



EXPLANATORY NOTE / GUIDELINES IN CANCELLATION OF CREDIT

AGREEMENTS

These guidelines apply where a consumer has purchased goods (e.g., a motor vehicle) and financed the same through a credit agreement with a bank/financer.

Credit agreements are regulated primarily by the National Credit Act 34 of 2005 (NCA). However, the goods purchased under such agreements are still protected by the Consumer Protection Act 68 of 2008 (CPA).

GROUND FOR CANCELLATION

A. Cancellation Due to Defective Goods - Sections 55 and 56

Section 55 of the CPA provides that “*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.

(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

If the goods do not comply with the provisions referred above (Latent Defects) such goods are defective: The defect must be material (serious enough to affect its use). It must have existed at the time of sale. The consumer must produce evidence to confirm the defects and the extent thereof.

In terms of Section 56 (2) of the CPA 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.

Consumers have a legal duty to inform the supplier (both the bank and dealer) about the defects and elect Refund, Replacement or repairs. If the vehicle is not financed, the consumer must request the above remedies from the dealer.

Where the vehicle is financed, consumers must take the following steps:

- Notify the bank and the dealer about the defects on the vehicle
- Inform the bank and the dealer that the consumer is requesting a refund, replacement or repairs of the vehicle.
- Where the consumer elects a refund, the consumer must simultaneously request cancellation of the Credit Agreement from the Bank, and payment of instalments already paid in terms of the Credit agreement and cancellation of the transaction from the dealer.
- Where a consumer elect repairs or a replacement of the vehicle, the bank and the dealer must be informed about the election and the bank and dealer must comply with the election of the consumer.
- If the dealer refuses to cancel the agreement, consumers must refer the complaint to MIOSA or CGSO and must clearly state that they wish to cancel both the transaction. Where the bank refuses to cancel credit agreement and pay back the instalment, the

consumer must also refer to matter to National Financial Ombuds Scheme that has jurisdiction over the credit agreement.

- Consumers are encouraged to keep all communication in writing, as this may serve as evidence in the event of a dispute

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