to a desquamation of its responsibility of honouring the basic rights of the consumer.

Similarly, [eBay India](#) offers buyer protection programmes whereby it states a clear procedure to assist consumers in case of any issues they face due to a seller's non-performance. Apart from this, eBay plays an active role to solve the problems faced by both buyers and sellers, thereby providing a marketplace that is well regulated to respect consumer rights and protect sellers' interest at the same time.

eBay offers similar user agreements for other countries like Singapore and Malaysia, thereby setting an international standard.

In the case of content-aggregating sites, such as [AllDealsAsia](#), which is a Singapore-based daily deals aggregator and group buying site, the terms of use are slightly different as the site is allowing merchants to offer deals to the buyers on an online platform.



Referring to the terms of AllDealsAsia, the site provides distinct terms of sale that are categorised into three categories, including terms of sale for restaurant specific vouchers, terms of sale for non-restaurant merchant vouchers, and terms of sale for all deals including redemption of voucher for cash value.

While specifying all such terms, AllDealsAsia clearly mentions applicable laws in all the provisions, thereby drawing a distinct line while absolving its responsibility in case of direct

dealings between merchants and buyers.

AllDealsAsia further defines responsibilities of the merchants succinctly whereby it is clearly stated that since the deals (vouchers) are offered by the merchants (and not AllDealsAsia), the merchant is solely responsible for redeeming the same. Detailed terms may be seen [here](#).

From the perspective of business owners, a number of legal issues should be considered before the e-commerce site goes live. The general terms and conditions of use should be clearly defined, giving due consideration to contract law and consumer rights.

The terms governing online transactions between buyers and sellers should include provisions to limit transaction risk and protect the business by specifying limitations of liability, indemnities, returns policy and favourable legal jurisdiction.

The terms related to security, privacy and best trade practices should be defined in light of the laws of the jurisdiction.

It should also be ensured that the website does not host defamatory material, infringe third party intellectual property rights, and should further operate in accordance with the data storage and data protection laws of the country.

Businesses should also take strict measures to protect their own intellectual property rights by filing appropriate copyrights, trademarks, patents and design protections both domestically and internationally, which ensures strong brand protection in the digital world.

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