

FREQUENTLY ASKED QUESTIONS

DRIVING COURSE CONTRACT

(The French version of this document was approved by the *Office de la protection du consommateur*. If any discrepancies are found between the French and English versions, the French version prevails.)

Is it compulsory for driving schools to set the same price for both the theoretical and practical courses?

No, it is not: driving schools are allowed to establish different rates for the in-class and the in-car courses, provided that the driving school signs two different contracts with the consumer.

If only one contract is signed, the rate for the theoretical and the practical courses must be the same in accordance with article 191 of the *Consumer Protection Act* (cf. chapter P-40.1).

Are driving schools allowed to ask the consumer to pay a certain amount upon signing the contract?

No. Article 192 of the *Consumer Protection Act* stipulates that, *“the merchant (i.e. the school) shall not collect any payment from the consumer before beginning to perform his obligation.*

The merchant shall not collect payment of the consumer's obligation in less than two approximately equal instalments. The dates of payment of the instalments must be fixed in such a way as to be situated approximately at the beginning of approximately equal periods of the term of the contract.”

When must the first payment be made?

According to article 92 of the *Consumer Protection Act*, the school cannot collect any payment from the consumer before beginning to perform its obligation. In other words, the merchant can only collect payment the day of the first course.

When a student cancels his class without respecting the notice required by the contract, what legal measures can be taken by the school?

If the consumer does not cancel a course within the required notice and does not come to the class, the service will be deemed have been provided to the consumer. In this case, the school is allowed to charge the student the price of the lesson that was stipulated on the contract.

Are driving schools permitted to charge a penalty if a student cancels his class without respecting the notice required by the contract?

Driving schools cannot establish in advance a penalty to be paid if a consumer fails to meet his obligation (either by definite amount or by percentage (%) of the amount). In other words: *“Any*

stipulation requiring the consumer, upon the non-performance of his obligation, to pay a stipulated fixed amount or percentage of charges, penalties or damages, other than the interest accrued, is prohibited” (cf. Consumer Protection Act, article 13).

Thus, a clause describing any imposed fee or damage decided beforehand by the merchant will be declared null and void and unwritten by the court.

In certain circumstances, the merchant is in his right to be compensated for the inconvenience that was caused by the consumer’s absence. However, the amount to be charged can only be determined once the consumer has failed to meet his obligation. The amount will be calculated according to the damages that were actually encountered by the merchant. In this case, if the two parts do not come to an agreement on the sum, they will need to settle on an agreement in court. The pecuniary damage will be determined according to the circumstances of the litigation rather than arbitrarily by the merchant himself before any fault has taken place. When the amount of a penalty is established in advance, there may be no correspondence between the inconvenience caused and the amount of the penalty.

Are driving schools authorized to charge interest on services that have provided to the consumer, but for which they have not yet been paid?

Yes, driving schools can charge interest when the consumer fails to meet his obligation to pay an amount of money when the sum was due, if a clause to this effect is included in the contract. In this case, it is the school’s right to charge the consumer the interest rate determined in the contract.

Upon request, must driving schools refund students for classes they haven’t followed?

If a student, who has not finished his course within the period stipulated on the contract, wishes to be refunded for services he has not yet obtained, he must send the cancellation form to the school within the period of validity of the contract. Upon reception of this form, the school is obligated to refund the student. However, the student must comply with the rules of the **“Clause required under the Consumer Protection Act (Service contract involving sequential performance for instruction, training or assistance)”**.

On the other hand, if the consumer does not send a signed cancellation form to the school before the contract’s stipulated end date, nor does he come to an agreement with the school to extend the contract, the driving school is not obligated to refund the student for the uncompleted courses.

Can driving schools charge a penalty to students who cancel their contracts?

Article 193 of the *Consumer Protection Act* states that, *“the consumer may, at any time and at his discretion, cancel the contract by sending the form provided for (...) or another written notice to that effect to the merchant. The contract is cancelled of right from the sending of the form or notice.”*

If the consumer cancels the contract before the date of the first course, the cancellation is without cost or penalty to the consumer (art.194).

On the other hand, if the consumer cancels the contract after he has begun his course, the merchant may ask for the following sums: (a) the price of the services rendered, calculated on the basis of the hourly rate stipulated in the contract, and (b) as a penalty, the lesser of the following sums: \$50 or a sum representing no more than 10% of the price of the services that were not rendered” (art.195).

Teaching material:

The student must buy an unused and up-to-date *Access Road Binder* course book before starting the classes. The driving school may offer or sell the learning material, but the consumer is not obliged to buy it from his school. The student is free to buy it elsewhere.

A separate invoice must be given to students for training materials purchased at a price lower than \$100. If training materials cost more than \$100, a separate contract must then be drawn up in accordance with sections 208 of the *Consumer Protection Act* and 50 of the *Regulation respecting the application of the Consumer Protection Act* . This contract will be accompanied by a resolution form in conformity with Appendix 10 of the *Consumer Protection Act*.