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## GENERAL NOTICE

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### NOTICE 113 OF 2013

## NATIONAL CONSUMER COMMISSION SOUTH AFRICAN AUTOMOTIVE INDUSTRY CODE

I, Ebrahim Mohamed, Acting Commissioner of the National Consumer Commission (NCC), in terms of section 82(3) of the Consumer Protection Act 68 of 2008 (Act), hereby publish, for public comment, the proposed South African Motor Industry code, which also provide for a scheme of alternate dispute resolution.

The proposed industry code and alternative dispute resolution scheme are intended to regulate the interaction and to provide for alternative dispute resolution between persons conducting business within the automotive industry in South Africa and consumers. The NCC may make any revision to this proposed industry code and alternative dispute resolution scheme. The code may then be recommended by the NCC to the Minister of Trade and Industry for promulgation thereof and for the alternative dispute resolution scheme to be accredited as "*an accredited industry ombud*".

Interested persons are accordingly invited to submit written comments on the proposed code and scheme, quoting the following reference number (**NCC/GN/0005**) to the Acting Commissioner, National Consumer Commission, within 21 days after publication of this notice, for the attention of:

Mr. Jeremiah Modiba,  
8 Bauhinia Street  
Building No. 12,  
Berkley Office Park,  
Techno Park, Centurion  
0157  
or email: [j.modiba@thencc.org.za](mailto:j.modiba@thencc.org.za).



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Mr. E Mohamed  
Acting Commissioner: National Consumer Commission

# **SOUTH AFRICAN AUTOMOTIVE INDUSTRY CODE OF CONDUCT**

**Vision:**

The Automotive Industry of South Africa will at all times endeavour to comply with the contents and spirit of this Code of Conduct when supplying goods and services to consumers.

**Mission:**

The Automotive Industry of South Africa will achieve its vision in three ways, by:

1. **Subscribing to this Code of Conduct;**
2. **Providing goods and services that are safe and at prices that are fair and reasonable;**
3. **Publicly acknowledging the consumer's rights to be heard, to be informed, to have the right to safety, the right to choose, and the right to redress with regard to the South African Automotive Industry.**

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## PART A

### 1. INTRODUCTION:

This Code, voluntarily established by the Automotive Industry of South Africa, shall regulate the interaction between the Automotive Industry and its consumers in relation to the matters dealt with in the Code, as well as provide for alternative dispute resolution between the consumer and all participants in this industry through a scheme for alternative dispute resolution by an Industry Ombud.

In introducing the Code, the following Purposes, Objectives and Information should be noted:

- 1.1. The Code is an industry code for the entire Automotive Industry as defined in this code of conduct.
- 1.2. The Code relates to the conduct for the supply of goods and services by the Automotive Industry and consumers within the Republic of South Africa and focuses on consumer protection, supplier guidance and fair business practices.
- 1.3. The Code has been developed by the various associations within the Automotive Industry, a list of which can be found in Schedule 1.
- 1.4. The Code applies to all entities operating within the Automotive Industry, regardless of whether or not such are formal suppliers of the associations as referred to in 1.3 above and aims to raise the standards of general industry conduct where necessary while still allowing for business to grow.
- 1.5. The Automotive Industry for the purposes of this Code includes manufacturers, producers, wholesalers, distributors, dealers, retailers, suppliers, importers, service centres, workshops and their agents, parts, services, body builders, body repairers, automotive component manufacturers and remanufacturers, testing and tyre businesses.
- 1.6. The Code shall be reviewed from time to time by the Motor Industry Advisory Board.
- 1.7. The Code is adjudicated by the Motor Industry Ombudsman of South Africa (MIOSA) and its interpretation is vested in the MIOSA.
- 1.8. The Automotive Industry will use its best endeavours to ensure that consumers are made aware of the Code and its contents.
- 1.9. The Code provides for an Alternative Dispute Resolution process, within the Automotive Industry, and between:
  - 1.9.1. consumers and suppliers; and
  - 1.9.2. suppliers themselves, which will, amongst other things, include instances in which:
    - 1.9.2.1. a supplier falls within the definition of consumer as envisaged in the Act; and
    - 1.9.2.2. a supplier falls under the threshold as determined by the Regulations to the Act; and
    - 1.9.2.3. supplier and manufacturer;
    - 1.9.2.4. consumer and manufacturer.

- 1.10. The Code recognises the principles of the Act and the objectives of Section 3 in particular. It does not replace any other legislation that may also protect consumers from unsafe, unfair, discriminatory or dishonest or fraudulent practices, as may be in force from time to time and must be interpreted to complement such legislation.
- 1.11. An important aspect of the Code is the dispute resolution process. A summary of the General Complaint Procedure is accordingly included in the introduction:
- 1.11.1. Pursue your complaint as soon as possible;
  - 1.11.2. Identify the specific problem and confirm it with evidence such as contracts or receipts. (Keep all originals, post only copies);
  - 1.11.3. Find out the identity of the person to whom the complaint should be addressed and make an appointment to discuss the complaint with the designated person. Try to resolve it directly with the person responsible for the transaction;
  - 1.11.4. Communicate how you would like your complaint to be resolved (refund, repair, etc.);
  - 1.11.5. If this is not successful, go up the lines of authority, as far as necessary;
  - 1.11.6. Document your steps. Write down the details of your complaint. Note to whom you spoke and the dates on which you spoke to them;
  - 1.11.7. Keep emotions in check. Be firm without being rude. Be reasonable, but persistent;
  - 1.11.8. Wait a reasonable length of time for a settlement of your dispute;
  - 1.11.9. Make a genuine attempt to settle the dispute yourself;
  - 1.11.10. If you are still not happy with the way your complaint is being dealt with, contact the office of the MIOSA for further assistance.

Although certain sections of the Act have been left out of the Code, the Act shall apply to this Code as applicable to the Automotive Industry. The Motor Industry Advisory Board shall meet from time to time to assist and advise industry in respect of amendments that may become apparent or necessary in overseeing and administering this Code, and to achieve the objectives of the Act, and this Code.

## 2. DEFINITIONS

**The definitions in the Act will apply to the Code.**

**In this Code:**

- 2.1. **“ADR”** means Alternative Dispute Resolution;
- 2.2. **“the Act”** means The Consumer Protection Act 68 of 2008 and the Regulations thereto, as amended from time to time;
- 2.3. **“Automotive Industry”** means importers, distributors, manufacturers, retailers, franchisors, franchisees; suppliers, and intermediaries who import, distribute, produce, retail or supply passenger, recreational, agricultural, industrial, or commercial vehicles, including but not limited to passenger vehicles, trucks, motor cycles, quad cycles or boats, whether self-propelled or not, or import, distribute, manufacture, retail or supply any completed components and/or accessories to such vehicles, and/or renders a related repair or replacement service to consumers in respect of such vehicles; and trailers, and

“anyone who modifies, converts or adapts vehicles.

- 2.4. **“the Code”** means this Code of Conduct as amended from time to time;
- 2.5. **“days”** means business days which is any day other than a Saturday, Sunday or public holiday as gazetted by the government of the Republic of South Africa from time to time;
- 2.6. **“dealer”** means a retailer who supplies goods or services to the end-consumer;
- 2.7. **“distributor”** in relation to any particular goods, means a person who, in the ordinary course of business—
- 2.7.1. is supplied with those goods by a manufacturer; and
- 2.7.2. in turn, supplies those goods to either another distributor or to a retailer;
- 2.8. **“parallel goods”** means any goods marketed and/or distributed that bear a trademark but have been imported without the express approval or license of the authorized South African distributor;
- 2.9. **“importer”** means, with respect to any particular goods, a person who brings those goods, or causes them to be brought, from outside the Republic into the Republic, with the intention of making them available for supply in the ordinary course of business;
- 2.10. **“manufacturer”** includes a producer or importer and it means a person who: –
- 2.10.1. manufactures or produces goods, or causes any goods to be manufactured or produced, with the intention of making them available for supply in the ordinary course of business; or
- 2.10.2. by applying a personal or business name, trademark, 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 clause 2.10.1;
- 2.11. **“MIAB”** means the Motor Industry Advisory Board established in terms of the Code;
- 2.12. **“MIOSA”** means Motor Industry Ombudsman of South Africa, established to assist in resolving disputes that arise in terms of the Act regarding any goods or services provided by the Automotive Industry to such consumers, including suppliers who are in turn also consumers within the industry supply chain;
- 2.13. **“motor vehicle”** means any vehicle designed or adapted for propulsion or haulage on a road by means of fuel, gas or electricity or any other means, including a motorcycle, trailer, caravan, an agricultural or any other implement designed or adapted to be drawn by such motor vehicle;
- 2.14. **“NCC”** means the National Consumer Commission;
- 2.15. **“NCT”** means National Consumer Tribunal;
- 2.16. **“normal office hours”** means from 09H00 to 16H00 on business days;
- 2.17. **“OEM”** means the original equipment manufacturer, and for the purposes of this Code includes the distributor, importer or manufacturer, as the case may be;
- 2.18. **“OTP”** means offer to purchase;
- 2.19. **“offer to purchase” or (OTP):** means a written offer to purchase that contains the terms and conditions of sale and shall be binding once signed by both parties;

- 2.20. **“repairer”** includes any person or entity that performs a repair, service and/or supplies spares and/or components;
- 2.21. **“retailer”** includes a dealer and means any entity which supplies goods or services to the consumer in the ordinary course of business and includes a trader;
- 2.22. **“supplier”** means a person who markets goods or services and for the purposes of this Code includes a retailer and OEM;
- 2.23. **“trade associations”** means associations that act as a collective to represent, assist, educate and advise their members in matters of common interest;
- 2.24. **“used vehicle”** means a motor vehicle that has been previously licensed or registered and includes demonstration (demo) vehicles but excludes a vehicle or the components thereof disposed of as scrap or utilised for parts and not saleable as an operating vehicle.

### 3. REQUIRED PERFORMANCE STANDARDS

- 3.1 Individuals and businesses operating within the Automotive Industry are required to follow the aims the Act, and particularly to:
- 3.1.1 promote fair business practices;
- 3.1.2 in their dealings with consumers protect consumers from:-
- 3.1.2.1 unconscionable conduct;
- 3.1.2.2 unfair, unreasonable, unjust contracts and contractual terms;
- 3.1.2.3 unfair, unreasonable, unjust or otherwise improper trade practices; and
- 3.1.2.4 deceptive, misleading, unfair or fraudulent conduct.

### 4. OBLIGATIONS BY SUPPLIERS REGARDING COMPLAINTS

- 4.1 Suppliers should:
- 4.1.1 establish internal complaints handling processes including the following:
- 4.1.1.1 an internal complaints handling department, if any, of the supplier; and/or
- 4.1.1.2 a suitable complaints resolution procedure, including details relating to the process to be followed by the consumer in order for such complaint to be lodged internally; and
- 4.1.1.3 the process to be followed by the consumer in order for such complaint to be lodged with the MIOSA;
- 4.1.2 display in or at all trading premises a notice that:
- 4.1.2.1 reflects that there is a Code which binds suppliers; and
- 4.1.2.2 when requested by consumers, and at no cost, provide the consumers with the contact details of:
- 4.1.2.2.1 the particular internal complaints handling department, if any, of the supplier; and
- 4.1.2.2.2 the MIOSA, including details relating to the process to be followed by the consumer in order for such complaint to be lodged;
- 4.1.3 train, or if not possible inform all relevant staff members in respect of:
- 4.1.3.1 the Act and Regulations, as issued and/or amended from time to time; and
- 4.1.3.2 the Code, as amended from time to time; and
- 4.1.3.3 general principles and procedures on effective handling of complaints;



- 4.1.4 attempt to resolve complaints and disputes in accordance with:
  - 4.1.4.1 the spirit and provisions of this Code, the Act and Regulations; and
  - 4.1.4.2 the spirit and provisions of dispute procedures;
- 4.1.5 make every reasonable effort to resolve complaints within 30 (thirty) days and if unable to do so, for reasons such as on-going technical testing or the like, then to inform the consumer thereof.

## 5. NON-COMPLIANCE WITH THE CODE

- 5.1 Where there is any non-compliance with the Code by consumers and suppliers within the Automotive Industry and such non-compliance is brought to the attention of the MIOSA, the matter will be investigated and dealt with in accordance with the MIOSA procedures.
- 5.2 The MIOSA may, in addition to any step taken in terms of its procedures, refer such non-compliance to the NCC or the NCT as may be appropriate.

## PART B: FUNDAMENTAL CONSUMER RIGHTS

This part of the Code deals with specific sections of the Act that have a direct impact on the Automotive Industry and must be strictly adhered to at all times.

### 6 SECTION OF ACT: 11 RIGHT TO RESTRICT UNWANTED DIRECT MARKETING

- 11(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.
- (2) To facilitate the realisation of each consumer's right to privacy, and to enable consumers to efficiently protect themselves against the activities contemplated in subsection (1), 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.

#### Regulation 4: Mechanisms To Block Direct Marketing Communication

- 4(1) For the purposes of section 11(1) and 11(2) of the Act, if a consumer has—
- (a) Informed the direct marketer; or
  - (b) placed any communication or sign on a postal box, post office box or other container for mail, indicating that he or she does not wish to receive any material related to direct marketing, then the direct marketer—
    - (i) may not place or attach any material primarily aimed at direct marketing, in whichever physical format, in or on or near the postal box, post office box, container, or in, on or near the fence, gate or any other part of the premises of the consumer; and
    - (ii) must provide the consumer with written communication of the receipt by the direct marketer of the notice referred to in paragraph (a) above.

**Application for the purposes of section 11 read together with regulation 4**

- 6.1 A direct marketer will not be required to confirm whether a pre-emptive block has been placed by a consumer on the Direct Marketing Registry in terms of Regulation 4(3)(g) where the direct marketer has the express consent of an existing consumer for the receipt of marketing material from the direct marketer.

**7 SECTION OF ACT: 13 CONSUMER'S RIGHT TO SELECT SUPPLIERS**

- 13(1) A supplier must not require, as a condition of offering to supply or supplying any goods or services, or as a condition of entering into an agreement or transaction, that the consumer 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, unless the supplier—
    - (i) can show that the convenience to the consumer in having those goods or services bundled outweighs the limitation of the consumer's right to choice;
    - (ii) can show that the bundling of those goods or services results in economic benefit for consumers; or
    - (iii) offers bundled goods or services separately and at individual prices.

**Application for purposes of section 13**

For the purposes of this section, because of the economic benefits and convenience provided to the consumer, it will not be a breach of section 13 of the Act if a supplier:

- 7.1 Includes, in order to maintain a safety standard, the longevity of the vehicle and an assurance that the consumer is able to fully comply with the OEM's specifications, at no additional charge to the consumer, a warranty, maintenance plan or service plan as a standard specification of a vehicle when selling that vehicle to a consumer; and
- 7.2 includes the terms and conditions of such warranty, maintenance plan or service plan in the sale documentation; and
- 7.3 requires that all repairs or maintenance carried out in terms of the warranty, maintenance plan or service plan be conducted at an authorised dealer or repairer that has the necessary manufacturer:
- 7.3.1 accreditation;
  - 7.3.2 training;
  - 7.3.3 skills; and
  - 7.3.4 equipment,
- to repair and/or maintain the vehicle.

**8. SECTION OF ACT: 14 EXPIRY AND RENEWAL OF FIXED TERMS AGREEMENTS**

- 14(1) This section does not apply to transactions between juristic persons regardless of their annual turnover or asset value.
- 14(2) If a consumer agreement is for a fixed term—
- (a) that term must not exceed the maximum period, if any, prescribed in terms of subsection

- (4) with respect to that category of consumer agreement;
- (b) despite any provision of the consumer agreement to the contrary—
- (i) the consumer may cancel that agreement—
    - (aa) upon the expiry of its fixed term, without penalty or charge, but subject to subsection (3)(a); or
    - (bb) at any other time, by giving the supplier 20 business days' notice in writing or other recorded manner and form, subject to subsection (3)(a) and (b); or
  - (ii) the supplier may cancel the agreement 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;
- (c) of not more than 80, nor less than 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—
- (i) any material changes that would apply if the agreement is to be renewed or may otherwise continue beyond the expiry date; and
  - (ii) the options available to the consumer in terms of paragraph (d); and
- (d) 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 in paragraph (c), unless the consumer expressly—
- (i) directs the supplier to terminate the agreement on the expiry date; or
  - (ii) agrees to a renewal of the agreement for a further fixed term.
- 14(3) Upon cancellation of a consumer agreement as contemplated in subsection (1)(b)—
- (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—
    - (i) 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, if any; and
    - (ii) must credit the consumer with any amount that remains the property of the consumer as of the date of cancellation, as prescribed in terms of subsection (4).
- 14(4) The Minister may, by notice in the *Gazette*, prescribe—
- (a) the maximum duration for fixed-term consumer agreements, generally, or for specified categories of such agreements;
  - (b) the manner and form of providing notices to the consumer in terms of subsection (2)(c);
  - (c) the manner, form and basis for determining the reasonableness of credits and charges contemplated in subsection (3); and
  - (d) other incidental matters as required to provide for the proper administration of this section.

**Regulation 5: Maximum Duration of Fixed-Term Consumer Agreements**

- 5(1) For the purposes of section 14(4)(a) of the Act, the maximum period of a fixed-term consumer agreement is 24 months from the date of signature by the consumer—
- (a) unless such longer period is expressly agreed with the consumer and the supplier can show a demonstrate 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 contemplated in section 82 of the Act in respect of specific type of agreement, type of consumer, sector or industry.

**Application for purposes of section 14 read together with regulation 5**

- 8.1 For the purposes of Regulation 5, a warranty, maintenance plan or service plan which is not sold separately at an additional price to the consumer shall not be considered a fixed-term agreement and the provisions of section 14 of the Act and regulation 5 shall not apply.
- 8.2 For the purposes of this section, a warranty purchased separately that is deemed to be an insurance product is excluded from the ambit of the Act and is therefore regulated elsewhere.

**9 SECTION OF ACT: 15 PRE-AUTHORISATION OF REPAIR OR MAINTENANCE SERVICE**

- 15(1) This section applies only to a transaction or consumer agreement—
- (a) with a price value above the threshold prescribed in terms of subsection (5); and
- (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 contemplated in this paragraph; or
- (ii) in any other case, the consumer requests an estimate before any services or goods are supplied.
- (2) A service provider to whom this section applies, must not charge a consumer for the supply of any goods or services contemplated in subsection (1), unless—
- (a) the supplier or service provider has given the consumer an estimate that satisfies the prescribed requirements, and the consumer has subsequently authorised the work; or
- (b) the consumer, in writing, or by another recorded manner or form, has—
- (i) declined the offer of an estimate, and authorised the work; or
- (ii) pre-authorised any charges up to a specified maximum, and the amount charged does not exceed that maximum.
- (3) A service provider to whom this section applies must not charge a consumer for preparing an estimate required in terms of subsection (2) (a), 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) 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 authorised the work to continue.

**Regulation Notice: Threshold for Pre-Authorisation of Repair or Maintenance Services**

- 1 For the purposes of section 15(1)(a) and (5) of the Act, the threshold for pre-authorisation of repair or maintenance services generally is R1.00 (One Rand) excluding value-added tax, unless

- differently provided for by regulation or industry code contemplated in section 82 of the Act.
- 2 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 or she or it does not do so.

**Application for purposes of section 15 and the regulation notice**

- 9.1 All repairs above the prescribed threshold as set out in clause 9.2 below, which threshold has been agreed upon within the Automotive Industry and prescribed in terms of the regulation notice by this Code, shall be pre-authorized by the consumer.
- 9.2 The monetary threshold applicable to this section is set out in Schedule 10.
- 9.3 This section does not apply to repairs which are not charged to the consumer (no consideration paid) because they are covered by a valid warranty, service, maintenance or similar plan.
- 9.4 For the purposes of section 15 of the Act, an estimate of the total cost of repairs or services to a vehicle shall disclose in a reasonable manner, the following information:
- 9.4.1 the name of the consumer;
  - 9.4.2 repairer details including name, physical address and contact information;
  - 9.4.3 vehicle details, including vehicle identification number and odometer reading;
  - 9.4.4 subject to clause 9.1 and 9.2 above, the estimated costs of the repairs and/or service, including a breakdown of the total amount to be charged, the nature and extent of the repair or maintenance, the period of validity of the quote and the period within which the consumer must collect the goods plus the consequence if the consumer not do so; and
  - 9.4.5 the date on which the estimate was prepared.
- 9.5 If the consumer has pre-authorized any charges up to a maximum amount in terms of section 15(2)(b)(ii) of the Act, authorisation must be in writing or recorded and must meet the requirements of clause 9.4.
- 9.6 With regard to work carried out on the vehicle:
- 9.6.1 Unless instructed otherwise by the consumer, a supplier shall not re-fit parts to a vehicle if the fitment of those parts would render a vehicle unsafe or un-roadworthy or in contravention of manufacturer specifications;
  - 9.6.2 When a consumer does not authorise the repairs referred to in 9.6.1, the service provider will provide the consumer with a report that the service provider has informed the consumer that the repairs are necessary, but that the consumer has declined to have the necessary repairs carried out. Repairs in terms of such a report shall be agreed by the consumer before they are carried out.
- 9.7 When repair work is outsourced to a sub-contractor, the service provider shall inform the consumer.

- 9.8 A service provider that supplies and or fits any grey/parallel parts shall advise the consumer accordingly, explain the meaning of the prescribed notice and shall obtain the consumer's consent prior to supplying and fitting the part.
- 9.9 A service provider may not sub-contract the repair of any vehicles that are subject to a Manufacturer's Warranty or Maintenance/Service plan unless the service provider has obtained prior consent from the Manufacturer of the vehicle or unless the repair is done by an entity pre-approved by the Manufacturer.
- 9.10 The service provider shall advise the consumer of any additional defects which may be found while repair work is being carried out. Prior authorisation to carry out any additional repairs will be obtained from the consumer.
- 9.11 Due to production constraints and high levels of quality control necessary for consumer safety, if the consumer neither declines nor accepts the additional repairs within 30 minutes of receiving notification, the consumer will be deemed to have declined the repairs.
- 9.12 All invoices will contain full details of the work done and materials supplied.
- 9.13 The service provider shall explain any work in more detail included in the quotation or estimate given, if requested to do so by the consumer.

#### 10 SECTION OF ACT: 16 CONSUMER'S RIGHT TO COOLING-OFF PERIOD AFTER DIRECT MARKETING

- 16(1) This section does not apply to a transaction if section 44 of the Electronic Communications and Transactions Act applies to that transaction.
- (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.
- (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 business days after the later of the date on which—
- (a) the transaction or agreement was concluded; or
  - (b) the goods that were the subject of the transaction were delivered to the consumer.

#### **Application for purposes of section 16**

- 10.1 For the purposes of this section, if a consumer has concluded a transaction for the purchase of goods on the premises of the supplier and has had an opportunity to inspect the goods prior to taking delivery thereof, then the transaction did not result from any direct marketing.
- 10.2 In the event of a consumer being entitled to and elects to return the goods in terms of this section, then the amount originally invoiced to the consumer to be refunded by the supplier will be repaid to the consumer or registered Credit Provider where the goods were financed, after the costs and expenses as set out in Schedule 11 read with Schedule 12 have been deducted or paid by the consumer.
- 10.3 Where applicable, if a consumer is entitled to and elects to rescind a transaction resulting from direct marketing in term of section 16(3) of the Act, notice by the consumer:
- 10.3.1 must be in writing;
  - 10.3.2 must be sent to and marked for the attention of the person in charge of the supplier;
  - 10.3.3 must include proof of delivery;

- 10.3.4 must contain at least the following:
- 10.3.4.1 full name, address and contact details of the consumer;
  - 10.3.4.2 description of goods or services which form the basis of the direct marketing;
  - 10.3.4.3 date of the notice;
  - 10.3.4.4 signature of consumer.

10.4 Any valid return of goods in accordance with to section 16 must include the written notice set out in 10.3 above. The goods shall be returned at the risk and expense of the consumer.

## 11 SECTION OF ACT: 17 CONSUMER'S RIGHT TO CANCEL ADVANCE RESERVATION, BOOKING OR ORDER

- 17(1) This section does not apply to a franchise agreement, or in respect of any special- order goods (goods that a supplier expressly or implicitly was required or expected to procure, create or alter specifically to satisfy the consumer's requirements).
- 17(2) Subject to subsections (3) and (4), a consumer has the right to cancel any advance booking, reservation or order for any goods or services to be supplied.
- (3) A supplier who makes a commitment or accepts a reservation to supply goods or services on a later date may—
- (a) require payment of a reasonable deposit in advance; and
  - (b) impose a reasonable charge for cancellation of the order or reservation, subject to subsection (5).
- (4) For the purposes of this section, a charge is unreasonable if it exceeds a fair amount in the circumstances, having regard to—
- (a) the nature of the goods or services that were reserved or booked;
  - (b) the length of notice of cancellation provided by the consumer;
  - (c) 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
  - (d) the general practice of the relevant industry.
- (5) A supplier may not impose a cancellation fee in respect of a booking, reservation or order if the consumer is unable to honour the booking, reservation or order because of death or hospitalisation of the person for whom, or for whose benefit the booking, reservation or order was made.

### **Read together with Section 65: Supplier to Hold and Account for Consumer's Property**

- 65(2) When a supplier has possession of any pre-payment, 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 utilisation 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).

**Application for purposes of section 17 read together with section 65**

- 11.1 Special-order goods
- 11.1.1 If the consumer has requested a supplier to specifically procure, or has requested a special build order or has requested a supplier to alter existing goods or add any specified accessories or extra components in the supplier's possession, then the consumer is not entitled to cancel such order as specified in section 17 of the Act.
- 11.2 Goods other than special order goods
- 11.2.1 Subject to section 17(5), the supplier shall be entitled to charge a holding deposit, this deposit is required to be accounted for separately from all other accounts of the supplier and any interest earned on this deposit shall be held to the benefit of the consumer.
- 11.2.2 The supplier will be entitled to off-set a reasonable cancellation fee against the deposit together with any interest earned as agreed upon by the parties in writing.
- 11.2.3 In the event that the deposit is not sufficient to cover the reasonable cancellation fee, then the consumer will be liable to the supplier for the balance of the cancellation fee which is due.
- 11.3 In the absence of an agreement as set out in 11.1 above, and subject to section 17(5), the supplier shall be entitled to charge a cancellation fee, based on reasonable, actual costs to resell the goods and any other loss that may be suffered by the supplier as a result of the cancellation.

**12 SECTION OF ACT: 18 CONSUMER'S RIGHT TO CHOOSE OR EXAMINE GOODS**

- 18(1) 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 behaviour or criminal conduct.
- (2) 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.
- (3) 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 respects 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.
- (4) 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.

**Application for purposes of section 18**

- 12.1 The provisions of section 18(1) will also apply where the consumer tests and drives a vehicle displayed on the supplier's floor.
- 12.2 For the purposes of Section 18(2) of the Act the supplier must disclose to the consumer whether goods are available for sale or are for display purposes only.



**13 SECTION OF ACT: 19 CONSUMER'S RIGHT WITH RESPECT TO DELIVERY OF GOODS OR SUPPLY OF SERVICE**

- 19(2) 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; and
    - (iii) at the cost of the supplier, in the case of delivery of goods; or
  - (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; and
  - (c) goods to be delivered remain at the supplier's risk until the consumer has accepted delivery of them, in accordance with this section.
- (3) 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.
- (4) 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—
    - (i) the consumer does anything in relation to the goods that would be inconsistent with the supplier's ownership of them; or
    - (ii) after the lapse of a reasonable time, the consumer retains the goods without intimating to the supplier that the consumer has rejected delivery of them, subject to subsection (5).
- (5) 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—
- (a) are of a type and quality reasonably contemplated in the agreement, and meet the tests set out in section 18(3) and (4); and
  - (b) in the case of a special-order agreement, reasonably conform to the material specifications of the special order.
- (6) If the supplier tenders the delivery of goods or the performance of any services at a location, on a date or at a time other than as agreed with the consumer, the consumer may either—
- (a) accept the delivery or performance at that location, date and time;
  - (b) require the delivery or performance at the agreed location, date and time, if that date and time have not yet passed; or
  - (c) cancel the agreement without penalty, treating any delivered goods or performed services as unsolicited goods or services in accordance with section 21.

**Application for purposes of section 19**

- 13.1 For the purposes of section 19(3) of the Act, it will be considered reasonable if goods are delivered:
- 13.1.1 at a date which is within 10 days of the date that the goods would be available for delivery to the consumer, or collection from the supplier's premises, (as the case may be), unless failure to deliver is beyond the supplier's control;
  - 13.1.2 unless otherwise agreed in a recordable format, at a time that is within normal office hours.
- 13.2 For the purposes of section 19(4) of the Act, goods will be deemed to have been accepted by the consumer if the consumer has acted in one or more of the following ways:
- 13.2.1 signed a document indicating acceptance of the goods;
  - 13.2.2 makes use of the goods or services in a manner other than for examination purposes;
  - 13.2.3 in terms of Section 19(4)(b)(ii) of the Act, the consumer does not contact the supplier but uses the goods or services for more than 5 days;
  - 13.2.4 damages or destroys the goods;
  - 13.2.5 requested the supplier, in the case of a vehicle, in writing, to license and register the vehicle and the request has been complied with by the supplier.
- 13.3 Any examination of goods before or at delivery may be done by the consumer or an authorised representative of the consumer.
- 13.4 The supplier must allow the consumer or authorised representative of the consumer a reasonable opportunity to conduct a thorough examination taking in account the nature of the goods and/or services.

**14 SECTION OF ACT: 20 CONSUMER'S RIGHT TO RETURN GOODS**

- 20(1) This section is in addition to and not in substitution for—
- (a) the right to return unsafe or defective goods, contemplated in section 56; or
  - (b) any other right in law between a supplier and consumer to return goods and receive a refund.
- (2) Subject to subsections (3) to (6), the consumer may return goods to the supplier, and receive a full refund of any consideration paid for those goods, if the supplier has delivered—
- (a) goods to the consumer in terms of an agreement arising out of direct marketing, and the consumer has rescinded that agreement during the cooling-off period, in accordance with section 16;
  - (b) goods that the consumer did not have an opportunity to examine before delivery, and the consumer has rejected delivery of those goods for any of the reasons contemplated in section 19(5);
  - (c) a mixture of goods, and the consumer has refused delivery of any of those goods, as contemplated in section 19(8); or
  - (d) goods intended to satisfy a particular purpose communicated to the supplier as contemplated in section 55(3), and within 10 business days after delivery to the consumer, the goods have been found to be unsuitable for that particular purpose.

- (3) Subsection (2) does not apply with respect to any goods if—
- (a) for reasons of public health or otherwise, a public regulation prohibits the return of those goods to a supplier once they have been supplied to, or at the direction of, a consumer; or
  - (b) after having been supplied to, or at the direction of, the consumer, the goods have been partially or entirely disassembled, physically altered, permanently installed, affixed, attached, joined or added to, blended or combined with, or embedded within, other goods or property.
- (4) Goods returnable in terms of—
- (a) subsection (2) (a) must be returned to the supplier at the consumer's risk and expense; or
  - (b) subsection (2) (b) to (d) must be returned to the supplier at the supplier's risk and expense, within 10 business days after delivery to the consumer.
- (5) Upon return of any goods in terms of this section, the supplier must refund to the consumer the price paid for the goods, less any amount that may be charged in terms of subsection (6).
- (6) In determining the right of a supplier to impose a charge contemplated in subsection (5), if any goods returned to the supplier in terms of this section are—
- (a) in the original unopened packaging, the supplier may not charge the consumer any amount in respect of the goods;
  - (b) in their original condition and repackaged in their original packaging, the supplier may charge the consumer a reasonable amount for—
    - (i) 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 has occurred; or
    - (ii) any consumption or depletion of the goods, unless that consumption or depletion is limited to a reasonable amount necessary to determine whether the goods were acceptable to the consumer; or
  - (c) in any other case, the supplier may charge the consumer a reasonable amount—
    - (i) as contemplated in paragraph (b); and
    - (ii) 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—
      - (aa) conformed to the description or sample provided, in the case of goods that had not been examined by the consumer before delivery, as contemplated in subsection (2)(b); or
      - (bb) were fit for the intended purpose, in a case contemplated in subsection (2) (d).

#### **Application for purposes of section 20**

- 14.1 If the consumer was given an opportunity to examine the goods in terms of section 19(5) and declined the opportunity such notice of decline must be in writing and signed by the consumer.
- 14.2 In the event of a consumer being entitled to return the goods and the consumer elects to do so, then the amount originally invoiced to the consumer to be refunded by the supplier will be repaid to the consumer or registered Credit Provider where the goods were financed, after the processes, costs and expenses as set out in Schedule 11 read with Schedule 12 have been deducted or paid by the consumer.

- 14.3 Where applicable, if a consumer is entitled to and elects to rescind a transaction resulting from direct marketing in terms of section 16(3) of the Act, clauses 10.3 and 10.4 above will apply.
- 14.4 The goods shall be returned at the risk and expense of the consumer if the goods are returned from an agreement arising out of direct marketing and the consumer has rescinded the agreement during the 5-day cooling off period contemplated in section 16.
- 14.5 If the return of goods is at the supplier's risk and expense in terms of section 20(4)(b) of the Act, the following options are available to the consumer:
- 14.5.1 the consumer may request the supplier to collect the goods at a time, date and place that has been agreed;
- 14.5.2 the consumer may deliver the goods to the place of business of the supplier at a date and time that has been agreed by the consumer and supplier; or
- 14.5.3 if the supplier has a designated return centre, the consumer may return the goods to the returns centre at a time in which the centre is operating;
- 14.5.4 if the consumer elects to return the goods in terms of this clause, to the supplier, the consumer may charge the supplier no more than the actual cost incurred in the delivery of the goods to the supplier;
- 14.5.5 the consumer is under a duty to ensure that all reasonable care is taken to prevent any harm or damage to the goods as the supplier will only be liable for the risk of profit and loss to the goods once it is in possession of the goods.

## 15 SECTION OF ACT: 21 UNSOLICITED GOODS OR SERVICES

- 21(1) For the purpose of this Act, goods or services are unsolicited in any of the following circumstances, subject to subsection (2):
- (a) If, during any direct marketing of goods or services, 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, those goods or services, as the case may be, are unsolicited;
- (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 that agreement, the supplier delivers any further goods to the consumer, other than in terms of a different agreement or transaction, those further goods are unsolicited goods;
- (c) if a supplier delivers goods or performs services at a location, date or time other than as agreed, and the consumer has rejected that delivery or performance of services, as contemplated in section 19(6), those goods or services are unsolicited;
- (e) if 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 goods.

- (2) Despite subsection (1), if—
- (a) within 10 business days after delivery of any goods to a consumer, the supplier informs the consumer that the goods were delivered in error, those goods become unsolicited only if the supplier fails to recover them within 20 business days after so informing the consumer; or
  - (b) any goods are delivered to a consumer and—
    - (i) those goods are clearly addressed to another person, and have obviously been misdelivered; or
    - (ii) having regard to the circumstances of the delivery, it would be apparent to the ordinary alert consumer that the goods were intended to be delivered to another person, the goods become unsolicited goods only if the recipient informs the apparent supplier or the deliverer that the goods were misdelivered, and the goods are not recovered within the following 20 business days.
- (3) If a person is in possession of goods contemplated in this section, the person—
- (a) must not frustrate or impede any reasonable action by the supplier or deliverer to recover the goods within the time allowed in subsection (2);
- (4) A person who fails to comply with subsection (3)(a) is liable to the supplier or deliverer, as the case may be, for any additional costs for recovery of, or damage to, the goods arising as a result of anything done to frustrate or impede the lawful recovery of those goods.
- (5) If a person is in possession of any unsolicited goods, the person may—
- (a) retain the goods; or
  - (b) return the goods to the apparent supplier or deliverer at the risk and expense of the supplier or deliverer, as the case may be.
- (6) If a person lawfully retains any unsolicited goods—
- (a) the property in those goods passes unconditionally to the person, subject only to any right or valid claim that an uninvolved third party may have with respect to those goods; and
  - (b) the person who supplied or delivered those goods is liable to any other person in respect of any right or valid claim relating to such goods.
- (7) A person has no obligation to pay a supplier for unsolicited goods or services, or a deliverer for the cost of delivery of any unsolicited goods.
- (8) A supplier must not demand or assert any right to, or attempt to collect, any payment from a consumer in respect of any charge relating to unsolicited goods left in the possession of a consumer, or the delivery of any such goods, or unsolicited services supplied to or for the benefit of, a consumer, except as contemplated in subsection (4).
- (9) If a consumer has made any payment to a supplier or deliverer in respect of any charge relating to unsolicited goods or services, or the delivery of any such goods, the consumer is entitled to recover that amount, with interest from the date on which it was paid to the supplier, in accordance with the Prescribed Rate of Interest Act, 1975 (Act No. 55 of 1975).

**Application for purposes of section 21**

- 15.1 For the purposes of section 21(3)(a) of the Act, intentional interference shall include the abuse of the goods.
- 15.2 For the purposes of section 21(9) of the Act, any costs incurred by the supplier due to intentional interference shall be deducted from the amount payable to the consumer.

- 15.3 If the consumer elects to return unsolicited goods to the supplier, this must be done in terms of section 20(4) of the Act and clause 15 of the Code.
- 15.4 If the consumer elects to keep the goods, the consumer will be responsible, where appropriate for the costs of:
- 15.4.1 registration in the name of the consumer;
- 15.4.2 insurance;
- 15.5 If section 21(2)(a) of the Act applies, the supplier must:
- 15.5.1 arrange with the consumer a time, date and place to collect the goods during normal office hours.
- 15.6 If section 21(2)(b) of the Act applies:
- 15.6.1 the consumer must inform the supplier at the earliest opportunity in writing that the goods were delivered in error;
- 15.6.2 the notice to be sent in terms of clause 15.6.1 must be delivered to the supplier's place of business or failing this, the registered address of the business and must:
- 15.6.2.1 contain the name and address of the person to whom the goods were delivered in error;
- 15.6.2.2 if the goods are a vehicle, set out the make, model, vehicle identification number, licence number and odometer reading of the vehicle;
- 15.6.3 the supplier must retain proof of delivery of this notification received.

## 16 SECTION OF ACT: 25 DISCLOSURE OF RECONDITIONED OR GREY MARKETGOODS

- 25(1) A person 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.
- (2) A person who markets any goods that bear a trade mark, but have been imported without the approval or licence of the registered owner of that trade mark, must apply a conspicuous notice to those goods in the prescribed manner and form.

### **Regulation 8: Disclosure of Reconditioned or Grey Market Goods**

- 8(1) The notice contemplated in subsections (1) and (2) of section 25 of the Act and meeting the requirements of section 22 of the Act must be applied-
- (a) in a place on the goods and the marketing material of the goods where a consumer is likely to see that notice; and
- (b) 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.
- 8(2) The supplier must when selling the goods to the consumer-
- (a) expressly draw his or her attention to the notice prescribed in sub regulation (1);
- (b) in plain language explain the meaning of the notice to the consumer; and

- (c) the notice contemplated in section 25(2) of the Act and meeting the requirements of section 22 of the Act must be applied-
- (i) in a place on the goods and the marketing material of the goods where a consumer is likely to see that notice; and
  - (ii) in an easily legible size and manner;
  - (iii) 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, if the goods bear a trademark, that they have been imported without the approval or licence of the registered owner of that trademark and that no guarantee or warranty in respect of such goods will be honoured or fulfilled by any official or licenced importer of such goods.

**Application for the purposes of Section 25 and regulation 8:**

16.1 The supplier must display a notice in a place where a consumer is likely to see the notice as well as apply the following notice to all grey or parallel goods:

16.1.1 "The authorised South African distributor of this product is under no obligation to honour the manufacturer's guarantees or warranties or to provide after sales service in respect of this product. The seller is exclusively responsible for honouring statutory warranties, guarantees and providing service."

16.2 The supplier must when selling the goods to the consumer: -

16.2.1 expressly draw the consumer's attention to the notice set out in clause 16.1 above; and

16.2.2 in plain language explain the meaning of the notice to the consumer.

**17 SECTION OF ACT: 26 SALES RECORDS**

26(2) A supplier of goods or services must provide a written record of each transaction to the consumer to whom any goods or services are supplied

(3) The record contemplated in subsection (a) 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.

**Application for purposes of section 26**

17.1 In addition to the information referred to in section 26(3) of the Act, unless otherwise agreed in writing, the supplier should provide the following in respect of the supply of a vehicle:

- 17.1.1 sales invoice signed by the consumer;
  - 17.1.2 valid roadworthy certificate, if applicable;
  - 17.1.3 local authority registration certificate, if applicable;
  - 17.1.4 warranty in respect of the vehicle, service and/or maintenance agreement, if applicable;
  - 17.1.5 vehicle handbook, if available;
  - 17.1.6 delivery document;
  - 17.1.7 service history of the vehicle as reflected in the service book (in the event that the supplier is not in possession of the service history, the consumer should be accordingly notified in writing);
  - 17.1.8 offer to purchase;
  - 17.1.9 written confirmation of odometer reading supplied by the previous owner in the case of used vehicles. In cases where kilometre readings cannot be verified, consumers shall be advised in writing;
  - 17.1.10 relevant information regarding the history of the vehicle, (including any repairs to the bodywork or paint that the supplier is reasonably aware of) where applicable or available;
  - 17.1.11 spare key for the vehicle (in the event that it is available in respect of used vehicles).
- 17.2 All sales records under this section must be retained for a period of 5 (five) years from the date of such sale.

## 18 SECTION OF ACT: 44 CONSUMER'S RIGHT TO ASSUME SUPPLIER IS ENTITLED TO SELL GOODS

- 44(1) Subject to subsection (2), every consumer has a right to assume, and it is an implied provision of every transaction or agreement, that—
- (a) in the case of a supply of goods, the supplier has the legal right, or the authority of the legal owner, to supply those goods;
  - (b) in the case of an agreement to supply goods, the supplier will have a legal right, or the authority of the legal owner, to—
    - (i) sell the goods at the time the title to those goods is to pass to the consumer; or
    - (ii) lease the goods at the time the lessee is to take possession of the leased goods;
  - (c) as between the supplier and the consumer, the supplier is fully liable for any charge or encumbrance pertaining to the goods in favour of any third party unless—
    - (i) such a charge or encumbrance is disclosed in writing to the consumer before the transaction or agreement is concluded; or
    - (ii) the supplier and consumer have colluded to defraud the third party; and
  - (d) the supplier guarantees that the consumer is to have and enjoy quiet possession of the goods, subject to any charge or encumbrance disclosed as contemplated in paragraph (c) (i).
- (2) If, as a result of any transaction or agreement in which goods are supplied to a consumer, a right or claim of a third party pertaining to those goods is infringed or compromised the supplier is liable to the third party to the extent of the infringement or compromise of that



person's rights pertaining to those goods, except to the extent of a charge or encumbrance disclosed as contemplated in subsection (1)(c)(i).

**Application for purposes of section 44**

18.1 No supplier may sell any goods to a consumer or another supplier unless the goods are unencumbered and fully paid for or payment to any credit provider, who may be the title holder, has been secured and the supplier has been authorised and is entitled to transfer unconditional ownership.

**19 SECTION OF ACT: 46 CHANGES, DEFERRALS and WAIVERS, and SUBSTITUTION OF GOODS**

46 (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.

- (2) If, after delivery to the consumer of goods that are the subject of a transaction, the consumer and the supplier 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.

**Application for purposes of section 46**

19.1 If the substituted vehicle has a lower mileage than the replaced vehicle and/or is of a different make and/or model year (date of liability for first registration), the supplier shall be entitled to recover from the consumer an amount calculated in relation to the benefit to the consumer of the lower mileage and/or make and/or model year (date of liability for first registration), equal to the difference in market value between the original and replacement vehicle.

19.2 If the substituted vehicle has a higher mileage than the replaced vehicle and/or is of a different make and/or model year (date of liability for first registration), the consumer shall be entitled to recover from the supplier an amount calculated in relation to the detriment to the consumer of the higher mileage and/or make and/or model year (date of liability for first registration), equal to the difference in market value between the original and replacement vehicle.

**20 SECTION OF ACT: 53 RIGHT TO FAIR VALUE, GOOD QUALITY AND SAFETY**

Definitions applicable to this Part

53(1) In this Part, when used with respect to any goods, component of any goods, or services—

- (a) "defect" means;
  - (i) any material imperfection in the manufacture of the goods or components, or in performance of the services, that renders the goods or results of the service less acceptable than persons generally would be reasonably entitled to expect in the circumstances; or
  - (ii) any characteristic of the goods or components that renders the goods or

components less useful, practicable or safe than persons generally would be reasonably entitled to expect in the circumstances;

- (b) "failure" means the inability of the goods to perform in the intended manner or to the intended effect;
- (c) "hazard" means a characteristic that;
  - (i) has been identified as, or declared to be, a hazard in terms of any other law; or
  - (ii) presents a significant risk of personal injury to any person, or damage to property, when the goods are utilized; and
- (d) "unsafe" means that, due to a characteristic, failure, defect or hazard, particular goods present an extreme risk of personal injury or property damage to the consumer or to other persons.

## 21 SECTION OF ACT: 54 CONSUMER'S RIGHT TO DEMAND QUALITY SERVICE

- 54(1) When a supplier undertakes to perform any services for or on behalf of a consumer, the consumer has a right to—
- (a) the timely performance and completion of those services, and timely notice of any unavoidable delay in the performance of the services;
  - (b) the performance of the services 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 services; 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, having regard to the circumstances of the supply, and any specific criteria or conditions agreed between the supplier and the consumer before or during the performance of the services.
- (2) If a supplier fails to perform a service to the standards contemplated in subsection 40 1), the consumer may require the supplier to either—
- (a) remedy any defect in the quality of the services performed or goods supplied; or
  - (b) refund to the consumer a reasonable portion of the price paid for the services performed and goods supplied, having regard to the extent of the failure.

### Application for purposes of section 54

- 21.1 For the purposes of this section, the supplier will in the ordinary course of its business endeavour to put measures in place that would assist the consumer to realise the rights contemplated in this section. In this regard the supplier will undertake to:
- 21.1.1 inform the consumer of the approximate time that it would take to supply the goods or provide the services required by the consumer;
  - 21.1.2 inform the consumer of the goods and the nature of services that will be provided to the consumer and provide the consumer with an opportunity to accept or decline the services or the supply of goods based on the information provided to the consumer;
  - 21.1.3 If the consumer is given a time that the goods will be delivered or the services provided, then:

21.1.3.1 deliver or render as soon as is possible and inform the consumer if the estimated time indicated to the consumer may not be complied with;

21.1.3.2 inform the consumer of any unexpected delays in the supply of the services and the goods and the reasons therefore as well as the new anticipated delivery date.

## 22 SECTION OF ACT: 55 CONSUMER'S RIGHT TO SAFE, GOOD QUALITY GOODS

- 55(1) This section does not apply to goods bought at an auction, as contemplated in section 45.
- 55(2) Except to the extent contemplated in subsection (6), every consumer has a right to receive goods that—
- (a) are reasonably suitable for the purposes for which they are generally intended;
  - (b) are of good quality, in good working order and free of any defects;
  - (c) will be useable 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 Standards Act, 1993 (Act No. 29 of 1993), or any other public regulation.
- 55(3) In addition to the right set out in subsection (2)(a), 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—
- (a) ordinarily offers to supply such goods; or
  - (b) 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.
- 55(4) In determining whether any particular goods satisfied the requirements of subsection (2) or (3), 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 purposes for which, the goods were marketed, packaged and displayed, the use of any trade description or mark, any instructions for, or warnings with respect to the use of the goods;
  - (b) the range of things that might reasonably be anticipated to be done with or in relation to the goods; and
  - (c) the time when the goods were produced and supplied.
- 55(5) For greater certainty in applying subsection (4)—
- (a) it is irrelevant whether a product failure or defect was latent or patent, or whether it could have been detected by a consumer before taking delivery of the goods; and
  - (b) a product failure or defect may not be inferred in respect of particular goods solely on the grounds that better goods have subsequently become available from the same or any other producer or supplier.
- 55(6) Subsection (2)(a) and (b) do not apply to a transaction if the consumer—
- (a) has been expressly informed that particular goods were offered in a specific condition; and
  - (b) has expressly agreed to accept the goods in that condition, or knowingly acted in a manner consistent with accepting the goods in that condition.

**23 SECTION OF ACT: 56 IMPLIED WARRANTY OF QUALITY**

- 56(1) In any transaction or agreement pertaining to the supply of goods to a consumer there is an implied provision that the producer or importer, the distributor and the retailer each warrant that the goods comply with the 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 or importer, a distributor or the retailer, as the case may be.
- (2) Within six 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 contemplated in section 55, and the supplier must, at the direction of the consumer, either;
- (a) repair or replace the failed, unsafe or defective goods; or
  - (b) refund to the consumer the price paid by the consumer, for the goods.
- (3) If a supplier repairs any particular goods or any component of any such goods, and within three months after that repair, the failure, defect or unsafe feature has not been remedied, or a further failure, defect or unsafe feature is discovered, the supplier must;
- (a) replace the goods; or
  - (b) refund to the consumer the price paid by the consumer for the goods.
- (4) The implied warranty imposed by subsection (1), and the right to return goods set out in subsection (2), are each in addition to;
- (a) any other implied warranty or condition imposed by the common law, the Act or any other public regulation; and
  - (b) any express warranty or condition stipulated by the producer or importer, distributor or retailer, as the case may be.

**Application for purposes of section 56**

- 23.1 If a consumer exercises its right to return any goods to the supplier, then:
- 23.1.1. the consumer will have to disclose full details and reasons, in a recordable manner, substantiating that consumer's entitlement to such return;
  - 23.1.2. the supplier will be permitted a reasonable period of time to examine the goods in respect of the alleged claims.
- 23.2 In the event that the supplier finds that the goods comply with the provisions of Section 55(2) and that the consumer is not entitled to return the goods, then, without limiting the consumer or supplier's right of appeal, the supplier will not accept the return of the goods from the consumer until directed to do so by any of the dispute resolution forums available to the consumer in terms of this Act.
- 23.3 Should the consumer return the goods to the supplier without the supplier's agreement and it is found by any dispute resolution forum that the consumer was not entitled to return such goods, and provided there is an agreement in place between the parties, then the supplier is entitled to demand payment of storage costs as agreed to, from the consumer from date of delivery of the goods to the supplier until date of return of the goods to the consumer. The supplier will be entitled to withhold return of the goods until such time as the reasonable storage costs have been paid.**

23.4 For the purposes of this clause 23, even though the supplier may be in physical possession of the goods returned by the consumer, it will only have accepted return thereof in terms of Section 56 of the Act once the consumer's right to return them has been confirmed and the provisions of clauses 23.1.1 have been met.

23.5 If the consumer is entitled to and exercises the right to replacement of the goods or refund of the purchase price, then:

**Relationship between the Consumer and the Supplier**

23.5.1 the consumer must make the selection for the goods to be replaced or the purchase price to be refunded in writing and this notice must be sent to and marked for the attention of the person in charge of the supplier. The notice must contain at least the following:

23.5.1.1 full name, address and contact details of the consumer;

23.5.1.2 description of goods or services which form the basis of the claim in respect of section 56 of the Act;

23.5.1.3 date of notice;

23.5.1.4 signature of consumer;

23.5.1.5 proof of delivery of the notification;

23.5.2 the supplier shall be entitled to recover an amount relating to the use of the goods returned, calculated as set out in Schedule 11 read with Schedule 12.

**Relationship between the Retailer and OEM**

23.5.3 In the event that the consumer is entitled and elects to return the goods to the retailer as a result of a breach of either of the following:

23.5.3.1 the goods are not reasonably suitable for the purposes for which they are generally intended; or

23.5.3.2 the goods were not of a good quality, in good working order or free of defects that the retailer could not reasonably have determined following a standard pre-delivery inspection under the instructions or procedures (if any) specified by the OEM; or

23.5.3.3 the goods were not useable 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; or

23.5.3.4 the goods did not comply with any applicable standards set under the Standards Act 1993, or any public regulation,

then the OEM of the goods so returned shall hold the supplier harmless against any such return.

23.6 Notwithstanding the provisions of this Code, the consumer may, in the consumer's sole discretion elect to proceed in terms of the provisions and/or remedies set out in any warranty agreement between the consumer and the supplier or any third party insurer instead of the provisions of section 56 of the Act.

23.7 The supplier will in the ordinary course of conducting its business endeavour to put measures in place that would help the consumer to use the rights contemplated in the Act and this Code.

In this regard the supplier supplying the goods directly to the consumer will inform the consumer:

- 23.7.1 of the nature and extent of the warranties and conditions of use applicable to the goods concerned;
- 23.7.2 that such warranty will be concurrent with any other deemed, implied or express warranty;
- 23.7.3 that such warranty will be invalid if the consumer has not complied with the terms thereof; and
- 23.7.4 that such warranty would not apply in the case of ordinary wear and tear, having regard to the circumstances in which the goods are ordinarily used or intended to be used.

#### 24. SECTION OF ACT: 57: WARRANTY ON REPAIRED GOODS

- 57(1) A service provider warrants every new or reconditioned part installed during any repair or maintenance work, and the labour required to install it, for a period of three months after the date of installation or such longer period as the supplier may specify in writing.
- (2) A warranty in terms of this section;
  - (a) is concurrent with any other deemed, implied or express warranty;
  - (b) is void if the consumer has subjected the part, or the goods or property in which it was installed, to misuse or abuse; and
  - (c) does not apply to ordinary wear and tear, having regard to the circumstances in which the goods are intended to ordinarily be used.

#### Application for purposes of section 57

- 24.1 The terms and conditions of any warranty in relation to repaired goods will be disclosed to the consumer.
- 24.2 In the case of a vehicle, the supplier will show in the service book of the vehicle the fact that the vehicle was serviced and/or repaired at its workshop. The details to be recorded in the book will include:
  - 24.2.1 the name of the supplier;
  - 24.2.2 the telephone number and other contact details of the supplier.
- 24.3 In the event that any vehicle shall be out of commission for repairs, the following will apply in addition to the Act:
  - 24.3.1 where possible, the consumer will be notified in a recordable manner when the necessary parts or components could reasonably be expected to be available.

#### 26. SECTION OF ACT: 60 SAFETY MONITORING AND RECALL

- 60(1) The Commission must promote, within the framework of section 82, the development, adoption and application of industry-wide codes of practice providing for effective and efficient systems to—
  - (a) receive notice of—
    - (i) consumer complaints or reports of product failures, 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; and
- (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 contemplated in paragraph (a), and analyse the information received with the object of detecting or identifying any previously undetected or unrecognised potential risk to the public from the use of or exposure to those goods;
  - (c) conduct investigations 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; and
  - (e) if the goods are unsafe, recall those goods for repair, replacement or refund.
- (2) 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 an applicable code contemplated in subsection (1), the Commission, by written notice, may require that producer to—
- (a) conduct an investigation contemplated in subsection (1); or
  - (b) carry out a recall programme on any terms required by the Commission.

#### **Application for the purposes of section 60**

##### **26.1. Introduction**

26.1.1. This section is in addition to and not a substitution of section 15(3) of the National Regulator for Compulsory Specifications (NRCS) Act of 2008.

26.1.2. Recall campaigns may be launched and will be monitored as agreed in this Code. This section is based on international recall standards and sets out the guidelines on procedures for the recall of goods that have safety related defects, due to a feature of design or construction, and which are likely to cause significant risk of injury or death and which recall campaigns are instituted on the instance of any of the following entities:

26.1.2.1. the local OEM;

26.1.2.2. the NCC;

26.1.2.3. the foreign OEM; or

26.1.2.4. the NRCS.

##### **26.2. Cases Covered**

26.2.1. A recall campaign will only be launched:

26.2.1.1. if substantial evidence confirms the existence of a safety defect in the goods; and

26.2.1.2. the defect appears to be common to a substantial number of the goods; and

26.2.1.3. the goods are available for supply within the territory of the Republic of South Africa; and

26.2.1.4. in respect of imported goods, will only apply to goods that have been imported by the authorised distributor (the importer) of such goods.

26.2.2. A recall campaign may also be launched in respect of any safety defects relating to components or parts either sold with the vehicle as original equipment or supplied to the automotive aftermarket.

- 26.2.3. In order to determine whether the number of the goods affected by a defect as set out in clause 26.2.1, is sufficient to justify the launching of a recall campaign, the representatives of the OEM will exercise their reasonable discretion taking into account the degree of seriousness of the defect present in the Goods.
- 26.3. **Recall Coordinators**
- 26.3.1. In the event that a recall campaign has been launched, the relevant OEM will be obliged to appoint a recall coordinator and a deputy who has the responsibility of managing the recall campaigns.
- 26.4. **Imported Goods**
- 26.4.1. In the case of a recall campaign affecting Goods imported by an OEM, that OEM will bear the responsibilities specified in this clause 26.
- 26.5. **Exported Goods**
- 26.5.1. Recall campaigns will not apply to exported goods, but will be regulated by the legal and administrative arrangements prevailing in the country of import.
- 26.6. **Notification By Consumers**
- 26.6.1. Consumers may report:
- 26.6.1.1. incidents of failures, defects or hazards;
  - 26.6.1.2. any return of Goods as a result of any incidents set out in 26.6.1.1 above;
  - 26.6.1.3. personal injury, illness or damage to property cause wholly or partially as a result of any incidents set out in clause 26.6.1.1 above;
  - 26.6.1.4. any other issue relating to an incident set out in clause 26.2.1.1 above,
  - 26.6.1.5. in the manner and form as set out in Schedule 7 of this Code.
- 26.6.2. A report as set out in clause 26.6.1 above, may be sent to either the:
- 26.6.2.1. OEM; or
  - 26.6.2.2. Retailer.
- 26.6.3. The receiving party of the report in clause 26.6.2 above, must, where it is not the OEM, send the information to the OEM within 3 (three) days of receipt of such information.
- 26.7. **Notification To The Consumer**
- 26.7.1. In the event of a recall campaign being launched, the OEM will use reasonable endeavours to contact affected owners and known users and recall the affected Goods for inspection and, if necessary, rectify components or assemblies that are deemed to be safety defective.
- 26.7.2. The OEM will send a notification of the recall campaign to the owner or known users, directly or through the Retailer or through other any means, which notification must contain details of the nature of the defect and its safety significance.
- 26.7.3. **The OEM will be required to issue a Safety Recall no more than 8 (eight) weeks after the official notification so as to ensure that there is sufficient availability of parts or components as well as the capacity to fully inspect and resolve any issue that may be detected.**
- 26.7.4. In the event that a notification is not received by the owner or known user, but the recall campaign comes to their knowledge, such owner or known user may obtain the contact details of the relevant OEM from:
- 26.7.4.1. the owner's or user's hand book;



- 26.7.4.2. the Retailer; or
- 26.7.4.3. the Relevant National Association to which the OEM belongs.
- 26.7.5. In order to prevent delays, affected consumers are encouraged:
  - 26.7.5.1. to address enquiries to the Customer Service Department of the relevant OEM; and
  - 26.7.5.2. in the case of a vehicle that forms the subject of the recall campaign, provide details of the Model, Month, the date of liability for first registration, the VIN (Chassis Number) and Engine number.
- 26.7.6. The relevant OEM will notify the NCC of the status of the recall at 3 (three) monthly intervals, until the recall campaign is completed or it is mutually agreed that further reporting is no longer required.
- 26.8. **Monitoring And Analysis Of Information**
  - 26.8.1. The relevant OEM is obliged to monitor information received in terms of clause 26.7 for the purpose of identifying and investigating any trends that may indicate potential safety risks to consumers.
  - 26.8.2. The relevant OEM must, after verifying the information in its possession within a reasonable time, determine whether there has been a repetitive failure of an identical safety critical component in a model range which substantially exceeds the Industry Norm, in which event a recall campaign should be instituted.

## 27. SECTION OF ACT 61: LIABILITY FOR DAMAGE CAUSED BY GOODS

- 61(1) Except to the extent contemplated in subsection (4), the producer or importer, distributor or retailer of any goods is liable for any harm, as described in subsection (5), 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 the producer, importer, distributor or retailer, as the case may be.
- (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 purposes of this section.
- (3) If, in a particular case, more than one person is liable in terms of this section, their liability is joint and several.
- (4) Liability of a particular person in terms of this section does not arise if—
- (a) the unsafe product characteristic, failure, defect or hazard that results in harm is wholly attributable to compliance with any public regulation;
  - (b) the alleged unsafe product characteristic, failure, defect or hazard—
    - (i) did not exist in the goods at the time it was supplied by that person to another person alleged to be liable; or
    - (ii) was wholly attributable to compliance by that person with instructions provided by the person who supplied the goods to that person, in which case subparagraph (i) does not apply;

- (c) it is unreasonable to expect the distributor or retailer to have discovered the unsafe product characteristic, failure, defect or hazard, having regard to that person's role in marketing the goods to consumers; or
  - (d) the claim for damages is brought more than three years after the—
    - (i) death or injury of a person contemplated in subsection (5) (a);
    - (ii) earliest time at which a person had knowledge of the material facts about an illness contemplated in subsection (5) (b); or
    - (iii) earliest time at which a person with an interest in any property had knowledge of the material facts about the loss or damage to that property contemplated in subsection (5) (c); or
    - (iv) the latest date on which a person suffered any economic loss contemplated in subsection (5) (d).
- (5) Harm for which a person may be held liable in terms of this section includes—
- (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; and
  - (d) any economic loss that results from harm contemplated in paragraph (a), (b) or (c).
- (6) Nothing in this section limits the authority of a court to—
- (a) assess whether any harm has been proven and adequately mitigated;
  - (b) determine the extent and monetary value of any damages, including economic loss; or
  - (c) apportion liability among persons who are found to be jointly and severally liable.

#### **Application for purposes of Section 61**

- 27.1. In the event that a supplier is found to be liable to a consumer in terms of section 61, and to the extent that the supplier is not the OEM, then OEM shall hold the retailer harmless against any loss which it may so suffer as long as the retailer could not reasonably have determined, following a standard pre-delivery inspection under the instructions or procedures (if any) specified by the OEM, the cause of the liability in terms of section 61.
- 27.2. To the extent necessary, the retailer and OEM shall assist each other as much as is reasonably possible to facilitate the finalisation of any claim brought by a consumer in terms of section 61.

#### **28. SECTION OF ACT: 65 SUPPLIER TO HOLD AND ACCOUNT FOR CONSUMER'S PROPERTY**

- 65(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 utilisation 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).
- (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 the 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
  - (ii) without knowledge of the existence of the consumer's interest.

**Application for purposes of section 65**

- 28.1. If goods are damaged, stolen or misplaced while in the possession of a supplier and the supplier was grossly negligent in failing to prevent it, the supplier shall at its own expense and its election, restore the goods to their original condition if it is reasonable to do so, or in the case of a vehicle, replace the vehicle with a similar vehicle in terms of age, mileage and condition or refund the value of the vehicle calculated on the basis of fair market value.
- 28.2. A supplier to whom this section applies, and who has unsuccessfully tried to resolve any dispute over fair market value of the goods directly with the consumer, may apply to the MIOSA for a determination.

**29. SECTION OF ACT: 67 RETURN OF PARTS AND MATERIALS**

- 67 (1) When a supplier is authorised 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.
- (2) This section does not apply to any substance, parts or components that are
- (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.

**Application for purposes of section 67**

- 29.1. In the event of a good having been repaired and a consumer failing to remove the goods at the agreed time and place, the supplier shall be entitled to charge a daily storage fee (which must be agreed in writing with the consumer prior to commencing the work) and in respect of any other costs incurred by the supplier arising from the failure of the consumer to remove the goods from the date following the agreed delivery date to the date of actual delivery, provided that the charges are reasonable.

## PART C: ALTERNATIVE DISPUTE RESOLUTION

This part of the Code deals with specific sections of the Act that cater for the resolution of disputes through an ADR function such as the MIOSA.

### SECTION OF ACT: 70 ALTERNATIVE DISPUTE RESOLUTION

- 70 (1) A consumer 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 industry Ombud accredited in terms of section 82(6), if the supplier is subject to the jurisdiction of any such Ombud;
  - (b) 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
  - (c) 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.
- (2) If an alternative dispute resolution agent concludes 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, where after the party who referred the matter to the agent may file a complaint with the Commission in accordance with section 71.
- (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.
- (4) With the consent of a complainant, a consent order confirmed in terms of subsection (3) (b) may include an award of damages to that complainant.

#### Application for purposes of section 70

##### **Dispute Resolution Mechanisms**

- 29.2. If a matter is not resolved between the consumer and supplier, either of the parties may approach any of the following for assistance:
- 29.2.1. the MIOSA;
  - 29.2.2. the NCC;
  - 29.2.3. a Consumer Court;
  - 29.2.4. The NCT; or
  - 29.2.5. A Court with jurisdiction.
- 29.3. A supplier may refer a dispute to MIOSA on behalf of a consumer.

##### **Maintaining the independence of the Motor Industry Ombud**

- 29.4. The MIOSA is a voluntary, non-statutory body that has been afforded recognition under section 82(6) of the Act.
- 29.5. The MIOSA may engage in the resolution of disputes arising within the Automotive Industry.

**The MIAB**

- 29.6. The MIOSA will be guided by the MIAB who is responsible for ensuring the continued independence of the MIOSA.
- 29.7. The MIAB is a voluntary association, with a committee comprising of 2 (two) representatives from each of the following sectors:
- 29.7.1. Dealer;
  - 29.7.2. OEM;
  - 29.7.3. Independent representatives not belonging to Dealers or OEM's.
- 29.8. The MIAB will assist the MIOSA by identifying prevalent issues in the Automotive Industry and shall convene, on the request of the Ombud, special meetings from time to time.
- 29.9. The MIAB is an advisory body and will not have any day-to-day operational authority in management or compromise the independence or objectivity of the MIOSA.
- 29.10. The MIAB will investigate any complaints against the Ombud and may request the board of the MIOSA to remove the Ombud and appoint a new Ombud on removal of the current Ombud in terms of clause 30.25.

**MIAB Appointment Procedures**

- 30.10 Representatives of the MIAB will be elected as follows:
- 30.10.1 Each sector set out in clause 29.7 above will develop internal rules of election to determine its 2 (two) representatives that will serve on the MIAB.
  - 30.10.2 Representatives of the MIAB will serve a term of 2 (two) years and may be re-elected by their particular sectors.
  - 30.10.3 In terms of clause 30.10.1 above, each sector will develop their own selection criteria as to the qualifications, experience and industry knowledge of its representatives but must meet the requirements of clause 30.24 below.

**Removal of a MIAB Representative**

- 30.11 A Representative may be removed by his or her sector on grounds determined by that sector, or
- 30.12 If the MIOSA makes a request to the MIAB for the removal of a Representative, the MIAB shall convene a special meeting to decide whether to request a sector to remove a Representative.

**Meetings of the MIAB**

- 30.13 The MIAB shall meet at least 2 (two) times per year to discuss matters of the MIOSA and the Automotive Industry.
- 30.14 The Ombud shall be invited to all meetings of the MIAB.
- A special meeting may be called by any Representative or the Ombud at any time by giving notice to all parties at least 2 (two) weeks before such meeting.

**Objectives of MIOSA**

- 30.15 The objective of the MIOSA, in terms of clause 30.26 below, is to consider and dispose of complaints in a procedurally fair, informal, economical and expeditious manner and by reference to what is equitable in all the circumstances, with due regard to:
- 30.15.1 the contractual arrangement or other legal relationship between the complainant and any other party to the complaint; and
  - 30.15.2 the Act, read with the provisions of this Code.

**Ombud Appointment Procedures**

- 30.16 An Ombud will be appointed by the MIAB as follows:
- 30.16.1 subject to clause 30.20, each sector described in clauses 29.7 as well as the incumbent Ombud will have one vote;
  - 30.16.2 a new Ombud will be elected by way of simple majority.
- 30.17 The Ombud will be appointed for fixed periods of 5 (five) years at a time, with no Ombud remaining in office for consecutive periods.
- 30.18 Whenever a new Ombud is to be appointed, the new Ombud will be appointed one year prior to his/her commencement of the period of service and will be remunerated according to the remuneration criteria as set by the MIOSA board for this period.
- 30.19 Once an Ombud is appointed, that Ombud will appoint a board of the MIOSA consisting of no more than 4 (four) directors, unless the appointment of the Ombud is pursuant to a removal in terms of clause 30.26 below, in which case the board directors already appointed will serve out the remainder of their original term.
- 30.20 The MIAB will be required to invite applications from the general public who meet the selection criteria as set out below.

**MIOSA Selection Criteria**

- 30.21 The Ombud must have:
- 30.21.1 at least 10 (ten) years direct involvement in the Automotive Industry in a senior position;
  - 30.21.2 sufficient legal knowledge and experience of at least 5 (five) years;
  - 30.21.3 sufficient knowledge and experience of the technical aspects of the goods and services provided in the Automotive Industry;
  - 30.21.4 the necessary management skills to manage the scheme to successfully achieve the vision and mission of the scheme as contained in the Code;
  - 30.21.5 sufficient knowledge and skill to comprehend the Act to ensure that the staff component of the scheme will diligently and honestly conduct their day-to-day tasks.
- 30.22 An Ombud may not:
- 30.22.1 have any previous criminal conviction or conviction during her/his tenure;
  - 30.22.2 be an un-rehabilitated insolvent or commit an act of insolvency during her/his tenure;
  - 30.22.3 have an interest directly or indirectly in the Automotive Industry whatsoever.
- 30.23 Selection criteria and qualifications of the Board of Directors:
- 30.23.1 at least 10 (ten) years direct involvement in the Automotive Industry in a senior position;
  - 30.23.2 sufficient experience of at least 5 (five) years in the subject field of employment;
  - 30.23.3 the necessary management skills to manage the scheme to successfully achieve the vision and mission of the scheme as contained in the Code;
  - 30.23.4 sufficient knowledge and skill to comprehend the Act to ensure that the staff component of the scheme will diligently and honestly conduct their day-to-day tasks.
- 30.24 In order to realise its objectives, the Board of Directors will appoint qualified and competent employees with the necessary skills and expertise to accomplish speedy and efficient dispute resolution.

**Removal of the Ombud**

- 30.25 During the period envisaged in clause 30.17 above, the Ombud enjoys security of tenure and can only be dismissed on the grounds of gross misconduct, incompetence, or its inability to effectively carry out duties.

**MIOSA Minimum Standards**

- 30.26 The MIOSA will:
- 30.26.1 report regularly to the NCC on its progress or on issues identified by the NCC;
  - 30.26.2 be sufficiently resourced to perform and carry out its functions;
  - 30.26.3 not be influenced when making its decisions;
  - 30.26.4 be entirely responsible for the management and determination of complaints;
  - 30.26.5 be accountable to the Minister, the Commissioner of the NCC and the MIAB;
  - 30.26.6 act independently, objectively, openly and honestly;
  - 30.26.7 have regard to the provisions of the Act as well as principles of the rule of law, of equality, fairness, justice and equity;
  - 30.26.8 equally and impartially balance the rights of consumers (also called "complainants") and the rights of suppliers;
  - 30.26.9 exercise its functions and duties in terms of these operating procedures;
  - 30.26.10 resolve complaints as efficiently and as speedily as is possible; and
  - 30.26.11 ensure that its staff performs their functions in terms of and according to these operating procedures;
  - 30.26.12 be guided by the following considerations:
    - 30.26.12.1 the Consumer Protection Act;
    - 30.26.12.2 the Arbitration Act;
    - 30.26.12.3 the principles and rules of civil procedure as in the Magistrates Court where applicable to the dispute resolution process;
    - 30.26.12.4 the need to resolve disputes expeditiously.
- 30.27 The MIOSA must compile an annual report regarding the numbers and types of complaints received by it, including the outcomes; and make such report available to all Automotive Industry stakeholders, the DTI, the NCC or any other statutory body that may require this in terms of any statutory requirement.

**Funding the MIOSA**

- 30.28 The MIOSA financial year will be from 1 March to 28 February.
- 30.29 The MIOSA is funded by the Automotive Industry in the manner as set out in Schedule 9.
- 30.30 The MIOSA will compile a database of all members of the Automotive Industry by 1 September 2013 and will keep such database updated.
- 30.31 The MIOSA will provide the MIAB and the Commissioner of the NCC with a written report on the progress made with the compilation of the database every six months, the first report to be submitted within 6 months of accreditation and every six months thereafter.
- 30.32 The MIOSA will be responsible to collect all contributions due and owing by the members of the Automotive Industry.
- 30.33 The MIOSA may put out to tender the compilation of the database of all members of the Automotive Industry and the collection of funding contributions from those members; provided that after 1 March 2013, it will only be entitled to do if the related expenditure has been approved as part of the annual budget.

- 30.34 The MIOSA will invoice the members of the Automotive Industry monthly on or before the 7<sup>th</sup> day of each month and the invoices are payable monthly in arrears on or before the 20<sup>th</sup> day of each month, with the first payments due on or before 20 April 2013.
- 30.35 The MIOSA must deposit all funds in an account opened with a bank registered under the Banks Act, 1990 (Act No. 94 of 1990).
- 30.36 The MIOSA must utilise all funds received for the defrayal of expenses incurred in the performance of its duties and may invest funds which are not required for immediate use.
- 30.37 All payments made on behalf of the MIOSA, excluding petty cash must be made by way of cheques and/or debit orders drawn against the bank account of the MIOSA and must be signed in a manner decided on by the MIAB after consultation with the Ombud; provided that all cheques, bills and other negotiable instruments to be drawn on the MIOSA's bank accounts will at all times require the approval of 2 (two) of the executive directors of the MIOSA.
- 30.38 Funds standing to the credit of the MIOSA at the end of the financial year, as well as funds invested, must be carried forward to the next financial year.
- 30.39 The Ombud will submit an annual budget to the MIAB on 1 November 2012 and thereafter on 1 November of each subsequent year which budget will include, without limitation, the budget for:
- 30.39.1 remuneration of the staff, including executive directors;
  - 30.39.2 operating capital in respect of normal business activities;
  - 30.39.3 capital in respect of training for staff, consumers and role-players in the industry;
  - 30.39.4 unforeseen contingencies;
  - 30.39.5 marketing in order to promote the scheme.
- 30.40 The MIAB must consider the proposed budget and furnish the MIOSA with an approved budget by 31 January of each year.

#### **Conflict of Interest**

- 30.41 The MIOSA must adopt a conflict of interest policy which includes at least the:
- 30.41.1 identification of conflicts of interest in which the Ombud and/or any Director and/or employee of the MIOSA have an actual or potential interest that may influence the objectivity of the Ombud and/or Director and/or employee may be in question;
  - 30.41.2 provisions for avoiding any conflicts of interest, and where not possible, reasons therefore and procedures to mitigate such conflicts;
  - 30.41.3 internal controls to adhere to the policy;
  - 30.41.4 processes to disclose any conflicts of interest;
  - 30.41.5 rules relating to the giving and receipt of gifts, vouchers, incentives, hospitality or other benefits;
  - 30.41.6 creation and maintenance of a gift register.

#### **Accountability**

- 30.42 The Ombud is the accounting officer in respect of all funds received and all payments made in respect of expenses incurred by the MIOSA.
- 30.42.1 The Ombud, as accounting officer, must ensure that proper accounting records for the recording of all the MIOSA's transactions are kept, which records will:
- 30.42.1.1 be kept at the main offices of the MIOSA regarded as such from time to time by the MIAB;
  - 30.42.1.2 at all times during normal working hours, be available for inspection by the Minister, the NCC and the MIAB or their duly appointed and authorised representatives.



- 30.42.2 The MIOSA will ensure that financial statements consisting of:
- 30.42.2.1 an income and expenditure account for the financial year under observation; and
  - 30.42.2.2 a balance sheet reflecting the financial position of the MIOSA at the end of the financial year,
- are prepared by a firm of auditors appointed by the board of the MIOSA as soon as possible after the financial year end, but not later than 90 (ninety) days after the financial year end.
- 30.43 A copy of the financial statements must as soon as possible, but not more than 7 (seven) days after those statements have been prepared, be made available to each member of the MIAB.
- 30.44 The MIAB will, within one month of the finalisation of the financial statements, meet to consider, provide comment and/or approve such financial statements.
- 30.45 A copy of the approved financial statements will be made available to the Minister, the Commissioner of the NCC and each member of the MIAB and will be published in a two newspapers circulated nationally.

#### **Jurisdiction of the MIOSA**

- 30.46 The authority of the MIOSA to resolve disputes is confined to the terms and conditions of the agreement between the supplier and consumer. It should be noted that the MIOSA does not have jurisdiction in respect of any dispute:
- 30.46.1 which falls within the exclusive mandate of any other Ombudsman;
  - 30.46.2 which occurred more than 36 (thirty-six) months prior to the date on which the complaint was lodged with the MIOSA as such claims will have become prescribed by law;
    - 30.46.2.1 the period of 3 (three) years commences on the date on which the complainant became aware or ought reasonably to have become aware of such occurrence, whichever occurs first;
  - 30.46.3 which requires the determination of the quantum of consequential damages;
  - 30.46.4 which requires the Ombud to act as arbitrator in the above mentioned circumstances;
  - 30.46.5 where a class action must be determined;
  - 30.46.6 where legal action has been instituted by either party unless such complaint was received by the MIOSA before such legal action was instituted;
  - 30.46.7 where it appears that a criminal offence has been committed by either party, in which event the MIOSA will only deal with the facts outside the ambit of the suspected criminal offence;
  - 30.46.8 involving in direct or consequential damages, arising from a contract and/or delict or otherwise.
- 30.47 Limits on the MIOSA's jurisdiction:
- 30.47.1 The MIOSA may not consider a complaint or dispute that relates to a juristic person as a consumer whose asset value or annual turnover equals or exceeds the threshold (limit) of R2,000,000.00 being the amount as determined by the Minister by regulation issued in terms of section 5(2) of the Act, from time to time;
  - 30.47.2 The MIOSA may not make a finding on product liability.

**General Administrative Powers of Ombud**

- 30.48 The Ombud may for the performance of functions in the MIOSA and as a charge against or for the benefit of the funds of the MIOSA, as the case may be-
- 30.48.1 hire, purchase or otherwise acquire property, and let, sell or otherwise dispose of property so purchased or acquired;
  - 30.48.2 enter into an agreement with any person for the performance of any specific act or function or the rendering of specific services;
  - 30.48.3 insure the office against any loss, damage, risk or liability;
  - 30.48.4 employ persons to assist the Ombud, determine their terms of appointment and, subject to such conditions as may be determined by the Ombud, delegate or assign to any such employee, including a Deputy Ombud, any administrative function vesting in the Ombud in terms of this part;
  - 30.48.5 obtain such professional advice as may reasonably be required; and
  - 30.48.6 in general, do anything which is necessary or expedient for the achievement of the objectives of the Ombud.

**De-establishment and Liquidation of MIOSA**

- 30.49 The MIOSA may not be de-established or liquidated except by the Minister.
- 30.50 In the event of any such de-establishment or liquidation, the surplus assets of the MIOSA or any dividends (if any) accrue to the Board.

**Considering a Complaint**

- 30.51 The MIOSA may consider a complaint brought by or on behalf of a consumer who is:
- 30.51.1 a natural person; or
  - 30.51.2 a juristic person (small business, including a sole proprietor, trust or partnership).

**Adjudication**

- 30.52 The MIOSA can adjudicate upon disputes between:
- 30.52.1 consumers;
  - 30.52.2 consumers on the one hand and suppliers, and/or distributors, and/or retailers, and/or manufacturers on the other hand; and/or
  - 30.52.3 complaints concerning alleged contraventions of the Code or the Act.
- 30.53 The MIOSA can adjudicate upon disputes where a supplier has referred a dispute on behalf of a consumer.
- 30.54 Where more than one Ombud has jurisdiction to decide a matter, the MIOSA will have jurisdiction to the extent that the dispute relates to the automotive industry.

**Procedure for Determination of a Dispute**

- 30.55 A party must refer a dispute to the MIOSA in terms of Schedule 4 within 10 (ten) days of the one party notifying the other party in writing that the matter has not been resolved.
- 30.56 Any party will be required to respond to a request by the MIOSA within 5 (five) days of receiving notification from MIOSA, failing which the party will be barred from providing information, unless the MIOSA in its discretion and considering the reasons for the delay determine otherwise.
- 30.57 After complaints are lodged with the MIOSA for investigation regarding alleged contraventions of the Code or the Act, the MIOSA must:

- 30.57.1 investigate and evaluate alleged complaints arising from the alleged contraventions of the Code or the Act;
- 30.57.2 attempt to facilitate a settlement between the parties and where possible, provide a recommendation with regard to such settlement;
- 30.58 The MIOSA will determine a dispute within 20 (twenty) days from the date it has received all the necessary documentation/information to enable the MIOSA to make an informed decision regarding the complaint.

#### **Post Resolution of Dispute**

- 30.59 In the event of a dispute being resolved, the MIOSA must:
  - 30.59.1 at the request of a party to a dispute, record the resolution thereof in the form of an order in terms of section 70(3)(a) of the Act, the cost of which will be borne by the party making such request;
  - 30.59.2 with the consent of both parties, include in any agreed consent order any award of damages made to that complainant in terms of section 70(4) of the Act;
  - 30.59.3 at the request of a party to a dispute, submit an order to the NCT or the High Court for purposes of a consent order in terms of its rules and of section 70(3)(b), the cost of such order to be borne by the party making such request;
  - 30.59.4 terminate the process by notice to the parties in terms of section 70(2) of the Act;
  - 30.59.5 report any non-compliance with the Code or the Act by a supplier or service provider to the Automotive Industry Association to which it is a member (if any), in order for that particular Association to investigate the allegations.

#### **Miscellaneous**

- 30.60 Should resolution of any particular complaint require the input of a specialist authority or technical expert in any field, or advice from any third party, then in order to resolve such dispute before it, the MIOSA may employ or utilize the services of any specialist authority or technical expert to assist the MIOSA with its investigation or in order to produce any required report.
- 30.61 Subject to clause 30.62 below, neither the MIOSA, nor any member of its staff may be subpoenaed, by any supplier or any consumer, to give evidence in a court of law on behalf of such supplier or consumer, regarding any dispute that the MIOSA had considered or adjudicated upon or was referred to the MIOSA.
- 30.62 Should the MIOSA, its staff or any supplier become aware of any criminal act being committed or intended to be committed within the Automotive Industry, or of any practice that may be deemed or alleged to be criminal, then in such event the supplier, and/or the MIOSA and/or its staff will be obliged to report such practice or behaviour to the relevant authority(ies), in which case evidence may have to be given in a court of law.
- 30.63 Nothing contained herein precludes the MIOSA from developing internal rules, forms and procedures that are not in conflict with the provisions of this document or the Act.
- 30.64 All information (including settlement offers) provided by one party to a dispute before MIOSA to the other party will be deemed to be provided on a confidential "without prejudice" basis and may not be disclosed to any other party or used in any subsequent arbitration or litigation.

**Transitional Period**

30.65 The MIOSA is currently established as an Alternative Dispute Resolution scheme. The Incumbent Ombud and the 3 (three) Directors appointed by him will continue in this position for 5 (five) years so as to ensure that the Code can be adequately enforced from the date of approval

**SCHEDULE 1: LIST OF CURRENT INDUSTRY ASSOCIATIONS**

<b>ASSOCIATION</b>	<b>INDUSTRY TYPE</b>
AMID – Association of Motorcycle Importers and Distributors	Motorcycle
IDA – Independent Dealers Association	Independently Owned Dealers, Inclusive Of Independently Owned Franchisees
NAACAM – National association of Automotive Component & Allied Manufacturers	Components
NAAMSA – National Association of Automobile Manufacturers of South Africa	Motor Vehicle OEM & Importer And Distributor
RMI – Retail Motor Industry Organisation	Umbrella Body For Various Automotive Retail Associations

## SCHEDULE 2: SUMMARY OF SUPPLIER OBLIGATIONS

NOTE: This Table is not an exhaustive list of sections applicable to the automotive industry and is provided for information purposes only and represents the main provisions of the Act so applying. Regard should, however, be had to the Act in its entirety when interpreting or applying any section.

SUPPLIER OBLIGATIONS	SECTION/S
Notices & documents etc. to be in the prescribed form or in plain language	22 (1)
Provide a written record of transaction for goods or services supplied/written consumer agreements	26 (2), 50(1)
Disclose reconditioned or grey market goods	25 (1)
Disclose the prescribed information to a consumer if catalogue marketing	33 (3)
Intermediary in the sale of any property or services must disclose prescribed Information	27 (1)
Draw limitation of risk or liability of the supplier or an assumption of risk or liability by the consumer to the attention of the consumer	49 (1)
Draw to the attention of the consumer potential risks of an unusual character or that consumer could not reasonably be expected to be aware or that could result in serious injury or death	58 (1)
Wear or display identification device or provide identification when calling on consumer	28
Accept the return of designated products from any consumer, without charge to the consumer	59 (1)
Notify the NCC upon confirmation that substantial evidence exists of a safety defect that justifies a recall campaign	60
Deliver the goods or refund the consumer for lay-bys	62 (1) & (2)
Repay the deposit for containers, pallets etc.	66

### SCHEDULE 3: SUMMARY OF PROHIBITIONS

NOTE: This Table is not an exhaustive list of prohibitions applicable to the automotive industry and is provided for information purposes only and represents the main provisions of the Act so applying. Regard should, however, be had to the Act in its entirety when interpreting or applying any section.

PROHIBITIONS	SECTION/S
Discrimination against a person or group or giving any person or group preferential treatment other than on purely commercial grounds or the exceptions relating to seniors and minors	8
False, misleading or deceptive representations about a supplier or any goods or services	4 (5), (b) & (c ) & 41
False, misleading or deceptive representations about the nature, properties, advantages or uses of the goods or services	29
Misleading trade description	24 (2)
Misleading or deceiving regarding the actual availability or price of goods or services	30 (1)
Unfair, unreasonable or unjust price, marketing or negotiation	48 (1) & (2)
Prohibited transactions, agreements, terms or conditions	51 (1)
Fraudulent or pyramid schemes and offers	42 (1), 43 (1)
Bundling of goods and services (i.e. requiring that the consumer purchase any other particular goods or services from that supplier or a designated third party)	13 (1)
Unsolicited goods or services	21 (1)
Display of goods for sale without displaying a price	23 (3)
Negative option marketing	31 (1)
Over-selling	47 (1)
Making a promotional offer with the intention of not fulfilling it	34 (3)
Operating a loyalty programme without the intention of providing goods and services in exchange for loyalty points	35 (2)
Falsely telling a person that that person has won a competition	36 (2)

## **SCHEDULE 4: MIOSA COMPLAINTS PROCESS**

### **THE COMPLAINTS PROCESS**

#### **Stage 1 — Laying of First Complaint**

- 1 A consumer who has a query is advised to address the query in writing to the supplier and/or trade association to which the supplier subscribes.
- 2 The supplier may endeavour to resolve the dispute directly with the consumer. In this regard the supplier will respond to the query substantively, in writing, within 5 (five) days of receipt of the query. If the supplier is unable to provide a substantive response or resolve the matter within 10 (ten) days thereafter, the supplier shall communicate this to the consumer and provide reasons to the extent possible in writing.
- 3 If the query is not resolved within the time period as mentioned in clause 2 above or such period as the parties may agree to in writing:
  - 3.1 the consumer shall acquire a complaint form from the office of the MIOSA or via their website [www.miosa.co.za](http://www.miosa.co.za), complete the complaint form and forward it to the MIOSA by facsimile, e-mail or pre-paid registered post, stating the nature of the complaint and dispute as well as the action required and expected outcome;
  - 3.2 copies of all relevant documentation shall accompany the complaint.
- 4 If a consumer requires assistance in understanding the procedures to conduct a dispute with the MIOSA, the MIOSA will assist the consumer in this regard.

#### **Stage 2A — Lodging a Complaint with Motor Industry Ombud**

- 5 A complainant who:
  - 5.1 referred a complaint to a supplier, and who is dissatisfied with the manner in which the supplier is dealing with it, or how it has been dealt with or with the outcome thereof; or
  - 5.2 has not approached the supplier as this would cause or be likely to cause the complainant undue harm or prejudice,may refer the complaint to the MIOSA.
6. A supplier who:
  - 6.1. is unable to resolve a complaint referred to it by a consumer; or
  - 6.2. is unable to resolve a complaint referred to it by another supplier,may refer the complaint to the MIOSA.
- 7 The complainant must refer the complaint to the MIOSA within a reasonable time of the issue arising and no later than those times as set out in Stage 1 above.
- 8 Receipt of each complaint should be acknowledged to the complainant within 2 (two) business days of receipt thereof by way of phone, facsimile or e-mail.
- 9 No party shall disclose the nature of the dispute to the media from the date on which the complaint is filed with the MIOSA, to the date on which the dispute is resolved.
- 10 The supplier shall file its substantive response with the MIOSA within 5 (five) days of receipt of the complaint as provided in clause 7, If the supplier is unable to provide a substantive response within 5 (five) days, the supplier must advise the MIOSA and provide acceptable reasons.
- 11 All communication between the parties and the MIOSA regarding the dispute must be in writing, unless alternative arrangements have been agreed between the parties, in writing.



- 12 After receipt, an initial assessment must be made of each complaint to ascertain whether it falls within the jurisdiction of the MIOSA.
- 13 The MIOSA shall be entitled to request further particulars from the parties. The parties shall provide all relevant information to each other and the MIOSA to deal with the query within 10 (ten) days of such a request. If oral evidence is necessary to resolve the dispute:
  - 13.1 the MIOSA shall request the parties to attend a hearing on not less than 10 (ten) days prior written notice;
  - 13.2 attendance at the hearing shall be at each party's own expense;
  - 13.3 the MIOSA shall, if requested and at the requesting party's expense, arrange for an interpreter to be present;
  - 13.4 either party shall be entitled to be represented by a suitable party, including a legal representative, with the permission of the MIOSA, to make submissions and cross examine the other party and witnesses at the hearing.
- 14 All decisions fall exclusively within the discretion of the MIOSA.
- 15 An up-to-date status should be made available to both the complainant and the supplier at least at the time of pre-set deadlines.

#### **Stage 2B — Referral by the MIOSA**

- 16 The MIOSA may refer a complaint to any supplier within the supply chain, or to all suppliers within the supply chain, as the MIOSA considers appropriate in the circumstances.
- 17 Once the decision has been made to refer the complaint, it must be referred to the relevant party, body or institution within 5 (five) days of it being received by MIOSA.
- 18 The MIOSA, and to the extent the MIOSA considers it necessary, will provide the supplier concerned with full details of the complaint, including copies of relevant documentation as submitted to MIOSA.
- 19 The MIOSA shall keep a register of all the complaints it refers to the suppliers, as well as the appropriate tracking mechanisms and records – to ensure that all of the complaints are able to be tracked at any time and are eventually addressed.

#### **Stage 3 – Resolution by MIOSA**

- 20 The supplier must acknowledge receipt of the notification within 5 (five) days and may do so by letter delivered by hand or sent by post, telefax or e-mail.
- 21 The MIOSA shall first attempt to mediate the dispute between the parties. If mediation fails to resolve the dispute the MIOSA shall issue a certificate to that effect to the parties. The complainant shall then refer the matter adjudication within 5 (five) days of issue of this certificate.
- 22 Proceedings may be recorded at the request of a party, provided the requesting party tenders the costs of the recording, payable to the MIOSA at least 5 (five) days before the hearing takes place.
- 23 The MIOSA will present its decision within 10 (ten) days of conclusion of the arbitration proceedings. The MIOSA is allowed to provide its decision in writing and deliver the findings to the parties' chosen addresses.
- 24 The MIOSA will, in providing its decision, make an order as to the costs of the adjudication including costs relating to taxation of the bill of costs, as the parties agree or the MIOSA deems appropriate.

**Stage 4 – Appeal**

- 25 All appeals to rulings made by the MIOSA shall be lodged with the NCC and the NCT in terms of its rules and procedures.

## **SCHEDULE 5: INTERNAL COMPLAINTS HANDLING GUIDELINES**

1. When dealing with complaints; customers, complainants and other interested parties should receive the following:
  - 1.1. necessary information concerning the internal complaints-handling process applicable to the supplier;
  - 1.2. any relevant MIOSA brochures and pamphlets.
2. All information must be provided in plain language and, where reasonably possible, in an accessible format to ensure that complainants are not disadvantaged by any format in which information is provided.
3. The following are examples of such information:
  - 3.1. where complaints can be made;
  - 3.2. how complaints can be made;
  - 3.3. information to be provided by the complainant (see Schedule 5 for suggested format);
  - 3.4. the process to be followed when handling complaints;
  - 3.5. the time periods associated with the various stages in the process;
  - 3.6. the complainant's options for remedy, including referral to the MIOSA;
  - 3.7. the manner in which the complainant can obtain feedback on the stage of the complaint.
4. Receipt of complaint:
  - 4.1. When the complaint is first reported, the complaint must be recorded and a unique identifier code or number must be provided for each complaint.
  - 4.2. Any other information necessary for the effective handling of the complaint must also be recorded or attached to the complaint, including at least the following:
    - 4.2.1. a description of the complaint must be made including:
      - i. the products or related organization practices complained about;
      - ii. information on the persons involved including department, branch, organization and market segment;
    - 4.2.2. all supporting information, all relevant supporting data and documentation must also be recorded or attached to the complaint;
    - 4.2.3. the record of the initial complaint should also specify:
      - i. the remedy that complainant is seeking;
      - ii. the due date for a response; and
      - iii. whether any immediate action was or must be taken (if any).
5. Time limits for Complaint resolution:
  - 5.1. The supplier should make every effort to resolve the matter within 15 (fifteen) business days.
  - 5.2. If the supplier is unable to resolve the complaint within that period for reasons such as on-going technical testing, the supplier shall inform the complainant of that fact at least two days before the expiry of the 15 (fifteen) business day deadline.
6. Complaint resolution:
  - 6.1. The supplier should make every effort to resolve the matter in good faith and in accordance with its internal complaints-handling processes.
  - 6.2. In doing so, the supplier should deal with the complaint:
    - 6.2.1. politely and courteously;
    - 6.2.2. promptly and efficiently; and
    - 6.2.3. in a confidential manner.

7. Acknowledgement of complaint:
  - 7.1. Receipt of each complaint should be acknowledged to the complainant:
    - 7.1.1. immediately; or
    - 7.1.2. by the latest within 2 (two) business days (for example via post, phone or email).
8. Tracking of complaint:
  - 8.1. The complaint should be tracked from initial receipt through the entire process until the complainant is satisfied or the final decision is made.
  - 8.2. An up-to-date status should be made available to the complainant:
    - 8.2.1. upon request ; and
    - 8.2.2. at regular intervals; or
    - 8.2.3. at least at the time of pre-set deadlines.
9. Initial assessment of complaint:
  - 9.1. After receipt, each complaint should be initially assessed by the supplier in terms of criteria such as:
    - 9.1.1. severity;
    - 9.1.2. safety implication;
    - 9.1.3. complexity;
    - 9.1.4. impact; and
    - 9.1.5. the need and possibility for immediate action.
10. Attempt to settle:
  - 10.1. The supplier should contact the complainant to:
    - 10.1.1. clarify any issue;
    - 10.1.2. ascertain the essence of the complaint; and
    - 10.1.3. attempt to settle the complaint to the reasonable satisfaction of the complainant.
11. Investigation of complaints:
  - 11.1. Every reasonable effort should be made by the supplier to investigate all the relevant circumstances and information surrounding a complaint.
  - 11.2. The level of investigation should be commensurate with the seriousness, frequency of occurrence and severity of the complaint.
12. Response to complaints following an investigation
  - 12.1. Where able and appropriate, the supplier should offer a response, for example that will:
    - 12.1.1. correct the problem; and
    - 12.1.2. prevent it from happening in the future.
  - 12.2. Where not possible: the offer of referring the matter for mediation to the MIOSA may be made.
13. Communicating the decision:
  - 13.1. As soon as is reasonably possible, after a decision has been made regarding the complaint or any action has been taken regarding the complaint, the supplier must advise:
    - 13.1.1. the complainant of such decision made or action taken; and
    - 13.1.2. any of its staff who may have been involved in the incident (if any).
14. Closing the complaint:
  - 14.1. If the complainant accepts the proposed decision or action, then:
    - 14.1.1. the decision or action should be implemented; and
    - 14.1.2. the decision or action should be recorded.

- 14.2. The complaint should not be closed by the supplier until the complainant has acknowledged the completion of any actions due to him/her.
- 14.3. If the complainant rejects the proposed decision or action, and the supplier rejects or refuses to implement or take further steps or measures regarding the complaint, then:
  - 14.3.1. this should be recorded by the supplier; and
  - 14.3.2. the complainant should be informed of his/her rights in respect of the referral of the complaint to either:
    - 14.3.2.1 the MIOSA; or
    - 14.3.2.2 other entity with jurisdiction.

**SCHEDULE 6: DRAFT COMPLAINT FORMS****COMPLAINT NOTIFICATION FORM**

## COMPANY DETAILS

Attention: The Compliance Manager

P O Box 000000

suburb, 0000

e-mail: consumer@complaints.com

fax: 086 0000000

Date: \_\_\_\_\_

Complainant's Details			
Surname		First Names	
Postal Address			
Contact Details	Cell No		Home No
	Work No		Fax No
	e-mail		
Preferred method of Communication	postal <input type="checkbox"/>	e-mail <input type="checkbox"/>	fax <input type="checkbox"/>
Transaction Details			
Representative's Name		Branch	
Product Name		Reference	
Date of Transaction/Incident			
Summary of Complaint			
<i>Please attach all supporting documentation relevant to the complaint</i>			

COMPLAINT REGISTER AND PROGRESS REPORT						
Company Name				Date Received		
Complaint Handler				Complaint No		
Company Representative				Designation		
NAME OF CLIENT						
Client Address						
Client Contact Details	Cell		Home		Work	
	e-mail				Fax	
COMPLAINT DETAIL						
Complaint received by	Fax <input type="checkbox"/>	E-Mail <input type="checkbox"/>	Registered Post <input type="checkbox"/>	Hand Delivered <input type="checkbox"/>	Telephone <input type="checkbox"/>	Other <input type="checkbox"/>
Describe Other						
Date Received			Date of Initial Response			
Client Expectation						
SUPPLY CHAIN	Are there any other parties in the supply chain involved?			Yes <input type="checkbox"/>	No <input type="checkbox"/>	
Any evidence of 3 <sup>rd</sup> party responsibility?	Yes <input type="checkbox"/>	Has contact been made with the 3 <sup>rd</sup> party/ies?			Yes <input type="checkbox"/>	
	No <input type="checkbox"/>				No <input type="checkbox"/>	
Date Contacted	Confirmed in writing with supporting documents			Yes <input type="checkbox"/>	No <input type="checkbox"/>	
Initial Response						
Supply Chain Contact Details	Company Name			Contact Person		
	Tel No		Fax No		Cell No	
	e-mail				Website	
Type	OEM <input type="checkbox"/> Retailer <input type="checkbox"/> Repairer <input type="checkbox"/> Sublet Repairer <input type="checkbox"/> Sublet Cleaner <input type="checkbox"/> Broker <input type="checkbox"/> Warranty Administrator <input type="checkbox"/> VAP Provider <input type="checkbox"/> Credit Provider <input type="checkbox"/> Insurer <input type="checkbox"/> Other <input type="checkbox"/>					
Describe Other				SLA / Vendor Contract	Yes <input type="checkbox"/> No <input type="checkbox"/>	
Client Response	Acceptance <input type="checkbox"/>	Rejection <input type="checkbox"/>	Date			
Reason for Rejection						
Ombud Referral	Yes <input type="checkbox"/>	No <input type="checkbox"/>	Date			
Outcome from Ombud						
Final Result				Date		
Date Finalised			Signed off by			

TIME LINE IN RESPECT OF COMPLIANT HANDLING				
CLIENT NAME				
COMPLAINT NO				
Date & Time		Contacted		Contact No
Comments				
Date & Time		Contacted		Contact No
Comments				
Date & Time		Contacted		Contact No
Comments				



**SCHEDULE 7: DEFECT, FAILURE OR HAZARD REPORT****DEFECT, FAILURE or HAZARD REPORT**

<b>Consumer details</b>			
Title:			
Full Name:			
Company Name (if applicable):			
Address:			
Post Code:			
Telephone:			
Mobile Phone:			
Fax No:			
E- Mail:			
<b>The Goods</b>			
Type of Goods			
Make:		Model:	
Registration/ Part No:		Full Chassis/VIN No: (vehicles only)	
Date of liability for first registration:			
Any Special Features:			
<b>The Defect, Fault or Hazard</b>			
Description:			
Description of incident leading to failure:			
Date of failure:			
In the case of a vehicle, Odometer Reading at time of failure:			
<b>Other information (please circle or highlight the appropriate box)</b>			
Is the Service History available?	Yes	No	
Was there an accident? ( if so, please provide full details including a copy of the SAPS report)	Yes	No	
Are there any injuries that are attributable to the defect, failure or hazard? (please provide details)	Yes	No	
<b>For Vehicles only:</b>			
Date of Last Service:		Carried Out by: (name of Retailer)	
Type of Service: (e.g. 15,000 km)		Mileage Reading at last service:	
Is the failed component original to the vehicle?	Unknown	Yes	No
Are the goods available for examination? (if so, please provide contact details of person from whom inspection can be arranged)	Yes	No	
<b>Photographs/ other Evidence</b>			
Please include any photographs or copies of any other relevant information with the form. Please note that in order to progress this investigation it may be necessary to send this form to the relevant OEM.			
I consent to this form and other relevant evidence being sent to the OEM:	Yes	No	
<b>Data Protection</b>			
The personal information you provide on this form will be used for the purposes of the recipient's statutory functions. It will not be disclosed to other organisations unless required or permitted by law.			
Signature:		Date:	

**SCHEDULE 8: INFORMATION TO BE PROVIDED TO THE NCC**

<b>RECALL CAMPAIGN INFORMATION</b>			
Campaign No.		Goods Type	Company
Reference:			
Launch Date:			
Concern:			
Model Start:		Model End	
Description of Defect:			
Numbers Involved:			
Action by OEM:			
<b>BREAKDOWN BY TYPE OF GOODS</b>			
TYPE	NUMBER OF CAMPAIGNS		NUMBER OF GOODS
VEHICLE			
COMPONENT			
GOODS			
LPV			
MOTOR CYCLE			
OTHER			
TOTAL			

## SCHEDULE 9: FUNDING OF MIOSA

### BACKGROUND AND EXPLANATION

- i. The MIOSA is an established Ombud Scheme and has operated since 2000. Due to this, there is an existing staff contingent, expert knowledge base, premises, telephone infrastructure, certain equipment, assets and stationary and IT network in place and sustainable.
- ii. During 2009, the MIOSA received 19 700 complaints with a value of R126 489 299 all of which have been resolved.
- iii. Before the coming into operation of the Act, the MIOSA adjudicated disputes between consumers, OEM's and Retailers. In terms of the Act, the MIOSA has jurisdiction over all the members within the Automotive Industry.
- iv. According to the records of the Motor Industry Bargaining Counsel, there are approximately 14 000 retailers forming part of the Automotive Industry. In addition there are currently 42 motor vehicle OEM's and Importers forming part of the Automotive Industry. NAACAM has been approached to provide the exact number of component OEM's and Importers forming part of the Automotive Industry.
- v. The MIOSA will, once accredited, be in a position to vastly expand its current infrastructure to meet the needs of Consumers in line with other Ombud schemes established under various forms of legislation. However, as an existing scheme, the majority of start-up pressures and challenges will not be present which leads to a cost and efficiency saving from the beginning.
- vi. The sustainable funding model below is based on the assumption that, following accreditation, the MIOSA will initially, in the first one to two years, only be able to recover contributions from 60% of the retailers and all of the NAAMSA motor vehicle OEM's and Importers forming part of the Automotive Industry.
- vii. The contribution rate as set out in clause 'vi' above is based on a worst-case scenario and the quantum of each entity's contribution has initially been increased accordingly in order to ensure that the MIOSA is able to fulfil its obligations in terms of its budget requirements without the necessity of collecting more than 60% of required contributions.
- viii. Each year the quantum of required contribution will be reviewed in line with the success rate of the previous year's contributions collected along with the revised budget requirements. At no stage will the model rely on a 100% collection success rate.
- ix. The cost of collection will at all times be kept to a minimum and decisions regarding outsourced collection or in-house operations will be made with this in mind. The model has been structured to allow for this cost.

1. **Funding during Transitional Phase from 1 Oct 2012 – date of accreditation:**

During the transitional period, the MIOSA will be funded as follows:

- 1.1 The MIOSA will charge and invoice all motor vehicle OEM's and Importers a combined annual fee equalling 50% of the MIOSA budget and each individual OEM or Importer's contribution shall be calculated by dividing 50% of the approved budget by the total number of entities who directly import or manufacture Goods in line with the established NAAMSA contribution model.
- 1.2 The MIOSA will charge and invoice all RMI and IDA retailers a combined annual fee equalling 50% of the MIOSA budget and each individual retailer's contribution shall be calculated by dividing that percentage of the approved budget by the total number of retail premises from which business is being conducted in the Automotive Industry.

2. **Funding from date of accreditation:**

From the date of accreditation, the MIOSA will be funded as follows:

- 2.1 The OEM's and Importers shall be liable to contribute 20% of the approved budget and each individual OEM or Importer's contribution shall be calculated by dividing 20% of the approved budget by the total number of entities who directly import or manufacture Goods.
- 2.2 The retailers shall be liable to contribute 80% of the approved budget and each individual retailer's contribution shall be calculated by dividing 80% of the approved budget by the total number of retail premises from which business is being conducted in the Automotive Industry.

## **SCHEDULE 10: SERVICE THRESHOLD**

The service threshold in terms of clause 9 shall be as set out in the Regulations or by the Honourable Minister of Trade and Industry in a Government Gazette.

## **SCHEDULE 11: RETURN PROCESS, PAYMENTS AND DEDUCTIONS**

If a consumer is entitled to exercise the right to return goods to a supplier in terms of clause 10.2, 14.2 or 25.5.2 of the SAAICC, then:

### **1. Acceptance of the Return by Supplier**

1.1. The supplier will only be able to accept return of the goods once:

- 1.1.1. the consumer has completed the Return or Substitution of Goods form as set out in Schedule 12; and
- 1.1.2. the supplier has been afforded a reasonable opportunity to examine the goods to determine their use and any damage that may have occurred; and
- 1.1.3. the supplier has provided the consumer with a schedule of costs including deductions as determined in terms of item 2 below within 10 (ten) business days after examining the goods; and
- 1.1.4. if goods returned were financed by a registered Credit Provider then any shortfall between the amount refunded by the supplier and the amount due and owing to the Credit Provider in terms of the credit agreement will be payable by the consumer directly to the Credit Provider; and
- 1.1.5. the consumer has settled all outstanding amounts either to the supplier or to the registered credit provider as well as having complied with other governing legislation or ordinance in terms of registration and/or ownership of the vehicle (where required) that will allow the consumer to return title to the supplier and have this recorded on the electronic National Traffic Information System (e-NaTIS) as amended.

### **2. Allowable Deductions**

2.1 For the purposes of item 1.1.3 above the supplier will be entitled to charge the consumer an amount for the original amount invoiced to the consumer, or registered Credit Provider where the goods are subject to a credit agreement, less:

- 2.1.1 the reasonable cost of having any goods returned and restored to saleable condition; and
- 2.1.2 a reasonable amount for the use of those goods for the time that the goods were in the consumer's possession, unless those goods are in their original packaging and it is apparent that they have remained unused; and
- 2.1.3 for other goods or services, any costs that would be incurred to prepare the goods for resale or cancel the services, provided that each item charged for is individually priced and disclosed; and
- 2.1.4 the depreciation in relation to fair market value of the goods as determined by an industry recognised and widely accepted valuation platform or a valuator.

2.2A supplier to whom goods have been returned in terms of clauses 10.2, 14.2 or 25.5.2, and who has unsuccessfully attempted to resolve any dispute over the goods directly with the consumer, may apply to the MIOSA for a determination.

**SCHEDULE 12: RETURNS PROCESS****Return or Substitution of Goods Policy**

Customer satisfaction is of paramount importance to us therefore it is the objective of this Return or Substitution of Goods Policy to set forth guidelines that will ensure the prompt and efficient handling of requests for returns of goods or services at the earliest possible date.

You must advise us in writing of your complaint and desired outcome by comprehensively completing the Complaint - Return or Substitution of Goods Request Form. Any such request must be signed by the person who made the original purchase.

**NOTE:**

Returns or Substitution of Goods will not apply where:

- the goods concerned have been disassembled, altered, permanently installed or combined with other goods; or
- there is a public regulation prohibiting the return of the goods.

If there is anything which is not clear, or should you require further information, please contact the Customer Contact Centre on 000 000 000 or by fax on 000 000 000 or email: [customercare@dealer.co.za](mailto:customercare@dealer.co.za).

The official version of this Policy is in English only, all communications and policy documents will be in English unless otherwise agreed.

Should it be found that you are entitled to, and thereafter elect to, return goods to us, the agreement will be between you and us subject to the terms and conditions as listed below.

**1. Definitions**

Where the following words are shown in this document they shall have the following meanings:

- 1.1. "You", "your", refer to the Purchaser i.e. the person or entity that purchased the vehicle/s.
- 1.2. "Us" or "We" refer to the Selling Dealer.
- 1.3. "Goods" means vehicles, parts or accessories purchased from us.
- 1.4. "Rebate" the amount the retail price of the goods is reduced by the Selling Dealer for your benefit. This rebate may be in the form of:
  - 1.4.1. Reduction of the retail of price the goods
  - 1.4.2. Contribution towards Credit Agreement and or deposit
  - 1.4.3. Write-back of Trade-in (over allowance)
  - 1.4.4. Cash Back – cash money paid back to the Purchaser
- 1.5. "Purchase Price" the actual amount paid for the goods less any rebates as defined in point 1.4 above.
- 1.6. "Credit Provider" means a registered Bank / Developmental Credit Provider being the Institution, who supplied goods or services under a discount transaction, incidental credit agreement, instalment agreement, rental agreement or the lessor under a lease.
- 1.7. "Credit Agreement" is the legally enforceable Credit Agreement as defined in the National Credit Act No. 34 of 2005 the subject matter of which is the goods of the transaction for which you have requested a cancellation.
- 1.8. "CPA" means the Consumer Protection Act 68 of 2008
- 1.9. "Unencumbered" means goods that are free from debt, and clear of any legal obstruction in its title.

1.10 "Value Added Products" means insurance and after-market products associated with the principal product purchased through us.

## **2. Cancellation and Return of Cash Transactions**

Valid, agreed cancellations and refunds are subject to the following conditions:

- 2.1. You must submit the completed, signed Return or Substitution of Goods Request Form, where after we will have a reasonable opportunity to assess the request to determine whether a valid right of return or substitution exists.
- 2.2. Cancellation will only be effective once you have returned possession and ownership of the goods to us and fulfilled the requirements of section 4 - Cost of Return, and section 6 - Substituted Goods (if applicable) below.
- 2.3. You must allow us the opportunity to examine the goods to determine usage and any damage that may have occurred.
- 2.4. The goods are returned unencumbered and, therefore, can be transferred or sold.
- 2.5. A schedule of costs in terms of Section 20(6) of the CPA will be provided to you within 10(ten) business days after examining the goods.
- 2.6. Section 4 - Cost of Return and Section 6 - Substituted Goods will be applicable in respect of the process and how the cancellation will be effected.
- 2.7. Only once cancellation is effective shall the risk associated with ownership of the goods pass to us. This means you are responsible for the safekeeping of the goods until effective cancellation. As a measure of sound risk management you must maintain comprehensive insurance on the goods.

## **3. Cancellation and Return of Goods subject to a Credit Agreement**

Valid, agreed cancellations and refunds are subject to the following conditions:

- 3.1. Cancellation will only be effective once you have fulfilled the requirements of section 4 - Cost of Return, section 5 –Goods subject to a Credit Agreement and section 6 - Substituted Goods below as may be applicable.
- 3.2. You must allow us the opportunity to examine the goods to determine usage and any damage that may have occurred.
- 3.3. Section 4 - Cost of Return, Section 5 –Goods subject to a Credit Agreement and Section 6 - Substituted Goods will be applicable in respect of the process and how the cancellation will be effected.
- 3.4. Only once cancellation is effective shall the risk associated with ownership of the goods pass to us. This means you are responsible for the safekeeping of the goods until effective cancellation. As a measure of sound risk management you must maintain comprehensive insurance on the goods.

## **4. Cost of Return**

You are responsible for the following costs as per the CPA:

- 4.1. Where a refund is due, the purchase price paid by you will be refunded less charges for:
  - 4.1.1. the cost of restoring the goods to its condition before delivery to you;
  - 4.1.2. usage of the goods;
  - 4.1.3. any depreciation to the goods since you took delivery of the goods;
  - 4.1.4. special order goods you requested (as examples paint protection, smash and grab, tracking devices etc; and
  - 4.1.5. any other charges that may be applicable in line with the Motor Industry Code of Conduct (e.g.: restocking, roadworthy, storage costs etc).
- 4.2. Any value added products cancellations must be referred to the relevant supplier as we do not have a



mandate to act on their behalf with regards to cancellations and/or refunds.

4.3. Storage costs at a daily rate of R..... should the goods be left at our premises prior to conclusion of the cancellation of the transaction, unless otherwise agreed in writing.

4.4. All costs associated with the safekeeping and insurance of the goods until legal transfer of the goods back to us has been effected.

#### **5. Goods Subject to a Credit Agreement**

**We are not responsible for any interest or costs charged by the Credit Provider with regards to your purchase of the goods and/or services.**

**We CANNOT enter into any agreement to cancel a transaction and take back goods on direction from you where a Credit Provider is the legal owner (title holder in the case of vehicles), therefore:**

5.1. After you have submitted the completed, signed Return or Substitution of Goods Request Form we will then have a reasonable opportunity to assess the complaint to determine whether a valid right of return or substitution exists.

5.2. Should it be found that you are entitled to, and thereafter elect to, return goods to us, on return of the goods, you must notify the Credit Provider of your intention to cancel the transaction.

5.3. In terms of 5.2 above the following would then be applicable:

5.3.1. The Credit Provider will provide you with a settlement letter.

5.3.2. That settlement letter must be provided to us timeously.

Settlements are only valid for a specified period. It is important that the process of the full settlement of the vehicle be properly synchronised with us as detailed in this document to ensure that the deadline is met. We will not be held responsible if the deadline is missed and the costs associated with this.

5.3.3. On receipt of the settlement letter we will finalise the calculation of the refund due in terms of the return as detailed under Section 4 – Cost of Return above, following which we will advise you if there is going to be a shortfall for which you are liable.

5.3.4. If there is a shortfall due you must pay the shortfall to the Credit Provider only then will we accept to take back the goods.

5.4. If the refund due exceeds the settlement to the Credit Provider, then the balance of the monies will be paid to you.

5.5. You will be responsible for the safekeeping of the goods and must maintain comprehensive insurance on the goods until ownership of the goods has legally been passed back to us.

#### **6. Substituted Goods**

6.1. Where the goods are subject to a Credit Agreement you must get approval for the substitution from the Credit Provider in order to go ahead with the substitution of goods.

6.2. The same principle as indicated under Section 5 – Goods Subject to a Credit Agreement will be followed in terms of costs you would incur with respect of the return, and any additional costs that that you would be responsible for.

6.3. You will be responsible for the safe-keeping of the goods and must maintain comprehensive insurance on the goods until ownership of the goods has legally been passed back to us.

6.4. Where the goods were originally purchased as a cash sale you would be liable for costs as detailed under the section 4 – Cost of Return.

Application for Return or Substitution of Goods Request Form					
Dealer Name				Dealer Branch	
Dealer				Business Manager	
Client Name					
Client Address					
				Code	
Client Contact Details	Cell		Home		Work
	e-mail				Fax
Vehicle Make				Model	
Chassis (VIN) No				Date you took Delivery	
KMS at time of				Is the vehicle financed? Yes <input type="checkbox"/> No <input type="checkbox"/>	
Credit Provider				Credit Agreement No	
Request Detail					
Reason for Request					
Vehicle Sale <input type="checkbox"/> Vehicle Repair <input type="checkbox"/> Other <input type="checkbox"/>					
Last Repairer				Repairer Contact Person	
Describe Reason for Request	If this space is not sufficient please attach additional detail and all supporting documentation relevant to the complaint				
Desired Outcome					
Bank Account Details (Please provide banking details should a refund be due)					
Name of Bank				Branch Name	
Account Number				Branch No	
Declaration:					
1. I, the complainant hereby declare that all particulars stated above are true and correct and that no material facts have been withheld.					
2. I have been provided access to the Return or Substitution of Goods Policy, and have read and understood the terms and conditions.					
Signature				Date	

**COST SCHEDULE ON RETURNS**

**Date** \_\_\_\_\_  
**Client Name** \_\_\_\_\_  
**Vehicle Chassis No** \_\_\_\_\_  
**Credit Provider** \_\_\_\_\_  
**Credit Agreement No** \_\_\_\_\_  
**Date of Inspection** \_\_\_\_\_  
**KMS on Date of Inspection** \_\_\_\_\_

<b>Purchase Price of Vehicle*</b>	R	_____
Less Rebates		
Reduction of the retail of price the goods	R	_____
Contribution towards Credit Agreement	R	_____
Write-back of Trade-in (over allowance)	R	_____
Cash Back – cash money paid back to the Purchaser	R	_____
<b>Actual Purchase Price of Vehicle</b>	<b>R</b>	<b>0.00</b>

**Cost of Return - Deduction from Purchase Price**

<b>Restoration Costs</b>	R	<b>0.00</b>
Vehicle Inspection	R	_____
Repairs - mechanical and electrical	R	_____
Repairs - body work	R	_____
Roadworthy	R	_____
License and Registration	R	_____
<b>Usage</b> as per AA rates excluding fuel	<b>R</b>	<b>0.00</b>
Service And Repair	R	_____
Tyre Costs	R	_____
<b>Depreciation</b>	R	_____
<b>Storage Costs</b>	R	<b>0.00</b>
<b>Value Added Products</b>	R	_____
Maintenance Plan	R	_____
Service Plan	R	_____
Warranty	R	_____
Paint Warranty	R	_____
Other	R	_____
	R	_____
<b>Special Order Items</b>	R	_____
	R	_____
	R	_____
<b>Total Cost of Return Deductions</b>	<b>R</b>	<b>0.00</b>
<b>Settlement / Refund Due</b>	<b>R</b>	<b>0.00</b>

\* the Purchase Price of the Vehicle is the price invoiced to the finance house, also known as the Invoiced Amount, Financeable Amount, the Total Principle debt or total price. The price includes all VAPS and Accessories and dealer charges but excludes all discounts, rebates, bank and finance charges.