

This brochure has been developed as part of the Consumer Education Programme of the Communications Commission of Kenya. It was compiled as a result of a review of material from various sources and presents the current perception of the information available on consumer rights and responsibilities in relation to the purchase of communications technology in Kenya.

Introduction

The consumer has certain rights in relation to the purchase of communication products or services, all of which are protected by the Kenyan constitution. However, many consumers feel that they have little power in the marketplace, especially when they are forced to come into conflict with large and powerful organizations. Thus, in many cases, their rights are violated. To protect themselves against this, consumers are advised to know and understand their rights, and to insist that they are respected at all times.

How is the consumer protected in Kenya?

In Kenya, the rights of the consumer are enshrined in a number of parliamentary Acts, all of which are presently being consolidated by means of **The 2007 Consumer Protection Bill**. They are designed to ensure that consumers are provided with full information, including the price and quality, of any product or service they may wish to purchase, and to ensure that they are safe and meet international standards. One such Act is **The Sale of Goods Act**, which is specifically designed to protect the consumer against unfair trading practices.

The rights of the consumer

The consumer has certain specific rights in relation to the purchase of communications services and products, they are as follows:

- The right of access to basic communications services at reasonable prices
- The right to full pre-contractual information, which is clear, helpful, adequate and accurate, and which allows the consumer to make an informed choice

- The right to receive information and assistance with regard to the proper use of the item or service
- The right of access to comparative information
- The right to receive services of such a quality that reflects the cost of the service: value for money
- The right to receive the level of quality of service that is stated in the service agreement as provided by the service provider
- The right to fair treatment without undue discrimination
- The right to fair terms of service
- The right to complain with regard to quality, delays in provision of rectification, quantity and price of such goods or services as are offered
- The right of access to an effective system for the handling of complaints
- The right to be provided with services that are safe and secure
- The right to privacy
- The right to consumer education
- The right to a reasonable notification of termination of service – particularly in relation to the provision of basic telecommunications services and/or Internet access
- The right to make representations to those delivering or regulating and/or governing the provision of communications services on matters pertaining to the services offered to them
- The right to access billing information for free or at a reasonable price.

Consumer rights in relation to misleading advertising

There are certain laws regarding advertising, which ensure that:

- Any claims relating to how an item should operate or its place of origin **must be true**
- Any claims relating to the time in which a service is provided, the effect of the service and the responsibilities of the service provider **must be true**
- Any claims relating to the price (actual, previous and recommended) **must be true**. Such prices should be portrayed as the total price and there should be no hidden charges.

What the consumer should do if he/she believes they have been misled

Should the consumer believe that he/she has been misled by the terms or contents of an advertisement, they should:

- Point out the error and demand that the vendor match the claims made in the advertisement
- Refuse to complete the sale
- Report the trader to the appropriate regulatory authorities

The consumer's rights in relation to unfair contract terms

An unfair sales contract is one in which the terms are significantly weighted against the consumer, and the enactment of which will cause detriment to the rights and obligations of the consumer. By suggesting such terms in a contract, a vendor demonstrates a desire to gain an advantage over the consumer. Consumer contracts are, however, subject to a test of fairness, and any term found to be unfair by a court of law will be rendered ineffective (meaning that the consumer is no longer bound by such terms). There are three main categories of 'unfair' terms:

- Those that give the supplier the absolute and sole right to change the terms of the contract

- Those that limit the liability of the supplier (the failure, for instance, to accept liability for the death or injury of a consumer arising from an act or omission on the part of the supplier)
- Those that place an unfair burden on the consumer.

What does 'unfair' mean?

'Unfair' terms violate the principle of good faith. Those who enter into a contract 'in good faith' are of honest intent. To violate such a principle, the vendor could, for instance insert a term in the 'small print' of a contract, which the consumer may not easily notice.

Written contracts

Written contracts must be presented in plain and understandable language. If doubts arise as to the exact meaning of any given term – the one most favourable to the consumer will prevail. However, if one term in a contract is proven to be unfair, the rest of the terms in the contract may still be considered fair and legally binding.

The responsibilities of the consumer

The consumer has a number of responsibilities, which must be fulfilled if his rights are to be protected. The consumer must:

- Make reasonable decisions and exercise responsibility when exercising his/her freedom of choice in the market place
- Be informed, avoid making hasty decisions, avoid making decisions based on misleading advertising claims
- Make due enquiry as to standards, quality, value, style and model. Similarly in relation to repairs, spare parts, labour and other related terms
- Honour such obligations as arise from decisions taken
- Be assertive in the interests of achieving a fair deal
- Identify their 'needs' as opposed to their 'wants'

- Obtain information on the product or service and observe the experiences of others in relation to the same
- Compare price, quality, standard and features with competing products
- Review safety issues, such as those pertaining to the use of mobile phones or the Internet by children
- Refrain from entering into any 'get rich quick' schemes
- Be aware of their own financial capabilities before committing to a purchase
- Review the relative benefits of 'free gifts' in relation to the purchase price. Protect all communications equipment and facilities within their vicinity

The consumer's responsibility with regard to terms and conditions of contracts

A contract is a legally binding agreement between two parties, whereby each agrees to do something for the other, and which is enforceable by law. The law comes into effect IF the terms of the contract are breached. A contract typically involves the exchange of money, goods or services. Many consumers wrongly believe that a contract MUST be written down and signed. This is not, however, true. For instance, a contract comes into force when a passenger boards a bus and purchases a ticket.

When entering into a contract, a consumer must understand that having agreed to the terms, he/she has a legal obligation to honour them, and that failure to do so may result in their being sued for breach of contract (the legal term for the breaking of an agreement, which can also result in the other party claiming compensation from them).

The consumer must also fully understand their contract by reading all the terms and provisions contained within it before signing it. If any terms are unclear – they should request clarification from the vendor, a lawyer or some other informed person. Any consumer who is not satisfied with the terms of a contract should refuse to sign it.

The responsibility of the consumer in relation to transactions with regard to electronic commerce

Consumers trading 'online' (via the Internet) are responsible for reading the terms and conditions allied to any electronic transaction. These may include:

- The terms of payment, delivery, guarantees; warranties or after-sales service
- The conditions related to return, exchange, cancellation or refund
- The terms of the trader's privacy policy, means of redress and dispute resolution

The online consumer should also ensure that their own Internet security is in operation with relation to the protection of sensitive personal data – such as credit card numbers.

The consumer's responsibility after purchase

After a purchase has been made, the consumer is responsible for the following:

- Making all required payments on time
- Verifying all receipts, statements and transaction records
- Retaining receipts, product manuals, maintenance/warranty documentation
- Returning warranty cards within the stipulated period
- Checking the receipt of any goods immediately upon delivery
- Raising complaints with the trader in the first instance
- Reading all warnings and product information regarding installation and safe operation
- Using the products/services according to the instructions and only for the purposes for which they were intended.

Consumer responsibility with regard to cable vandalism

Cable vandalism refers to the deliberate damage of communication cables, such as will effectively disrupt the normal operation of the communications system. Cable vandalism not only affects the proper functioning of a communications network, it also causes inconvenience and distress to users of that system, as well as impacting negatively on national revenue and on the proper functioning of the country's emergency services. Regrettably, cable vandalism is rampant in Kenya, due to the high price of the copper and aluminium used in the cables. However, it is the responsibility of the consumer to:

- Protect such cabling as comes within their sphere of influence
- Not engage in the buying and selling of used cabling, whose source is not known, and to report the incidence of such immediately to the police.

Need to know more?

For further information on the above topic or any other aspect of health and safety with regard to communicational equipment, please contact:

Disclaimer: while every attempt has been made to ensure that the information included in this document is accurate, it is intended ONLY as a guideline towards the safe operation of communications equipment and should not be regarded as (or used in lieu of) legal advice. The Communications Commission of Kenya will not, therefore, accept any liability for the consequences of any actions taken, or decisions made upon the information offered. **Acknowledgements:** This brochure was developed as part of the Consumer Education Outreach Programme of the Communications Commission of Kenya, working in partnership with Teknobyte (Kenya).

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Consumer rights and responsibilities



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**CHUKUA
HATUA**
Pata huduma ya
mawasiliano unayostahili