

# Guidelines on handling of payments by payees in connection with distance selling

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**Guidelines on handling of payments by payees in connection with distance selling**

**The Danish Consumer Ombudsman**

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# Background to the guidelines

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## Annexes

*On the basis of negotiations with the Danish Consumer Council, the Confederation of Danish Industries, the Danish Chamber of Commerce, the Danish Telecom Industry, the Danish E-commerce Association (FDIH), Finance and Leasing (the Association of Danish Finance Houses), the Association of Danish Media, Nets and the Danish Bankers Association and with participation of the Danish Gambling Authority and the Danish Financial Supervisory Authority, the Danish Consumer Ombudsman hereby issues the following guidelines pursuant to section 24 of the Danish Marketing Practices Act:*

### **Background**

In recent years, we have seen an increasing amount of new payment methods and new payment instruments in connection with consumer purchases of products and services; not least in connection with consumers' use of the Internet and online purchases.

By far the majority of purchases and payments made on the Internet presumably take place without problems. However, enquiries received by the Consumer Ombudsman show that, especially in relation to the use of the new payment methods, the way in which such payments are made often causes great uncertainty. Often, the enquiries relate to questions concerning the justification of charges, including whether the consumers have consented to the payment being made. Also, the use of and purchases made on foreign websites frequently give rise to questions.

Furthermore, the Consumer Ombudsman often receives questions from consumers and traders alike on how and when payments may be effected. The questions may relate to whether payment may be completed before the products are shipped, when advance payments may be requested and whether and on what conditions amounts may be "reserved" when a new purchase is commenced and a payment card is used.

Agreements on future payments in ongoing contractual relationships where payments are initiated by the trader on the basis of the payer's prior consent also give rise to questions.

Online purchases by minors represent a special concern; especially their inability, due to legal incapacity, to enter into binding financial agreements in connection with games on the Internet, for example. These issues are, however, not separately addressed in these guidelines. See 7 below.

In many circumstances, regulation on these issues is unclear and is widely based on contract law principles and considerations of what is deemed to be good marketing practice.

Since payments and, by extension, withdrawals from consumers' accounts are increasingly initiated by payees, it rests with the consumer to "identify" any erroneous or unauthorised payments and take action to obtain a chargeback or, where required, commence legal proceedings. This calls for clear rules that ensure transparency and a fair legal position for consumers.

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The relationship between a consumer (payer) and his provider, e.g. a bank or telecommunications operator, is governed by the Danish Payment Services Act and the agreement made between the two parties on the use of a payment instrument, e.g. a payment card.

Generally, the Payment Services Act does not apply to the relationship between a consumer and a payee. However, the Act provides that payments may be initiated by a payee.

The terms and conditions for using and acquiring payment instruments in the relationship between a payee and a provider (acquirer) are primarily governed by the acquirer agreement or the affiliation agreement made between the two parties.

In the telecommunications area, four mobile operators have signed a framework agreement, version 5.3, 2012, <http://www.rammeaftalen.dk/english/> (the "Framework Agreement"), setting out the framework for providing mobile payment services in connection with premium rate-based products and services. Providers of premium rate-based products and services must comply with the Framework Agreement on a contractual basis.

These agreements stipulate a number of requirements to be met by the payee before a payment request can be processed. Generally, however, such agreements only apply between the two trading parties.

Consequently, the Consumer Ombudsman sees a need for issuing a set of guidelines under the Marketing Practices Act to specify the requirements applicable to payees in relation to consumers concerning payment transactions involving payment instruments.

It should be noted that with respect to any use of the words "should" and "shall/must" below, the term "should" means a recommendation. Any use of the terms "shall/must" means that the requirement is directly stipulated in the Marketing Practices Act or other legislation protecting consumers.

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# Section 1 Purpose

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The purpose of these guidelines is to define good marketing practice in relation to a number of issues with respect to payment transactions involving the use of payment instruments between consumers and payees in the area of distance selling.

The guidelines reflect what must be deemed to be good marketing practice. See section 1 of the Marketing Practices Act.

Good marketing practice is a standard that evolves dynamically in line with trends in society, changes in the way we trade and other factors. International developments in e-commerce, including international regulation, trends in new payment methods, etc. play a significant role in the assessment of the aspects addressed in these guidelines. As e-commerce involves cross-border trading, it may be difficult to define specific Danish rules for good practice.

Continued developments may call for a revision of these guidelines as and when needed.

The type of payments discussed in 6 below on registration and reuse of card data for subsequent purchases deviate from traditional payment card transactions. The payment method is relatively new and is known especially from websites of large foreign traders. The payment method raises a number of questions on consumer protection and the correlation with the Payment Services Act/the Payment Services Directive. It would, therefore, be preferable to have an international understanding of and approach to the issues in this area. The information provided in 6 reflect what must generally be deemed to be good marketing practice and must therefore be observed by all participants in the Danish market.

The guidelines are not exhaustive. Any matters not dealt with in these guidelines should not on that basis be seen as lawful or generally consistent with good marketing practice.

## Section 2

# Scope

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These guidelines apply to payees (traders) in relation to matters of significance for payments in connection with distance selling vis-à-vis consumers when a payment instrument is used for the payment as defined in the Payment Services Act (see the definition provided in section 6(ix) of the Act), e.g. a payment card or a mobile phone.

Payments in connection with purchases on the Internet or by mail order or telephone constitute distance selling and are comprised by these guidelines if a payment instrument is used for the payment.

It should be noted that the agreement for the purchase of goods or services is deemed to be a separate agreement which is not regulated by these guidelines. The guidelines address the manner in which and the terms on which payment must be effected (in the following referred to as the "payment agreement").

Generally, these guidelines do not regulate the relationship with providers of payment services, including the relationship between consumer and provider.

These guidelines do not apply to payments in connection with physical trading.

### **Comments:**

*These guidelines generally do not cover matters between a consumer and a shop other than those relating to the payment in connection with purchases of products or services. Accordingly, references to the general requirements under applicable law, including, for example, information requirements under the Consumer Contracts Act, the Marketing Practices Act, the E-commerce Act, etc., will only be made if they are relevant to the payment.*

*These guidelines comprise payments made using a payment instrument as defined in section 6(ix) of the Payment Services Act. Payment instruments thus comprised include, for example, cards, or a "set of procedures", e.g. passwords which are personal, i.e. which are issued to a specific consumer and which the consumer can use in order to initiate a payment order. Typically, the above consist of all forms of payment cards (credit and debit cards), including SIM cards for mobile phones. Payments via e-banking services will be comprised to the extent an agreement thereon is made between the consumer's bank and the payee before payment is made, allowing the consumer to use his e-banking services to pay the payee for purchases of products or services. The same applies to MobilePay, Swipp, Paii and similar application-based payment systems to the extent that such systems may be used to effect payments to a trader in connection with distance selling within the meaning of the Consumer Contracts Act.*

*Payments effected through Betalingsservice (direct debit service) or ordinary account-to-account transfers from a consumer's bank account to the account of the shop are not comprised by the definition because the purchase does not involve the use of a payment instrument, but a different payment method, and because no prior agreement is made between the consumer, the provider and the payee. Likewise, a consumer's payment via a giro transfer form through his e-banking service is not comprised by these guidelines.*

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*The contractual relationship between a payee and his acquirer will generally be defined in the agreement between the two parties. Such agreements will typically stipulate a number of requirements to be met by the payees, but such requirements may not necessarily be comprised by these guidelines.*

*On the other hand, these guidelines may address matters not mentioned in the acquirer agreements/the Framework Agreement, or which specify or supplement the agreements between the payee and the acquirer. These guidelines must generally be observed in order for the payee to comply with the principles of good marketing practice.*

*Because the guidelines to some extent address issues that to some degree will be governed by the providers' framework agreements, acquirer agreements and by the Framework Agreement, the Consumer Ombudsman will to the extent required discuss any need for adjustments to such agreements with the providers and the acquirers.*

*When a payee sells products or services via the Internet or by mail or telephone order, and a payment instrument is used for the payment, he must observe these guidelines, including any adjustments following from the distance communication technology applied. As a result, certain requirements will apply, in particular to the information to be provided on a website, in an order form for mail orders and verbally when an agreement is made by telephone.*

*The contract of sale is not governed by these guidelines. The contract of sale concerns, for example, the products or services purchased and the price and the delivery. The Contracts Act, the Sale of Goods Act and the Consumer Contracts Act typically govern such matters. These guidelines concern what must be deemed to be good practice in relation to the payment and the special terms that may be associated with a payment agreement.*

## Section 3

# General information requirements for payees

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Before the consumer commences his purchase, the payee must provide the consumer with all essential information about the purchase and the payment.

The payee must satisfy the requirements for information to be provided prior to entering into agreements as set out in the Marketing Practices Act, the Consumer Contracts Act, the E-commerce Act and the Act on Payment Services.

**Comments:**

*It should be emphasised that all essential information must be provided before the consumer commences his order. Information concerning e.g. card fees must be provided at the time when the price of products or services are provided. The information must be provided through the same medium through which the payment order is made; typically at a website or through one or more text (SMS) messages.*

*The general rules of law on information requirements etc. must of course be observed at any time. More specifically, these include*

- » *Section 3 of the Marketing Practices Act on prohibition against misleading statements etc., section 12a on invitations to purchase and section 13 on price information;*
- » *The general provisions on information requirements, as set out in sections 8–13 of the Consumer Contracts Act relating to distance contracts for products and non-financial services;*
- » *Sections 7–10 of the E-commerce Act on information requirements, including contact information; and*
- » *Sections 82–83 of the Payment Services Act on information on currency and charges.*

## Section 4

# Terms of payment

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### 4.1 General terms of payment

Before payment is accepted, the payee must provide information about all essential terms applying to payment with a payment instrument.

The following (general) information must at a minimum be provided to the consumer before a payment may be initiated:

- » The method of payment, e.g. by a debit card (Dankort), MasterCard, Visa or similar cards or application-based payment systems, e.g. MobilePay, Pii or Swipp;
- » The time when the payment may/will be effected;
- » Any charges payable in connection with specific payment instruments and specification of such charges;
- » Procedures for payment on partial or delayed delivery;
- » Procedures for cancellation of purchases/chargebacks;
- » Where relevant, the terms and conditions for receipt of security/deposit;
- » Where relevant, the terms of payment/charge in relation to non-performance ("no show").

#### **Comments:**

*The consumer must be informed of all essential payment terms before the purchase/payment is accepted. Such information may, for example, be provided by specifically alerting the consumer's attention, before he is directed to the payment page, to the shop's standard payment terms and prompting him to actively "click yes" to having read the terms before payment can be effected.*

*For a trader's standard terms to be deemed to generally meet the requirements for good marketing practice, the terms must be clearly formulated and relevant and, for purposes of clarity, they should not include any unnecessary information.*

*Furthermore, any terms in the agreement between a payee and a consumer which may be deemed unfair and which may be set aside under the rules of the Contracts Act must be deemed to be contrary to good marketing practice.*

*Not later than at the commencement of the ordering process, it must be stated which payment instruments may be used for the payment, e.g. debit card (Dankort), MasterCard, Visa, etc., or whether the payment may be effected through application-based payment systems, e.g. MobilePay, Pii or Swipp. The order confirmation/receipt must specify the payment instrument used for the payment.*

*If the payee charges a fee for the use of certain payment instruments, this must also be stated together with the size of the fees. Furthermore, the first time the price of a product or a service is stated on the payee's website, the total price including any fees etc. must be stated pursuant to the Marketing Practices Act and the Consumer Contracts Act. If the total price cannot reasonably be calculated in advance, the manner in which the price is calculated must be specified together with information about any additional costs if relevant. If a fee is payable only in respect of the specific payment instrument selected, information to that effect must be provided in the same*

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*place, e.g. by the payee also stating, together with information about the total price of the products or services, that a fee will be charged when a payment instrument is used.*

*Prior to entering into agreements for products or non-financial services, the payee must clearly and expressly provide the consumer with information pursuant to section 8(1) of the Consumer Contracts Act.*

*Such information must include details of the total costs per settlement period in the case of agreements with an indefinite term or subscription agreements, and, in the case of agreements with indefinite terms or subscription agreements subject to fixed payments, the total monthly costs. If the total costs cannot be calculated in advance, information must be provided on how the price is calculated. See section 8(1)(vi) of the Consumer Contracts Act.*

*If the payee has not provided any information about additional costs or other expenses (see section 8(1)(v),(vi) and (xii) of the Consumer Contracts Act) the consumer is not required to pay such costs or expenses. See section 9(3) of the Act.*

*If a distance contract is concluded through electronic means, and if the contract involves a payment obligation, this must be clearly and expressly stated in the place where the order is entered. Furthermore, the payee must clearly, in highlighted form and immediately prior to the consumer placing his order inform the consumer of the information referred to in section 8(1)(i), (v), (vi), (xvii) and (xviii) of the Consumer Contracts Act. If the payee fails to do so, the consumer will not be bound by the agreement. See section 12(2) of the Act.*

*The payee must provide information about payment in the event delivery cannot be made as agreed, e.g. if only some of the products ordered can be delivered right away, or if the products or services cannot be delivered until at a later date. If required, the consumer's consent to such changes of the agreement must be obtained.*

*The payee must inform the consumer about the procedures for refunding the purchase price in the event that the purchase is withdrawn or cancelled. If the purchase is withdrawn pursuant to the rules of the Consumer Contracts Act, the payee must refund all amounts, including any delivery costs, without undue delay and not later than 14 days from the date when the payee received notification that the consumer intended to invoke his right of withdrawal. See section 22(1) of the Consumer Contracts Act. However, pursuant to section 22(4), the payee may withhold any amounts paid until the products have been returned or until the consumer has provided documentation that the products have been returned.*

*If in connection with an order an amount is to be paid, e.g. a deposit or similar, information to that effect must be provided. In that connection, information about the purpose thereof and the related conditions must be provided. If a fee is payable in the event of unjustified no-show or cancellation of an agreement, clear information to that effect must have been provided in advance. The charging of the fee must be lawful.*

*In connection with distance selling, the consumer has a right of objection vis-à-vis his provider pursuant to section 74 of the Payment Services Act, e.g. if the products were not delivered, the payee withdrew a higher amount than agreed, or the consumer invoked an agreed or statutory right of withdrawal prior to delivery. Pursuant to the provision, prior to contacting his provider, the consumer must contact the payee for a possible settlement of the matter.*

*The payee must loyally contribute to resolving or clarifying any issues in that regard or other issues or similar matters that may arise in connection with the payment.*

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## 4.2 Advance payments

Standard terms on advance payment may be deemed to be unfair and inconsistent with good marketing practice and should consequently not be applied unless they have an objective and reasonable justification.

Charging advance payment is subject to an express agreement to that effect.

### Comments:

*Advance payment means payment in whole or in part of the purchase sum made in connection with the order but prior to delivery.*

*Any terms on advance payment must have an objective and reasonable justification. Objective and reasonable justification could be the delivery of products produced to the consumer's specifications or which have been given a clear personal character (see section 18(2)(iii) of the Consumer Contracts Act (commissioned sale)), or in areas with a regular objective industry practice of advance payment, e.g. in ongoing agreements for the delivery of newspapers and magazines. Requesting advance payment due to cash requirements does not in its own right constitute an objective justification.*

*Payments to a payee using a payment instrument which requires payment prior to the purchase/order, e.g. in the case of many online services, are not deemed to be advance payments contrary to the Marketing Practices Act. The same applies to ongoing agreements under which payments are made through a payment card, e.g. agreements on automatic recharging of mobile phone subscriptions.*

*It should be noted that if a lawful agreement has been made on advance payment, and the payee subsequently fails to deliver the relevant product due to bankruptcy, the consumer risks being unable to claim a refund from his provider under section 74 of the Payment Services Act.*

*Any terms on advance payment are subject to express agreement with the consumer before the payment is effected or the payment order is accepted. In that connection, it should be noted that a general reference to standard business terms will not in itself satisfy this requirement.*

## 4.3 Reservation of amounts in a consumer's payment account/payment instrument

Any reservation of amounts in a consumer's payment account/payment instrument must be deleted once the payment has been effected or the purchase has been cancelled.

In accordance with the rules that apply to the relevant payment instrument, payees must have clear procedures in place to ensure that the acquirer is promptly notified when a payment is completed, or when an order/payment is withdrawn or otherwise cancelled, or if the consumer reports an error through a complaint or an objection.

### Comments:

*If a purchase is not completed, e.g. in the event of cancellation or withdrawal of the agreement, the payee must promptly notify his acquirer so that the reservation of the amount in the consumer's payment account/payment instrument may be cancelled immediately.*

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*If the payee becomes aware that a reservation for a completed payment transaction has not been deleted, the payee must loyally assist in the cancellation.*

*The payee must have clear procedures in place in that regard so that the parties that handle the payments know how to act in such situations.*

## Section 5

# Payments initiated by payee

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### 5.1 Additional payment for individual purchases

Generally, it must be deemed to be inconsistent with good marketing practice if in his contract terms a payee reserves the right to initiate additional payments in connection with a consumer's consent/authorisation of a single payment transaction.

**Comments:**

*Payments for individual purchases are effected when the consumer has approved the payment transaction. Any subsequent purchases and payments generally require the consumer's approval of the new payment transaction.*

*Any subsequent payment transaction without the consumer's consent may only be completed in special circumstances and only if in connection with the consent to/authorisation of the original payment transaction the consumer clearly and expressly consented thereto. The payee's agreement with his acquirer must allow for such arrangement, as is the case e.g. when international payment cards are used for hotel accommodation or car rentals.*

*Accordingly, 5.1 above only applies to agreement terms to which a payee is subject under his agreement with the consumer on possible subsequent payment charges through the payment instrument used.*

*In such special circumstances, the payee must clearly state when such additional payment may apply and the amount thereof. Additional payments must have a clear objective basis, e.g. a parking fee or a fine for speeding, and the additional payment may generally only constitute a relatively small amount.*

*If the consumer has any justified objections to any additional payment effected, the payee must reverse the charge.*

*The above does not affect the consumer's possibility of objecting to the payment transaction to his provider. The payee should inform the consumer about the possibility of objecting to his provider under the rules of the Payment Services Act, including section 65 of the Act, and the special time limits for objection provided under section 66 of the Act. Such information may be provided by referring the consumer to his framework agreement with his provider for additional information.*

### 5.2 Recurring payments initiated by payee

A payee may complete future payment transactions under an ongoing contractual relationship with a consumer through the consumer's payment instrument if a separate and clear agreement is made with the consumer to that effect. Such payments must relate to a specific contractual relationship.

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The payee must confirm the agreement and provide the consumer with the terms of the agreement on paper or on another durable medium.

The terms and procedures applying to such charges must be safe and ensure the required level of transparency for the consumer, including verification and objection possibilities.

The payment agreement must allow the consumer to unconditionally withdraw at any time the consent given to the payee to charging amounts on the payment instrument/payment account, regardless of whether or not the consumer is bound by the underlying contractual relationship to the effect that any future payments must be deemed to be unauthorised within the meaning of the Payment Services Act.

**Comments:**

*Recurring payments via a payment instrument are based on authorisation (consent) from the consumer to the payee to certain future payment transactions under a specific contractual relationship via the consumer's payment instrument to the effect that payments are charged to the payment account. These may, for instance, consist of future payments under agreements for telephone subscriptions or subscriptions for fitness centres.*

*In order to meet the requirements for good marketing practice, such payment method requires a separate and clear agreement with the consumer, and the terms of and the procedures for such payments must be safe and ensure the required level of transparency for the consumer.*

*Pursuant to section 12(1) of the Consumer Contracts Act, it must be clearly stated in the place where the order is made if a distance contract imposes a payment obligation on the consumer. Immediately prior to the consumer placing his order, the information referred to in section 8(1)(i), (v), (vi), (xvii) and (xviii) of the Consumer Contracts Act must be provided. If the payee fails to satisfy these conditions, the consumer will not be bound by the agreement. See section 12(2) of the Consumer Contracts Act.*

*The payee must subsequently confirm the agreement and provide the consumer with the terms of the agreement separately on paper or on another durable medium.*

*If under the agreement with the consumer the payee may charge amounts other than fixed amounts, or the date of charge is not predefined, the terms of agreement must ensure that the consumer is provided with a necessary overview and information about the individual payments in due time before they are effected so that the consumer is given the opportunity to stop payments that he does not acknowledge.*

*With reference to the notices that generally apply to other payment methods, including Beta-lingservice and SEPA direct debit payments, a notice of not less than eight days must be given before the payment is initiated. The consumer must be able to object to the payee and receive a refund of the amount within a period of 14 days after the payment was effected.*

*The notice requirement may be disregarded if the payee only charges a fixed, agreed amount at a predefined date, e.g. the last weekday of the month, whether or not the agreement allows for charging a higher amount.*

*With respect to automatic recharge agreements under which a pre-defined amount may be charged when the account balance with the relevant trader reaches a certain amount, the date of charge is not deemed to be predefined. Thus, the time when the account will be recharged depends on the consumer's consumption or purchase from the trader. Such agreements are now widely used by various traders, including telecommunications operators and the travel card*

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*provider Rejsekort. For such agreements, notice must be provided at the time when the amount is charged to the payment instrument.*

*In such situations, the consumer must also be able to receive a refund of the amount within a period of 14 days after the payment was effected.*

*The agreement must specify how such information was provided to the consumer and how the consumer must act in order to object to a notified payment. Information about individual payments must include sufficient details to allow the consumer to directly identify and verify the correctness of the individual payments. Notice must be given on paper or on another durable medium, e.g. in the form of an email or, depending on the circumstances, a text (SMS) message.*

*The above does not affect the consumer's possibility of objecting to the payment transaction to his provider. The payee should inform the consumer about the possibility of objecting to his provider under the rules of the Payment Services Act, including section 65 of the Act, and the special time limits for objecting provided under section 66 of the Act. Such information may be provided by referring the consumer to his framework agreement with his provider for additional information.*

*A specific payment initiated by or through the payee cannot be withdrawn by the consumer after the consumer has given a payment order or given his consent to completing the payment transaction to the payee, e.g. by using his payment card with the related PIN with the payee or by providing his payment card data in connection with an online purchase. In connection with direct debit services, the payment order may be revoked not later than by the end of the business day prior to the date agreed for the debiting of funds. See section 73(2)-(3) of the Payment Services Act.*

*Consent to future payments not yet initiated may freely be withdrawn (see section 57(3) of the Act (by implication) and article 54(3) of the Payment Services Directive) with the legal effect that payments are deemed to be unauthorised if effected nonetheless at the payee's request/initiation.*

*The payee's payment terms must state that the consumer may at any time unconditionally withdraw his consent given to the payee to charge amounts to the payment account in future and independently of the underlying contractual relationship.*

*Such withdrawal will take effect from the time it reaches the payee. Accordingly, any future payments initiated by the payee contrary to the withdrawal must be deemed to be unauthorised.*

*Because payments may only relate to a specific contractual relationship, the agreement and the nature of the payments must be defined and established in advance. The agreement must specify and define an (ongoing) debt obligation, e.g. payments under a membership of a fitness club or a telephone subscription. Payment of other and any new debt obligations are subject to a separate payment agreement.*

*The contractual relationship must be an ongoing contractual relationship with clearly defined rights and obligations, and the character and the nature of future payments in particular must be clearly stated. The terms of the agreement must be balanced. If the agreement allows for charging of payment for separate services or in special circumstances, e.g. a no-show fee in connection with a fitness class reservation, the applicable criteria and prices must be clearly provided in the agreement.*

*Any offers/agreements, e.g. a subscription, that prescribe payment through the consumer's payment instrument, may be fixed-term agreements (automatic expiry at a given date) or have an indefinite duration (in force until terminated). The marketing of such offers/agreements must always be aligned with the type of agreement offered. The fact that the agreement is indefinite*

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*must not be concealed, omitted, unclear or inadequately presented. If the offer is subject to restrictions or special conditions, information to that effect must be clearly stated.*

*The use of expressions such as "trial", "trial subscription", and "trial package" indicate that the consumer can assess the product for a limited period of time after which period the consumer must actively decide whether to enter into an ongoing agreement. Consequently, a payee must fully refrain from using such expressions in the marketing of agreements with an indefinite term.*

## Section 6

# Specific information about registration and reuse of payment card data for subsequent purchases

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If a payee intends to register and store a consumer's card data so that the consumer may later make payments without having to re-enter his card data, the consumer's express and unambiguous consent must be obtained.

The terms and procedures applying to payments must be safe and ensure the required level of transparency for the consumer, including verification and objection possibilities.

The payee must confirm the agreement and provide the consumer with the terms of the agreement on paper or on another durable medium.

The consumer must be able to easily withdraw his consent at any time.

### **Comments:**

*This type of card payment differs from the traditional way of making payments in connection with distance selling. The payment method is relatively new and is known especially from websites of large foreign traders. Danish payees and Danish acquirers may, however, also conclude such acquirer agreements.*

*This payment method raises many questions concerning consumer protection and the correlation with the Payment Services Act/the Payment Services Directive, including the question as to when a payment is authorised and as to responsibility and liability in connection with unauthorised payment transactions and errors.*

*The information provided in 6 reflect what must generally be deemed to be good marketing practice and must therefore be observed by all participants in the Danish market. Enforcement in relation to foreign payees may be difficult and may require international coordination between regulatory authorities, especially within the EU.*

*Consent is valid if the consumer has actively accepted the registration of card data (clicked to accept). Consent to the registration of card data cannot be given by merely ticking a box to accept the payee's business terms.*

*Information about the payee's terms on registration of card data, and the features and structure of his payment concept must be provided in a single place.*

*The payee must inform the consumer about the consequences of consenting, how subsequent payments may be effected and how the consent can be withdrawn. Among other things, the payee must inform the consumer about the risks of allowing others, including minors, to use the consumer's access to the payee's website for making payments etc.*

*The manner in which individual payments are effected must be deemed safe and secure. The consumer must be provided with a personal password solely to be used for purchases.*

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*The payment function must be designed in a standard format requiring the password to be used every time the consumer wants to make a purchase. The consumer must be able to actively choose a scheme under which purchases can be made during fixed periods of time without using the personal password.*

*The consumer must be provided with adequate information about the individual purchases to allow the consumer to see and verify the individual purchases/payment transactions.*

*Information must be provided as to how the consumer can object and complain about purchases registered. In connection with in-app purchases, according to the general principles of the law of obligations, any objections in connection with a purchase may usually be made to the party receiving the payment notwithstanding that the service was delivered by another party.*

*The payee's terms and order and purchase functions must be formulated and designed to ensure that any risk of errors, unintended purchases, including unintended orders, "double purchases" or similar are limited to the extent possible.*

*Card data must be safely stored and not used for any purpose other than payment transactions. The acquirer agreements will usually stipulate special requirements in that respect. If the consumer has not used the payment option with the payee for an extended period of time, the payee must delete the card data.*

*Consent/authorisation to complete a payment transaction must be subject to the requirement that the payee for each purchase provides clear and unambiguous information about the products or services to be purchased and their price and that the payment will be made via the registered card.*

## Section 7

# Specific information about purchases through distance selling made by children and young people, including requirements for identification and maximum amounts

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Special regulation and special considerations apply to agreements entered into by minors and their purchases through distance communication means, e.g. mobile phones and computers.

The Consumer Ombudsman has prepared a memorandum on agreements entered into by minors and incapacitated persons. The memorandum, which primarily discusses online purchases of games and services made by children and young people, is attached to these guidelines as **Annex 1**.

The annex was not separately considered in connection with the preparation of these guidelines and thus does not form part hereof. However, the Consumer Ombudsman considers the indications in the memorandum to reflect what is deemed good marketing practice.

## Section 8

# Consent/authorization of payment

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The payee must plan his procedures so that consent to the payment may be given in a proper and safe manner and in a manner that minimises the risk of misuse to the extent possible.

Consent/authorisation to payment must be given in the manner and according to the procedures that apply to the relevant payment instrument. If the payee is uncertain about the consumer's proper identity or authorisation to use the relevant payment instrument, the payment must not be completed until such issues have been further examined.

The payee must design his business and procedures to minimise any risk of errors and unintended purchases, including unintended orders, "double purchases" and similar to the extent possible.

Before payment is accepted, the consumer must be able to check and make any changes to the order.

### **Comments:**

*The payee must not assist in the completion of a payment transaction if there is any doubt as to the consumer's authorisation to make the payment. Controls and measures to prevent misuse etc. which may be applied depend largely on the payment instrument used, and this will typically appear from the acquirer agreement with the payee's acquirer.*

*If the payee is in doubt as to whether an error or misuse has occurred, e.g. in connection with an unusual purchase pattern (for instance if the same purchase/order is made several times within a short period of time, or an unusual number of purchases/orders are made within a short period of time, the payee should to the extent possible verify the correctness of the purchases, e.g. by separate notice to the consumer before the payments are completed. Special attention should be given in the case of products or services directed at children and young people, e.g. games and similar.*

*The manner in which a specific payment is accepted/authorised is set out in the agreement between the consumer and his provider. See section 57 of the Payment Services Act. The agreement between the payee and the acquirer stipulates how payments are authorised.*

*The payee may only demand payment for services in addition to the main services if, prior to entering the agreement, the consumer has given his express consent to this. See section 31 of the Consumer Contracts Act. This provision provides that the consumer must make an active selection, and preselected additional services are thus prohibited.*

*When the consumer accepts/authorises the payment, the following information must at a minimum be provided:*

- » An unambiguous and clear description of the product(s) or service(s) bought, e.g. a product and a subscription, if an agreement has been made for both services;
- » The price of the individual products or services bought or ordered;

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- » The total amount to be paid, including specification of any taxes, charges, shipping costs and any other charges;
  - » Expected date of delivery, if different from the date stated in the general terms and conditions;
  - » Delivery address.

*In the case of agreement on/consent to*

- » Subsequent charging;
- » Recurring payments under ongoing contractual relationships; or
- » Registration of card data for use in connection with subsequent payments

*the consumer must expressly be informed of and accept the terms thereof in connection with his consent to the payment.*

*Pursuant to section 11 of the E-commerce Act, before an order is made, the service provider (here: the payee) must make adequate, efficient and accessible technical tools available to the service recipient, which will allow the service recipient to find and correct any entry errors.*

## Section 9

# Order confirmation/receipt

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Immediately after completion of a payment or receipt of an order, the payee must provide the consumer with a receipt/order confirmation providing the necessary information as documentation for the payment/order.

**Comments:**

*Such order confirmation/receipt must serve as the consumer's documentation and allow the consumer to see and verify the payment order and match it against the information to be provided by the consumer's provider on completed payment transactions.*

*The order confirmation/receipt should at a minimum contain information about*

- » *The name and contact information of the payee;*
- » *A description of the product(s) or service(s) ordered;*
- » *The date of order and delivery, if applicable;*
- » *The total amount paid;*
- » *Confirmation that payment has been made, including information that the payment constitutes advance payment; and*
- » *Whether the payment is a recurring payment under an ongoing contractual relationship, if applicable.*

## Section 10

# Storing and using payment information

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Information which may be used to complete payment transactions must be treated confidentially and may only be used for the purpose(s) for which it was provided. Payment information must not be stored longer than required.

If the consumer has accepted that the payee may store payment data for use in connection with subsequent payments, the consumer/payer may at any time demand that the payment data stored by the payee be deleted.

**Comments:**

*The rules on registration and use of personal data apply in addition to the rules of the Marketing Practices Act.*

*Attention is furthermore drawn to section 85 of the Payment Services Act which sets out restrictions on the processing of data on where consumers use their payment instruments and what they buy.*

*Information which can be used to complete payment transactions should be stored so as only to be accessible by specially trusted staff. The information must be deleted once the payment transactions have been completed.*

*For the purpose of complaints etc., information about individual purchases must be stored in accordance with section 10 of the Danish Bookkeeping Act (five years).*

*To a wide extent, acquirer agreements provide rules on the obligations of payees to store and process payment transaction data.*

## Section 11

# Revision

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The need for revising these guidelines will be assessed in the light of subsequent developments within three years of the commencement date of the guidelines. Prior to such time, any of the contracting parties may request that the Consumer Ombudsman consider a revision if the need arises.

# Section 12

## Commencement

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These guidelines will enter into force on 1 September 2014.

The provisions in 5.2 on time limits for information about and objections to future payments will, however, not enter into force until 1 January 2015. The remaining provisions of 5.2 will enter into force at the time when the other provisions of the guidelines enter into force.