

Electronic contracts from the perspective of consumer vulnerability

Electronic contracts from the perspective of consumer vulnerability

Aldryn Amaral de Souza
Gustavo Garcia Rodrigues da Silva
Jeremiah da Silva Leo
Chubby
Valeria da Costa Mourão

SUMMARY

This article analyzes electronic contracts with a focus on consumer vulnerability, investigating the structural challenges and systemic risks inherent to this type of contract, as well as the legal responses developed to mitigate them. The digitalization of consumer relations has transformed the dynamics of electronic contracts, creating significant legal challenges for consumer protection. Considered to be at a disadvantage in contractual relationships, consumers face aggravated vulnerabilities in the digital environment, especially due to information asymmetry, impersonality of transactions, and imposition of contractual adhesion clauses. The Consumer Defense Code and Decree No. 7,962/2013 establish guidelines to ensure greater transparency and balance in these relationships. The case law of the Superior Court of Justice (STJ) has played a crucial role in regulating electronic contracts, consolidating the right of withdrawal and the liability of suppliers for defects and failures in the provision of services. Decisions such as REsp 1,340,604/RJ reinforce the need to guarantee the refund of amounts paid for online purchases, while REsp 1,599,511/SP combats abusive clauses that limit consumer rights. Despite regulatory advances, challenges persist, such as the difficulty of holding foreign suppliers accountable and the complexity of digital contracts. The action of regulatory bodies and the modernization of consumer protection policies are essential to ensure a safer and more transparent digital environment, balancing the interests of consumers and suppliers in e-commerce.

Keywords: Electronic commerce, Abusive clauses, Consumer law, Right of withdrawal, Consumer vulnerability in the digital environment.

ABSTRACT

The present paper conducts an analysis of electronic contracts with a focus on consumer vulnerability, examining the structural challenges and systemic risks inherent to this type of contractual arrangement, as well as the legal responses developed to mitigate them. The digitalization of consumer relations has transformed the dynamics of electronic contracts, creating significant legal challenges for consumer protection. Recognized as the weaker party in contractual relations, the consumer faces heightened vulnerabilities in the digital environment, especially due to informational asymmetry, the impersonal nature of transactions, and the imposition of standard-form contractual clauses. The Consumer Protection Code and Decree No. 7,962/2013 set forth guidelines to ensure greater transparency and balance in such relationships. The case law of the Superior Court of Justice (STJ) has played a crucial role in regulating electronic contracts, consolidating the right of withdrawal and the liability of suppliers for defects and service failures. Decisions such as REsp 1.340.604/RJ emphasize the need to guarantee the refund of amounts paid in online purchases, while REsp 1.599.511/SP challenges abusive

clauses that restrict consumer rights. Despite regulatory advancements, challenges remain, including the difficulty in holding foreign suppliers accountable and the complexity of digital contracts. The role of regulatory agencies and the modernization of consumer protection policies are essential to ensure a safer and more transparent digital environment, balancing the interests of consumers and suppliers in electronic commerce.

Key-words: E-commerce, Abusive clauses, Consumer law, Right of withdrawal, Consumer vulnerability in the digital environment.

1. INTRODUCTION

Advances in technology and the digitalization of contractual relationships have substantially transformed the way consumers and suppliers interact in the consumer market. The rise of electronic contracts – agreements concluded digitally, without the need for the parties to be physically present – poses unprecedented legal challenges, especially with regard to consumer protection, historically recognized as the weaker party in consumer relations, under the terms of article 4, item I, of the Consumer Protection Code (Law No. 8,078/1990). Consumer vulnerability, a fundamental principle of the consumer microsystem, becomes even more evident when analyzed from the perspective of electronic contracting, in which there is significant information asymmetry and frequent imposition of contractual adhesion clauses.

The consumerist doctrine, represented by jurists such as Cláudia Lima Marques and Bruno Miragem, emphasizes that the digital era has increased the gap between consumers and suppliers, especially with regard to accessibility and clarity of information, data privacy and compliance with contractual obligations. In this context, the doctrine of vulnerability assumes a fundamental role in the interpretation and application of protective norms, requiring the legal system to provide effective mechanisms to protect consumers in the face of new types of contracting. The Superior Court of Justice (STJ), guardian of the interpretation of infra-constitutional legislation, has consolidated relevant case law on contracting electronic, recognizing, for example, the applicability of the right of withdrawal provided for in article 49 of the CDC to purchases made in a virtual environment, regardless of the reason for withdrawal (REsp 1,340,604/RJ). Furthermore, this Court has repeatedly rejected contractual clauses that exclude the liability of suppliers for defects in products purchased online, reinforcing the need for transparency and balance in digital contractual relationships.

Specific regulations for e-commerce in Brazil were introduced by Decree No. 7,962/2013, known as the "E-commerce Decree", which regulates essential aspects such as the duty to provide information, facilitated customer service and the right to withdraw. However, technological developments and the emergence of new commercial practices, such as *marketplaces* and *smart contracts*, require constant regulatory reviews and case law adaptations in order to ensure the effectiveness of consumer protection in the digital environment. In the context of comparative law, it is observed that countries such as the European Union already have robust legislation on electronic contracts, establishing strict rules for the collection and use of personal data, as well as for transparency in digital transactions. The General Data Protection Regulation (GDPR) - European data protection law, in force since 2018, brought significant advances to consumer protection in the electronic environment, directly influencing the recent General Data Protection Law (Law No. 13,709/2018) in Brazil, which provides greater legal security to digital relationships and reinforces the suppliers' duty to provide information.



In view of this scenario, this study aims to analyze electronic contracts from the perspective of consumer vulnerability, investigating the structural challenges and systemic risks inherent to this type of contract, as well as the legal responses developed to mitigate them. To this end, the research is structured around four articulated axes. Section 2 discusses the conceptualization of electronic contracts, as well as aspects of consumer vulnerability in the digital environment. Consumer protection mechanisms in the virtual environment, with a critical analysis of the doctrine, national legislation (CDC and Decree No. 7,962/2013) and STJ case law, are presented in Section 3. Section 4 addresses the civil liability of suppliers and the available protection instruments, with an emphasis on the application of the objective liability regime and the practical challenges for the enforcement of rights. Finally, in Section 5, we present general considerations that summarize the implications of the digitalization of consumer relations, highlighting the persistence of obstacles such as the complexity of contractual clauses, the difficulty of holding transnational suppliers accountable and the need for continuous improvement of regulatory policies.

ELECTRONIC CONTRACTS AND CONSUMER VULNERABILITY IN DIGITAL ENVIRONMENT

1.1 Concept and General Characteristics

Electronic contracts are expressions of intent entered into through electronic data transmission, without the need for face-to-face interaction between the parties, whether orally or in writing on paper, but through virtual means, as taught by Coelho (2003). Defined as business instruments signed in a virtual environment, these contracts can take different forms, from simple clicks to accept terms and conditions to more complex agreements, formalized through specialized electronic platforms. The expansion of digital transactions and the widespread adoption of technologies such as *blockchain* and smart contracts *reformulate* traditional contractual paradigms, requiring new doctrinal and jurisprudential interpretations. In this sense, both *blockchain* and *smart contracts* are already recognized by jurisprudence as a valid and secure contractual means, as long as procedures are adopted to guarantee the reliability and security of operations, as can be seen in the excerpt:

TJ-RJ - APPEAL: APL 2828598620208190001 202200121847

(...)

Freedom of form even allows it to be done verbally. It would be no different in relation to an electronic contract or any other means, as long as integrity and authenticity are ensured. It is no wonder that numerous studies are being developed in this regard, such as in smart contracts .

Please note that Resolution 4283/2013 requires, in art. 1, item II, the integrity, reliability, security and confidentiality of transactions carried out, as well as the legitimacy of the contracted operations and services provided. The digital photo and the attached documents could be reproduced without the slightest security and provide the opportunity for the execution of several undesirable contracts. Although the provision of the service using new techniques does not in itself constitute a defect in the service, the business form now advocated contains insecurity, due to the lack of integrity and authenticity, considering the mode of provision and the resulting risk. (CDC ITEM I - III), especially when the borrower, in good faith, not only refuses to contract, but also returns the capital borrowed. It cannot be forgotten that, in society, there are hypervulnerable people, who have difficulties of various kinds in keeping up with the dizzying advances in technology, such as the elderly. (...)”

TJ-DF - 7277488820238070001 1899762

Summary: Summary: CIVIL AND CIVIL PROCEDURE. CIVIL APPEAL. CONSUMER LAW. ACTION FOR CONTRACT TERMINATION WITH REFUND OF AMOUNTS PAID. CONTRACT OF LEASING OF CRYPTOASSETS. RESTRICTION OF DEFENSE. OCCURRENCE. SENTENCE





CASSADA. 1. If there is a provider of crypto asset leasing services and the final recipient of the provision, the consumer chain is terminated and the relationship is subject to the rules of the Code of Consumer Protection (articles 2 and 3 of the CDC). 2. The sentencing court claims that there is sufficient evidence to resolve the matter and does not grant the request to reverse the burden of proof that would prove the author's thesis. 3. By denying the reversal of the burden of proof, the sentencing court restricts the fundamental right to adversarial proceedings and full defense, making it impossible for the party to prove their allegations. The denial of the production of evidence and the denial of the request due to lack thereof are inconsistent. 4. The appeal is known and granted to annul the contested judgment and order the reversal of the burden of proof claimed.

The traditional conception of Civil Law defines a contract as an agreement of wills intended to create, modify or extinguish obligations between the parties (GAGLIANO; PAMPLONA FILHO, 2019). However, when transposed to the digital environment, this concept maintains its essence, but requires a reinterpretation in light of the specificities of electronic interactions. In contracts concluded by digital means — especially adhesion contracts, widely used on online platforms —, the autonomy of the consumer's will is mitigated, expanding the

its condition of structural vulnerability. This fragility arises not only from the lack of negotiation, but also from the use of digital interfaces that sometimes make it difficult to fully access and understand the contractual terms, violating the duty of transparency.

In this context, the Consumer Defense Code (Law No. 8,078/1990) plays a central role in establishing objective good faith and transparency as fundamental principles of consumer relations (art. 4, III, combined with art. 6, III). These principles impose on suppliers the duty to ensure that contractual information is clear, obvious and easily accessible, even in contracts signed electronically. Corroborating this guideline, the Superior Court of Justice, in the judgment of Resp 1,737,428/RS, established the understanding that electronic contracts must strictly observe the right to adequate information, prohibiting clauses and practices that surreptitiously restrict consumer rights. The Court emphasized that the apparent simplicity of digital transactions cannot serve as a shield for abusive practices or for the concealment of harmful clauses, reaffirming the need for effective consumer protection in the virtual environment.

In light of this scenario, it is clear that simply adapting the classic concept of contract to new forms of contracting is not enough to ensure effective consumer protection in the digital environment. Technological intermediation introduces even more pronounced information asymmetries, in addition to new situations that create an imbalance in consumer relations. Such transformations require a specific analysis of the consumer's vulnerability in this context, especially in view of the challenges posed by algorithms, persuasive interfaces and hidden clauses in electronic contracts, which demonstrate the consumer's vulnerable position in the digital environment for the supply of products and services.

1.2 Consumer Vulnerability in the Digital Environment

The vulnerability of consumers in the digital environment is exacerbated by multiple factors inherent to electronic consumer relations, such as the marked asymmetry of information, the impersonal nature of transactions, the difficulty in identifying and locating suppliers, and the proliferation of aggressive and sometimes abusive commercial practices. These elements add additional complexity to the legal protection of consumers, requiring the application not only of the general principles of the Consumer Protection Code, but also of specific rules, such as those provided for in Decree No. 7,962/2013, which regulates electronic commerce in Brazil.



Informational asymmetry, a central element in vulnerability analysis, consists of the substantial inequality of access and understanding of relevant information between supplier and consumer, compromising the self-determination of the latter's will. According to Netto (2011), the consumer is often placed in a position of ignorance regarding the characteristics, risks and conditions linked to the product or service offered, becoming an easy target for abusive behavior, prohibited by art. 39 of the CDC. This informational deficiency hinders the full exercise of the right to information, provided for in art. 6, III, of the aforementioned legal diploma, affecting

directly the validity and effectiveness of the manifestation of will, a pillar of contractual theory.

Furthermore, the impersonal nature and speed inherent to digital contracts aggravate this vulnerability, since the lack of direct human interaction and the instantaneous nature of transactions lead consumers to make hasty decisions, often without due consideration of the terms agreed upon. This phenomenon, widely discussed in contemporary doctrine, highlights the need to reinforce the duties attached to objective good faith, especially with regard to loyalty and transparency in virtual business relationships. The Superior Court of Justice has repeatedly affirmed this premise, highlighting that, even in electronic contracts, "the duty to provide information must be amplified, given the opacity that characterizes many digital platforms" (STJ, REsp 1.813.684/SP).

At the international level, instruments such as Directive 2011/83/EU of the European Parliament and of the Council on consumer rights establish advanced protection parameters in electronic commerce, requiring transparency, the right to withdraw and the prohibition of misleading practices, serving as a reference for the evolution of Brazilian legislation. In addition, the United Nations Convention on Contracts for the International Sale of Goods (CISG), although focused on commercial relations, points to the global trend towards harmonization of contractual obligations in the digital environment.

Another aspect that deserves to be highlighted is the recurring difficulty faced by consumers in locating and identifying suppliers in the digital environment, especially in cross-border transactions. Decree No. 7,962/2013 sought to mitigate this problem by imposing the obligation to clearly and conspicuously disclose essential data about suppliers on electronic platforms (art. 2). However, as Cruz (2006) observes, in practice, resistance from many suppliers persists —

especially those based abroad — in fully complying with such requirements, making it difficult for consumers to access complaints mechanisms and enforce their rights, including with regard to the jurisdiction and applicability of Brazilian legislation.

Brazilian jurisprudence, aware of this challenge, has expanded the application of the principle of facilitating consumer protection in court (art. 6, VIII, of the CDC), admitting, for example, the joint liability of digital intermediaries when they act as facilitators of the consumer relationship, as can be seen in the following judgments:

TJ-MG - [CIVIL CIVIL LETTER ROCATORY 5006589-21.2024.8.13.0461 Ouro Preto -
Small Claims Court - MG

Jurisprudence Sentence published on 12/06/2024

Full text: Furthermore, consumer vulnerability is a fundamental principle of the Consumer Defense Code (CDC) that recognizes the disadvantageous position of the consumer in relation to the supplier in the legal relationship... Therefore, social isolation can aggravate these changes and increase the vulnerability of the elderly consumer... In the face of GOOGLE BRASIL INTERNET LTDA, Website: www.google.com ;
Head Office: Avenida Brigadeiro Faria Lima 3477, 18th





And GERENCIANET TEC IN
PAYMENTS AND ELECTRONIC COMMERCE

STJ - APPEAL IN SPECIAL APPEAL: AREsp 946301

Jurisprudence Decision published on 02/05/2024 Full text: According to art. 37 of the CDC of misleading advertising (likely to mislead the consumer) or abusive (unethical, which harms the vulnerability of the consumer and society as a whole... verified in the analysis of the website and the advertisement, considering that the defendant company does not observe the rules of the Decree No. 7,962, of 03/15/2013, which establishes rules and restrictions on hiring in electronic commerce... electronic, since it does not make the company's business name and CNPJ available on its website, so that consumers can easily identify the supplier, and does not maintain an adequate customer service

In view of this panorama, continuous normative and interpretative evolution aimed at protecting the digital consumer becomes essential, reaffirming the principle of vulnerability as the foundation of the consumer system and guaranteeing the material effectiveness of the rights provided for, even in the face of the challenging dynamics of globalized electronic commerce.

Furthermore, it is observed that aggressive commercial practices and the use of targeted advertising, enhanced by advanced technological tools, expose consumers to sophisticated persuasion mechanisms that often culminate in the induction of thoughtless consumption. The use of behavioral algorithms and *neuromarketing* techniques — which explore cognitive and emotional reactions to direct purchasing decisions — constitutes a true manipulation of the consumer's contractual freedom, directly affecting their self-determination and the authenticity of their expression of will (COELHO, 2003).

This scenario highlights the need to reinforce the principles of transparency and the duty to provide information, both enshrined in Article 6 of the Consumer Protection Code, as essential instruments for containing abusive practices in the context of electronic contracts. Case law has addressed *neuromarketing* practices used abusively against consumers:

TJ-MG - [CIVIL] COMMON CIVIL PROCEDURE 5006284-39.2024.8.13.0040 Araxá - MG

Jurisprudence Sentence published on 07/03/2024

Full text: authors, in summary, who agreed to participate in a lecture, attracted by the offer of gifts, and who, after the explanation about the advantages of the program offered, were subjected to aggressive **neuromarketing techniques**. According to article 51, items II and IV of the **Consumer Defense Code**, the percentage determined in a contractual clause cannot be abusive, so as to cause high burden to the **consumer** and... Therefore, in the case of a consumer relationship and the flagrant insufficiency of the **consumer**, I reverse the burden of proof, according to art. 6, VIII, of the CDC

In this context, Decree No. 7,962/2013 — known as the “E-commerce Decree” — emerges as a relevant regulatory framework by establishing guidelines that aim to ensure the clarity and accessibility of information in digital consumer relations. Among its provisions, it is worth highlighting the mandatory clear and accurate presentation of prices and payment conditions, as well as facilitating the exercise of the right of withdrawal, provided for in art. 49 of the CDC.

According to Braga Netto (2011), the right to withdraw, applicable to purchases made outside of a physical commercial establishment, especially via the Internet, is a prerogative granted to the consumer regardless of the existence of a defect or fault in the product or service. It is a protective mechanism that aims to balance the consumer relationship in the absence of direct contact with the good or service at the time of contracting, allowing the consumer to unilaterally terminate the contract within the legal period of seven days, without the need for justification, as expressly provided for in the CDC.



It is important to highlight that the Superior Court of Justice has been consolidating the understanding that any limitation or condition on the exercise of this right constitutes an abusive practice, prohibited by the legal system (STJ, REsp 1,280,825/SP). Furthermore, case law recognizes that the duty to inform, when breached, not only leads to the nullity of contractual clauses, but may also generate civil liability on the part of the supplier for any damages caused to the consumer.

Given this reality, the need for constant vigilance regarding market strategies adopted in the digital environment is reinforced, requiring the interpreter and the applier of the law to take a proactive stance in defending the weaker party, in order to guarantee the effectiveness of consumer rights in the face of technological innovations that challenge traditional contractual paradigms, as seen in the following judgment:

TJ-SP - Civil Appeal 10007540720238260587 San Sebastian

Jurisprudence Judgment published on 11/18/2024

Summary: CONSUMER LAW. APPEAL. FRAUDULENT CONSIGNED CREDIT CARD. DISPUTED ELECTRONIC CONTRACTING. "SELFIE" PHOTOGRAPH IS NOT A VALID MEANS OF AUTHENTICATION. NULLITY OF THE CONTRACT. DOUBLE REIMBURSEMENT. MORAL DAMAGE CONFIGURED. COMPENSATION. I. CASE UNDER EXAMINATION 1. Action in which the plaintiff claims not to have contracted a payroll credit card that generated undue discounts on her social security benefit. She requests a declaration of unenforceability of the debt, return of the amounts and compensation for moral damages. II. ISSUE UNDER DISCUSSION 2. There is one issue: to define whether the defendant bank proved the regularity of the electronic contracting of the payroll credit card. III. REASONS FOR DECISION 3. As is common knowledge, criminals have been able to easily obtain copies of personal documents and forge "selfie" photos in order to defraud contracts, so these are not valid authentication mechanisms. 4. There is absolutely no valid evidence that the geolocation and IP of the contracting party were actually those indicated in the contract. Since this is a simple systemic screen produced unilaterally, the defendant may very well have entered the data after the distribution of this action. 5. Even though the transfer of the loan amount by the defendant to the plaintiff has been proven, this does not mean that the plaintiff signed the contract, as it is common knowledge that fraud in the contracting of loans is most often carried out by bank correspondents who enter into these fraudulent contracts in the name of retirees just to earn commissions from the banks.

The Superior Court of Justice has reiterated its understanding that, in consumer relations established in the digital environment, any clause that imposes disproportionate restrictions or that prevents the exercise of essential consumer rights must be considered null and void, in light of the provisions of art. 51 of the Consumer Defense Code. In particular, in the judgment of Resp 1,599,511/SP, the Court took the position that the vulnerability of consumers in virtual environments requires the adoption of additional safeguards, reinforcing the obligation of suppliers to ensure transparency, accessibility to information and full respect for the right to withdraw, without abusive or hidden impositions. This decision consolidates the line of case law that recognizes the peculiar fragility of digital consumers, highlighting the need for a more protective approach by the Judiciary in view of the new contractual dynamics driven by technology.

Thus, the Brazilian legal system has been progressing in the construction of a regulatory and jurisprudential framework guided by maximum consumer protection, in line with the principles enshrined in both domestic legislation and international guidelines, such as those issued by the Organization for Economic Cooperation and Development (OECD) and the European Union. This movement reveals a growing concern in adapting Consumer Law to the complexities of digital relationships, ensuring that the fundamental rights of the consumer are not mitigated by the advancement of electronic commercial practices.



In view of this context of constant regulatory evolution and the demands imposed by the dynamics of digital commerce, it is essential to further analyze the legal tools available for effective consumer protection. Protection cannot be limited to abstract guidelines, but must be materialized through concrete mechanisms that ensure the prevention of abuse, the reparation of damages and the promotion of a balanced and transparent contractual environment. Thus, we will examine consumer protection mechanisms in electronic contracts, highlighting the legal guarantees, guiding principles and practices that aim to protect the weaker party against the challenges and risks inherent in contemporary digital relationships.

2. CONSUMER PROTECTION MECHANISMS IN ELECTRONIC CONTRACTS

The increasing digitalization of consumer relations has imposed new challenges to the legal system, especially regarding the effectiveness of consumer protection in virtual environments. In e-commerce, consumer vulnerability becomes more pronounced, requiring the application of specific mechanisms that ensure contractual balance and prevent abusive practices. These protection instruments arise not only from the rules established in the Consumer Protection Code (CDC), but also from complementary regulations, such as Decree No. 7,962/2013, and from the solid case law that has been consolidated by the higher courts.

The most relevant mechanisms include: the duty to provide information and transparency, the right to withdraw, the prohibition of abusive clauses, the objective liability of suppliers and the facilitation of access to legal protection. These guarantees aim to mitigate the risks inherent in digital contracts, in which the consumer is often exposed to adhesion contracts, targeted advertising and interfaces that make it difficult to fully understand the rights and obligations assumed. In this scenario, the first and most essential protection mechanism lies in the strict observance of the duty to provide information and transparency, fundamental pillars to ensure that the expression of the consumer's will is free, conscious and duly clarified.

3.1. Duty of Information and Transparency

The duty to provide information and transparency are the structuring principles of the consumer protection system, expressly provided for in Article 6, paragraph III, of the CDC. These principles impose on the supplier the obligation to make available, in a clear, precise and visible manner, all information relevant to the contract, covering characteristics of the product or service, commercial conditions, risks involved, cancellation policies, delivery times, payment methods and any additional charges.

In the context of digital relations, this obligation is reinforced by Decree No. 7,962/2013, which establishes, in its art. 2, the need for essential information to be permanently visible and accessible to the consumer on electronic platforms. This requirement seeks to neutralize information asymmetry.



typical of virtual contracts and prevent the consumer from being surprised by obscure clauses or unfair practices. As Marques (2006) warns, the lack of transparency in electronic contracts compromises the soundness of the expression of will, violating the principle of objective good faith and opening space for the incidence of judicial control over potentially abusive clauses.

Brazilian case law, in turn, has played a crucial role in implementing this duty. In particular, the Superior Court of Justice, in its judgment of Resp 1,599,511/SP, established the understanding that the omission or deficient presentation of relevant information constitutes an abusive practice, under the terms of art. 39, IV, of the CDC, giving rise to the nullity of the harmful clauses and the liability of the supplier. The Court emphasized that, in electronic contracts, the duty to provide information must be interpreted broadly, considering the peculiarities of the digital environment, where the lack of physical contact and the complexity of the interfaces can obscure the fundamental rights of the consumer. Furthermore, in precedents such as REsp 1.634.851/SP, the STJ reaffirmed that misleading advertising, the omission of information on return and cancellation policies, as well as the lack of clarity regarding additional costs, constitute serious violations of the duty of transparency, subjecting the supplier to the sanctions provided for in the CDC, including compensation for moral and material damages.

It is important to highlight that the protection provided by the duty to inform is not limited to the pre-contractual period, but extends throughout the execution of the contract, as advocated by the doctrine and supported by the prevailing case law. It is an ongoing duty, which aims to ensure the legitimate trust of the consumer throughout the legal relationship. Thus, compliance with the duty to inform and transparency is not a mere formality, but rather a true instrument for protecting the dignity of the consumer, the violation of which compromises the validity of the legal transaction and entails severe legal consequences for the supplier. Continuing, it is important to analyze other equally relevant protection instruments in the context of electronic contracts, with emphasis on the right of withdrawal, to be addressed in the next subsection, as an essential safeguard against the aggravated vulnerability in digital commerce.

The effectiveness of the duty to provide information and transparency, however, does not exhaust the mechanisms necessary for the full protection of consumers in electronic contracts. Even when duly informed, digital consumers remain exposed to circumstances that may compromise their purchasing decision, especially in the absence of direct contact with the product or service and the persuasive strategies widely used in the virtual environment. It is precisely to balance this relationship and guarantee the consumer a second opportunity to reflect that the legal system enshrines the right to withdraw, an essential protection instrument in distance relationships, the analysis of which is required as a logical continuation of the safeguards provided for in the consumer protection microsystem.

The duty to provide information and transparency in consumer relations are fundamental principles of the Consumer Protection Code (art. 6, III), essential to guarantee consumer protection in the digital environment. Decree No. 7,962/2013 reinforces this obligation by requiring suppliers to provide clear and accessible information about the products and services offered. Marques (2006) highlights that the lack of transparency in electronic contracts compromises the expression of the consumer's informed will, characterizing a violation of their basic rights.



The case law of the STJ has reaffirmed the importance of the duty to provide information in digital contracts. In Resp 1,599,511/SP, the Court determined that the lack of clear information about the contractual terms constitutes an abusive practice, resulting in the nullity of clauses that are harmful to the consumer. In addition, misleading advertising and the lack of details about cancellation policies are frequently the subject of litigation in e-commerce.

3.2. Right of Withdrawal in Electronic Contracts

The right of withdrawal, provided for in article 49 of the CDC, is one of the main consumer protection instruments in electronic contracts. This prerogative allows the consumer to withdraw from the contract within seven days after receiving the product or service, without the need for justification and with the right to a full refund. The right of withdrawal also constitutes one of the most relevant guarantees granted to the consumer in cases of contracts concluded outside the commercial establishment, especially in the context of electronic commerce.

This is a prerogative that guarantees the consumer the possibility of unilaterally withdrawing from the contract, within seven days of signing it or receiving the product or service, whenever the contract is signed outside of a traditional physical environment.

The purpose of this institution is to protect the consumer's freedom of choice, which is mitigated in remote contracts, where there is no possibility of prior direct and sensorial analysis of the good or service. Thus, the right of withdrawal functions as a compensatory mechanism for the increased vulnerability in this type of consumer relationship, allowing the consumer to reevaluate the contract without needing to justify their decision and without any burden, as reinforced by Decree No. 7,962/2013, which regulates electronic commerce. The majority doctrine, represented by authors such as Marques (2006), emphasizes that the right of withdrawal aims to reestablish contractual balance, given the information asymmetry and consumer induction techniques present in the digital environment. It is therefore not a simple act of liberality, but a fundamental guarantee, the non-observance of which implies the nullity of restrictive clauses and the liability of the supplier.

The case law of the Superior Court of Justice has repeatedly affirmed the binding nature of this right. In the judgment of Resp 1.787.492/SP, the Court consolidated the understanding that any attempt to limit or suppress the exercise of the right of withdrawal in electronic contracts is abusive, and that the supplier is prohibited from imposing conditions, fees or restrictions that distort the protective purpose of the legal provision. The full refund of the amounts paid, including shipping costs, was recognized as an obligation of the supplier in such situations.

It is important to note that the seven-day period is counted in favor of the consumer, and is interpreted extensively when there are doubts, in accordance with the principle of *in dubio pro consumidor*. Furthermore, any lack of clear information about this right at the time of contracting constitutes a violation of the duty of transparency, giving rise to sanctions provided for in the CDC.

In the current scenario, marked by the intensification of online shopping, the right to withdraw takes on an even more important role, acting as a true brake on aggressive commercial practices and as an instrument to reinforce consumer autonomy. Its effectiveness depends not only on regulatory provisions, but also on an active stance by consumer protection agencies and the Judiciary in repressing clauses and conduct that seek to undermine this protection.

The STJ, in its judgment of Resp 1.737.412/SP, consolidated the understanding that the right of withdrawal must be broadly ensured in purchases made remotely, as a form of compensation for the impossibility of prior inspection of the product. In addition, Decree No. 7.962/2013 establishes that suppliers must expressly inform the consumer of this possibility, under penalty of administrative sanctions and contractual nullity. The right of withdrawal is therefore one of the pillars of contractual protection in e-commerce, and must be strictly observed by suppliers and broadly guaranteed to the consumer as an expression of the principle of human dignity in consumer relations.

Although the right to withdraw represents an important safeguard for consumers in electronic contracts, it does not exhaust the mechanisms necessary to preserve balance in digital consumer relations. In many cases, consumer vulnerability manifests itself in a more subtle and prolonged manner, especially through the insertion of contractual clauses that, under the guise of apparent legality, impose excessively onerous obligations or restrict fundamental rights. In this context, it becomes essential for the legal system to act by controlling abusive clauses, an essential instrument to curb practices that are contrary to objective good faith and the social function of the contract, ensuring that the protective principles of the consumer microsystem prevail in the face of the asymmetries typical of adhesion contracts, widely used in e-commerce.

3.3. Control of Abusive Clauses

The control of abusive clauses is an instrument of public order and fundamental protection in the context of consumer relations, especially in electronic contracts, where the adhesion method prevails and information asymmetry is pronounced. According to art. 51 of the Consumer Protection Code, clauses that establish unfair obligations, place the consumer at an exaggerated disadvantage or contravene the principles of objective good faith and the social function of the contract are null and void. The judicial action has been decisive for the effectiveness of this control, since, given the massification of digital contracts, the insertion of clauses that, although presented in a standardized manner and “accepted” by the consumer, blatantly violate the rights guaranteed by the consumer microsystem has become recurrent.

Among the abusive practices most frequently identified in electronic contracts, the following stand out:



1. Exemption clauses for hidden defects

Suppliers are prohibited from exempting themselves from liability for hidden defects or flaws in products or services provided, even if the contract is entered into in a digital environment. The Superior Court of Justice, in the judgment of Resp 1.818.391/RN, consolidated the understanding that contractual provisions that seek to eliminate the supplier's objective liability provided for in articles 12 to 25 of the CDC are null and void. The Court emphasized that, in the case of hidden defects, the duty of warranty subsists regardless of contractual provisions, and the consumer cannot be deprived of this right by unilateral and abusive wording clauses.

2. Forum selection clauses that hinder access to justice

The imposition of a forum other than the consumer's domicile, especially in electronic contracts with national or international scope, is a practice repeatedly rejected by case law. Summary 335 of the STJ establishes that "the forum election clause is valid for proceedings arising from the contract, except in cases of absolute jurisdiction". However, in the context of consumer relations, the consolidated understanding is that the forum selection clause that excessively burdens the consumer must be removed, ensuring the jurisdiction of the forum of his/her domicile, in accordance with precedents such as REsp 1,299,422/MA. This measure aims to ensure the effectiveness of the principle of facilitating consumer defense in court, provided for in art. 6, VIII, of the CDC.

3. Clauses imposing compulsory arbitration

The imposition of arbitration clauses in adhesion contracts, especially without the consumer's due possibility of free and informed choice, is prohibited by the legal system. Article 51, XVII, of the CDC considers the stipulation of mandatory arbitration abusive when the consumer is not given the option of judicial means. The STJ, in Resp 1.189.050/SP, reinforced this understanding, stating that the use of arbitration as the exclusive means of resolving disputes, without the specific and highlighted consent of the consumer, directly violates the principles of transparency and mitigated contractual freedom, typical of consumer relations.

The constant evolution of e-commerce requires that both the legislator and the Judiciary maintain active surveillance over the contractual practices adopted by digital platforms and suppliers. The principle-based interpretation of the CDC, combined with the strict application of the control of abusive clauses, proves essential to preserve the dignity of the consumer and ensure that electronic contracts comply with the postulates of objective good faith, equity, the social function of the contract and transparency. Thus, the fight against abusive clauses is not limited to the formal analysis of the contract, but requires a material and protective reading, compatible with the vulnerability of the consumer in the digital environment and with the values enshrined in the contemporary legal system.

The repression of abusive clauses represents only one aspect of consumer protection in electronic contracts, since the dynamics of these relationships require not only preventive and corrective control of the contractual content, but also effective liability of suppliers for any damages resulting from poor service provision, product defects or unfair commercial practices. In this sense, the civil liability of suppliers assumes a central role in guaranteeing consumer rights, especially given the complexity of consumer chains.



digital platforms and the actions of multiple economic agents, such as *marketplaces* and intermediary platforms. In fact, it is essential to analyze the contours of this responsibility, as well as the jurisdictional and extrajudicial mechanisms available for consumer protection in the virtual environment, a topic that will be addressed in the following chapter.

4. SUPPLIER LIABILITY AND CONSUMER PROTECTION MECHANISMS IN ELECTRONIC CONTRACTS

In the contemporary scenario, marked by the rapid expansion of digital relations, Consumer Law assumes a leading role as a true instrument of protection for the weaker party in the face of modern commercial practices. The transposition of consumer relations to the electronic environment does not eliminate — on the contrary, it reinforces — the need to observe the principles that govern the consumer microsystem, especially human dignity, objective good faith, transparency and contractual balance.

As Marques (2019) rightly points out, consumer vulnerability is exacerbated in e-commerce, requiring a principle-based reading of the CDC capable of keeping up with technological innovations without allowing setbacks in the legal protection achieved. In this context, the responsibility of suppliers and consumer protection mechanisms emerge not only as legal duties, but as ethical and legal imperatives to ensure justice in digital relationships.

4.1. Suppliers' Obligations in Electronic Contracts

Suppliers operating in the digital environment cannot hide behind the impersonality of virtual platforms to fail to comply with their legal obligations. On the contrary, they must take extra care, given that remote contracting intensifies information asymmetries and limits the consumer's power of conscious choice.

The principle of transparency, enshrined in art. 6, III, of the CDC, imposes on the supplier the duty to provide clear, adequate and conspicuous information, covering all the conditions of the contract. This obligation is reinforced by Decree No. 7,962/2013, which regulates electronic commerce, requiring the unequivocal provision of data on products, services, deadlines, prices, return policies and service channels.

The absence of such information is not a mere administrative error, but a true abusive practice, as established by the Superior Court of Justice in the emblematic REsp 1,599,511/SP. In this decision, the Court reaffirmed that the supplier who omits or presents essential information in a deficient manner violates objective good faith and is subject to the nullity of the harmful contractual clauses, in addition to administrative sanctions.

Regarding the protection of personal data, Law No. 13,709/2018 (LGPD) establishes strict parameters that bind digital suppliers to the adoption of technical and organizational measures capable of guaranteeing the security of consumer information, under penalty of civil and administrative liability. As Bruno Miragem (2020) teaches, data protection is currently an extension of the right to information and privacy, constituting a pillar of consumer protection in the virtual environment.



Suppliers in the digital environment have specific duties, among which the following stand out: transparency in the information provided to consumers (CDC, art. 6, III), protection of personal data (General Data Protection Law – LGPD, Law No. 13,709/2018) and ensuring the adequacy of products and services (CDC, arts. 18 to 20).

Furthermore, compliance with delivery deadlines and the provision of effective means for exercising the right of withdrawal are fundamental requirements, as provided for in Art. 5 in conjunction with Art. 6, both of Decree No. 7,962/2013.

The STJ has repeatedly ruled that the lack of clear information on e-commerce websites constitutes an abusive practice, as per the understanding established in REsp 1,599,511/SP. This decision reinforces the need for suppliers to comply with regulatory requirements in order to avoid the cancellation of contractual clauses or the imposition of administrative penalties.

4.2. Civil Liability of Suppliers and Application of the Consumer Protection Code

Civil liability in electronic consumer relations is objective, according to art. 14 of the CDC, and it is sufficient to demonstrate the damage and the causal link for the duty to compensate to arise, regardless of proof of the supplier's fault.

Although STJ Summary 479 deals specifically with financial institutions, its logic has been applied by analogy to suppliers that fail to protect consumers against electronic fraud, as long as the so-called internal fortuitous event is configured - situations inherent to the activity carried out, such as security failures in digital platforms.

In Resp 2,077,278-SP, the STJ reaffirmed the supplier's liability for failures in the provision of services in an electronic environment, including failure to adopt adequate security measures. Cases of card cloning, data leaks or fraudulent operations, when resulting from the inefficiency of the protection system, give rise to compensation for material and moral damages. Failure to comply with advertising offers, as provided for in art. 35 of the CDC, also constitutes reprehensible practice, and the consumer is guaranteed the right to demand forced compliance with the offer, accept another equivalent product/service or terminate the contract with a refund of the amount paid and compensation for losses and damages. Failure to maintain effective service channels violates art. 4, V, of Decree No. 7,962/2013, which may result in sanctions applied by consumer protection agencies, in addition to constituting a breach of the duty of good faith, even generating the obligation to seek civil compensation.

The civil liability of suppliers in e-commerce follows the objective liability regime, as recommended by article 14, § 1º of the CDC. The case law of the STJ has consolidated this understanding, holding companies liable for fraud in electronic transactions and failures in the provision of services, according to Summary 479, which provides for the objective liability of banks for damages.

generated by internal chance or fraud in banking transactions. In addition, the lack of adequate security mechanisms to prevent fraud, such as card cloning and data leaks, generates civil liability and requires compensation for moral and material damages to the injured consumer.

Failure to comply with advertising offers, which is common in e-commerce, is also subject to liability. According to Article 35, item I, of the CDC, the supplier must strictly comply with the advertised conditions, and refusal may result in

give rise to compensation for the consumer. The impossibility of resolving problems through consumer service channels also generates sanctions. Article 4, item V, of Decree No. 7,962/2013 requires that suppliers maintain an effective service channel, and the lack of support may give rise to administrative penalties and even the application of moral damages.

4.3. Protection and Dispute Resolution Mechanisms in Electronic Commerce

Consumer protection in the digital environment requires not only substantive standards, but also procedural mechanisms that guarantee effective access to justice and the pacification of conflicts.

The following stand out in this context:

- The exercise of the right of withdrawal (art. 49 of the CDC), widely applicable in electronic contracts;
- Reversing the burden of proof, as a way of mitigating the disadvantage consumer procedural (art. 6, VIII, of the CDC);
- The promotion of alternative means of conflict resolution, such as online mediation and conciliation, encouraged by platforms such as consumidor.gov.br and by state Consumer Protection and Defense Programs (PROCON).

REsp 1.189.050/SP recognized the validity and importance of extrajudicial means of resolving disputes in electronic commerce, as long as the consumer's inalienable right to access the Judiciary is respected, as guaranteed by art. 5, XXXV, of the Federal Constitution and by art. 33 of Law no. 9,307/1996 (Arbitration Law), and also ensured that there is no incompatibility between arts. 51, VII, of the CDC and 4, § 2, of Law no. 9,307/96.

Case law is clear in rejecting clauses that impose compulsory arbitration in adhesion contracts, reaffirming that such mechanisms must always be optional and transparent, in compliance with the principles of consumer autonomy and vulnerability. Thus, effective consumer protection in e-commerce depends on integrated action between protective legislation, efficient monitoring and case law committed to preserving fundamental rights in digital relationships.

To ensure consumer protection, several measures can be adopted, such as facilitating the right to withdraw (CDC, art. 49), reversing the burden of proof in legal actions (CDC, art. 6, VIII) and expanding access to alternative means of dispute resolution (CDC, art. 4, V), such as online mediation systems promoted by PROCON and other consumer protection entities. The STJ has reaffirmed the importance of these instruments in protecting digital consumers, as highlighted in REsp 1.189.050/SP.

Digital mediation and arbitration have been encouraged as efficient alternative methods, ensuring speed and less bureaucracy in resolving disputes. However, such mechanisms cannot suppress the consumer's right to appeal to the Judiciary, according to art. 33 of Law 9.307/1996. Thus, the protection of the

Consumer protection in electronic contracts demands a multidisciplinary approach, involving legislation, inspection and jurisprudence, ensuring balance and justice in digital relationships.

5. FINAL CONSIDERATIONS

The consolidation of electronic contracts as a common practice in contemporary commerce demands a redesign of the legal tools designed to protect consumers. The initial sections of this study demonstrated that, although the Consumer Protection Code and Decree No. 7,962/2013 represent important normative pillars, the vulnerability of the digital consumer is intensified by the impersonality of relationships, the asymmetry of information and the opacity of virtual platforms. The case law of the STJ has reaffirmed essential guarantees, such as the right to withdraw and the prohibition of abusive clauses, reinforcing the need for an active Judiciary to deal with harmful contractual practices. However, structural challenges persist, especially with regard to the liability of foreign suppliers, the protection of personal data and transparency in electronic contracts. The objective liability of suppliers and the expanded application of the duties of information and good faith are essential to contain abuses. Finally, it is urgent to strengthen extrajudicial mechanisms for conflict resolution, in addition to developing integrated public policies capable of ensuring balance, security and dignity in digital consumer relations.

REFERENCES

BRAGA NETTO, Felipe Peixoto Braga Consumer Law Manual: in light of STJ case law. 6th ed. rev., expanded and updated. Salvador: Juspodivm, 2011, p. 49, 295.

BRAZIL. Law No. 8,078 of September 11, 1990. Consumer Protection Code. *Official Gazette of the Union*, September 12, 1990. Available at: <http://www.planalto.gov.br>. Accessed on: February 27, 2025.

BRAZIL. Decree No. 7,962 of March 15, 2013. Regulates Law No. 8,078/90 to provide for contracting in electronic commerce. *Official Gazette of the Union*, March 15, 2013. Available at: <http://www.planalto.gov.br>. Accessed on: February 27, 2025.

BRAZIL. STJ – Superior Court of Justice. REsp 1.340.604/RJ, 2nd Panel, Rel. Min. Mauro Campbell Marques, j. 15/08/2013.c. (Right of Withdrawal. Art. 49 of the CDC).

BRAZIL. STJ – Superior Court of Justice. REsp 1.189.050/ SP, 4th Panel, Rapporteur Min. Luis Felipe Salomão, j. 01/03/2016. (Arbitration agreement. Possibility, subject to certain exceptions.).

BRAZIL. STJ – Superior Court of Justice. Resp 2,077,278/SP, 3rd Panel, Rapporteur Min. Nancy Andrighi, j. 10/03/2023. (Bank data leak. Bill scam. Inadequate processing of confidential personal data. Art. 43 of the LGPD. Facilitation of criminal activity. Fact of service. Duty to compensate. Summary 479/STJ.).



BRAZIL. STJ – Superior Court of Justice. REsp 1,299,422/MA, 3rd Panel, Rapporteur.
Min. Nancy Andrighi, j. 06/08/2013. (Commercial concession contract - forum selection clause - insufficiency
- size of contracting companies).

BRAZIL. STJ – Superior Court of Justice. Resp 1.737.428/RS, reported by Min. Nancy Andrighi, by majority,
decided that the sale of tickets in a virtual environment linked to a single intermediary and upon payment of
a convenience fee is abusive, thus configuring indirect tied selling and, therefore, an abusive consumer
practice.

BRAZIL. STJ – Summary 479 – “Financial institutions are objectively liable for damages caused by internal
fortuitous events related to fraud and crimes committed by third parties within the scope of banking
transactions”.

BRAZIL. STJ – Summary 335 – “In lease agreements, the clause waiving compensation for improvements
and the right of retention is valid.”

BRAZIL. STJ – Superior Court of Justice. Resp 1,599,511/SP, 2nd Section, Rel. Min.
Paulo de Tarso Sanseverino, j. 24/08/2016. (Real estate brokerage clause –
transfer of brokerage commission to buyer, validity of clause).

BRAZIL. STJ – Superior Court of Justice. REsp 1.818.391/RN, 3rd Section, Rel. Min.
Paulo de Tarso Sanseverino, j. 10/09/2019. (Consumer Law. Supplier's Liability. Contract Review).

BRAZIL. STJ – Superior Court of Justice. REsp 1,737,412/SE, 3rd Panel, Rapporteur Min.
Nancy Andrighi, j. 02/05/2019. (Temporal damage to the consumer – recognition of the theory of productive
deviation).

BRAZIL. STJ – Superior Court of Justice. REsp 1,787,492 /SP, 3rd Panel, Rapporteur Min.
Nancy Andrighi, j. 10/31/2017. (Consumer Law. Delivery of Products and Refund of Amounts for the Exercise
of Repentance).

BRAZIL. Superior Court of Justice (Special Court). point of order in Special Appeal No. 1,813,684/SP.
Rapporteur Justice Nancy Andrighi. Judgment Date: 10/02/2019

BRAZIL. Law No. 13,709 of 08/14/2018, published in the Official Gazette of the Union (DOU).
Available at in:
http://www.planalto.gov.br/ccivil_03/_ato2015-2018/2018/Lei/L13709.htm Accessed on: October 24, 2025

COELHO, Fabio Ulhoa. Commercial Law Course. 4th ed. v. 3, p. 37, 47-48.

CRUZ, Carolina Dias Tavares Guerreiro. International consumer contracts: applicable law. Rio de Janeiro:
Forense, 2006, p. 99 et seq.

GAGLIANO, Pablo Stolze; PAMPLONA FILHO, Rodolfo. *New Course in Civil Law – Contracts*. 2nd ed. São
Paulo: Saraiva Educação, 2019. (Chapter: Electronic contracts).

MARQUES, Claudia Lima. Consumer Protection in E-Commerce and the So-Called New Contract Crisis: For a Deepened Consumer Law. *Consumer Law Journal*, [SI], v. 57, p. 9-59, p. 305-306, 338-339, 347-353, 2006.

MARQUES, Cláudia Lima. *Contracts in the Consumer Protection Code: the new regime of contractual relations*. 9th ed. São Paulo: Revista dos Tribunais, 2019.

MIRAGEM, Bruno. *Consumer Law Course*. 8th ed. São Paulo: Courts Review, 2020. (Ebook).