THE SIX MONTH IMPLIED WARRANTY

Applicable sections of the Consumer Protection Act, 68 of 2008: S 53, 55, 56, Schedule 2 clause 3(2)

The provisions of the Act discussed below only apply to goods supplied to the consumer on or after 1 April 2011.

In terms of Section 55 of the Act, a consumer has the right to receive goods that:

• are reasonably suitable for the purpose for which they are generally intended. In addition, where the consumer has specifically informed the supplier of the particular purpose or use for which the consumer wishes to buy the goods and the supplier ordinarily supplies such goods or acts in a manner consistent with being knowledgeable about the use of such goods, then the goods must be reasonably suitable for the specific purpose indicated;

• are of good quality, in good working order and free from any defects. It is irrelevant whether the defect is a latent (hidden) or patent (obvious) or could have been detected by the consumer before taking delivery. The much (ab)used “voetstoots” or “as is” clause can therefore no longer be used when selling any goods, if the transaction is governed by the provisions of the Act;

• will be usable and durable for a reasonable period of time (six months), considering their normal use and all the surrounding circumstances of their supply; and

• comply with any applicable standards set under the Standards Act, 29 of 1993, or any other public regulation.

In determining whether goods meet the above requirements all of the circumstances of the supply must be considered. These include, but are not limited to:

• the manner and purpose for which the goods were marketed, packaged and displayed;

• the use of any trade description or mark;

• any instructions 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.

The mere fact that better goods have become available after delivery does not mean that the goods delivered are now defective.

None of the above provisions are applicable to goods sold on auction. Auctions are governed by separate provisions in the Act.

The requirements that goods must be reasonably suitable for the purpose for which generally intended and are of good quality, in good working order and free from defects do not apply to goods where the consumer was expressly informed that the goods were offered in a specific condition and the consumer expressly or through his actions agreed to accept the goods in that condition. When offering goods in such a condition, suppliers should clearly record the condition in which the goods are supplied and the consumer’s express acceptance of the goods in that specific condition.
In terms of Section 56 of the Act, the producer (manufacturer) or importer, the distributor and the retailer each warrant the goods supplied comply with the requirements and standards contained in Section 55 (as discussed above) except to the extent that the goods have been altered after leaving their control or contrary to their instructions.

A consumer may within six months of delivery return the goods to the supplier if the goods fail to satisfy the requirements and standards contained in Section 55. The consumer can direct the supplier to either:
- repair or replace the failed, unsafe or defective goods; or
- refund the consumer the price paid by the consumer for the goods.

Where the consumer allows the supplier to repair goods 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.

The right to return goods and the implied warranty, as discussed above, are in addition to any express warranty or condition stipulated by the supplier and any other implied warranty or condition imposed by law. The implied warranty, if stronger than the supplier’s normal warranty, will therefore override the supplier’s warranty.

**Commentary:**

The Act does not specifically differentiate between the supply of new and used goods. The implied warranty is thus applicable to both types of goods.

No specific mention is made in the Act in relation to the six month implied warranty of potential misuse, abuse, operation contrary to instructions or warnings by the consumer, nor is ordinary wear and tear recognised. The Act does state that all of the circumstances of the supply must be considered when determining whether goods meet the standards and requirements of Section 55. This potentially allows for suppliers to take the above issues into consideration when dealing with returns in terms of Section 56.

No supplier can economically afford to at will refund or replace goods at the consumer’s whim. Manufacturers must support their products and retailers must protect their reputations, as most of them have done in the past. It is suggested that suppliers implement specific procedures and processes for dealing with returns in terms of Section 55 and 56 of the Act which allows for the supplier to investigate the consumer’s complaint fully for validity, compliance with instructions and warnings, how used by the consumer, the age of the goods, etc. Clear timelines in dealing with consumer demands should be clearly communicated to the consumer. Processes should furthermore be transparent.

A minor defect, product failure or unsafe feature that could easily be remedied through a repair should surely not entitle the consumer to a replacement or refund. For example, a vehicle where a globe in the brake light has failed. The Act does contain definitions for defect, failure, hazard and unsafe in Section 53. Only product problems which meet these definitions should qualify the consumer for a refund or replacement.
Most suppliers, on own accord or based on industry practice, will consider use, depletion, damage, depreciation, etc. of the goods when determining the amount to be refunded to the consumer or the quality of the goods to be provided as a replacement. By example, if you drive a motor vehicle for a period of five months and then return it for a refund or replacement in terms of the implied warranty provisions of the Act, the dealership will in all probability only refund the current market value of the vehicle without the defect, failure or unsafe feature or replace it with a vehicle with a similar odometer reading and in a similar overall condition. Alternatively, they will merely charge the consumer for the use of the goods.

I am convinced that industry codes, which the Act allows for, when submitted to the Minister of Trade and Industry for approval, will address and attempt to remedy issues such as those highlighted above.

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.