

Right to Fair, Just and Reasonable Terms and Conditions

What does this mean for the ordinary consumer?

Your right to protection against unfair, unreasonable or unjust contract terms

- Suppliers are not permitted to market, supply or enter into an agreement to supply goods or services at prices or terms that are unfair, unreasonable or unjust.
- Suppliers are not permitted to require consumers to waive any rights, assume any obligations, waive any liability of the suppliers on terms that are unfair, unreasonable or unjust.

Your right to obtain notice for certain terms and conditions

- Suppliers are required to provide consumers with prior written notice of clauses in agreements that may constitute a potential risk or liability to consumers.
- Suppliers must specifically draw the fact, nature and potential effects of risks to the attention of consumers, in a conspicuous manner and form, to which the consumers accordingly accept responsibility.

Your right to obtain free copies of agreements/contracts

- Consumers are entitled to obtain free copies or free electronic access to copies of agreements/contracts, irrespective of whether consumers have entered into such agreements/contracts.
- Free copies should include an itemised breakdown of financial obligations under such agreements.
- Suppliers are required to keep records of transactions entered into over telephone or other recordable forms, in the event of the consumer-supplier agreement not being in writing.

Your right to refuse prohibited transactions, agreements, and terms or conditions

- Suppliers are not permitted to make a transaction or agreement if the terms and conditions:
 - Are contrary to the Consumer Protection Act;
 - Mislead or deceive consumers;
 - Subject the consumers to fraudulent conduct;
 - Directly or indirectly deprives consumers of rights in terms of the Act;
 - Avoid suppliers' obligations or duties in terms of the Act;
 - Limit or exempt suppliers of goods or services from liability for any loss, directly or indirectly attributable to the gross negligence of the suppliers or any persons acting for or controlled by the suppliers;
 - Constitute an assumption of risk or liability by the consumers for a loss;
 - Impose an obligation on consumers to pay for damage to, or otherwise;
 - Require the consumers to enter into supplementary agreements;
 - Falsely express an acknowledgement by the consumers that before the agreement was made, no representations or warranties were made in connection with the agreement by the supplier or a person on behalf of the supplier; or
 - Require the consumers to forfeit any money to the supplier.

Your right to approach the Court to ensure fair and just conduct, terms and conditions

- If consumers are not satisfied with the outcomes of the National Consumer Tribunal's (NCT's) investigation into alleged unconscionable, unjust or unfair conduct on the part of the suppliers, they may approach the Court for its further consideration of these matters.
- If the unfair terms and conditions offered by the supplier constitute damages or loss, consumers are entitled to institute proceedings in the competent court with jurisdiction for appropriate order or redress.
- Except when otherwise provided by law, the area of civil jurisdiction of a Magistrate's Court is the district or area for which the Court has been established.

- Unless all the parties in a case consent to higher jurisdiction, the jurisdiction of a magistrate's court is limited to cases in which the claim value does not exceed R100 000, where the action arises from a liquid document or credit agreement, or R50 000 in all other cases.
- However, in terms of Section 115(2) of the Consumer Protection Act, a person who has suffered loss or damages as a result of prohibited conduct:
 - May not institute a claim in a Civil Court for the assessment of the amount or awarding of damages, if that person has consented to an award of damages in the Consent Order, as issued by the Consumer Tribunal.
 - If entitled to commence an action in the Civil Court, the applicant must file with the Registrar of the Court or the Clerk of the Court, a notice from the Chairperson of the Tribunal in the prescribed form, specifying the following:
 - » Certifying whether the conduct constituting the basis for the action has been found to be a prohibited or required conduct in terms of this Act; and
 - » Stating the date of the Tribunal's finding.
 - Section 115(4) states that an appeal or application for review against an order made by the Tribunal suspends any right to commence an action in a civil court.

Right to Fair Value, Good Quality and Safety

What does this mean for the ordinary consumer?

Your right to demand quality service

- Consumers are entitled to the following, when entering into agreements/contracts with suppliers:
 - Timely performance and completion of those services;
 - Timely notice of any unavoidable delays in the performance of the services;
 - High-quality services, which consumers are entitled to expect; and
 - Use, delivery or installation of goods that are free of defects and of a quality that persons are generally entitled to expect, if any such goods are required for performance of the services.
- Suppliers are required to remedy any defects in the quality of services performed or goods supplied; or refund the consumers a reasonable portion of the price paid for the services performed and goods supplied, in the event of these being sub-standard.

Your right to safe, good quality goods

- Consumers are entitled to receive goods or services that are of good quality, in good working order and free of any defects, and that comply with any applicable standards set under the Standards Act, No. 29 of 1993 or any other public regulation.

Your right to implied warranty of quality

- In any transaction or agreement pertaining to the supply of goods to consumers, it is an implied provision that the producer or importer, distributor and retailer each warrant that the goods comply with the requirements and standards of being safe, of good quality and durable.
- Consumers are permitted to return goods to suppliers, without penalty and at the suppliers' risk and expense, within a period of six (6) months after delivery of such goods, if the goods are of inferior quality, unsafe or defective.

- Suppliers are obliged to refund, repair or replace the failed, unsafe and defective goods.
- Suppliers are obliged to replace goods or refund the consumer the price paid for the goods within a period of three (3) months after repairs have been done, if the repaired goods are found to be defective, have failed or are considered unsafe.

Your right to a warranty on repaired goods

- Suppliers are obliged to warrant every new or reconditioned part installed during any repair or maintenance work, and the labour required to install it, for a period of three (3) months after the date of installation or a longer period, as the supplier may specify in writing.

NB! Warranties are null and void if consumers are found to be misusing or abusing goods or property, while under warranty.

Your right to receive warnings on the fact and nature of risks

- Suppliers are obliged to make consumers aware of any risks of an unusual character or nature, risks of which consumers could not reasonably be expected to be aware, or which ordinarily alert consumers could not reasonably be expected to contemplate, depending on the specific circumstances or risk that could result in serious injury or death.
- Suppliers are obliged to bring to the consumers' attention notice/labelling of any hazardous or unsafe goods, and provide the consumers with adequate instructions for the safe handling and use of those goods.

Your right to recovery and safe disposal of designated products or components

- Suppliers are responsible for accepting and disposing of waste deemed unsuitable for disposal in common waste systems, if so specified in any national legislation.

Your right to have products monitored for safety and/or recalled

- Industry codes will make provision for the return/recall of hazardous, unsafe or defective goods.

Your right to claim damages for injuries caused by unsafe/defective goods

- Producers, importers, distributors or retailers of any goods are each liable for any harm caused wholly or in part, as a consequence of the following:
 - Supplying any unsafe goods;
 - Product failure, defect or hazard in any goods; or
 - Inadequate instructions or warnings provided to the consumer pertaining to any hazard arising from or associated with the use of any goods, irrespective of whether the harm resulted from any negligence on the part of the producers, importers, distributors or retailers, as the case may be.

Right to Accountability from Suppliers

What does this mean for the ordinary consumer?

Your right to protection when entering lay-by agreements

- Consumers are entitled to the following, when entering lay-by agreements:
 - Purchase goods and services via lay-by agreements. In this case, if the suppliers fail to deliver any goods, these suppliers must, at the discretion of the consumers, supply equivalent or superior products;
 - Full refund of money paid, plus interest; and
 - Keep their deposits in an interest-bearing account.

Your right to protection with regard to prepaid certificates, credits and vouchers, and access to prepaid services and service facilities

- Suppliers in possession of any prepaid certificates, credits, vouchers, membership fees or other money belonging to the consumers, must do the following:
 - Not treat such property as theirs;
 - Exercise care, diligence and skill; and
 - Assume liability for any losses suffered by consumers in this regard.

Where to Complain

The Consumer Protection Act aims to promote consumer activism, by making provision for the accreditation of consumer groups tasked with lodging complaints on behalf of consumers, as well as making available support for activities, such as consumer advice, education, publications, research and alternative dispute resolution through mediation or conciliation.

As such, the Act gives rise to the establishment of the National Consumer Commission, a body assigned to investigate consumer complaints, as well as the National Consumer Tribunal, the latter of which was created by the National Credit Act in September 2006, and is responsible for the adjudication of violations and transgressions of the National Credit Act and the Consumer Protection Act.

For further assistance, please contact:

- **the dti** Consumer Help Line, via **the dti** Customer Contact Centre: 0861 843 384
the dti Office of Consumer Protection (OCP): (012) 394 1436/1558/1076
the dti E-mail: Contactus@thedti.gov.za
the dti Website: www.thedti.gov.za
- National Consumer Tribunal (NCT): (012) 663 5615
NCT E-mail: Registry@thenct.org.za
NCT Website: www.thenct.org.za

Should you require additional information, please contact the Education and Compliance Division:

the dti Consumer Help Line, via **the dti** Customer Contact Centre:
0861 843 384

the dti Postal Address:
Education and Compliance Division
Private Bag X84
Pretoria, 0001

the dti Website:
www.thedti.gov.za

the dti E-mail Address:
Contactus@thedti.gov.za



the dti

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