



the consumer protection act

THE RIGHT TO RETURN GOODS

Applicable sections of the Consumer Protection Act, 68 of 2008: S 16, 19 (5) & (8), 20, 55 (3), 56

A consumer has various rights of return in terms of the Consumer Protection Act.

The five instances where a consumer may return goods to the supplier are:

- **Unsafe or defective goods** may be returned for a repair, replacement or refund within 6 months of delivery. The consumer may choose whether he wants the item repaired, replaced or receive a refund. If the consumer allows the supplier to repair, then the repair must last for at least three months. If the same fault re-appears or another defect appears within three months of the repair being effected, then the supplier must choose whether to replace the item or refund the consumer. At this stage, a further repair is not an available option. (See the section titled "Six month implied warranty" for more details.)

A consumer may within 10 business days after delivery return the goods to the supplier for a full refund, where:

- Goods were delivered as a result of a transaction entered into because of **direct marketing** and the consumer has exercised his right to cancel the agreement without reason or penalty during the cooling-off period. The consumer must within 5 business days of delivery advise the supplier in writing or other recordable form that he is rescinding the agreement, must return the goods delivered within 10 business days of delivery of such goods and the supplier must then refund the consumer within 15 business days of the latter of notice of cancellation or return of the goods. Goods are returned at the risk and expense of the consumer. (See the section titled "Cooling-off period" for more details.)
- Goods which the consumer did not have an **opportunity to examine before delivery** and where the consumer has now rejected delivery. Valid reasons for rejection of delivery are:
 - the type and quality of the goods are not as reasonably contemplated in the agreement; or
 - the goods differ in a material respect or characteristic from the sample or product description (based on what an ordinary alert consumer would be entitled to expect); or
 - the goods do not reasonably conform to the material specifications of a special order.Goods are returned at the risk and expense of the supplier.
- Some goods are as ordered but is delivered **mixed** with other goods not ordered, and the consumer accepts delivery of the ordered goods, but rejects the goods not ordered or rejects all the delivered goods. Goods must be returned within 10 business days of delivery and are returned at the risk and expense of the supplier.
- Goods found to be **unsuitable for a particular purpose** communicated to the supplier when entering into the transaction, may also be returned at the risk and expense of the supplier within 10 business days of delivery.

A consumer would lose his right of return, other than for defective or unsafe products, if the goods concerned have been disassembled, altered, permanently installed, affixed or combined with other goods; or a public regulation for reasons of public health or other prohibits the return of such goods. An example hereof would be floor tiles which have already been laid or medicine and underwear.

The supplier must refund to the consumer the price paid for the goods, less any amount allowable in terms of the following:

- Returned in original unopened packaging – no charge to consumer.
- Returned in original condition and repackaged in their original packaging – a reasonable charge for use, consumption or depletion of the goods unless the consumption or depletion was reasonable and required for the consumer to determine the acceptability of the goods.
- In all other cases – a reasonable amount for necessary restoration costs to render the goods fit for re-stocking may be charged, unless where the packaging was reasonably destroyed in order to allow for the consumer to determine whether the goods conformed to the sample or brochure description in cases where the goods were not examined by the consumer before delivery or were fit for the intended purpose communicated to the supplier.

The rights of return in terms of the Consumer Protection Act are in addition to any other right in law between a supplier and consumer to return goods and receive a refund.

In instances not dealt with above where a consumer returns an item to the supplier, the return will be dealt with in terms of the supplier's own returns policy. These are often referred to as "goodwill" returns as there is no legal obligation on the supplier to accept such a return. Suppliers should display their normal returns policy in plain and understandable language in a conspicuous manner and place to avoid any misunderstanding on the part of the consumer.

Consumers should choose carefully and not frivolously enter into transactions in the false hope and expectation that they may return the item for a refund.

A suggested returns policy for display was authored by the office of the consumer commissioner as follows: "Please choose carefully. We do not normally give refunds if you simply change your mind or make the wrong decision. You could choose between a repair, exchange or your money back where goods are faulty, wrongly described, different from the sample shown to you or do not perform as intended. Please retain your receipt as proof of purchase." *Obvious mistakes, in my opinion, contained in the original returns policy wording were corrected.*

In my opinion it would be acceptable to require from a consumer to provide proof of purchase before being entitled to any return. Supplier's should advise consumers before entering into the transaction that any return of goods will be subject to the provision of proof of purchase. Where a consumer cannot provide such proof, the supplier should use its own discretion whether to accept the return or not.

I furthermore am of the opinion that it would also be acceptable to inform consumers that refunds will be made using the consumer's original payment method. In other words, a store credit, gift card or voucher will not be acceptable.

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