

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 buying a mobile-phone/contracting for network access, with particular reference to Kenya.

## Introduction

When consumers do not know their rights with regard to buying mobile phone handsets, they become very vulnerable to fraud or being sold substandard products. Consumers therefore need to know their rights and responsibilities so as to protect themselves and exploit all avenues for redress when their rights are violated.

## Types of mobile phone technology

The two most common types of wireless phone technology currently in use in Kenya are **GSM** (Global System for Mobile Communication) and **CDMA** (Code Division Multiple Access).

For purposes of comparison, it is worth noting that currently (2008) seventy three per cent of the global mobile communications market uses GSM (Global System for Mobile Communication) technology, while fourteen per cent uses CDMA.

## GSM (Global System for Mobile Communication) technology

GSM is a second-generation wireless telecommunications standard for digital mobile cellular services. GSM technology uses three frequency bands: 900 MHz, 1800 MHz and 1900 MHz. Dual-band phones operate on two out of three of these frequencies, while tri-band phones operate on all three frequencies. GSM wireless technology offers a number of advantages, which are:

- GSM networks enjoy wide international coverage.
- The use of a SIM (Subscriber Identity Module) card makes it easy to switch between different handsets and allows for the quick and easy import of data such as contacts and text-messages.
- Battery-supported ‘talk-time’ is generally longer on GSM phones.

## CDMA (technology)

CDMA digital wireless technology employs a special coding scheme (whereby each transmitter is assigned a specific code), which allows multiple users to share common access to the network. CDMA wireless technology offers a number of advantages, which are:

- CDMA enjoys wider coverage than GSM and allows for a larger cell area.
- CDMA enabled calls can be placed in lower-signal strength conditions, thus CDMA phones offer better reception or better coverage in rural areas.
- CDMA consistently provides better capacity for voice and data communications than other commercial mobile technologies, allowing more subscribers to connect simultaneously at any given time, and it is the common platform on which all third generation technologies are built.

## Buying a handset

A wide range of mobile phones are available, defined by price, size and capabilities. As a general rule, the more features a phone has and the smaller it is, the more expensive it will be. When choosing the right phone for you, it is advisable to shop around, to avoid making instant decisions, and to guard against being misled by unusually cheap offers (which may conceal hidden costs).

## What to look for in a mobile phone

When choosing a mobile phone, consumers are advised to bear in mind the fact that some of the features incorporated in today’s mobile phones enable the user to:

- Make video calls
- Have access to broadband wireless data and internet access by use of GPRS, WAP, EDGE and 3G technologies, all of which enable web browsing and the sending and receiving of e-mails

- Offer features that enable access to Multimedia Messaging Service (MMS), which facilitate the sending and receiving of pictures, videos, and music files.

## Relevant questions

Here are some questions, which may prove useful when choosing a mobile phone:

- Is the size of the handset right for me?
- Can I see and use the keypad easily?
- Does the phone support a car kit?
- Does it allow access to short message services (SMS)?
- Does the phone work with a hearing aid?
- How many numbers is the phone able to store?
- What is the ‘talk time’ of the phone (the duration of time for which it will support conversation on a fully-charged battery and under optimum conditions)
- Am I paying for features that I don't need or are not supported by my service provider?

## Selecting a Service Provider

When choosing a Service Provider consumers are advised to research the entire range of services and tariff structures offered by the Service Provider, before signing a contract. For instance, they should:

- Always ask for the helpline number of the Service Provider and call that number to ascertain whether or not the features offered on the phone are supported by the chosen network.

## Mobile phone warranties and conditions

The ‘**conditions**’ under which an item is sold, refer to the obligations imposed by the contract of sale. In the event that such conditions are not adhered to (‘breached’) by either party (vendor or purchaser),the contract is rendered void (non-functional) and the wronged (‘injured’) party to the sale is entitled to sue for compensation.

A **warranty or guarantee** is a promise given by the manufacturer and/or vendor of a product or service, which is intended to assure the purchaser that the item/product will perform according to expectation. Note: the provision of a warranty is not always required by a contract, nor does it allow for the cancellation of a contract by either party – it may, however, provide a framework for complaint/redress.

## The sale of goods – terms, conditions and contracts

When a consumer makes a purchase (over the counter or otherwise), he/she enters into a contract with the vendor, under the terms of which certain conditions prevail (unless they are specifically excluded in the terms of the contract). They are:

- That the vendor has the right to sell/possess the product/service
- That the goods/services are free from charge or impediment
- That the goods/services are fit for the purpose for which they were intended, and of a saleable quality on the commercial market
- That items supplied in bulk replicate any samples offered in advance
- That goods sold by description (unseen) are supplied exactly as described

By entering into a contract, the consumer is protected by the laws of Kenya, and has a right to redress in the event that those laws are contravened. In order to seek redress, however, the consumer must be able to demonstrate proof of purchase (by displaying the receipt or network service agreement).

## Consumer rights in relation to buying a mobile-phone

In the event that a mobile phone proves to be defective the consumer is advised to:

- Ensure that they are fully conversant with the phone's features
- Demand a refund, repair or replacement in the event that they have only recently purchased the phone
- Demand that repairs be carried out within a reasonable time, without undue inconvenience to him/her; and that the phone be restored to full function
- Demand a replacement or refund in the event that repair (at no cost to the purchaser) does not restore the phone to full functional capacity
- Be aware that he/she may be entitled to claim compensation for costs/loses they have incurred/suffered, as a result of the phone's defects.

### Things to consider when comparing mobile-phone warranties

Manufacturers typically guarantee mobile phones against the occurrence of faults that become apparent within a specified period (usually 12 months). Network providers, on the other hand, guarantee the consumer access to the network within the period agreed by contract. Warranties may, however, be governed by certain conditions, which should be provided in writing and examined at the time of purchase.

Useful questions to be posed at the time of purchase include:

- What does the warranty cover (repair/replacement, replacement of parts, provision of labour) in relation to both software and hardware?
- Where are repair services provided and who provides these services? And how long do they take?
- Whether or not a similar substitute phone is provided while repairs are being effected.

### Express warranties

Express (also known as 'manufacturer's') warranties represent additional guarantees, which should be provided in writing and as a part of the purchase price. They usually extend for a period of one year. Manufacturers are not legally required to provide express warranties,

which are offered voluntarily. Once an express warranty is offered, however, the manufacturer is legally bound to honour its terms – which operate in addition to the statutory rights of the purchaser.

### Warranty conditions

Once a purchase has been made, the consumer cannot take action against the vendor if:

- He/she was made aware of the defects by the vendor before he/she made the purchase
- He/she has changed their mind about the purchase – or found a cheaper model
- He/she has not followed the instructions on how the phone should be used
- A malfunction or failure is the result of long-term use ('normal wear and tear').

### Compensation

The consumer may be entitled to compensation under the following circumstances:

- If the phone is not of the required quality/description, or does not function according to the terms specified
- If the contract has been breached (broken) by either party
- If the vendor made a false statement regarding the phone or the service before concluding the sale
- If repairs, as agreed between vendor and purchaser, have not been carried out satisfactorily
- If the purchaser has incurred additional expenses or suffered inconvenience as a result of a breach of contract

Note: some contracts require that the manufacturer's permission be sought before the sale of the item/service can be effected.

### How to deal with a faulty phone

- Contact the vendor (personally and in writing, retaining copies of all correspondence), explain the problem, and request rectification within a reasonable period of time

- In the event that such rectification is not forthcoming, write to the manufacturer/vendor, outline the situation, and suggest that if rectification is NOT effected, the matter will be escalated to the appropriate authorities
- Only in the event of the failure of ALL of the above – consider legal action.

### Complaints against mobile phone companies and vendors

In the event that rectification is not effected, the consumer may wish to bring the complaint to the attention of the Communications Commission of Kenya. Should this be the case, the consumer should write to the Director-General attaching copies of all purchase and complaint documentation.

### 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).

# Buying a mobile phone



Communications  
Commission  
of Kenya

**CHUKUA  
HATUA**  
Pata huduma ya  
mawasiliano unayostahili

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