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**GENERAL NOTICES • ALGEMENE KENNISGEWINGS**

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**DEPARTMENT OF TRADE AND INDUSTRY  
NOTICE 402 OF 2016**

NATIONAL CONSUMER COMMISSION

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I, Ebrahim Mohamed, Commissioner of the National Consumer Commission (herein after referred to as the Commission), hereby publish for comments best practices applicable to the motor industry as mandated by section 93(2) of the Consumer Protection Act 68 of 2008 (Act No. 68 of 2008 or the CPA).

The best practices are in respect of alternative dispute resolution mechanism of handling complaints to better achieve the purpose of the CPA. The Commission attempts to promote voluntary use of these best practices and guidelines in the interpretation and application of the CPA.

The general public is accordingly invited to submit written comments, quoting the following reference number (NCC/GN/93/1) to: The National Commissioner, National Consumer Commission c/o Mr. Jeremiah Modiba, 8th 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). The comment period closes within 30 official days after publication of this notice in the Government Gazette.

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**Mr. Ebrahim Mohamed**  
**Deputy Commissioner: National Consumer Commission**

## 1. Introduction

This Code sets out a series of industry “best-practices” for consumers and participants within the Automotive Industry.

A “motor vehicle” in terms of this Code 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.

An “OEM” means the original equipment manufacturer, and for the purposes of this code includes the distributor, importer or manufacturer as the case may be.

A “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. Purpose of the Code

The National Consumer Commission believes that consumers and participants in the Automotive Industry would benefit from a series of “best practices” that will give greater effect to certain provisions of the Act

## 3. General Complaint Resolution Procedure in terms of section 70 of the Act

A consumer should:

- 3.1. pursue the complaint as soon as possible;
- 3.2. identify the specific problem and confirm it with evidence such as photographs, contracts or receipts.  
(Keep all originals, post only copies);
- 3.3. 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 and try to resolve it directly with the person responsible for the transaction;
- 3.4. communicate how you would like your complaint to be resolved (refund, repair or replacement etc.);
- 3.5. if this is not successful, go up the lines of authority, as far as necessary;
- 3.6. document your steps. Write down the details of your complaint. Note to whom you spoke with and the dates on which you spoke with them;
- 3.7. keep emotions in check. Be firm without being rude. Be reasonable, but persistent;
- 3.8. wait a reasonable length of time for a settlement of your dispute;
- 3.9. make a genuine attempt to settle the dispute with the supplier;
- 3.10. if, still not happy with the way your complaint is being dealt with, contact the Motor Industry Ombudsman of South Africa (MIOSA) accredited in terms of the Act or the NCC for further assistance.

**4. Repairs in terms of Section 15 of the Act (Pre-authorised section of repairs)**

- 4.1. All repairs above the prescribed threshold as set out in the Regulations published in terms of the CPA shall be pre-authorised by the consumer.
- 4.2. This section does not apply to repairs which are not charged to the consumer because they are covered by a valid warranty, service, maintenance or similar plan.
- 4.3. An estimate of the total cost of repairs or services to a vehicle shall disclose in a reasonable manner, the following information:
  - 4.3.1. the name of the consumer;
  - 4.3.2. repairer details including name, physical address and contact information;
  - 4.3.3. vehicle details, including vehicle identification number and odometer reading;
  - 4.3.4. 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 date on which the estimate was prepared.
- 4.4. If the consumer has pre-authorised any charges up to a maximum amount such authorisation must be in a recordable format.
- 4.5. The person or business carrying out the repairs, service or maintenance work (supplier) shall advise the consumer of any additional required repairs/maintenance which may be found while repair work is being carried out. Prior authorisation to carry out any additional work will be obtained from the consumer.
- 4.6. 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.
- 4.7. The 30 minutes notification will be sent at least two (2) times within three (3) hours of receipt of a vehicle by the supplier, only then a consumer reasonably should be deemed to have declined the repairs.
- 4.8. All invoices will contain full details of the work done and materials supplied.
- 4.9. The supplier shall explain any work in more detail included in the quotation or estimate given, if requested to do so by the consumer.

**5. Work carried out on the motor vehicle in terms of Section 15 of the Act (Pre-authorised section of repairs)**

- 5.1. With regard to work carried out on the vehicle:
  - 5.1.1. 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;
  - 5.1.2. When a consumer does not authorise the repairs referred to in 4.1, the supplier will provide the consumer with a report that the supplier has informed the consumer that the repairs are necessary, but that the consumer has declined to have the necessary repairs carried out.
  - 5.1.3. Repairs in terms of such a report shall be agreed by the consumer before they are carried out.
- 5.2. All invoices will contain full details of the work done and materials supplied.
- 5.3. The supplier shall explain any work in more detail included in the quotation or estimate given, if requested to do so by the consumer.

**6. Grey and Parallel Parts in terms of Section 15 of the Act**

- 6.1. 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.

**7. Sub-contracting in terms of Section 15 of the Act**

- 7.1. When repair work is outsourced to a sub-contractor, the supplier shall inform the consumer.
- 7.2. A supplier 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, Except if such repairs are minor and not covered in the warranty or maintenance/service plan.
- 7.3. All invoices will contain full details of the work done and materials supplied.
- 7.4. The supplier shall explain any work in more detail included in the quotation or estimate given, if requested to do so by the consumer.

**8. Examination of Goods in terms of Section 19 of the Act (With respect to delivery or supply of services)**

- 8.1. Any examination of goods before or at delivery may be done by the consumer or an authorised representative of the consumer.
- 8.2. The supplier must allow the consumer or authorised representative of the consumer a reasonable opportunity to conduct a thorough examination taking into account the nature of the goods and or services.

**9. Relationship between the Retailer and OEM in terms of Section 56 of the Act**

- 9.1. The supplier should in the ordinary course of conducting its business help the consumer to use the rights contemplated in the Act.
- 9.2. In this regard the supplier supplying the goods directly to the consumer will inform the consumer:
- 9.2.1. of the nature and extent of the warranties and conditions of use applicable to the goods concerned;
  - 9.2.2. that such warranty will be concurrent with any other deemed, implied or express warranty;
  - 9.2.3. that such warranty will be invalid if the consumer has not complied with the terms thereof; and
  - 9.2.4. 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.

**10. Relationship between OEM and Supplier in terms of Section 61 of the Act**

- 10.1. 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.
- 10.2. 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.
- 10.3. A court's authority in terms of Section 61(6) to assess, determine and apportion damages will take precedence over any agreement between OEM and retailer in cases of liability caused by goods.

**11. Acceptance of the return by supplier in terms of section 20 of the Act****11.1. A supplier will only be able to accept return of the goods once:**

- 11.1.1. The supplier has been afforded a reasonable opportunity to examine the goods to determine their use and any damage that may have occurred; and
- 11.1.2. The supplier has provided the consumer with a schedule of costs including deductions within 10 (ten) business days after examining the goods; and
- 11.1.3. the consumer has complied with other governing legislations or ordinances 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.

**12. Allowable deductions in terms of section 20 of the Act****12.1. The supplier will be entitled to charge the consumer an amount for the original amount invoiced to the consumer, less:**

- 12.1.1. the reasonable cost of having any goods returned and restored to saleable condition; and
- 12.1.2. 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
- 12.1.3. 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
- 12.1.4. 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.

**12.2. A supplier to whom goods have been returned and who has unsuccessfully attempted to resolve any dispute over the goods directly with the consumer, may apply to the MIOSA for a determination.**

**13. Returns procedures in terms of Section 20 of the Act****13.1. Returns or Substitution of Goods will not apply where:**

- 13.1.1. The goods concerned have been disassembled, altered, permanently installed or combined with other goods; or
- 13.1.2. If there is anything which is not clear, or should the consumer require further information, the supplier must assist the consumer and where this is not possible, the supplier should direct the consumer to a Customer Contact Centre of the OEM.
- 13.1.3. The supplier should have a returns policy that facilitates the efficient and timely return of goods by a consumer.