



Consumer Protection Legal Audit





Amendments drafted in accordance with the Consumer Protection Act, No 68 of 2008

FOR

ICR Auto Pty Ltd

A Company duly registered in terms of the Companies Act,

with registration number:

2021/490475/07

With main place of business:

**2B Albert Street
Heidelberg**



Introduction:

The purpose of this document is to suggest possible amendments to be made to current consumer related documentation with regard to **ICR Auto Pty Ltd** (the “Business”).

The purpose of the Consumer Protection Act:

- Protecting consumers from unfair, unjust and unconscionable business practices;
- Providing accessible and efficient dispute resolution and redress for consumers;
- Establishing a legal framework for a market that is fair, accessible, efficient, sustainable and responsible;
- Promoting fair business practices;
- Improving consumer awareness;
- Enhance consumer safety;
- Reducing disadvantages to consumers who are:
 - in low income groups;
 - who live in remote and isolated areas;
 - who are minors, seniors or similarly vulnerable;
 - whose ability to react and comprehend advertisements, agreements, labels and instructions are limited.

The Consumer Protection Act regulates the following:

- Marketing of goods and services;
- Warranties and guarantees;
- Cooling off periods;
- Lay byes;
- Forfeiture of goods by suppliers;
- Record keeping;
- Delivery of goods and services;
- Discrimination against consumers;
- Consumers’ privacy;
- Language to be used in documentation;
- Franchise agreements;



- Dispute resolution and consumer commission powers; and
- Fines and penalties.

Application of the Consumer Protection Act:

- 1) This Act applies to –
 - a) every transaction occurring within the Republic, unless it is exempted;
 - b) the promotion of any goods or services, or of the supplier of any goods or services, within the Republic unless –
 - I. those goods or services could not reasonably be the subject of a transaction to which this Act applies in terms of paragraph (a) or;
 - II. the promotion of those goods or services has been exempted.
 - c) goods or services that are supplied or performed in terms of a transaction to which this Act applies, irrespective of whether any of those goods or services are offered or supplied in conjunction with any other goods or services, or separate from any other goods or services; and
 - d) goods that are supplied in terms of a transaction that is exempt from the application of this Act, remain subject to the stipulations of Section 60 and Section 61.
- 2) The Consumer Protection Act does not apply to any transaction –
 - a) in terms of which goods or services are promoted or supplied to the State;
 - b) 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 R2 million;
 - c) if the transaction falls within an exception granted by the Minister;
 - d) that constitutes a credit agreement under the National Credit Act, but the goods or services that are the subject of the credit agreement are not excluded from the ambit of this Act;
 - e) pertaining to services to be supplied under an employment contract;
 - f) giving effect to a collective bargaining agreement within the meaning of Section 23 of the Constitution and the Labour Relations Act, 1995 (Act No.66 of 1995); or
 - g) giving effect to a collective agreement as defined in Section 213 of the Labour Relations Act, 1995 (Act No.66 of 1995).



- 3) A regulatory authority may apply to the Minister for an industry-wide exemption from one or more provisions of this Act, on the grounds that those provisions overlap or duplicate a regulatory scheme authority in terms of –
 - a) any other national legislation; or
 - b) any treaty, international law, convention or protocol.

- 4) The Minister of Trade and Industry, by notice in the Gazette after receiving the advice of the Commission, may grant an exemption as stipulated in (3) –
 - a) only to the extent that the relevant regulatory scheme ensures the achievement of the purpose of this Act at least as well as the provisions of this Act; and
 - b) subject to any limits or conditions necessary to ensure the achievement of the purposes of this Act.

- 5) If any goods are supplied within the Republic to any person in terms of a transaction that is exempt from the application of this Act, those goods, and the importer or producer, distributor and retailer of those goods, respectively, are nevertheless, subject Sections 60 and 61 of this Act.

- 6) For greater certainty, the following agreements must be regarded as a transaction between a supplier and consumer, within the meaning of this Act; -
 - a) the supply of any goods or services in the ordinary course of business to any of its members by a club, trade union association, society or other collectivity, whether corporate or unincorporated, of persons voluntarily associated and organized for a common purpose, whether for fair value consideration demanded or expected in order to become or remain a member of that entity;
 - b) a solicitation of offers to enter into a franchise agreement;
 - c) an offer by a potential franchisor to enter into a franchise agreement with a potential franchisee;
 - d) a franchise agreement or an agreement supplementary to a franchise agreement; and
 - e) the supply of any goods or services to a franchisee in terms of a franchise agreement.

- 7) Despite the stipulations of (2)(b), this Act applies to a transaction as stipulated in (6)(b) to (e) irrespective of whether the size of the juristic person falls above or below the threshold determined in terms of Section 6 of this Act.



- 8) The application of this Act in terms of the stipulations in (1) to (7) extends to a matter irrespective of whether the supplier –
- a) resides or has its principal office within or outside the Republic;
 - b) operates on a for-profit basis or otherwise; or
 - c) is an individual, juristic person, partnership, trust, organ of state, an entity owned or directed by an organ of state, a person contracted or licensed by an organ of state to offer or supply any goods or services, or is a public-private partnership; or
 - d) is required or licensed in terms of any public regulation to make the supply of the particular goods or services available to all or part of the public.

Definitions applicable for the Consumer Protection Act, No 68 of 2008:

In this Act –

“Advertisement”: means any direct or indirect visual or oral communication transmitted by any medium, or any representation or reference written, inscribed, recorded, encoded upon or embedded within any medium, by means of which a person seek to –

- a) bring to the attention of all or part of the public
 - I. the existence or identity of a supplier; or
 - II. the existence, nature, availability, properties, advantages or uses of any goods or services that are available for supply, or the conditions on, or prices at, which any goods or services are available for supply;
- b) promote the supply of any goods or services; or
- c) promote any cause;

“Agreement”: means an agreement or understanding between or among two or more parties that purports to establish a relationship in law between or among them;

“Business”: means the continual marketing of any goods or services;

“Consideration”: means anything of value given and accepted in exchange for goods or services, including:

- a) money, property, a cheque or other negotiable instrument, a token, a ticket, electronic credit, credit, debit or electronic chip or similar object;
- b) labour, barter or other goods or services;
- c) loyalty credit or award, coupon or other right to assert a claim; or
- d) any other thing, undertaking, promise, agreement or assurance, irrespective of its apparent or intrinsic value, or whether it is transferred directly or indirectly, or involves only the supplier and consumer, or other parties in addition to the supplier and consumer.



“Consumer”: in respect of any particular goods or services, means –

- a) a person to whom those particular goods or services are marketed in the ordinary course of the suppliers business;
- b) a person who has entered into a transaction with a supplier in the ordinary course of the suppliers business, unless the transaction is exempt from the application of this Act;
- c) if the context so requires or permits a user of those particular goods or a recipient or beneficiary of those particular service, irrespective of whether that user, recipient or beneficiary was a party to a transaction concerning the supply of those particular goods or services; and
- d) a franchisee in terms of a franchise agreement, to the extent applicable as defined in this Act.

“Consumer Agreement”: means an agreement between a supplier and a consumer other than a franchise agreement.

“Direct Marketing”: means to approach a person, either in person or by mail or electronic communication, for the direct or indirect purpose of –

- a) promoting or offering to supply, in the ordinary course of business, any goods or services to the person; or
- b) requesting the person to make a donation of any kind for any reason.

“Distributor”: in relation to any particular goods, means a person who, in ordinary course of business

- a) is supplied with those goods by a producer, importer or other distributor; and
- b) in turn supplies those goods to either another distributor or to a retailer.

“Goods”: –includes –

- a) anything marketed for human consumption;
- b) any tangible object not otherwise contemplated in paragraph (a), including any medium on which anything is or may be written or encoded;
- c) any literature, music, photograph, motion picture, game, information, data, software, code or other intangible product written or encoded on any medium, or a license to use any such intangible product;
- d) a legal interest in land or any other immovable property, other than an interest that falls within the definition of “service” in this section; and
- e) gas, water and electricity.



“Intermediary”: means a person who, in the ordinary course of business and for remuneration or gain, engages in the business of –

- a) representing another person with respect to the actual or potential supply of any goods or services;
- b) accepting possession of any goods or other property from a person for the purpose of offering the property for sale; or
- c) offering to sell to a consumer, soliciting offers for or selling to a consumer any goods or property that belongs to a third person, or service to be supplied by a third person,

but does not include a person whose activities as an intermediary are regulated in terms of any other national legislation.

“Loyalty Programme”: means any arrangement or scheme in the ordinary course of business, in terms of which a supplier of goods or services, association of such suppliers, or other person on behalf of or in association with any such suppliers, offers or grants to a consumer any loyalty credit or award in connection with a transaction or an agreement.

“Producer”: with respect to any particular goods, means a person who –

- a) grows, nurtures, harvests, mines, generates, refines, creates, manufactures or otherwise produces the goods within the Republic, or causes any of those things to be done, with the intention of making them available for supply in the ordinary course of business; or
- b) by applying a personal or business name, trade mark, trade description or other visual representation on or in relation to the goods, has created or established a reasonable expectation that the person is a person contemplated in paragraph (a).

“Promote”: means to –

- a) advertise, display or offer to supply any goods or services in the ordinary course of business to all or part of the public for consideration;
- b) make any representation in the ordinary course of business that could reasonably be inferred as expressing a willingness to supply any goods or services for consideration; or
- c) engage in any other conduct in the ordinary course of business that may reasonably be construed to be an inducement or attempted inducement to a person to engage in a transaction.

“Rental”: means an agreement for consideration in the ordinary course of business, in terms of which temporary possession of any premises or other property is delivered, at the direction of, or to the consumer, or the right to use any premises or other property is granted, at the direction of, or to the consumer, but does not include a lease within the meaning of the National Credit Act.

“Retailer”: with respect to any particular goods, means a person who, in the ordinary course of business, supplies those goods to a consumer.



“Service”: includes, but is not limited to –

- a) any work or undertaking performed by one person for the direct or indirect benefit of another;
- b) the provision of any education, information advice or consultation, except advice that is subject to regulation in terms of the Financial Advisory and Intermediary Service Act, 2002 (Act No.37 of 2002);
- c) any banking services, or the undertaking, underwriting or assumption of any risk by one person on behalf of another, except to the extent that any such service –
 - I. constitutes advice or intermediary service that is subject to regulation in terms of the Financial Advisory and Intermediary Services Act, 2002;
 - II. is regulated in terms of the long-term Insurance Act, 1998 (Act No.52 of 1998), or short term Insurance Act, 1998 (Act No.53 of 1998);
- d) the transportation of an individual or any goods;
- e) the provision of –
 - I. any accommodation or sustenance;
 - II. any entertainment or similar intangible product or access to any such entertainment or intangible product;
 - III. access to any electronic communication infrastructure;
 - IV. access, or of a right of access, to an event or to any premises, activity or facility; or
 - V. access to or use of any premises or other property in terms of a rental agreement;
- f) a right of occupancy of, or power or privilege over or in connection with, any land or other immovable property, other than in terms of a rental; and
- g) rights of a franchisee in terms of a franchise agreement;

Irrespective of whether the person promoting, offering or providing the services participates in, supervises or engages directly or indirectly in the service.

“Supplier”: means a person who markets any goods or services.

“Supply Chain”: with respect to any particular goods or services, means the collectivity of all suppliers who directly or indirectly contribute in turn to the ultimate supply of those goods or services to a consumer, whether as a producer, importer, distributor, or retailer of goods, or as service provider.

“This Act”: includes any Schedule to this Act, regulations made or notices issued by the Minister under this Act.





“Transaction”: means –

- a) in respect of a person acting in the ordinary course of business –
 - I. an agreement between or among that person and one or more other persons for the supply or potential supply of any goods or services in exchange for consideration; or
 - II. the supply by that person of any goods to or at the direction of a consumer for consideration; or
 - III. the performance by, or at the direction of, that person of any service for or at the direction of a consumer for consideration; or
- b) an interaction contemplated in Section 5(6) of this Act, irrespective of whether it falls within paragraph (a).

“Used Goods”: when used in respect of any goods being marketed, means goods that have been previously supplied to a consumer, but does not include goods that have been returned to the supplier in terms of any right of return contemplated in this Act.



Electronic Communications and Transactions Act, Act 25 of 2002

Objectives of the Electronic Communications and Transactions Act:

Objectives of the Act are to enable and facilitate electronic communications and transactions in the public interest, and for that purpose to:

- **recognize the importance** of the information economy for the economic and social prosperity of the Republic;
- **promote universal access** primarily in underserved areas;
- **promote the understanding** and acceptance of, and growth in, the number of electronic transactions in the Republic;
- **remove and prevent barriers** to electronic communications and transactions in the Republic;
- **promote legal certainty** and confidence in respect of electronic communications and transactions;
- **promote technology neutrality** in the application of legislation to electronic communications and transactions;
- **promote e-government services** and electronic communications and transactions with public and private bodies, institutions and citizens;
- ensure that electronic transactions in the Republic **conform to the highest international standards**;
- **encourage investment and innovation** in respect of electronic transactions in the Republic;
- **develop a safe**, secure and effective environment for the consumer, business and the Government to conduct and use electronic transactions;
- **promote the development of electronic transactions services** which are responsive to the needs of users and consumers;
- ensure that, in relation to the provision of electronic transactions services, **the special needs of particular communities** and areas and **the disabled** are duly taken into account;
- **ensure compliance with accepted international technical standards** in the provision and development of electronic communications and transactions;
- **promote the stability** of electronic transactions in the Republic;
- **promote the development of human resources** in the electronic transactions environment;
- **promote SMMEs** within the electronic transactions environment;
- **ensure efficient use and management** of the .za domain name space; and
- **ensure that the national interest** of the Republic is not compromised through the use of electronic communications.





Application of the Electronic Communication and Transactions Act.

- Subject to any contrary provision in this section, the Act applies in respect of any electronic transaction or data message.





Definitions applicable for the Electronic Communications and Transactions Act, No 25 of 2005

In the Act –

“Commission”: means The National Consumer Commission as amended by Schedule 1B of the Consumer Protection Act, 2008.

“Addressee”: in respect of a Data Message, means a person who is intended by the originator to receive the data message, but not a person acting as an intermediary in respect of that data message.

“Consumer”: Shall have the meaning given to it in the Consumer Protection Act.

“Consumer Protection Act”: Means the Consumer Protection Act, 2008 (Act 68 of 2008).

“Critical data”: means data that is declared by the Minister in terms of Section 53 to be of importance to the protection of the national security of the Republic or the economic and social wellbeing of its citizens.

“Critical database”: means a collection of critical data in electronic form from where it may be accessed, reproduced or extracted.

“Critical database administrator”: means the person responsible for the management and control of a critical database.

“Automated Transaction”: means an electronic transaction conducted or performed, in whole or in part, by means of data messages in which the conduct or data messages of one or both parties are not reviewed by a natural person in the ordinary course of such natural person’s business or employment.

“Data Message”: means data generated, sent, received or stored by electronic means and includes:

- a) voice, where the voice is used in an automated transaction, and
- b) a stored record.

“Electronic Communication”: means a communication by means of data messages.

“Transaction”: means a transaction of either a commercial or non-commercial nature, and includes the provision of information and e-government services.

“the Act”: means the Electronic Communications and Transactions Act.





A. Terms and Conditions of Sale.

Standard required according to this Act:

Sections applicable:

1. Changes, deferrals and waivers, and substitution of goods **(Section 46)**
2. Unfair, unreasonable or unjust contract terms **(Section 48)**
3. Notice required for certain terms and conditions **(Section 49)**
4. Written consumer agreements **(Section 50)**
5. Prohibited transactions, agreements, terms and conditions **(Section 51)**

A.1) Changes, deferrals and waivers, and substitution of goods – Section 46

- 1.1) The supply of goods or services as a result of a change to an existing agreement, or a deferral or waiver of a right under an existing agreement, is not to be treated as creating a new agreement for the purposes of this Act, if the change, deferral or waiver is made in accordance with this Act or the agreement.
- 1.2) If, after delivery to the consumer of goods that are subject to the agreement, parties agree to substitute other goods for all or part of the goods sold –
 - a) from the date of delivery of the substituted goods, the transaction applies to the substituted goods rather than the goods originally described; and
 - b) if the transaction was the subject of a written agreement, or the sales record identified any specific goods, the supplier must prepare and deliver to the consumer an amended agreement or sales record, describing the substituted goods, but without making any other changes to the original document.



A.2) Unfair, unreasonable or unjust contract terms – Section 48

2.1) The supplier may not –

- a) supply, offer to supply, or enter into an agreement to supply any goods or services at a price that is unfair, unreasonable or unjust nor on terms that are unfair, unreasonable or unjust;
- b) market any goods or services, or negotiate, enter into or administer a transaction or an agreement for the supply of any goods or services, in a manner that is unfair, unreasonable or unjust;
- c) require a consumer, or other person to whom any goods or services are supplied at the direction of the consumer:
 - I. to waive any rights;
 - II. assume any obligation; or
 - III. waive any liability of the supplier, on terms that are unfair, unreasonable or unjust, or
 - IV. impose any such terms as a condition of entering into a transaction.

2.2) A term and/or condition of a transaction will be viewed as unfair, unreasonable or unjust if;

- a) it is excessively one-sided in favour of any person other than the consumer or other person to whom goods or services are to be supplied;
- b) the terms of the transaction or agreement are so adverse to the consumer as to be inequitable;
- c) the consumer relied upon a false, misleading or deceptive representation, or a statement of opinion provided by or on behalf of the supplier, to the detriment of the consumer;
- d) the transaction or agreement was subject to a term or condition, and the term or condition is unfair, unreasonable, and/or the fact, nature and effect of that term, condition or notice was not drawn to the attention of the consumer.



A.3) Notice required for certain terms and conditions – Section 49

- 3.1) Any notice to a consumer or provision of a consumer agreement which purports to:
- a) limit in any way the risk or liability of the supplier or any other person;
 - b) constitute an assumption of risk or liability by the consumer;
 - c) impose an obligation on the consumer to indemnify the supplier or any other person for any cause;
 - d) be an acknowledgement of any fact by the consumer;
- must be drawn to the attention of the consumer in a manner and form that satisfies the stipulations of this Act.
- 3.2) The supplier must specifically draw the fact, nature and potential effect of that risk to the consumer's attention in writing and in plain language and provide the consumer with adequate opportunity to comprehend the provision or notice, and the consumer must have **assented to that provision or notice by signing or initialing the provision or otherwise acting in a manner consistent with acknowledgement** of the notice, awareness of the risk and acceptance of the provision.

A.4) Written consumer agreements – Section 50

- 4.1) The minister may prescribe categories of consumer agreements that are required to be in writing.
- 4.2) **Note:** If a consumer agreement between a supplier and a consumer is in writing whether as required by this Act or voluntarily:
- a) it applies irrespective of whether or not the consumer signs the agreement and;
 - b) the supplier must provide the consumer with a free copy, or free electronic access to a copy, of the terms and conditions of that agreement, which must adhere to the following:
 - I. satisfy the requirements of being in plain and understandable language as set out in Section 22 of this Act; and
 - II. set out an itemized break-down of the consumers financial obligations under such agreement.
 - c) if a consumer agreement between a supplier and a consumer is not in writing, a supplier must keep a record of transactions entered into over the telephone or any other recordable form as prescribed.



A.5) Prohibited transactions, agreements, terms and conditions –Section 51

- 5.1) A supplier must not make a transaction or agreement subject to any term or condition if:
- a) its general purpose is to defeat, mislead or subject the consumer to fraudulent conduct;
 - b) it directly or indirectly purports to waive or deprive a consumer of a right in terms of this Act, set aside or override the effect of any provisions of this Act, or authorize the supplier to do anything that is unlawful or fail to do anything that is required in terms of this Act;
 - c) it purports to limit or exempt a supplier of goods or services from liability for any loss directly or indirectly attributable to the gross negligence of the supplier of any person acting for or controlled by the supplier or impose an obligation on a consumer to pay for damage to, or otherwise assume the risk of handling any goods displayed by the supplier, except if consumer is found to be grossly negligent;
 - d) it results from an offer prohibited by negative option marketing;
 - e) it requires the consumer to enter into a supplementary agreement;
 - f) it purports to cede to any person, charge, set off against a debt, or alienate in any manner, a right of the consumer to any claim against the Guardian's Fund;
 - g) it falsely expresses an acknowledgement by the consumer that:
 - I. before the agreement was made, no representation or warranties were made by the supplier or representative of the supplier;
 - II. the consumer has received goods or services, or a document that is required by this Act to be delivered to the consumer;
 - h) it requires the consumer to forfeit any money to the supplier if the consumer exercises any right in terms of this Act or to which the supplier is not entitled in terms of this Act, or any other law;
 - i) it expresses, on behalf of the consumer:
 - I. an authorization for any person action on behalf of the supplier to enter any premises for the purposes of taking possession of goods to which the agreement relates;
 - II. an undertaking to sign in advance any documentation relating to enforcement of the agreement, irrespective of whether such documentation is complete or incomplete at the time it is signed; or
 - III. a consent to a predetermined value of cost relating to enforcement of the agreement, except to the extent that is consistent with this Act;
 - j) it express an agreement by the consumer to:
 - I. deposit with the supplier, or with any other person at the direction of the supplier, an identity document, credit or debit card, bank account or automatic teller machine, access card, or any similar identifying document or device; or
 - II. provide a personal identification code or number to be used to access an account.



- 5.2) A supplier may not:
- a) **directly or indirectly require** or induce a consumer to enter into a supplementary agreement, or sign any documentation, that contains a provision as stipulated in 5.1;
 - b) **request or demand** a consumer to:
 - I. give the supplier temporary or permanent possession of an instrument, other than for the purpose of identification, or to make a copy of such instrument; or
 - II. reveal any personal identification code or number.
 - c) **direct or knowingly permit** any other person to do anything referred to in this section on behalf of or for the benefit of the supplier.
- 5.3) A purported transaction or agreement, provision, term or condition of a transaction or agreement, or notice to which a transaction or agreement is purported to be subject, is void to the extent that it contravenes this section.
- 5.4) Section 51 does not preclude a supplier to require a personal identification code or number in order to facilitate a transaction that in the normal course of business necessitates the provision of such code or number.



B. Right to fair value, good quality and safety.

Standard required according to this Act:

Sections applicable:

1. Consumer's rights to demand quality service **(Section 54)**
2. Consumer's rights to safe, good quality goods **(Section 55)**
3. Implied warranty of quality **(Section 56)**
4. Warranty on repaired goods **(Section 57)**
5. Warning concerning fact and nature of risks **(Section 58)**
6. Recovery and safe disposal of designated products or components **(Section 59)**
7. Safety monitoring and recall **(Section 60)**
8. Liability for damage caused by goods **(Section 61)**
9. Alternative dispute resolution **(Section 70)**
10. Vicarious liability **(Section 113)**

B.1) Consumer's rights to demand quality Service – Section 54

- 1.1) When the supplier undertakes to perform any service for or on behalf of a consumer, the consumer has the following rights:
 - a) the timely performance and completion of those services, and timely notice of any unavoidable delay in the performance of service;
 - b) the performance of the service in a manner and quality that persons are generally entitled to expect;
 - c) the 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 service; and
 - d) the return of any property or control over any property of the consumer in at least as good a condition as it was when the consumer made it available to the supplier for the purpose of performing such services.



B.2) Consumer's rights to safe, good quality goods – Section 55

2.1) Every consumer has a right to receive goods that:

- a) are reasonably suitable for the purpose for which they were generally intended;
- b) are of good quality, in good working order and free of any defects;
- c) will be usable and durable for a reasonable period of time, having regard to the use to which they would normally be put and to all the surrounding circumstances of their supply; and
- d) comply with any applicable standards set under the **Standard Act 1993 (Act No.29 of 1993)**, or any public regulation.

2.2) **Note:** 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** 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.

2.3) In determining whether any particular goods satisfied the requirements of the above, all of the circumstances of the supply of those goods must be considered including, but not limited to:

- a) **the manner** in which, and the purpose for which, the goods were marketed, packaged, and displayed, the use of the trade descriptions or mark, any instructions for, or warnings with respect to the use of the goods;
- b) **the range** of things that might reasonably relate to the goods; and
- c) **the time** when the goods were produced and supplied.

B.3) Implied warranty of quality – Section 56

3.1) In any transaction or agreement pertaining to the supply of goods to a consumer there is an implied term that the producer, importer, distributor or retailer, each warrant that the goods comply with the requirements and standards contemplated in Section 55, except to the extent that those goods have been **altered** contrary to the instructions, or after **leaving the control** of the producer, importer, distributor or retailer as the case may be.

3.2) Within **six (6) months** after the delivery of any goods to a consumer, the consumer may return the goods to the supplier, **without penalty** and at the **supplier's risk and expense**, if the goods fail to satisfy the requirements and standards as stipulated in Section 55. Accordingly the supplier must at the direction of the consumer either:

- a) **repair** or **replace** the failed, unsafe or defective goods; or
- b) **refund** the consumer the price paid by the consumer for the goods.



- 3.3) If a supplier **repairs** any particular goods or any component of any such goods, and within **three (3) 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 must:
- replace** the goods; or
 - refund** the consumer the price paid by the consumer for the goods.

B.4) Warranty on repaired goods – Section 57

A service provider warrants every new or reconditioned part installed during any repairs or maintenance work, and the labour required to install it, for a period of **three (3) months** after the date of installation or such longer period as the supplier may **specify in writing**.

Note: A warranty in terms of Section 57:

- 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 be **ordinary wear and tear**, having regard to the circumstances in which the goods are intended to **ordinarily used**.

B.5) Warning concerning fact and nature of risk – Section 58

- 5.1) The supplier of any activity or facility that is subject to any risk of unusual character or nature of risk of which a consumer could not reasonably be expected to be aware, or which any ordinarily alert consumer could not reasonably be expected to contemplate in the circumstances, or risk that could result in serious injury or death, **must specifically draw** the fact, nature and potential effect of that risk **to the attention of consumers** in a form and manner that meets the standards set out in **Section 49**.
- 5.2) A supplier who packages any hazardous or unsafe goods for supply to consumers must display on or within that packaging a notice that meets the requirements of being in plain and understandable language, and any other applicable standards, providing the consumer with adequate instructions for the safe handling and use of those goods.
- 5.3) The supplier of any of the aforesaid goods to a consumer, must give the consumer **the original copy** of any performance, handling, installation and use of those goods.



B.6) Recovery and safe disposal of designated products or components – Section 59

- 6.1) **Note:** If any national legislation prohibits the disposal or deposit of any particular goods, or any components, remnants, containers or packaging of any goods, into a common waste collection system –
- a) any person who, **in the ordinary course of business**, supplies goods of that kind to consumers, must accept the return of any such goods, components, remnants, containers or packaging from any consumer, without charge to the consumer, irrespective of whether that person supplied the particular object to that particular consumer; and
 - b) any person who in the ordinary course of business produces, imports or distributes any such goods as part of the **chain** by which those goods reach the consumer, must in turn accept the return of any such goods, components, remnants, containers or packaging from any supplier, as stated in paragraph (a).
- 6.2) **Note:** If any regulation or industry waste management plan approved by any other legislation for the management of a specific waste type applies, the consumer may dispose or deposit the goods to a collection facility provided for in the regulation or industry waste management plan.

B.7) Safety monitoring and recall – Section 60

- 7.1) The Commission must promote, within the framework of this Act, the development, adoption and application of industry-wide codes of practice for effective and efficient systems to:
- a) **receive notice** of –
 - I. consumer complaints or reports of product failure, defects or hazards;
 - II. the return of any goods because of a failure, defect or hazard;
 - III. personal injury, illness or damage to property caused wholly or partially as a result of a product failure, defect or hazard;
 - IV. other indication of failure, defect or hazard in any particular goods or in any component of them, or injury or damage resulting from the use of those goods.
 - b) **monitor the sources** of information as mentioned in (a), and analyse the information received with the object of detecting or identifying any previously undetected or unrecognized potential risk to the public from the use of or exposure to those goods.
 - c) **conduct an investigation** into the nature, causes, extent and degree of the risk to the public.
 - d) **notify consumers of the nature**, causes, extent and degree of the risk pertaining to those goods.
 - e) if the goods are unsafe, **recall those goods** for repair, replacement or refund.



- 7.2) **Note:** if the Commission has reasonable grounds to believe that any goods may be unsafe, or that there is a potential risk to the public from the continued use of or exposure to the goods, and the producer or importer of those goods has not taken any steps required by this Act, the Commission by written notice, may require that producer to:
- a) conduct an investigation.
 - b) carry out a recall programme on **any** terms required by the Commission.

B.8) Liability for damage caused by goods – Section 61

- 8.1) The producer, importer, distributor or retailer of **any goods** is **liable** for **any harm** caused wholly or partly as a consequence of:
- a) supplying any unsafe goods;
 - b) a product failure, defect or hazard in any goods; or
 - c) 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 a the producer, importer, distributor or retailer as the case may be.
- 8.2) A supplier of services who, in conjunction with the performance of those services, applies, supplies, installs or provides access to any goods, must be regarded as a supplier of those goods to the consumer, for the purpose of this Act.
- 8.3) In any particular case, if more than one person is liable in terms of this Act, their **liability** is **joint** and **several**.
- 8.4) Harm for which a person may be held liable in terms of this Act is:
- a) **The death** of, or injury to any natural person.
 - b) **An illness** of any natural person.
 - c) **Any loss** of, or **physical damage** to, any property, irrespective of whether it is movable or immovable.
 - d) **Any economic loss** that results from harm.



B.9) Alternative dispute resolution - Section 70

- 9.1) A customer may seek to resolve any dispute in respect of a transaction or agreement with a supplier by referring the matter to an alternative dispute resolution agent who may be –
- a) **an ombud with jurisdiction**, if the supplier is subject to the jurisdiction of any such ombud;
 - b) **an industry ombud** accredited in terms of Section 82(6) of this Act, if the supplier is subject to the jurisdiction of any such ombud;
 - c) **a person or entity providing conciliation**, mediation or arbitration services to assist in the resolution of consumer disputes, other than an ombud with jurisdiction, or an accredited industry ombud; or
 - d) **applying to the consumer court** of the province with jurisdiction over the matter, if there is such a consumer court, subject to the law establishing or governing that consumer court.
- 9.2) If an alternative dispute resolution agent concludes that there that there is no reasonable probability of the parties resolving their dispute through the process provided for, the agent may terminate the process by notice to the parties, whereafter the party who referred the matter to the agent may file a complaint with the Commission in accordance with Section 71 of this Act.
- 9.3) If an alternative dispute resolution agent has resolved, or assisted parties in resolving their dispute, the agent may –
- a) record the resolution of that dispute in the form of an order, and
 - b) if the parties to the dispute consent to that order, submit it to the Tribunal or the High Court to be made a consent order, in terms of its rules.
- 9.4) With the consent of a complainant, a consent order confirmed in terms of 9.3 (b) include an award of damages to that complainant.

B.10) Vicarious liability – Section 113

- 10.1) If an employee or agent of a person is liable in terms of this Act for anything done or omitted in the course of that person's employment or activities on behalf of their principal, the employer or principal is **jointly and severally liable** with that person.
- 10.2) This Section does not apply in respect of criminal liability.



C. Consumer's right to disclosure and information.

Standard required according to this Act:

Sections applicable:

1. Right to information in plain and understandable language (**Section 22**)
2. Disclosure of price of goods or services (**Section 23**) (**ECTA Section 43**)
3. Product Labeling and trade descriptions (**Section 24**)
4. Disclosure of grey or reconditioned market goods (**Section 25**)
5. Sales Record (**Section 26**) (**ECTA Section 43**)
6. Disclosure by intermediaries (**Section 27**)
7. Identification of deliverers, installers and others (**Section 28**)
8. Identification of Supplier (**Section 79**)

C.1) Right to information in plain and understandable language – Section 22

- 1.1) The supplier must provide a notice, document or visual representation in plain language if it is reasonable to conclude that an ordinary consumer of the class of persons for whom the notice, document or visual representation is intended, with average literacy skills and minimal experience as a consumer of the relevant goods or services, could be expected to understand the content, significance and import of the notice, document or visual representation without **undue effort with regarding to:**
 - a) **the context**, comprehensiveness and consistency of the notice, document or visual representation;
 - b) **the organisation**, form and style of the notice, document or visual representation;
 - c) **the vocabulary**, usage and sentence structure of the notice, document or visual representation;
 - d) **the use of any illustrations**, examples, headings, or other aids to reading and understanding.



C.2) Disclosure of Price of goods or services – Section 23

- 2.1) A retailer is **not required to display a price** for any goods that are displayed predominantly as a form of advertisement of the supplier, or of goods or services, in an area within the supplier's premises to which the public **does not ordinarily have access**.
- 2.2) A price is adequately displayed to a consumer if, in relation to any particular goods, a written indication of the price, expressed in the currency of the republic, is:
- a) **annexed or affixed to**, written, printed stamped or located upon, or otherwise applied to the goods or to any band, ticket, covering, label, package, reel, shelf or other thing used in connection with the goods or on which the goods are mounted for display or exposed for sale;
 - b) in any way represented in a manner from which it may **reasonably be inferred** that the price represented is a price applicable to the goods or services in question, or
 - c) **published in relation to the goods in a catalogue**, brochure, circular or similar form of publication available to that consumer or to the public generally if –
 - I. **a time is specified** in the brochure, catalogue, circular or similar form of publication as the time after which the goods may not be sold at that price, and that time has not yet passed, or
 - II. **in any other case**, the catalogue brochure, circular or similar form of publication is dated, and in the circumstances may reasonably be regarded as not out of date.
 - III. the supplier must **not require** a consumer to **pay a price** for any goods or services that is **higher than the displayed price** for those goods or services or, **if more than one price is concurrently displayed**, higher than the lower or lowest of the prices so displayed.

This Section **does not apply** to a transaction if **Section 43 of the Electronic Communications and Transactions Act** applies to that transaction.



Information to be provided – Section 43 of the Electronic Communications and Transactions Act

A supplier offering goods or services for sale, hire or for exchange by way of electronic transaction must disclose the following information to consumers on its website:

- its **full name** and **legal status**;
- its **physical address** and **telephone number**;
- its **web site address** and **e-mail address**;
- **membership** of any self-regulatory or accreditation bodies to which that supplier belongs or subscribes and the contact details of that body;
- **any code of conduct** to which that supplier subscribes and how that code of conduct may be accessed electronically by the consumer;
- in the case of a legal person, its **registration number**, the names of its office bearers and its place of registration;
- the **physical address** where that supplier will receive legal service of documents;
- a sufficient description of the **main characteristics** of the **goods or services** offered by that supplier to enable a consumer to make an informed decision on the proposed electronic transaction;
- the **full price** of the goods or services, including **transport costs, taxes** and any other fees or costs;
- the **manner of payment**;
- any **terms of agreement**, including any guarantees, that will apply to the transaction and how those terms may be accessed, stored and reproduced electronically by consumers;
- the **time** within which the goods will be **dispatched or delivered** or within which the services will be rendered;
- the **manner** and **period** within which consumers can **access** and maintain a full record of the transaction;
- the **return, exchange** and **refund policy** of that supplier;
- any **alternative dispute resolution code** to which that supplier subscribes and how the wording of that code may be accessed electronically by the consumer;
- the **security procedures** and **privacy policy** of that supplier in respect of payment, payment information and personal information.

The supplier must provide a consumer with an opportunity-

- to **review** the entire electronic transaction;
- to **correct** any mistakes; and
- to **withdraw** from the transaction, before finally placing any order.





If a supplier fails to comply with the aforesaid provisions, the consumer may cancel the transaction within **fourteen (14) days after receiving** the goods or services.

If a transaction is cancelled by a consumer within **fourteen (14 days)** after receiving the goods or services:

- the consumer must **return the performance** of the supplier or, where applicable, cease using the services performed; and
- the supplier must **refund all payments** made by the consumer minus the direct cost of returning the goods.

The supplier must utilize a payment system that is sufficiently secure with reference to accepted technological standards at the time of the transaction and the type of transaction concerned.

The supplier is liable for any damage suffered by a consumer should the supplier fail to utilize a payment system that is sufficiently secure.

C.3) Product Labeling and Trade descriptions – Section 24

3.1) **Note: This regulation applies to goods approved for commercialization by the Executive Council of Genetically Modified Organisms established by Section 3 of the Genetically Modified Organisms Act, 1997.**

3.2) A trade description is applied to goods if it is:

- a) **applied to the goods**, or to any covering, label or reel in or on which the goods are packaged, or attached to the goods;
- b) **displayed together with**, or in proximity to, the goods in a manner that is likely to lead to the belief that the goods are designated or described by that description;
- c) **is contained in any sign**, advertisement, catalogue, brochure, circular, wine list, invoice, business letter, business paper or other commercial communication on the bases of which a consumer may request or order the goods.

3.3) **Note:** A person **must not** –

- a) knowingly apply to any goods a trade description that is likely to **mislead the consumer** as to any matter implied or expressed in that trade description;
- b) **alter, deface, cover, remove or obscure** a trade description or trade mark applied to any goods in a manner calculated to mislead consumers.



- 3.4) A retailer of goods must:
- a) not offer to supply, display or supply any particular goods if the retailer knows, reasonably could determine or has reason to suspect that –
 - I. a trade description applied to those goods is likely to mislead that consumer as to any matter implied or expressed in that trade description; or
 - II. a trade description or trade mark applied to those goods has been altered as contemplated in the paragraph before.
 - b) with respect to any goods within the retailer's control, take **reasonable steps** to prevent any other person from doing anything as contemplated in the previous paragraph.
- 3.5) It is important to note that any person who produces, supplies, imports or packages any prescribed goods must display on, or in association with the packaging of those goods, a notice in the prescribed manner and form that discloses the presence of any genetically modified ingredients or components of those goods in accordance with applicable regulations. **The aforesaid will apply to all goods which contain at least 5 percent of genetically modified organisms, irrespective of whether such making or manufacturing occurred in the Republic or elsewhere, and to marketing material in respect of such goods.**
- 3.6) **Take note:** Any good or ingredient or component to which the aforesaid applies, may not be produced, supplied, imported, or packaged unless a notice meeting the requirements of Section 22 of this Act is applied to such goods or marketing material, as the case may be, in a conspicuous manner and easily legible manner and size stating, without change, that the good or ingredient or component **“Contains genetically modified organisms”**.
- 3.7) **Take note:** If goods are intentionally and directly produced using genetic modification processes, the goods or marketing material, as the case may be, must be labeled, meeting the requirements of Section 22 of this Act, without change, as **“Produced using genetic modification”**.
- 3.8) **Take note:** If it is scientifically impractical or not feasible to test goods for the presence of genetically modified organisms or ingredients, a notice meeting the requirements of Section 22 of this Act must be applied to such goods or marketing material, as the case may be, in a conspicuous manner and easily legible manner and size stating, **“May contain genetically modified ingredients”**.



3.9) Labeling of goods originating from East Jerusalem, Gaza or West Bank:

- a) An importer, producer, retailer or supplier must label Israeli goods that originate from:
 - I. East Jerusalem, as goods originating from East Jerusalem: **Israeli Goods (“East Jerusalem: Israeli Goods”)**;
 - II. Gaza, as goods originating from Gaza: **Israeli Goods (“Gaza: Israeli Goods”)**;
or
 - III. West Bank, as goods origination from West Bank: **Israeli Goods (“West Bank: Israeli Goods”)**.
- b) **Note:** The label **“Made in Israel”** may only be applied to goods that originate from within Israel’s borders of 1948 – 1967.
- c) The producer or importer of cosmetics, technology, food and beverage, textiles and household goods must apply a trade description to those goods, disclosing: –
 - I. The country of origin of the goods;
 - II. In the event of a producer or importer **using imported material from** –
 - East Jerusalem to produce goods, such goods must be labeled “made in the Republic of South Africa from material imported from **“East Jerusalem: Israeli Goods”**;
 - Gaza to produce goods, such goods must be labeled “made in the Republic of South Africa from material imported from **“Gaza: Israeli Goods”**;
 - West Bank to produce goods, such goods must be labeled “made in the Republic of South Africa from material imported from **“West Bank: Israeli Goods”**;
 - III. In the event of a producer or importer of goods from another country into the Republic of South Africa, **made from material imported from** –
 - East Jerusalem, such goods shall be labeled “made in country X from material imported from “East Jerusalem: Israeli Goods”;
 - Gaza, such goods shall be labeled “made in country X from material imported from “Gaza: Israeli Goods”;
 - West Bank, such goods shall be labeled “made in country X from material imported from “West Bank: Israeli Goods”;
- d) **Note:** Labeling must **permanently** be applied to the prescribed category of goods in a **conspicuous** and **easily legible manner**.



C.4) Disclosure of grey or reconditioned market goods – Section 25

4.1) A supplier who offers or agrees to supply, or supplies, any goods that:

- a) have been reconditioned, rebuilt or remade; and
- b) that bear the trade mark of the original producer or supplier, **must** apply a **conspicuous notice to those goods** stating clearly that they have been reconditioned, rebuilt or remade, as the case may be.

4.2) **A supplier who markets any goods that bear a trade mark**, but have been imported without the approval or license of the registered owner of that trade mark, **must** apply a **conspicuous notice** to those goods in the prescribed manner and form which adheres:

- in a place on the goods and the marketing material of the goods where a consumer is likely to see that notice; and
- in an easily legible size and manner,

to the goods and all forms of advertising or promotion, including in-store promotions, packaging, websites and brochures, when these goods are advertised or promoted, stating clearly that they have been reconditioned, rebuilt or remade, as the case may be.

- The **conspicuous notice** as mentioned previously, must be applied to the goods and all forms of advertising or promotion, including in-store promotions, packaging, websites and brochures, when these goods are advertised or promoted, stating clearly that the goods bear a trade mark, that they have been imported without the approval or license of the registered owner of that trade mark and that **no guarantee or warranty** in respect of such goods will be honoured or fulfilled by any **official or licensed importer of such goods**.



C.5) Sales Records – Section 26

- 5.1) A supplier of goods or services must provide a written record of such transaction to the consumer to whom any goods or services are supplied.
- 5.2) **This record must include at least the following information:**
- a) the supplier's full name, or registered business name, and VAT registration number if any;
 - b) the address of the premises at which, or from which, the goods or services were supplied;
 - c) the date on which the transaction occurred;
 - d) a name or description of any goods or services supplied or to be supplied;
 - e) the unit price of any particular goods or services supplied or to be supplied;
 - f) the quantity of any particular goods or services supplied or to be supplied;
 - g) the total price of the transaction, before any applicable taxes;
 - h) the amount of any applicable taxes; and
 - i) the total price of the transaction including any applicable taxes.

This Section **does not apply** to a transaction if **Section 43 of the Electronic Communications and Transactions Act** applies to that transaction. Refer to Section 43 of the Electronic Communications and Transactions including Section 23 of the Consumer Protection Act.

C.6) Disclosure by intermediaries- Section 27

- 6.1) An **intermediary must** – disclose the prescribed information to:
- a) **any person whom the intermediary solicits** or agrees to represent with respect to the sale of any property or services, or from whom the intermediary accepts any property for the purpose of offering it for sale;
 - b) **any person from whom the intermediary solicits an offer**, or to whom the intermediary offers to supply or supplies any services to be performed by a third person; and must
 - c) **keep the prescribed records** of all relationships and transactions contemplated in this regard; and
 - d) **in writing to a consumer the existence of any circumstances** or any personal interest in the relevant service or goods which gives rise or may give rise to an actual or potential conflict of interest, or perception of conflict of interest, in relation to the intermediary, and the intermediary must take all reasonable steps to ensure fair treatment of the consumer.



6.2) **Records to be kept** by intermediary must adhere to the following:

- a) An intermediary must for a period of **three (3) years** retain a copy of –
 - I. **any information contemplated in sub regulations (2) and (3)** of regulation 9 of this Act;
 - II. **any written instruction** given or sent by a consumer to the intermediary;
 - III. if applicable and only where a transaction results, **maintain a record of advise furnished** to a consumer which must reflect the basis on which the advise was given.

6.3) **Take note**, that an intermediary must take all reasonable steps to keep all records and documentation safe from destruction and must, if records are lost or destroyed, make a statement under oath or affirmation explaining the reasons for the circumstances of the loss or the destruction.

C.7) Identification of deliverers, installers and others – Section 28

7.1) Whenever a person is engaged in direct marketing in person at the premises of a consumer, or performing any service for a consumer at any such premises, or delivering any goods to, or installing any goods for a consumer, at any such premises, that person **must**:

- a) **visibly wear or display** a badge or similar identification device that satisfies any prescribed standards;
- b) provide **suitable identification** on request by the consumer.

C.8) Identification of Supplier – Section 79

8.1) A person must not carry on business, advertise, promote, offer to supply or supply any goods or services, or enter into a transaction or agreement with a consumer under any name except –

- a) the person's full name as –
 - I. recorded in the identity document or any other recognized identification document, in the case of an individual; or
 - II. registered in terms of a public regulation, in the case of a juristic person; or
- b) a business name registered to, and for the use of, that person in terms of Section 80 of this Act, or any other public regulation.



- 8.2) A person doing anything as stipulated in 8.1 must include the following particulars on any trade catalogue, trade circular, business letter, order for goods, sales record or statement of account that the person issues:
- a) the name, title or description under which the business is carried on;
 - b) a statement of the primary place at which, or from which, the business is carried on; and
 - c) if the activity is carried on under a business name, the name of the person to whom that business name is registered.
- 8.3) If a person –
- a) does anything as stipulated in 8.1 under a name that is not that person's full name, or a business name registered to that person, the commission may issue a compliance notice to that person, in terms of Section 100 of this Act, requiring the person –
 - I. within a reasonable time, to –
 - (aa) apply for registration of the business name in terms of Section 80 of this Act; or
 - (bb) discontinue that conduct under that business name; and
 - II. if the application to register that business name is unsuccessful for any reason contemplated in this Part, to discontinue that conduct under that name within 40 business days after receiving notice of the failure of the application;
 - b) fails to comply with any requirement as stipulated in 8.2, the commission may issue a compliance notice to the person in terms of Section 100 of this Act; or
 - c) does anything as stipulated in 8.1 under a business name that is registered to another person, that other person may apply to the court for an order as stipulated in 8.4.
- 8.4) The court hearing an application as stipulated in 8.3 (c) may make an order directing a person to stop using a business name within a period, and on any terms, that the court considers just, equitable and expedient in the circumstances.



D. Right to fair and responsible marketing.

Standard required according to this Act:

Sections applicable:

1. Right to restrict unwanted direct marketing (**Section 11**) (**ECTA Section 45**)
2. Unsolicited goods or services (**Section 21**)
3. General standards for marketing of goods or services (**Section 29**)
4. Bait marketing (**Section 30**)
5. Negative option marketing (**Section 31**)
6. Direct marketing to consumers (**Section 32**)
7. Catalogue marketing (**Section 33**)
8. Trade Coupons and Similar Promotion (**Section 34**)
9. Customer loyalty programs (**Section 35**)
10. Promotional Competitions (**Section 36**)
11. Referral selling (**Section 38**)
12. Unconscionable conduct (**Section 40**)
13. False misleading or deceptive representations (**Section 41**)

D.1) Right to restrict unwanted direct marketing – Section 11

- 1.1) The right of every person to privacy includes the right to—
 - a) **refuse to accept**;
 - b) require another person to **discontinue**; or
 - c) in the case of an approach other than in person, to **pre-emptively block**, any approach or communication to that person, if the approach or communication is primarily for the purpose of direct marketing.
- 1.2) To facilitate the realization of each consumer's right to privacy, and to enable consumers to efficiently protect themselves against the activities as stipulated in this Act, a person who has been approached for the purpose of direct marketing may demand during or within a reasonable time after that communication that the person responsible for initiating the communication desist from initiating any further communication.



- 1.3) The Commission may establish, or recognize as authoritative, a registry in which any person may register a pre-emptive block, either generally or for specific purposes, against any communication that is primarily for the purpose of direct marketing.
- 1.4) A person authorizing, directing or conducting any direct marketing—
 - a) must implement appropriate procedures to facilitate the receipt of demands as stipulated in this Act; and
 - b) must not direct or permit any person associated with that activity to direct or deliver any communication for the purpose of direct marketing to a person who has—
 - I. made a demand in terms of Section 11 subsection (2) of this Act; or
 - II. registered a relevant pre-emptive block.
- 1.5) No person may charge a consumer a fee for making a demand in terms of Section 11 subsection (2) or registering a pre-emptive block as contemplated in Section 11 subsection (3).
- 1.6) The Minister may prescribe regulations for the operation of a registry contemplated in Section 11 subsection (3).



Unsolicited goods, services or communications – Section 45 of the Electronic Communications and Transactions Act

Any person who sends unsolicited commercial communications to consumers, must provide the consumer-

- with the **option to cancel** his or her subscription to the mailing list of that person; and
- with the **identifying particulars** of the **source** from which that person obtained the consumer's personal information, on request of the consumer.

Any person who fails to comply with or contravenes the aforesaid, is **guilty of an offence** and liable, on conviction, to the penalties prescribed in Section 111 of the Act.

Any person who sends unsolicited commercial communications to a person who has advised the sender that such communications are unwelcome, is **guilty of an offence** and liable, on conviction to the penalties prescribed in Section 89(1) of the Act.

D.2) Unsolicited goods or services – Section 21

2.1) Goods or Services may become unsolicited if:

- a) **during direct marketing** a supplier or person acting on behalf of a supplier has left any goods with, or performed any service for, a consumer without requiring or arranging payment for them;
- b) if a **consumer is a party to an agreement** contemplating the periodic delivery of goods during the life of the agreement, and –
 - i. **during the course of that agreement**, the supplier introduces goods or services that are materially different from the goods or services previously supplied to an extent not reasonably contemplated in the agreement, the new goods or services are unsolicited, unless the consumer expressly consented to the material change; or
 - ii. **after the termination of an agreement**, the supplier delivers any further goods to the consumer;
- c) a supplier **delivers goods or performs services** at a location, date or time **other than as agreed**, and the consumer has rejected that delivery;
- d) **a supplier delivers a larger quantity** of goods than the consumer agreed to buy, the excess goods are unsolicited unless the consumer has rejected the entire delivery;
- e) any **goods have been delivered** to, or any services performed for, a consumer by or on behalf of a supplier **without the consumer having expressly or implicitly requested** that delivery or performance, the goods or services, as the case may be, are unsolicited.



- 2.2) **Note:** Despite the abovementioned aspects goods become unsolicited if a **supplier informs** a consumer within **ten (10) business** days after delivery of any goods to a consumer, that the goods were delivered in error, and the supplier fails to recover them within **twenty (20) business days**.
- 2.3) A consumer in possession of goods contemplated as unsolicited as described:
- a) must not frustrate or impede any reasonable action by the supplier or deliverer to recover the goods within the time allowed;
 - b) is not responsible for any cost pertaining to the recovery of the goods;
 - c) is not liable for any loss or damage to the goods during the time they are in the person's possession or control, other than loss caused by the person's intentional interference with the goods.

D.3) General standards for marketing of goods or services - Section 29

- 3.1) A producer, importer, distributor, retailer or service provider **must not market** any goods or services:
- a) in a manner that is reasonably likely to imply a **false or misleading representation** concerning those goods or services, as contemplated in Section 41 of this Act; or
 - b) in a manner that is misleading, fraudulent or deceptive in any way, including in respect of –
 - I. **the nature**, properties, advantages or uses of the goods or services.
 - II. **the manner in or conditions** on which those goods or services may be supplied;
 - III. **the price** at which the goods may be supplied, or the existence of, or relationship of the comparable or similar goods or services.
 - IV. **the sponsoring** of any event, or
 - V. any other material aspect of the goods or services.



D.4) Bait marketing-Section 30

- 4.1) A supplier must not advertise any particular goods or services as being available at a specified price in a manner that may result in consumers being misled or deceived in any respect relating to the **actual availability** of those goods or services from that supplier, **at the advertised price**.
- 4.2) If the supplier advertises particular goods or services as being available at a specified price, and the advertisement expressly states **a limitation** in respect of the availability of those goods or services from that supplier, at that price, the supplier **must** make those goods or services **available** at that price, to the extent of the **expressed limits**.

D.5) Negative Option Marketing- Section 31

- 5.1) The supplier must not:
 - a) promote any goods or services;
 - b) offer or enter into or modify an agreement for the supply of any goods or services; or
 - c) induce a person to accept any goods or services or to enter into or modify such an agreement;on the basis that the goods or services are to be supplied, or the agreement of modification will automatically come into existence, unless the consumer declines such offer or inducement.
- 5.2) **Note:** An agreement purportedly entered into as a result of an offer or inducement based on the aforesaid, is void.

D.6) Direct marketing to consumers – Section 32

- 6.1) A person who is directly marketing any goods or services, and who concludes a transaction or agreement with a consumer, must inform the consumer, in the prescribed manner and form, of the right to rescind that agreement, as set out in Section 16 of this Act.
- 6.2) If a person who has marketed any goods as described in the paragraph above, left any goods with the consumer without requiring or arranging payment for them, those goods are unsolicited goods, to which Section 21 of this Act applies.



D.7) Catalogue marketing – Section 33

- 7.1) Section 33 applies to an agreement for the supply of goods or services that is not entered into in person including an agreement concluded **telephonically** or by **postal order** or **fax**, or in any similar manner in which, with respect to goods, the **consumer does not have the opportunity to inspect the goods** that are the subject of the transaction before concluding the agreement.
- 7.2) Before concluding an agreement or transaction, a supplier must disclose the following information to a consumer, in an appropriate manner, having regard to the manner in which the supplier and consumer communicate in concluding the transaction:
- a) the supplier's **name and license or registration number**;
 - b) the **address** of the supplier's **physical business premises** and related contact details;
 - c) the **sales record information** required as listed in Section 26 of this Act;
 - d) the **currency** in which amounts under the agreement are payable;
 - e) the supplier's **delivery agreements**, including –
 - I. the identity of the shipper;
 - II. the mode of transport; and
 - III. the place of delivery to the consumer.
 - f) the supplier's **cancellation, return, exchange and refund policies**;
 - g) the manner and form in which a **complaint** may be lodged (Complaint Policy and Register);
 - h) any other prescribed information.

D.8) Trade Coupons and Similar promotion -Section 34

- 8.1) A promotional offer means an offer or promise, expressed in any manner, of any **prize, reward, gift, free goods or services, price reduction or concession, enhancement of quality or quantity of goods or services**, irrespective of whether or not acceptance of the offer is conditional on the offeree entering into any other transaction.
- 8.2) **Note: A person must not make a promotional offer with the intention of not fulfilling it or fulfilling it other than as offered.**



- 8.3) Any document setting out a promotional offer must clearly state the following:
- a) **the nature** of the price, reward, gift, free goods or services, price reduction or concession, enhancement of quality or quantity of goods or services, or other discounted or free thing being offered;
 - b) **the goods or services** to which the offer relates;
 - c) **the steps** required by a consumer to accept the offer or to receive the benefit of the offer;
 - d) **the particulars** of any person from whom, any place where, and any date and time on or at which, the consumer may receive the prize, reduction or concession, enhancement of quality or quantity of goods or services or other discounted or free thing.
- 8.4) **Note: A person who makes or sponsors a promotional offer must:**
- a) ensure that the supply of the particular prize, reward, gift, free or reduced price good, or the capacity to provide enhanced quality or services, **is sufficient to accommodate all reasonable anticipated demands** resulting from the offer;
 - b) **not limit or restrict capacity to supply** any such goods or services in response to the acceptance of the offer, on any basis other than that it applies to such a supply in exchange for any other consideration;
 - c) **not require the consumer to accept an inferior quality** of any such goods or services than those generally available to any other consumer on the same date who tenders a different form of consideration;
 - d) **not impose any monetary charge for the administration**, processing or handling of a transaction in respect of which the consumer **tenders a trade coupon**.
- 8.5) **It is a defense to an alleged failure to comply** with the aforesaid, if the supplier offered to supply or procure another person to supply a consumer with comparable goods or services of the relevant kind to satisfy the consumer's acceptance of the promotional offer, and the consumer –
- a) **accepted the supplier's offer**, and the supplier has supplied or procured another person to supply the goods or services so offered and accepted; or
 - b) **unreasonably refuse** the supplier's offer.



D.9) Customer loyalty programmes - Section 35

- 9.1) Despite any provision in any law, agreement or notice to the contrary, for all purposes of this Act, loyalty credits or awards are a legal medium of exchange when offered or tendered as consideration for any goods or services offered, or transaction contemplated, in terms of that loyalty programme.
- 9.2) A person must not offer participation in a loyalty programme, or offer any loyalty credit or award with the intention of-
- a) not providing it; or
 - b) providing it in a manner other than as offered.
- 9.3) Any document setting out an offer as stipulated in 9.2 must clearly state-
- a) **the nature of the programme**, credit or award being offered;
 - b) **the goods or services** to which the offer relates;
 - c) **the steps required** by a consumer to participate in the programme or to receive any benefit in terms of the programme; and
 - d) **any person from whom**, any place where, and any date and time on or at which, the consumer **may gain access** to the programme, or to any loyalty credit or awards in terms of the programme.
- 9.4) Subject to the stipulations of paragraph 9.5 and paragraph 9.6 in this section, the sponsor of a loyalty programme, or a supplier who offers or holds out a willingness, to accept any loyalty credits or awards as consideration or in exchange for any particular goods and services, must
- a) ensure that the supplier of those particular goods or services available at any time **is sufficient to accommodate all reasonably anticipated demands** for those goods or services in exchange for loyalty credit or awards;
 - b) **not limit or restrict capacity** to supply those particular goods or services in exchange for such credits or awards on any basis other than that it applies to such a supply in exchange for any other form of consideration;
 - c) **accept any tender of sufficient loyalty credits** or awards as adequate consideration for the price of those particular goods or services if, at that time, it has capacity available for supply in exchange for any other form of consideration;
 - d) **not require the consumer to accept an inferior quality** of those particular goods or services than those generally available to any other consumer on the same date who tenders a different form of consideration;
 - e) **not impose any monetary charge** in respect of the administration, processing, or remain a member of the programme, and
 - f) **not demand that the consumer purchase any other goods or services** in connection with that transaction.



- 9.5) **A sponsor of a loyalty programme**, or a supplier of goods or services who accepts loyalty credits or awards as consideration for any particular goods or services, **may impose a partial or complete restriction on the availability of any such goods or services in exchange for loyalty credits or awards during any specific period**, if the programme sponsor has directly or indirectly **given notice in writing to the members** of that programme at **least twenty (20) business days** before the beginning of that period, but the total of all such periods within a calendar year must not **exceed ninety (90) days**.
- 9.6) **It is a defense to an alleged failure** to comply or procure another person to supply a consumer with comparable goods or services of the relevant kind to satisfy the consumer's request, for no consideration beyond the advertised price expressed in loyalty awards, and the consumer-
- accepted the offer, and the supplier has supplied or procured another person to supply the goods or services so offered and accepted, or
 - unreasonably refused that offer.

D.10) Promotional Competitions – Section 36

10.1) The definition of a promotional competition is:

Any competition, game, scheme, arrangement, system, plan or device for distributing prizes by lot or chance if –

- it is conducted in the **ordinary course of business** for the purpose of promoting a producer, distributor, supplier, or association of any such persons, or the sale of any goods or services; and
- any prizes offered, **exceed the threshold, one Rand (R 1-00)** which is a monetary threshold which may be excluded depending on the value of the prizes;

irrespective of whether a participant is required to demonstrate any skill or ability before being awarded a prize.

10.2) The promoter of a promotional competition:

- must not require any consideration to be paid by or on behalf of any participant in the promotional competition, other than the reasonable cost of posting or otherwise transmitting an entry form or device which amounts to and not exceeding **one Rand fifty (R 1-50)**;
- must not award a prize** in a competition to –
 - a winner** of the competition if it is unlawful to supply those goods or services to that prize winner, but the aforesaid does not preclude awarding a prize to a person merely because that person's right to possess or use the prize is or may be restricted or regulated by, or is otherwise subject to any public regulation; or
 - any person** who is a director, member, employee, agent, consultant to the promoter or any other person who directly or indirectly controls or is controlled



by the promoter, or a supplier of goods or services in connection with that competition.

- c) **must** prepare competition rules before the beginning of the competition;
- d) **must** make the competition rules available to the commission and to any participant, **on request** and without cost;
- e) **retain a copy** of the competition rules for the prescribed period after the end of the competition.

10.3) An offer to participate in a promotional competition **must** clearly state the following:

- a) the **benefit** or competition to which the offer relates;
- b) the **steps** required by a person to accept the offer or to participate in the competition;
- c) the **basis** on which the results of the competition will be determined;
- d) the **closing date** of the competition;
- e) the **medium** through or by which the results of the competition will be made known; and
- f) any **person** from whom, any **place** where, and any **date** and **time** on or at which a person may obtain a copy of the competition rules or a successful participant may receive any prize.

10.4) In order to address the requirements as listed above, the following actions may be instituted:

- a) **directly** on any medium through which a person participates in a promotional competition;
- b) on a **document** accompanying any medium contemplated in paragraph (a);
- c) in any **advertisement** that is published during the time and throughout the area in which the promotional competition is conducted, and draws attention to and is clearly associated with the promotional completion.

10.5) **Take note:**

- a) The monetary threshold of prices for the purpose of excluding competitions with low value prices is **one Rand (R 1-00)**;
- b) The promoter of the competition must ensure that an **independent** accountant, registered auditor, attorney or advocate oversees and certifies the conducting of the competition and must report this through the promoter's internal audit reporting or other appropriate validation or verification procedures;



- c) The person conducting the competition must for a period of **three (3) years** retain all information related to the competition including:
- I. **full details of the promoter**, including identity or registration numbers, as the case may be, addresses and contact numbers;
 - II. **the rules** of the promotional competition;
 - III. **a copy of the offer to participate** in a promotional competition;
 - IV. the **names and identity numbers** of the persons responsible for conducting the promotional competition;
 - V. a full **list of all the prizes** offered in the promotional competition;
 - VI. **all materials used in marketing** the promotional competition;
 - VII. a list of all instances when the **promotional competition was marketed**, including details on the dates, the medium used and places where the marketing took place;
 - VIII. the **names and identity numbers** of the persons responsible for conducting the **selection of price winners** in the promotional competition;
 - IX. **an acknowledgement of receipt** of the prize signed by the prize winner, or legal guardian where applicable, and his/her identity number, and the date of receipt of the prize, or proof by the promoter that the prize was sent by post or other electronic means to the winner using his/her provided details;
 - X. **declarations**, by the persons conducting the promotional competition, **under oath** that the prize winners were to their best knowledge not directors, members, partners, employees, agents or consultants of or any other person who directly or indirectly controls or is controlled by the promoter or marketing service providers in respect of the promotional competition, or the spouses, life partners, business partners or immediate family members;
 - XI. **the grounds** on which the prize winners were determined;
 - XII. **a summary explaining the proceedings to determine the winners**, including the names of the persons participating in determining the prize winner, the date and place where the determination took place and whether those proceedings were open to the general public;
 - XIII. whether an **independent person oversaw** the determination of the prize winners, and his/her name and identity number;
 - XIV. the **means by which the prize winners were announced** and the frequency thereof;
 - XV. a **list of the prize winners** with their identity numbers and names;
 - XVI. a **list of the dates** when the **prizes were handed over** or paid to the prize winners;



- XVII. **in the event that a prize winner could not be contacted**, the steps that were taken by the promoter to contact the winner or otherwise inform the winner of his/her winning a prize; and
- XVIII. **in the event a prize winner did not receive or accept his/her prize**, the reason for his/her not so receiving or accepting the prize, and the steps that was taken by the promoter to hand over or pay the prize to that prize winner.
- A promoter must upon **request in writing by the Commission** forthwith at his, her or its own expense submit a report based on documentation or materials used during the promotion, to the Commission.

D.11) Referral selling – Section 38

- 11.1) **Take note**, a person must not offer, supply, agree to supply, or induce a consumer to accept any goods or services on the representation that the consumer will receive a rebate, commission or other benefit if –
- a) the consumer subsequently -
 - I. gives the supplier the names of consumers; or
 - II. otherwise assist the supplier to supply goods or services to another consumer; and
 - b) that rebate, commission or other benefit is contingent upon an event occurring after the consumer agrees to the transaction.

D.12) Unconscionable conduct – Section 40

- 12.1) A supplier or an agent of the supplier **must not use physical force against a consumer**, coercion, undue influence, pressure, duress or harassment, unfair tactics or any other similar conduct, in connection with any –
- a) **marketing** of any goods or services;
 - b) **supply of goods or services** to a consumer;
 - c) **negotiation**, conclusion, execution or enforcement of an agreement to supply any goods or services to a consumer;
 - d) **demand for**, or collection of, payment for goods or services by a consumer; or
 - e) **recovery of goods** from a consumer.
- 12.2) In addition to any conduct as stipulated in 12.1, it is unconscionable for a supplier to knowingly take advantage of the fact that a consumer was substantially unable to protect the consumer's own interests because of physical or mental disability, illiteracy, ignorance, inability to understand the language of an agreement, or any other similar factor.

- 12.3) Section 51 of this Act applies to any court proceedings concerning this Section.



D.13) False misleading or deceptive representations – Section 41

13.1) In relation to the marketing of any goods or services, the supplier must not, by words or conduct –

- a) **directly or indirectly express or imply a false**, misleading or deceptive representation concerning a material fact to a consumer;
- b) **use exaggeration**, innuendo or ambiguity as to a material fact, or fail to disclose a material fact if that failure amounts to a deception; or
- c) **fail to correct an apparent misapprehension** on the part of a consumer, amounting to a false, misleading or deceptive representation, or permit or require any other person to do so on behalf of the supplier.

13.2) A person acting on behalf of a supplier of any goods or services must not –

- a) falsely represent that the person has any sponsorship, approval or affiliation; or
- b) engage in any conduct that the supplier is prohibited from engaging as stipulated in 13.1.

13.3) Without limiting the generality of the stipulations of 13.1 and 13.2, it is a **false, misleading or deceptive representation** to falsely state or imply, or fail to correct an apparent misapprehension on the part of a consumer to the effect, that –

- a) the supplier of any goods or services has any particular status, affiliation, connection, sponsorship or approval that they do not have;
- b) any goods or services –
 - I. **have ingredients**, performance characteristics, accessories, uses, benefits, qualities sponsorship or approval that they do not have;
 - II. are of a **particular standard**, quality, grade, style or model;
 - III. are **new or unused**, if they are not or if they are reconditioned or reclaimed, subject to the stipulations of 13.4;
 - IV. have **been used for a period** to an extent or in a manner that is materially different from the facts;
 - V. **have been supplied in accordance** with a previous representation; or
 - VI. **are available** or can be delivered or performed within a specified time;



- c) any land or other immovable property –
 - I. has **characteristics** that it does not have;
 - II. **may lawfully** be used, or is capable of being used, for a purpose that is in fact unlawful or impracticable; or
 - III. **has or is proximate to any facilities**, amenities or natural features that it does not have, or that are not available or proximate to it;
- d) the **necessary service**, maintenance or repair facilities or parts are readily available for or within a reasonable period;
- e) **any services**, part, replacement, maintenance or repair is needed or advisable;
- f) **a specific price advantage exists**;
- g) **a charge or proposed charge** is for a specific purpose;
- h) **an employee**, salesperson, representative or agent has the necessary authority to negotiate the terms of, or conclude, an agreement;
- i) **the transaction affects**, or does not affect, any rights, remedies or obligations of a consumer;
- j) **a particular solicitation** of, or communication with, the consumer is for a particular purpose; or
- k) **the consumer will derive a particular benefit** if they assist the supplier in obtaining a new or potential customer.

13.4) A representation as stipulated in 13.3 (b)(III) to the effect that any goods are new is not false, misleading or deceptive if those goods have been used only –

- a) by or behalf of the producer, importer, distributor or retailer; and
- b) for the purposes of reasonable testing, service, preparation or delivery.

13.5) Section 51 of this Act applies to any court proceedings concerning this Section.



E. Consumer's right to choose.

Standard required according to this Act:

Sections applicable:

1. Responsible grounds for deferential treatment in specific circumstances (**Section 9**)
2. Consumer's right to select suppliers (**Section 13**)
3. Expiry and renewal of fixed-term agreements (**Section 14**)
4. Pre-authorization of repair or maintenance services (**Section 15**)
5. Consumer's right to cooling-off period after direct marketing (**Section 16**) (**ECTA Section 44**)
6. Consumer's right to cancel advance reservation, booking or order (**Section 17**)
7. Consumer's rights to choose or examine goods (**Section 18**)
8. Consumer's rights with respect to delivery of goods or supply of services (**Section 19**) (**ECTA Section 46**)
9. Consumer's right to return goods (**Section 20**)
10. Over-selling and Over-booking (**Section 47**)

E.1) Responsible grounds for deferential treatment in specific circumstances - Section 9

- 1.1) It is not a contravention of Section 8 of this Act for a supplier to –
 - a) refuse to supply or provide access to any particular goods or services to a minor, or to require the consent of a parent, guardian or other responsible adult before supplying or providing access to any particular goods or services to an unemancipated minor–
 - I. in accordance with any public regulation; or
 - II. as a reasonable precaution to protect health, welfare or safety of a minor;
 - b) refuse on reasonable grounds to –
 - I. enter into an agreement with a minor for the supply of any goods or services; or
 - II. continue, or renew, an agreement as stipulated in 1.1, unless the supplier has reason to believe that the minor is emancipated;



- c) reasonably designate any facility or service, permanently, or from time to time, for the exclusive use of –
 - I. minors generally;
 - II. minors who are above or below a specified age, or between specified ages; or
 - III. adults who have attained a specified age of at least sixty (60) years; or
- d) advertise, offer or agree to supply, or supply, any goods or services at a discounted price solely on the basis that the consumer –
 - I. is a minor who has not yet attained a specified age; or
 - II. is an adult who has attained a specified age of at least sixty (60) years.

1.2) It is not a contravention of Section 8 of this Act for a supplier to reasonably –

- a) provide and designate separate but substantially equivalent facilities for the exclusive use of persons of each gender; or
- b) offer to supply or provide access to a facility exclusively to persons of one gender.

1.3) It is **not a contravention of Section 8** of this Act for a supplier to market any goods or services in a manner that **implies or expresses a preference for a particular group of consumers who are distinguishable from the general population** on the basis of a ground of discrimination set out in Section 9 (3) of the Constitution, if the particular goods or services are reasonably intended or designed to satisfy any specific needs or interests that are common to, or uniquely characteristic of, that particular group of consumers.

1.4) Nothing in this section is intended to limit the authority of a court to –

- I. **assess the reasonableness** of any conduct, to the extent contemplated in the subsections, and determine whether any conduct not reasonably justified, constitutes unfair discrimination within the meaning of the Constitution or the Promotion of Equality and Prevention of unfair Discrimination Act; or
- II. **determine whether any conduct** was fair in the circumstances of a particular transaction or the marketing of any particular goods or services, as the case may be.



E.2) Consumer's right to select suppliers – Section 13

- 2.1) A supplier must not require, as a condition of offering to supply or supplying any goods or services, or a condition of entering into an agreement or transaction, that the customer must –
- a) purchase any other particular goods or services from that supplier;
 - b) enter into an additional agreement or transaction with the same supplier or a designated third party; or
 - c) agree to purchase any particular goods or services from a designated third party.
- 2.2) **Take note:** The above may not be applicable if the supplier –
- a) can show that the **convenience** to the consumer in having those goods or services bundled, outweighs the limitation of the consumer's right to choose;
 - b) can show that the bundling of those goods or services results in **economic benefit** for consumers;
 - c) offers bundled goods or services **separately and at individual** prices.

E.3) Expiry and renewal of fixed-term agreements – Section 14

- 3.1) **Take note:** This Section **does not apply** to transactions **between juristic persons** regardless of their annual turnover or asset value.
- 3.2) The consumer may cancel the agreement –
- a) **upon the expiry of its fixed term**, without penalty or charge, but subject to the fact that the consumer remains liable to the supplier for any amount owed to the supplier in terms of that agreement up to the date of cancellation;
 - b) **at any other time**, by giving the supplier **twenty (20) business days'** notice in writing or other recorded manner or form.
- 3.3) The **supplier** may **cancel** the agreement **twenty (20) business** days after giving written notice to the consumer of a **material failure** by the consumer to comply with the agreement, **unless** the consumer has rectified the failure within that time.
- 3.4) Not **more than eighty (80) days**, nor **less than forty (40) business days** before the expiry date of the fixed term of the consumer agreement, the supplier must notify the consumer in writing or any other recordable form, of the impending expiry date, including a notice of –
- a) any material changes that would apply if the agreement is to be renewed or may otherwise continue beyond the expiry date; and
 - b) the options available to the consumer.



- 3.5) On the expiry of the fixed term of the consumer agreement, it will be automatically continued on a **month-to-month basis**, subject to any material changes of which the supplier has given notice, as contemplated previously.
- 3.6) **Take note**, the above **does not apply** if any of the following circumstances exist:
1. the consumer has **expressly cancelled** the contract;
 2. the consumer **directs the supplier to terminate** the agreement on the expiry date;
 3. the consumer **agrees to a renewal** of the agreement for a further fixed term.
- 3.7) Upon **cancellation of a consumer agreement**:
- a) the **consumer remains liable to the supplier for any amounts owed** to the supplier in terms of that agreement up to the date of cancellation; and
 - b) **the supplier may impose a reasonable cancellation penalty** with respect to any goods supplied, services provided, or discounts granted to the consumer in contemplation of the agreement enduring for its intended fixed term, and must credit the consumer with any amount that remains the property of the consumer as of the date of cancellation.
- 3.8) **Take note**, the maximum period of a fixed term consumer agreement is **twenty four (24) months** from date of signature by the consumer –
- a) unless such longer period is **expressly agreed** with by the consumer and the supplier can show a demonstrable **financial benefit to the consumer**;
 - b) unless differently provided for by **regulation** in respect of a specific type of agreement, type of consumer, sector or industry; or
 - c) as provided for in an **industry code**.
- 3.9) **Take note**: a **reasonable credit or charge** imposed on a consumer for cancelling an agreement **may not exceed a reasonable amount**, taking into consideration –
- a) the **amount** which the consumer is still **liable** for to the supplier up to the date of cancellation;
 - b) the **value of the transaction** up to cancellation;
 - c) the **value of the goods** which will **remain in the possession** of the consumer after cancellation;
 - d) the **value of the goods** that are **returned** to the supplier;
 - e) the **duration** of the consumer **agreement** as initially agreed;
 - f) **losses suffered or benefits** accrued by the consumer as a result of the consumer entering into the consumer agreement;



- g) the **nature of the goods** or services that were reserved or booked;
- h) the **length of notice** of cancellation provided by the consumer;
- i) the **reasonable potential** for the service provider, acting diligently, to find an alternative consumer between the time of receiving the cancellation notice and the time of the cancelled reservation; and
- j) the **general practice** of the relevant industry.

3.10) **Take note**, a supplier may not charge a charge which will have the effect of negating the consumer's right to cancel a fixed term agreement.

E.4) Pre-authorization of repair maintenance services – Section 15

4.1) **Note:** This Section applies only to a transaction or consumer agreement –

- a) with a price value of above the threshold for pre-authorization of repair or maintenance services which amounts to **one Rand (R 1-00)** excluding value added tax;
- b) if in terms of that transaction or agreement, a service provider supplies a repair or maintenance service to, or supplies or installs any replacement parts or components in, any property belonging to or in the control of the consumer and –
 - I. the service provider has, or takes, possession of that property for the purpose as stated previously; or
 - II. in any other case, the consumer requests an estimate before any services or goods are supplied.

4.2) A service provider to whom this applies, must not charge a customer for the supply of any goods or services, unless –

- a) the supplier or service provider has given the consumer **an estimate** that satisfies the prescribed requirements, and the consumer has subsequently authorized the work; or
- b) the consumer, **in writing, or by another recorded manner or form**, has declined the offer of an estimate, and authorized work, or pre-authorized any charges up to a specified maximum, and the amount charged does not exceed that maximum.

4.3) A service provider to whom this applies **must not charge** a consumer for preparing an estimate required under the conditions as stated previously, including

- a) any cost of performing any diagnostic work, disassembly or re-assembly required in order to prepare an estimate; or
- b) any damage to or loss of material or parts in the course of preparing an estimate; **unless, before preparing the estimate the service provider has disclosed the price for preparing that estimate, and the consumer has approved it.**



- 4.4) **If a supplier has provided an estimate for any service, or goods and services**, the supplier may not charge the consumer a price for that service, or those goods and services, that exceeds the estimate, unless after providing the estimate –
- a) the service provider has informed the consumer of the additional estimated charges; and
 - b) the consumer has authorized the work to continue.
- 4.5) **Take note: An estimate must specify –**
- a) a **breakdown and the total** of the amount to be charged if the repair or maintenance is effected;
 - b) the **nature and extent** of the repair or maintenance;
 - c) the **period of validity** of the quote; and
 - d) the period within which the consumer must collect the goods and the **consequence** if he/she or it does not do so.



E.5) Consumer's right to cooling-off period after direct marketing – Section 16

- 5.1) This Section **does not apply** to a transaction if **Section 44 of the Electronic Communications and Transactions Act** applies to that transaction.
- 5.2) To the extent that this section applies to a transaction or agreement it is in addition to and not in substitution for any right to rescind a transaction or agreement that may otherwise exist in law between a supplier and a consumer.
- 5.3) A consumer may rescind a transaction resulting from any direct marketing without reason or penalty, by notice to the supplier in writing, or another recorded manner and form, within **five (5) business days** after the later of the date on which –
- a) the transaction or agreement was **concluded**;
 - b) the goods that were the subject of the transaction were **delivered** to the consumer.
- 5.4) A supplier must –
- a) return any payment received from the consumer in terms of the transaction within **fifteen (15) business days** after –
 - I. **receiving notice** of the recession, if no goods had been delivered to the consumer in terms of the transaction; or
 - II. receiving from the consumer **any goods** supplied in terms of the transaction; and
 - b) **not attempt to collect any payment** in terms of a rescinded transaction, except as permitted in terms of Section 20(6) of this Act.

Cooling-off period – Section 44 of the Electronic Communications and Transactions Act

A consumer is entitled to cancel without reason and without penalty any transaction and any related credit agreement for the supply-

- of goods **within seven (7) days** after the date of the receipt of the goods; or
- of services **within seven (7) days** after the date of the conclusion of the agreement.

The only charge that may be levied on the consumer is the direct cost of returning the goods.

The consumer is entitled to receive a **full refund** of monies paid **within thirty (30) days** of the date of cancellation.



This Section must not be construed as prejudicing the rights of a consumer provided or in any other law.

The cooling off period in terms of the Act **does not apply** to an electronic transaction -

- for **financial services**, including but not limited to, investment services, insurance and reinsurance operations, banking services and operations relating to dealings in securities;
- by way of **an auction**;
- for the supply of **foodstuffs**, beverages or other goods intended for everyday consumption supplied to the home, residence or workplace of the consumer;
- for services which began with the **consumer's consent** before the end of the seven (7) day "cooling-off" period;
- where the price for the supply of goods or services is dependent on **fluctuations in the financial markets** and which cannot be controlled by the supplier;
- where the goods-
 - are made to the **consumer's specifications**;
 - are clearly **personalized**;
 - by reason of their nature **cannot be returned**; or
 - are likely to **deteriorate or expire rapidly**;
- where **audio or video recordings** or computer software were unsealed by the consumer;
- for the **sale of newspapers**, periodicals, magazines and books;
- for the provision of **gaming and lottery** services; or
- for the **provision of accommodation**, transport, catering or leisure services and where the supplier undertakes, when the transaction is concluded, to provide these services on a specific date or within a specific period.



E.6) Consumer's right to cancel advance reservation, booking, or order – Section 17

- 6.1) **Take note:** A consumer has the right to cancel any advance booking, reservation or order for any goods or services to be supplied. A supplier who makes a commitment or accepts a reservation to supply goods or services on a later date may:
- require payment of a reasonable deposit in advance; and
 - impose a reasonable charge for cancellation of the order or reservation.
- 6.2) For the purpose of this section, a charge is unreasonable if it exceeds a fair amount in the circumstances, having regard to –
- the **nature of the goods** or services that were reserved or booked;
 - the **length of notice** of cancellation provided by the consumer;
 - the reasonable **potential** for the service provider, acting **diligently**, to find **an alternative** consumer between the time of receiving the cancellation notice and the time of the cancelled reservation; and
 - the **general practice** of the relevant industry.
- 6.3) A supplier may not impose any cancellation fee in respect of a booking, reservation, or order if the consumer is unable to honor the booking reservation or order because of **death or hospitalization of the person for whom**, or for whose benefit the booking, reservation or order was made.

E.7) Consumer's rights to choose or examine goods -Section 18

- 7.1) **Note:** Despite any statement or notice to the contrary, a **consumer is not responsible** for any loss or damage to any goods displayed by a supplier unless the loss or damage results from action by the consumer amounting to **gross negligence or recklessness, malicious behavior, or criminal conduct**.
- If any goods are displayed in or sold from open stock, the consumer has the right to select or reject any particular item from that stock before completing the transaction.
 - If the consumer has agreed to purchase goods solely on the basis of a description or sample, or both, provided by the supplier, the goods delivered to the consumer must in all material respect and characteristics correspond to that which an ordinary alert consumer would have been entitled to expect based on the description or on a reasonable examination of the sample, as the case may be.
 - If a supply of goods is by sample, as well as by description, it is not sufficient that any of the goods correspond with the sample if the goods do not also correspond with the description.



E.8) Consumer's rights with respect to delivery of goods or supply of services -Section 19

8.1) **Note:** Unless otherwise expressly provided or anticipated in an agreement, it is an **implied condition** of every transaction for the supply of goods or services that:

- a) the supplier is responsible to deliver the goods or perform the services –
 - I. on the **agreed date** and at the **agreed time**, if any, or otherwise within a reasonable time after concluding the transaction or agreement;
 - II. at the **agreed place** of delivery or performance;
 - III. at the **cost of the supplier**, in the case of delivery of goods,
- b) the agreed place of delivery of goods or performance of services is the supplier's place of business, if the supplier has one, and if not, the supplier's residence,
- c) goods to be delivered remain at the supplier's risk until the consumer has accepted delivery of them, in accordance with what was stated previously.

8.2) **Note:** If an agreement does not provide a specific date or time for delivery of any goods or performance of any services, the supplier must not require that the consumer accept delivery or performance of the services at an unreasonable time.

8.3) **The consumer is regarded to have accepted delivery of any goods on the earliest of the following circumstances:**

- a) when the consumer **expressly or implicitly communicates** to the supplier that the consumer has accepted delivery of such goods; or
- b) when the **goods have been delivered to the consumer** and the consumer does anything in relation to the goods that would be inconsistent with the supplier's ownership of them, or after a lapse of a reasonable time, the consumer retains the goods without intimating to the supplier that the consumer has rejected delivery of them.

8.4) When a supplier **tenders delivery** to a consumer, of any goods, the supplier must, **on request**, allow the consumer a **reasonable opportunity** to **examine those goods** for the purpose of ascertaining whether the consumer is satisfied that the goods are of a **type** and **quality** reasonably **contemplated** in the **agreement**, and in the case of a **special-order** agreement, **reasonably conform** to the **material specifications** of the special order.



- 8.5) Should the supplier **fail** to supply the goods or services on a date, time or location other than as agreed with the consumer the consumer may do any of the following:
- accept the delivery** or performance at that location, date and time;
 - require the delivery** or performance at the agreed location, date and time, if that date and time have not yet passed;
 - cancel the agreement** without penalty, treating any delivered goods or performed services as unsolicited goods or services.

This Section **does not apply** to a transaction if the performance of that transaction is governed by **Section 46 of the Electronic Communications and Transactions Act**.

Performance – Section 46 of the Electronic Communications and Transactions Act

The supplier must **execute the order within thirty (30) days** after the day on which the supplier received the order, unless the parties have agreed otherwise.

Where a supplier has failed to execute the order within **thirty (30) days** or within the agreed period the consumer may cancel the agreement with **seven (7) days** written notice.

If a supplier is unable to perform in terms of the agreement on the grounds that the goods or services ordered are unavailable the supplier must immediately notify the consumer of this fact and **refund any payments within thirty (30) days** after the date of such notification.

E.9) Consumer's right to return goods -Section 20

- 9.1) **Note:** A consumer **may return** goods to a supplier and **receive a full refund** if the supplier has delivered:
- goods to the consumer in terms of an agreement arising out of **Direct Marketing**,
 - goods that the consumer **did not have an opportunity to examine before delivery** and the consumer has rejected delivery;
 - a **mixture of goods**, and the consumer has refused delivery of any of those goods;
 - goods intended to satisfy a particular purpose**, and within **ten (10) business days** after delivery to the consumer, the goods have been found unsuitable for that particular purpose.



- 9.2) In determining the right of a supplier to impose a charge, if any goods were returned to the supplier, the following aspects must be taken into consideration:
- a) in the original **unopened** packaging, the supplier **may not** charge the consumer any amount;
 - b) in their **original condition** and **repackaged** in their **original packaging**, the supplier **may charge** the consumer a reasonable amount for use of the goods during the **time they were in the consumer's possession**, **unless** they are goods that are ordinarily consumed or depleted by use, and **no** such **consumption** or **depletion** of the goods has occurred.
 - c) in any other case, the supplier **may charge the consumer a reasonable amount** –
 - I. for necessary **restoration costs** to render the goods fit for re-stocking, unless, having regard to the nature of the goods, and the manner in which they were packaged, it was necessary for the consumer to destroy the packaging in order to determine whether the goods **conformed** to the description or sample, of fit for the intended purpose.

E.10) Over-selling and Over-booking - Section 47

10.1) Section 47 **does not** apply to –

- a) a franchise agreement;
- b) a consumer agreement pertaining to the supply of any special order goods.

10.2) A supplier **must not accept payment** or consideration for any goods or services if the supplier –

- a) has **no reasonable basis** to assert an intention to supply those goods or provide those services; or
- b) **intends to supply goods or services** that are materially different from the goods or services in respect of which the payment or consideration was accepted.

10.3) If a supplier makes a commitment or accepts a reservation to supply goods or services on a specified date or at a specified time and, on the date and at the time contemplated in the commitment or reservation, fails because of insufficient stock or capacity to supply those goods or services, or similar or comparable goods or services of the same or better quality, class or nature, the supplier must –

- a) **refund** to the consumer the amount, if any, paid in respect of that commitment or reservation, **together with interest** at the prescribed rate from the date on which the amount was paid until the date of reimbursement; and
- b) in addition, **compensate the consumer for costs directly** incidental to the supplier's breach of the contract, except to the extent that the stipulations of 10.5 provides otherwise.



- 10.4) **It is a defense** to an alleged failure to supply any goods or services, as stipulated in 10.3, if –
- a) the supplier offered to supply or procure **another person** to supply a consumer with comparable goods or services of the relevant kind to satisfy the consumer’s request; and
 - b) the consumer –
 - I. **accepted the offer**, and the supplier has supplied or procured another person to supply the goods or services so offered and accepted; or
 - II. **unreasonably refused that offer**.
- 10.5) The stipulations in 10.3 (b) does not apply if –
- a) the shortage of stock or capacity is due to **circumstances beyond** the supplier’s control, subject to the stipulations in 10.6; and
 - b) the **supplier took reasonable steps** to inform the consumer of the shortage of stock or capacity as soon as it was practicable to do so in the circumstances.
- 10.6) Without limiting the generality of the stipulations in 10.5(a), a shortage of capacity is not “due to circumstances beyond the supplier’s control” if the shortage results partially, completely, directly or indirectly from a failure on the part of the supplier to **adequately and diligently carry out any ordinary or routine** matter pertaining to the supplier’s business.





F. Copy of Supplier's Agreement

In the event that the Business does have supplier agreement(s) in place, please ensure that these agreements make provision for the recovery of damaged and / or faulty products by the supplier in order to meet the requirements as set out by the Consumer Protection Act.

Please note that this will be dealt with in more detail by your legal advisor during the implementation of your audit. Refer to sections 54, 55, 56, 57, 58 and 61.



G. Purpose, policy and application of Act.

Standard required according to this Act:

Sections applicable:

1. Requirements of franchise agreements (**Section 7**)

G.1 Requirements of franchise agreements- Section 7

- 1.1) A franchise agreement must contain provisions which prevent –
 - a) unreasonable or overvaluation of fees, prices or other direct or indirect consideration;
 - b) conduct which is unnecessary or unreasonable in relation to the risks to be incurred by one party; and
 - c) conduct which is not reasonably necessary for the protection of the legitimate business interest of the franchisor, franchisee or franchise system.
- 1.2) A franchise agreement must contain a clause informing a franchisor that he, she or it is not entitled to any undisclosed direct or indirect benefit or compensation from suppliers to its franchisees or the franchise system, unless the fact thereof is disclosed in writing with an explanation of how it will be applied.
- 1.3) Any provision in a franchise agreement to which these regulations apply which is in conflict with these regulations is void to the extent of such a conflict.
- 1.4) A franchise agreement must as a **minimum** contain the following specific information:
 - a) the **name and description** of the types of goods or services which the franchisee is entitled to provide, produce, render or sell;
 - b) the **obligation** of the **franchisor**;
 - c) the **obligation** of the **franchisee**;
 - d) a description of the applicable **franchise business system**;
 - e) the **direct or indirect consideration** payable by the franchisee to the franchisor;
 - f) the **territorial rights**, if any, granted to the franchisee in detail;
 - g) a description of the **site or premises and location** from which the franchisee is to conduct the franchise;



- h) the **conditions** under which the franchisee or his, her or its estate may transfer or **assign the rights** and obligations under the franchise;
- i) a **description of the trade mark** or any other intellectual property owned by the franchisor, or otherwise licensed to the franchisor which is, or will be used in the franchise, and the conditions under which they may so be used;
- j) if the agreement is related to a **master franchise**, the master franchisor's identity;
- k) particulars of the **initial training and assistance** provided by the franchisor and, where the franchisor provides ongoing training for the duration of the franchise agreement, a statement that the particulars of such training and assistance will be provided to the franchisee as and when necessary;
- l) the **duration and the terms** of the renewal of the franchise agreement, provided that such terms and conditions are not inconsistent with the purpose and policy of this Act;
- m) if the franchise agreement provides that the franchisee must directly or indirectly contribute to an advertising, marketing or other similar fund, the franchise agreement must adhere to the stipulations as prescribed in **this Act under Section 7(3)(m)(i-ix)**;
- n) the **effect** of the **termination or expiration** of the franchise;
- o) **extension or renewal terms**, or whether there is no option to renew or extend the agreement;
- p) a **written explanation** of any terms or section not fully understood by the prospective franchisee upon the prospective franchisee's written request;
- q) The **franchisor's legal name**, trading name, registered office and franchise business office, street address, postal address, e-mail address, telephone and fax number;
- r) The name, identity number, town of residence, job titles and qualifications of the **franchisor's directors or equivalent officers**;
- s) Except where the franchisor is a company listed on the stock exchange, details of **any proprietor**, member or shareholder if they are different from the persons referred to previously;
- t) Particulars of any **restrictions imposed** on the franchisee;
- u) The **nature and extent of the franchisor's involvement** in the process of site selection;
- v) The **terms and conditions relating to termination**, renewal, goodwill and assignment of the franchise;
- w) The **main obligations of the franchisor** in respect of initial and ongoing training to be provided;
- x) Confirmation that any **deposits paid** by the prospective franchisee will be deposited into a separate bank account and a description of how these deposits will be dealt with;
- y) **Full particulars** of the **financial obligations** of the franchisee in terms of the franchise agreement or otherwise related to the franchised business;





- 1.5) A franchise agreement must **be in writing** and signed by or on behalf of the franchisee;
- 1.6) Comply with the requirements of **Section 22 of this Act**.
- 1.7) A franchisee may cancel a franchise agreement without cost or penalty **within ten (10) business days** after signing such agreement, by giving written notice to the franchisor.



H. Supplier's accountability to consumer's.

Standard required according to this Act:

Sections applicable:

1. Lay by's (**Section 62**)
2. Supplier to hold and account for consumer's property (**Section 65**)
3. Deposits in respect of containers, pallets or similar objects (**Section 66**)
4. Return of parts and materials (**Section 67**)

H.1) Lay by's- Section 62

- 1.1) If a supplier agrees to sell particular goods to a consumer, to accept payment for those goods in periodic installments, and to hold those goods until the consumer has paid the full price for the goods-
 - a) each amount paid by the consumer to the supplier remains the property of the consumer, and is subject to the fact that the supplier hold and account for the consumer's property, until the goods have been delivered to the consumer;
 - b) the particular goods remain at the risk of the supplier until the goods have been delivered to the consumer.
- 1.2) **If the supplier is unable** to deliver any goods as contemplated previously when the consumer has paid the full price for those goods, the supplier must either at the option of the consumer-
 - a) supply the consumer with an equivalent quantity of goods that are comparable or superior in description, design and quality; or
 - b) refund to the consumer-
 - I. the money paid by the consumer, with interest in accordance with the Prescribed Rate of Interest Act, 1975 (Act No 55 of 1975), if the inability to supply the goods is due to circumstances beyond the supplier's control; or
 - II. double the amount paid by the consumer, as compensation for breach of contract in any circumstances not mentioned in (I.).



- 1.3) **If the consumer terminates** the agreement before fully paying for the goods, or fails to complete the payment for goods within **sixty (60) business days** after the anticipated date of completion, the supplier-
- a) may charge a termination penalty but **may not exceed one percent of the full purchase price of the goods**;
 - b) after deducting any such termination penalty, the supplier must **refund** the consumer any amount paid by the consumer under this agreement; and
 - c) on cancellation, the supplier must **upon request by a consumer** immediately provide the consumer with written details on how the penalty was calculated, unless the consumer waives this right in writing.
- 1.4) **Note, a cancellation penalty** may not be charged-
- a) If the consumer's failure to complete payment was due to death or hospitalization of the consumer; or
 - b) In any other case, unless the supplier informed the consumer of the fact and extent of the penalty before the consumer entered into the lay by agreement.

H.2) Supplier to hold and account for consumer's property - Section 65

- 2.1) The stipulations of (2) does not apply to a supplier that is –
- a) a bank, as defined in the Banks Act, 1990 (Act No. 94 of 1990);
 - b) a mutual bank, as defined in the Mutual Banks Act, 1993 (Act No. 124 of 1993); or
 - c) any other financial institution that is similarly licensed and authorized to conduct business and take deposits from the public in terms of any national legislation.
- 2.2) When a supplier has possession of any prepayment, deposit, membership fee, or other money, or any other property belonging to or ordinarily under the control of a consumer, the supplier –
- a) must not treat that property as being the property of the supplier;
 - b) in the handling, safeguarding and utilization of that property, must exercise the degree of care, diligence and skill that can reasonably be expected of a person responsible for managing any property belonging to another person; and
 - c) is liable to the owner of the property for any loss resulting from a failure to comply with paragraph (a) or (b).



- 2.3) A person who assumes control of a supplier's property as administrator, executor or liquidator of an estate –
- a) has a duty to the consumer –
 - (i) to diligently investigate the circumstances of the supplier's business to ascertain the existence of any money or other property belonging to the consumer and in the possession of the supplier; and
 - (ii) to ensure that any such money or property is dealt with for consumer's benefit in accordance with this section; and
 - b) is liable to the consumer for any loss, unless that person has acted –
 - I. in good faith; and without knowledge of the existence of the consumer's interest.

H.3) Deposits in respect of containers, pallets or similar objects - Section 66

- 3.1) The Minister may, in consultation with the Minister of Environmental Affairs and Tourism, prescribe a minimum or maximum deposit that a supplier must or may require a consumer to pay in respect of the return of a bottle, container, pallet, reel, or similar object used in respect of the packaging or delivery of any goods.
- 3.2) If a person returns a bottle, container, pallet, reel or similar object as stipulated in 3.1 to any supplier of goods ordinarily sold in that bottle or container or on that pallet or in or on that reel or similar object, the supplier must pay that person the amount of the deposit –
- a) if any , that is required to be charged in terms of any public regulation on the date on which the object is returned to the supplier; or
 - b) that the supplier charged for that object, or ordinarily charges for such an object, irrespective of whether the person returning the container paid a deposit for that object to that supplier.



H.4) Return of parts and materials – Section 67

- 4.1) When a supplier is **authorized to perform** any service to any goods or property belonging to or ordinarily under the control of the consumer, the supplier must –
- a) **retain any parts or components removed** from any goods or property in the course of any repair or maintenance work;
 - b) **keep those parts or components separate** from parts removed from other goods or property; and
 - c) **return those parts or components** to the consumer in a reasonably clean container, unless the consumer declined the return of any such parts or materials.
- 4.2) Section 67 does not apply to any substance, parts or components that are required –
- a) in terms of any warranty under which the work was carried out, to be returned to, or disposed of at the direction of, the producer or distributor;
 - b) in terms of any insurance claim under which the work was carried out, to be returned to, or disposed of at the direction of, the insurer; or
 - c) in terms of any public regulation, to be recovered or disposed of in a safe manner in the interests of environmental safety or public health and safety.





The following provisions in terms of the Electronic Communications and Transaction Act will apply to ICR Auto Pty Ltd (Business Name):

1) **Legal Recognition of data messages – Section 11**

- 1.1) Information is not without legal force and effect merely on the grounds that it is wholly or partly in the form of a **data message**.
- 1.2) Information is not without legal force and effect merely on the grounds that it is not contained in the data message purporting to give rise to such legal force and effect, but is merely referred to in such data message.
- 1.3) Information incorporated into an agreement and that is not in the public domain, is regarded as having been incorporated into a data message if such information is:
 - a) **referred** to in a way in which a reasonable person would have **noticed** the reference there to and incorporation thereof, and
 - b) **accessible** in a form in which it may be read, stored and retrieved by the other party, whether electronically or as a computer printout as long as such information is reasonably capable of being reduced to electronic form by the party incorporating it.

2) **Writing – Section 12**

- 2.1) A requirement in law that a document or information must be in writing is met if the document or information is:
 - a) in the **form of a data message**, and
 - b) accessible in a manner usable for **subsequent reference**.

3) **Signature – Section 13**

- 3.1) Where the signature of a person is required by law and such law does not specify the type of signature, that requirement in relation to a data message is met only if an **advanced electronic signature** is used.
- 3.2) Subject to the aforesaid, an electronic signature is not without legal force and effect merely on the grounds that it is in electronic form.



- 3.3) Where an electronic signature is required by the parties to an electronic transaction and the parties have not agreed on the type of electronic signature to be used, that requirement is met in relation to a data message if:
- a) a method is used to **identify** the person and to indicate the person's **approval** of the information communicated, and
 - b) having regard to all the relevant circumstances at the time the method was used, the method was as **reliable** as was appropriate for the purposes for which the information was communicated.
- 3.4) Where an advanced electronic signature has been used, such signature is regarded as being a **valid electronic signature** and to have been applied properly, unless the contrary is proved.
- 3.5) Where an electronic signature is not required by the parties to an electronic transaction, an expression of intent or other statement is not without legal force and effect merely on the grounds that:
- a) it is in the **form of a data message**, or
 - b) it is not evidenced by an electronic signature but is **evidenced** by other means from which such person's intent or other statement can be inferred.
- 4) **Original – Section 14**
- 4.1) Where a law requires information to be presented or retained in its original form, that requirement is met by a data message if:
- a) the **integrity** of the information from the time when it was first generated in its final form as a data message, and
 - b) that information is capable of being **displayed** or **produced** to the person to whom it is to be presented.
- 4.2) For the purposes of 4.1 (a), the integrity must be assessed:
- a) by considering whether the information has remained complete and unaltered, except for the addition of any endorsement and any change which arises in the normal course of communication, storage and display,
 - b) in the light of the purpose for which the information was generated, and
 - c) having regard to all other relevant circumstances.



5) Admissibility and evidential weight of data messages – Section 15

- 5.1) In any legal proceedings, the rules of evidence must not be applied so as to deny the admissibility of a data message, in evidence:
- a) on the mere grounds that it is constituted by a data message, or
 - b) if it is the best evidence that the person adducing it could reasonably be expected to obtain, on the grounds that it is not in its original form.
- 5.2) Information in the form of a data message must be given **due evidential weight**.
- 5.3) In assessing the evidential weight of a data message, regard must be had to:
- a) the **reliability** of the manner in which the data message was generated, stored or communicated,
 - b) the reliability of the matter in which the **integrity** of the data message was maintained,
 - c) the manner in which its originator was **identified**, and
 - d) any other **relevant factor**.
- 5.4) A data message made by a person in the **ordinary course of business**, or a copy or printout of or an extract from such data message **certified** to be correct by an officer in the service of such person, is on its mere production in any civil, criminal, administrative or disciplinary proceedings under any law, the rules of a self-regulatory organisation or any other law or the common law, **admissible** in evidence against any person and rebuttable proof of the facts contained in such record, copy, printout or extract.

6) Retention – Section 16

- 6.1) Where a law requires information to be retained, that requirement is met by retaining such information in the form of a data message, if:
- a) the information contained in the data message is **accessible** so as to be usable for subsequent reference,
 - b) the data message is in the format in which it was generated, sent or received, or in a format which can be **demonstrated** to represent accurately the information generated, sent or received, and
 - c) the **origin** and **destination** of that data message and the date and time it was sent or received can be determined.



7) Production of document or information – Section 17

- 7.1) Where a law requires a person to produce a document or information, that requirement is met if the person produces, by means of a data message, an electronic form of that document or information, and if:
- a) considering all the relevant **circumstances** at the time that the data message was sent, the **method** of generating the electronic form of that document provided a reliable means of assuring the maintenance of the **integrity** of the information contained in that document, and
 - b) at the time the data message was sent, it was reasonable to expect that the information contained therein would be **readily accessible** so as to be usable for subsequent reference.
- 7.2) The integrity of the information contained in a document is maintained if the information has remained complete and unaltered, except for:
- a) the addition of any **endorsement**: or
 - b) any **immaterial change**, which arises in the normal course of communication, storage or display.

8) Notarization, acknowledgement and certification – Section 18

- 8.1) Where a law requires a signature, statement or document to be notarized, acknowledged, verified or made under oath, that requirement is met if the **advanced electronic signature** of the person authorized to perform those acts is attached to, incorporated in or logically associated with the electronic signature or data message.
- 8.2) Where a law requires or permits a person to provide a certified copy of a document and the document exists in electronic form, that requirement is met if the person provides a **print-out** certified to be a true reproduction of the document or information.
- 8.3) Where a law requires or permits a person to provide a certified copy of a document and the document exists in paper or other physical form, that requirement is met if an **electronic copy** of the document is **certified** to be a true copy thereof and the certification is confirmed by the use of an **advanced electronic signature**.



9) Other Requirements – Section 19

- 9.1) A requirement in a law for multiple copies of a document to be submitted to a single addressee at the same time is satisfied by the submission of a single data message that is capable of being reproduced by that addressee.
- 9.2) An expression in a law, whether used as a noun or verb, including the terms “**document**”, “**record**”, “**file**”, “**submit**”, “**lodge**”, “**deliver**”, “**issue**”, “**publish**”, “**write in**”, “**print**” or words or expressions of similar effect, must be interpreted so as to include or permit such form, format or action in relation to a data message unless otherwise provided for in the Act.
- 9.3) Where a seal is required by law to be affixed to a document and such law does not prescribe the method or form by which such document may be sealed by electronic means, that requirement is met if the document indicates that it is required to be under seal and it includes the **advanced electronic signature** of the person by whom it is required to be sealed.
- 9.4) Where any law requires or permits a person to send a document or information by **registered or certified post** or similar service, that requirement is met if an electronic copy of the document or information is sent to the South African Post Office Limited, is registered by the said Post Office and sent by that Post Office to the electronic address provided by the sender.

10) Automated transactions – Section 20

- 10.1) In an automated transaction:
- a) an agreement may be formed where an **electronic agent** performs an action required by law for agreement formation;
 - b) an agreement may be formed where all parties to a transaction or either one of them uses an **electronic agent**;
 - c) a party using an electronic agent to form an agreement is, subject to paragraph (d), presumed to be bound by the terms of that agreement irrespective of whether that person reviewed the actions of the electronic agent or the terms of the agreement;
 - d) a party interacting with an electronic agent to form an agreement is not bound by the terms of the agreement unless those terms were capable of being reviewed by a **natural person** representing that party prior to agreement formation;
 - e) no agreement is formed where a natural person interacts directly with the electronic agent of another person and has made a material error during the creation of a data message and-
 - I. the electronic agent did not provide that person with an opportunity to **prevent** or **correct** the error;
 - II. that person **notifies** the other person of the error as soon as practicable after that person has learned of it;



- III. that person takes **reasonable steps**, including steps that conform to the other person's instructions to **return** any performance received, or, if instructed to do so, to destroy that performance; and
- IV. that person has not used or received any material benefit or value from any performance received from the other person.

11) **Non-exclusion – Section 48**

11.1) Any provisions in an agreement which exclude consumers' rights as stipulated in Section 42 – 47 of the Act, are null and void.

12) **Complaints to Consumer Affairs Committee – Section 49**

12.1) A consumer may lodge a complaint with the National Consumer Commission in respect of any non-compliance by a supplier in terms of the Act.

13) **Accreditation of authentication products and services – Section 37**

13.1) The Accreditation Authority may **accredit** authentication products and services in support of advanced electronic signatures.

13.2) A person falsely holding out its products or services to be accredited by the Accreditation Authority is guilty of an **offence**.

14) **Accreditation of foreign products and services – Section 40**

14.1) The Minister may recognize the accreditation or similar recognition granted to any authentication service provider or its authentication products or services in any foreign jurisdiction.

14.2) An authentication service provider falsely holding out its products or services to have been recognized by the Minister is guilty of an **offence**.

15) **Non-compliance with Chapter – Section 58(2)**

15.1) A critical database administrator that fails to take the **remedial action** within the period stated in the notice is guilty of an offence.



16) Appointment of cyber inspectors – Section 80(5)

16.1) A person who –

- a) **hinders** or **obstructs** a cyber inspector in the performance of his or her functions; or
 - b) **falsely** hold himself / herself out as a cyber inspector,
- is guilty of an **offence**.

17) Power to inspect, search and seize – Section 82(2)

17.1) A person who **refuses** to co-operate or hinders a person conducting a lawful search and seizure in terms of this section is guilty of an offence.

18) Unauthorized access to, interception of or interference with data – Section 86

18.1) A person who **intentionally** accesses or intercepts any data without authority or permission to do so, is guilty of an offence.

18.2) A person who intentionally and **without authority** to do so, interferes with data in a way which causes such data to be modified, destroyed or otherwise rendered ineffective, is guilty of an offence.

18.3) A person who **unlawfully** produces, sells, offers to sell, procures for use, designs, adapts for use, distributes or possesses any device, including a computer program or a component, which is designed primarily to overcome security measures for the protection of data, or performs any of those acts with regard to a password, access code or any other similar kind of data with the intent to unlawfully utilize such item to contravene this section, is guilty of an **offence**.

18.4) A person who **utilizes** any device or computer program as stipulated in (3) above, in order to unlawfully overcome security measures designed to protect such data or access thereto, is guilty of an offence.

18.5) A person who **commits** any act described in this section with the intent to interfere with access to an information system so as to constitute a denial, including a partial denial, of service to legitimate users is guilty of an **offence**.

19) Penalties – Section 89

19.1) A person convicted of an offence referred to in Sections 37(3), 40(2), 45, 58(2), 80(5), 82(2) or 86(1), (2) or (3) is **liable to a fine or imprisonment for a period not exceeding 12 months**.

19.2) A person convicted of an offence referred to in Section 86(4) or (5) or Section 87 is **liable to a fine or imprisonment for a period not exceeding five years**.



Areas of concern pertaining to

ICR Auto Pty Ltd

Documentation received to be audited from: **No documentation was received to be audited.**

Please note: The advice in the areas of concern below is based on relevant documentation received to be audited. The business may be at risk if your applicable documentation does not comply to the CPA & ECTA or POPI Act.

Further to the above, please take note of the following areas of concern with regard to documentation standard to most businesses:

A.1) Letterhead

- 1.1 Refer to Section 79. Please ensure that the full registered name of the business, the physical address from where you are conducting your business, as well as the member/director details appear on your letterhead.

A.2) Company Profile

- 2.1 Refer to Section 79. Please include the full registered name, and the physical address from where the business is delivering its services as well as the member/director details on the company profile.
- 2.2 Refer to Section 29 - Please note that a service provider must not market any goods or services in a manner that is reasonably likely to imply a false or misleading representation concerning those goods or services.
- 2.3 Ensure that you abide by the statements you declare in your company profile.
- 2.4 Please ensure that you have the consent of your references in terms of the Protection of Personal Information Act to include their details in your company profile.

A.3) Tax Invoice

- 3.1 Please refer to Section 26 and ensure that all required information appears on the Tax Invoice.

A.4) Quotation

The client is advised to consider including the following clauses on its quotation:





- 4.1.1 The Quotation, **including these Terms and Conditions are only accepted by signature at the end indicating that the said Terms and Conditions have been read and understood and the Quotation is acceptable.**
- 4.1.2 To be valid claims, same must be supported by the original Invoice.
- 4.1.3 This is a quotation, and not a Supplier's Agreement.
- 4.1.4 This quotation is subject to our Standard Terms and Conditions which is available on request at _____.
- 4.1.5 This quotation is valid for ____ days.

- 4.1.6 Acceptance of our quotation must be done in writing.

Acceptance of Quotation Terms & Conditions:

Customer's Name: _____
Signature: _____
Date: _____
Time: _____

