

Warranties in terms of the Consumer Protection Act 68 of 2008

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Don't be left in the dark when the new Consumer Protection Act comes into full effect.

Suppliers who in the ordinary course of business, enter into transactions with consumers for the supply or potential supply of any goods, should be aware of the implied warranties imposed by the Consumer Protection Act (CPA), since these will have a material impact on their return and refund policies.

As a supplier, a business may operate in the supply chain as producer, importer, distributor or retailer of goods, or as a service provider. The extent of the application of the implied warranties contained in the CPA should be considered by suppliers and included in their return and refund policies. Note that transactions include the supply of goods by clubs, trade unions, associations or societies to its members and also in terms of franchise agreements. The draft regulations currently provide that the CPA will not apply to any transaction in terms of which the consumer is a juristic person whose asset value or annual turnover, at the time of the transaction equals or exceeds R3 million.

Goods have been extensively defined and include:

- ▶ anything marketed (supplied) for human consumption, and any other tangible

object including any medium on which anything is or may be written or encoded;

- ▶ any literature, music, photograph, motion picture, game, information, data, software, code or other intangible product written or encoded on any medium, or a licence to use any such intangible product;
- ▶ a legal interest in land or any other immovable property; and
- ▶ gas, water and electricity.

The consumer's right to safe, good quality goods

The CPA ensures that every consumer has the right to safe and good quality products (except for goods bought at an auction). This means that the consumer has the right to receive goods that:

- ▶ are reasonably suitable for the purposes for which they are generally intended (i.e. so-called "fitness for purpose" warranty);
- ▶ are of a good quality, in good working order and free of any defects (it does not matter whether the defect was noticeable or detectable (patent or latent)). A defect means any material imperfection in the manufacture of the goods or components

that renders the goods less acceptable than persons would reasonably be entitled to expect in the circumstances; or any characteristic of the goods or components that renders the goods or components less useful, practicable or safe than persons generally would be reasonably be entitled to expect in the circumstances;

- ▶ will be useable and durable for a reasonable period of time, taking into account the use to which they would normally be put and to all the surrounding circumstances of their supply; and
- ▶ comply with any applicable standards set under the Standards Act, 8 of 2008 (such as SABS standards), or any other public regulation.

In addition to the abovementioned, if a consumer has specifically informed the supplier of the particular purpose for which the consumer wishes to acquire any goods, or the use to which the consumer intends to apply those goods, and the supplier ordinarily offers to supply such goods, or acts in a manner consistent with being knowledgeable about the use of those goods, the consumer has a right to expect that the goods are reasonably suitable for the specific purpose that the consumer has indicated.

A supplier and a consumer may of course agree to enter into an agreement in terms of which the supplier's liability for latent defects are excluded (i.e. an agreement to supply "voetstoots" goods). In such a case the supplier will be required to expressly inform the consumer that the goods are offered in a specific condition and in such a manner that the consumer understands that the goods may be defective and accepts that risk.

The implied warranty of quality

In any transaction or agreement pertaining to the supply of goods to a consumer there is an implied provision that the producer or importer, the distributor and the retailer each warrant that the goods comply with the abovementioned requirements and standards. This warranty will not apply if those goods have been altered contrary to the instructions, or after leaving the control, of the producer or importer, distributor or retailer, as the case may be.

If the goods do not comply with the abovementioned standards (i.e. the implied warranty of quality), consumers have a right to return the goods within 6 (six) months of purchase, and the supplier must, at the direction of the consumer either repair or replace the goods or refund to the consumer the price paid for the goods. Consumers should not be obliged to accept gift cards or vouchers when returning goods, unless they agree thereto.

When assessing whether to accept the return of the goods, the supplier may consider the following:

- ▶ the manner in which, and the purposes for which, the goods were marketed, packaged and displayed, the use of any trade description or mark, any instructions for, or warnings with respect to the use of the goods;
- ▶ the range of things that might reasonably be anticipated to be done with or in relation to the goods; and
- ▶ the time when the goods were produced and supplied.

In view of the above, suppliers should also consider ensuring that trade descriptions and product instructions adequately warn and instruct consumers on how to use and maintain the goods.

Note that the implied warranty imposed and the right to return goods are each in addition to any other implied warranty or condition imposed by the common law, the CPA or any other public regulation, and any express warranty or condition stipulated by the producer or importer, distributor or retailer, as the case may be.

If the consumer chooses to have the goods repaired, and within 3 (three) months after that repair, the failure, defect or unsafe feature has not been remedied, or a further failure, defect or unsafe feature is discovered, the supplier will be obliged to replace the goods, or refund to the consumer the price paid by the consumer for the goods.

Warranty on repaired goods

A service provider warrants every new or reconditioned part installed during any repair or maintenance work, and the labour required to install it, for a period of 3 (three) months

after the date of installation or such longer period as may be specified in writing.

Such a warranty:

- ▶ is concurrent with any other deemed, implied or express warranty;
- ▶ is void if the consumer has subjected the part, or the goods or property in which it was installed, to misuse or abuse; and
- ▶ does not apply to ordinary wear and tear, having regard to the circumstances in which the goods are intended to ordinarily be used.

Conclusion

It would be acceptable to require that a consumer provides proof of purchase (such as a till slip or an invoice or other form of proof of payment to the supplier), before being entitled to any of the rights set out above. It would, nonetheless, be advisable to make the consumer aware, before entering into a transaction that any return of goods will be subject to the provision of proof of purchase. If the consumer is not able to provide any proof of purchase, then the supplier should use his or her discretion on whether to accept the return or not.

It would also be acceptable to inform consumers that refunds will be made using the consumer's original payment method. In our view, it will not be acceptable to oblige the consumer to accept a gift card or voucher when goods are returned. Note further that consumers have additional rights to return goods (see Sections 16 and 20 of the CPA). These rights will be discussed in a further brief.

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