



## **Euporos SA**

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## **Why does the consumer's right to withdraw not apply to precious-metal orders?**

### **Summary**

**SWITZERLAND:** For online sales (over the internet via computer), Swiss law provides no right to return goods (unless they are faulty, of course). According to Article 12 of the Euporos SA General Terms of Sale, Swiss law applies exclusively.

**EUROPEAN UNION:** European Union legislation gives the right to withdraw, but makes exceptions for certain products, including precious metals. The consumer of course has a 14-day right of withdrawal as a general rule, but the law expressly excludes the possibility of cancelling orders relating to gold/silver investments, because their prices are inherently variable.

### **Switzerland**

The law provides no right of withdrawal at all for internet sales. The Euporos SA General Terms of Sale (GTS) clearly state that any contract entered into between yourselves and ourselves is governed exclusively by Swiss law (Article 12 GTS) and that our sales are final and cannot be returned (Article 10 GTS).

The *Fédération romande des consommateurs*, a Swiss consumer protection association, warns that if you buy via the internet, you have a possibility of returning goods only if they are faulty. It gives the following advice: "Before confirming your order, it is therefore very important to take the time to read and check that there are no errors in the information entered, because the seller can invoice you for modifying or cancelling your order, or even be totally inflexible" (<http://www.frc.ch/articles/e-commerce-erreur-produite-lors-de-la-commande>).

The Swiss government itself, on its official website, lists the situations in which you can withdraw (<https://www.konsum.admin.ch/en/faq/2-is-there-a-general-right-of-withdrawal/#c1189>). The purchase of a movable asset (in this case a gold or silver ingot) does not fall in the category of cases where the buyer is entitled to pull out.

### **European Union**

The European Union recognises a right of withdrawal, but not for transactions on precious metals, because their prices inherently fluctuate. "Member States shall not provide for the right of withdrawal set out in Articles 9 to 15 in respect of distance and off-premises contracts as regards the following: [...] b) the supply of goods or services for which the price is dependent on fluctuations in the financial market which cannot be controlled by the trader and which may occur within the withdrawal period" (Article 16 of Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights).

FRANCE: “The right of withdrawal cannot be exercised in contracts: “[...] 2. for the supply of goods or services for which the price is dependent on fluctuations in the financial market which cannot be controlled by the trader and which may occur within the withdrawal period” (translation of Article L. 121-21-8 of the Consumer Code).

BELGIUM: “The consumer cannot exercise the right of withdrawal provided in Article VI.47 for: [...] 2. the supply of goods or services for which the price is dependent on fluctuations in the financial market which cannot be controlled by the trader and which may occur within the withdrawal period” (translation of Article VI.53 of the Act on the insertion of Title VI "Market practices and consumer protection" into the Economic Law Code, 21 December 2013).

GERMANY: “Unless otherwise agreed by the Parties, the right of withdrawal does not apply in the following cases: [...] 8. Contracts for the provision of goods or services, including financial services, for which the price is dependent on fluctuations in the financial market which cannot be controlled by the trader and which may occur within the withdrawal period” (translation of Article 2 paragraph 312g of the German Civil Code).

OTHER EUROPEAN UNION COUNTRIES: Identical legislation, as each Member State must "transpose into national law" European directives including those cited above.

Furthermore, our customers cannot invoke “consumer” rights because the buyer does not “consume” the metal, but keeps it intact, for the purpose of making a sound financial investment. It is therefore in this case “investment gold/silver”, and not a consumer product.

## **Conclusion**

Under our General Terms of Sale and applicable Swiss law, no gold/silver investment order placed with Euporos SA may be withdrawn by the customer.

Purely hypothetically, even if European law were to apply, the precious metals would in any case be excluded from a withdrawal right, as they are financial products whose prices depend on random upward or downward market movements.