



SERVICE AND REPAIR OF GOODS, PRE-AUTHORISATION AND PROVISION OF ESTIMATES

Applicable sections of the Consumer Protection Act, 68 of 2008: S 15, 25, 41(3)(d-e), 56, 57, 61, 65, 67

Applicable sections of the Consumer Protection Act Regulations: R 8, Notice – Threshold for pre-authorisation of repair or maintenance services

The provisions of the Act discussed below only apply to service or repair work performed on or after 1 April 2011.

Section 15 of the Act dealing with pre-authorisation of repair or maintenance services only applies to a transaction or consumer agreement:

- with a price value above the prescribed threshold (currently set at R 1-00) [the current threshold of **R1-00** may be varied by way of regulation or an approved industry code]; and
- where the service provider performs service or maintenance work, or supplies or installs any replacement parts or components in any property belonging to or under the control of the consumer and:
 - the **service provider has or takes possession** of the consumer's property; or
 - in all other cases, the **consumer requests an estimate before** any services or goods are supplied.

In the instances outlined above, a service provider **may not charge a consumer for the supply of any goods or services unless the consumer authorised the work contained in an estimate provided** to the consumer **or** the consumer in writing or other recordable manner or form **declined the offer** of an estimate **or** the consumer pre-authorised the charge up to a certain maximum amount and the amount charged does not exceed that maximum.

Careful of the potential impact that the pre-authorisation of additional work requirement may have on workshop productivity.

A consumer **may not be charged a fee for the preparation of a cost estimate**, including any cost of diagnostic work, disassembly or re-assembly required in the preparation of an estimate or for any damage to or loss of material or parts in the course of preparing an estimate. Where a service provider (before preparing an estimate) disclosed the price of preparing such an estimate to the consumer and the consumer approved it, then the service provider may recover the charge approved from the consumer for the preparation of the estimate.

A supplier may not charge the consumer a price for any service, or goods and services, higher than the price indicated in the estimate. Where the consumer has authorised work to continue after the service provider informed the consumer of additional estimated charges for extra work to be performed, then the supplier may also charge for these additional services. No work other than what was contained in the original estimate must be performed without first obtaining the consumer's approval for the additional work estimate. Failure to do so will mean that the additional work performed are unsolicited and the consumer may not be required to pay for it.

In terms of the Act, 'an "estimate" means a statement of the projected total price for any service to be provided by a supplier, including any goods or components to be supplied in connection with that service'. **An estimate is thus a highest possible price quotation.**

An estimate must specify:

- a breakdown and the total of the amount to be charged if the repair or maintenance is effected;
- the nature and extent of the repair or maintenance;
- the period of validity of the quote; and
- the period within which the consumer must collect the goods and the consequence if not done.

When marketing goods or services, the supplier must not make any false, misleading or deceptive statements to the consumer. A statement will, amongst others, be false, misleading or deceptive if the supplier falsely states or implies that:

- the necessary service, maintenance or repair facilities or parts are readily available for or within a reasonable period; or
- any service, part, replacement, maintenance or repair is needed or advisable.

In terms of Section 56 of the Act, where the consumer allows the supplier to repair failed, defective or unsafe goods returned by the consumer within six months of delivery and within three months after such repair, the failure, defect or unsafe feature re-appears or a further failure, defect or unsafe feature is discovered, then the supplier must (at its choice):

- replace the goods; or
- refund to the consumer the price paid by the consumer for the goods.

It is thus critical for suppliers effecting repairs to get it right first time!

Section 57 of the Act compels a service provider to **warrant new or reconditioned parts installed during repair or maintenance work, including labour, for a minimum of three months** after installation. This warranty will be void if the consumer subjected the installed part or goods to misuse or abuse. The warranty further does not apply to ordinary wear and tear.

Where reconditioned, rebuilt, remade or grey market parts or components (goods) are used in the performance of a repair, service or maintenance work this fact should expressly be disclosed to the consumer by the supplier. (Section 25 and Regulation 8)

A service provider should furthermore take cognisance of the fact that poorly performed service or maintenance work could cause harm to the consumer through product failure, unsafe, hazardous or defective goods. This would potentially place the service provider in the supply chain for product liability in terms of Section 61 of the Act. The use of poor quality parts or components in the performance of service or maintenance work or the use of unskilled and unqualified service technicians should be avoided at all costs. For example, a service technician forgets to re-fit a sump plug to a vehicle after draining the oil. Soon afterward, the engine seizes and the vehicle becomes inoperative. All of this happens in a very bad area of town resulting in the consumer being robbed and beaten in the process. The manufacturer of the vehicle in this case carries no blame in the harm suffered by the consumer and liability will rest with the service provider. Please take note that Section 61 of the Act dealing with product liability already became effective on 24 April 2010. See the article titled "Liability for harm or damage caused by goods" for more information.

Section 65 of the Act stipulates that a supplier will be liable to the consumer for any loss resulting from the supplier's failure to exercise care, diligence and skill normally required of a person caring for the property of another. This is the case where the service provider takes possession of the consumer's property in order to perform repair, service or maintenance work. A thorough pre-work inspection should thus always be performed in the presence of the consumer and any the condition of the property recorded.

A supplier must retain any parts and components removed from any goods or property during repair or maintenance work, keep them separate and return them to the consumer in a reasonably clean container unless the consumer declines the return. The above does not apply to work performed in terms of a warranty, an insurance claim or where the parts or components must in terms of public regulation be disposed of in a certain manner and in the interest of public health and safety or environmental safety.

© Rynardt Olivier 2011 - 2021

Rynardt Olivier can be contacted at rynardt@edutrain.co.za

For information on other Consumer Protection Act related topics, go to www.edutrain.co.za

The views and opinions expressed above do not represent qualified legal opinion, but is merely a personal view based on my understanding and interpretation of the Consumer Protection Act.