



**Consumer**  
PROTECTION & POPI  
SEESA

# Consumer Protection **LEGAL AUDIT**



**SEESA**

   

*Professional Legal Support  
for Business*

# Consumer Protection

Legal Audit on Consumer Protection Act &  
Electronic Communication and Transaction Act



Amendments drafted in accordance with the Consumer Protection Act, No 68 of 2008

FOR

**CULMEN WES-KAAP CC**

A Close Corporation, duly registered in terms of the Close Corporation Act

with registration number:

**2001/025436/23**

With main place of business:

**Taurus Street  
Unit 7 Everite 4  
Brackenfell  
7560**



PRETORIA (HEAD OFFICE): Roban Centre, Ground Floor, 178 Erasmus Street, Meyerspark, 0184  
SEESA (PTY) Ltd | Registration Number: 2008/015270/07 | VAT Registration Number: 4400252823  
DIRECTORS: B.D Oostendurp | P.D Voges | C.J Badenhorst | H.J Wilken | U. Botha | W.R Le Roux NON-EXECUTIVE: B.R Topham

# Consumer Protection

## Legal Audit on Consumer Protection Act & Electronic Communication and Transaction Act



### Introduction:

The purpose of this document is to suggest possible amendments to be made to current Consumer related documentation with regards to **Culmen Wes-Kaap CC** (the “Business”).

### The purpose of the Consumer Protection Act:

- Protecting consumers from unfair, unjust and unconscionable business practices;
- Providing accessible and efficient dispute resolution and redress for consumers;
- Establishing a legal framework for a market that is fair, accessible, efficient, sustainable and responsible;
- Promoting fair business practices;
- Improving consumer awareness;
- Enhance consumer safety;
- Reducing disadvantages to consumers who are:
  - in low income groups;
  - who live in remote and isolated areas;
  - who are minors, seniors or similarly vulnerable;
  - whose ability to react and comprehend advertisements, agreements, labels and instructions are limited.

### The Consumer Protection Act regulates the following:

- Marketing of goods and services;
- Warranties and guarantees;
- Cooling off periods;
- Lay byes;
- Forfeiture of goods by suppliers;
- Record keeping;
- Delivery of goods and services;
- Discrimination against consumers;
- Consumers privacy;



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- Language to be used in documentation;
- Franchise agreements;
- Dispute resolution and consumer commission powers; and
- Fines and penalties.

## Application of the Consumer Protection Act:

- 1) This Act applies to –
  - a) every transaction occurring within the Republic, unless it is exempted;
  - b) the promotion of any goods or services, or of the supplier of any goods or services, within the Republic unless –
    - I. those goods or services could not reasonably be the subject of a transaction to which this Act applies in terms of paragraph (a) or;
    - II. the promotion of those goods or services has been exempted.
  - c) goods or services that are supplied or performed in terms of a transaction to which this Act applies, irrespective of whether any of those goods or services are offered or supplied in conjunction with any other goods or services, or separate from any other goods or services; and
  - d) goods that are supplied in terms of a transaction that is exempt from the application of this Act, remain subject to the stipulations of Section 60 and Section 61.
- 2) The Consumer Protection Act does not apply to any transaction –
  - a) in terms of which goods or services are promoted or supplied to the State;
  - b) in terms of which the consumer is a juristic person whose asset value or annual turnover, at the time of the transaction equals or exceeds the threshold value determined by the Minister;
  - c) if the transaction falls within an exception granted by the Minister;
  - d) that constitutes a credit agreement under the National Credit Act, but the goods or services that are the subject of the credit agreement are not excluded from the ambit of this Act;
  - e) pertaining to services to be supplied under an employment contract;
  - f) giving effect to a collective bargaining agreement within the meaning of section 23 of the Constitution and the Labour Relations Act, 1995 (Act No.66 of 1995); or



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- g) giving effect to a collective agreement as defined in section 213 of the Labour Relations Act, 1995 (Act No.66 of 1995).
- 3) A regulatory authority may apply to the Minister for an industry – wide exemption from one or more provisions of this Act on the grounds that those provisions overlap or duplicate a regulatory scheme authority in terms of –
- a) any other national legislation; or
  - b) any treaty, international law, convention or protocol.
- 4) The Minister of Trade and Industry, by notice in the Gazette after receiving the advice or the Commission, may grant an exemption as stipulated in (3) –
- a) only to the extent that the relevant regulatory scheme ensures the achievement of the purpose of this Act at least as well as the provisions of this Act; and
  - b) subject to any limits or conditions necessary to ensure that the achievement of the purposes of this Act.
- 5) If any goods are supplied within the Republic to any person in Terms of a transaction that is exempt from the application of this Act, those goods, and the importer or producer, distributor and retailer of those goods, respectively, are nevertheless, subject Section 60 and 61 of this Act.
- 6) For greater certainty, the following agreements must be regarded as a transaction between a supplier and consumer, within the meaning of this Act; -
- a) the supply of any goods or services in the ordinary course of business to any of its members by a club, trade union association, society or other collectivity whether corporate or unincorporated, of persons voluntarily associated and organized for a common purpose, whether for fair value consideration demanded or expected in order to become or remain a member of that entity;
  - b) a solicitation of offers to enter into a franchise agreement;
  - c) an offer by a potential franchisor to enter into a franchise agreement with a potential franchisee;
  - d) a franchise agreement or an agreement supplementary to a franchise agreement; and
  - e) the supply of any goods or services to a franchisee in terms of a franchise agreement.



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- 7) Despite the stipulations of (2)(b), this Act applies to a transaction as stipulated in (6)(b) to (e) irrespective of whether the size of the threshold determined in terms of Section 6 of this Act.
- 8) The application of this Act in terms of the stipulations in (1) to (7) extends to a matter irrespective of whether the supplier –
  - a) resides or has its principal office within or outside the Republic;
  - b) operates on a for-profit basis or otherwise; or
  - c) is an individual, juristic person, partnership, trust, organ of state, an entity owned or directed by an organ of state, a person contracted or licensed by an organ of state to offer or supply any goods or services, or is a public – private partnership; or
  - d) is required or licensed in terms of any public regulation to make the supply of the particular goods or services available to all or part of the public.

## Definitions applicable for the Consumer Protection Act, No 68 of 2008:

In this Act –

**“Advertisement”:** means any direct or indirect visual or oral communication transmitted by any medium, or any representation or reference written inscribed, recorded, encoded upon or embedded within any medium, by means of which a person seek to –

- a) bring to the attention of all or part of the public
  - I. the existence or identity of a supplier; or
  - II. the existence, nature, availability, properties, advantages or uses of any goods or
  - III. services that are available for supply, or the conditions on, or prices at, which any
  - IV. goods or services are available for supply;
- b) promote the supply of any goods or services; or
- c) promote any cause;

**“Agreement”:** means an agreement or understanding between or among two or more parties that purports to establish a relationship in law between or among them;

**“Business”:** means the continual marketing of any goods or services;





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**“Consideration”**: means anything of value given and accepted in exchange for goods or services, including:

- a) money, property, a cheque or other negotiable instrument, a token, a ticket, electronic credit, credit, debit or electronic chip or similar object;
- b) labour, barter or other goods or services’
- c) loyalty credit or award, coupon or other right to assert a claim; or
- d) any other thing, undertaking, promise, agreement or assurance, irrespective of its apparent or intrinsic value, or whether it is transferred directly or indirectly, or involves only the supplier and consumer, or other parties in addition to the supplier and consumer.

**“Consumer”**: in respect of any particular goods or services, means –

- a) a person to whom those particular goods or services are marketed in the ordinary course of the suppliers business;
- b) a person who has entered into a transaction with a supplier in the ordinary course of the suppliers business, unless the transaction is exempt from the application of this Act;
- c) if the context so requires or permits a user of those particular goods or a recipient or beneficiary of those particular service, irrespective of whether that user, recipient or beneficiary was a party to a transaction concerning the supply of those particular goods or services; and
- d) a franchisee in terms of a franchise agreement, to the extent applicable as defined in this Act.

**“Consumer Agreement”**: means an agreement between a supplier and a consumer other than a franchise agreement.

**“Direct Marketing”**: means to approach a person, either in person or by mail or electronic communication, for the direct or indirect purpose of –

- a) promoting or offering to supply, in the ordinary course of business, any goods or services to the person; or
- b) requesting the person to make a donation of any kind for any reason.

**“Distributor”**: in relation to any particular goods, means a person who, in ordinary course of business –

- a) is supplied with those goods by a producer, importer or other distributor; and
- b) in turn supplies those goods to either another distributor or to a retailer.



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**“Goods”**: –includes –

- a) anything marketed for human consumption;
- b) any tangible object not otherwise contemplated in paragraph (a), including any medium on which anything is or may be written or encoded;
- c) any literature, music photograph, motion picture, game, information, data, software, code or other intangible product written or encoded on any medium, or a license to use any such intangible product;
- d) a legal interest in land or any other immovable property, other than an interest that falls within the definition of “service” in this section; and
- e) gas, water and electricity.

**“Intermediary”**: means a person who, in the ordinary course of business and for remuneration or gain, engages in the business of –

- a) representing another person with respect to the actual or potential supply of any goods or services;
- b) accepting possession of any goods or other property from a person for the purpose of offering the property for sale; or
- c) offering to sell to a consumer, soliciting offers for or selling to a consumer any goods or property that belongs to a third person, or service to be supplied by a third person,

but does not include a person whose activities as an intermediary are regulated in terms of any other national legislation.

**“Loyalty Programme”**: means any arrangement or scheme in the ordinary course of business, in terms of which a supplier of goods or services, association of such suppliers, or other person on behalf of or in association with any such suppliers, offers or grants to a consumer any loyalty credit or award in connection with a transaction or an agreement.

**“Producer”**: with respect to any particular goods, means a person who –

- a) grows, nurtures, harvests, mines, generates, refines, creates, manufactures or otherwise produces the goods within the Republic, or causes any of those things to be done, with the intention of making them available for supply in the ordinary course of business; or
- b) by applying a personal or business name, trade mark, 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 paragraph (a).





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**“Promote”**: means to –

- a) advertise, display or offer to supply any goods or services in the ordinary course of business to all or part of the public for consideration;
- b) make any representation in the ordinary course of business that could reasonably be inferred as expressing a willingness to supply any goods or services for consideration; or
- c) engage in any other conduct in the ordinary course of business that may reasonably be construed to be an inducement or attempted inducement to a person to engage in a transaction.

**“Rental”**: means an agreement for consideration in the ordinary course of business, in terms of which temporary possession of any premises or other property is delivered, at the direction of, or to the consumer, or the right to use any premises or other property is granted, at the direction of, or to the consumer, but does not include a lease within the meaning of the National Credit Act.

**“Retailer”**: with respect to any particular goods, means a person who, in the ordinary course of business, supplies those goods to a consumer.

**“Service”**: includes, but is not limited to –

- a) any word or undertaking performed by one person for the direct or indirect benefit of another;
- b) the provision of any education, information advice or consultation, except advice that is subject to regulation in terms of the Financial Advisory and Intermediary Service Act, 2002 (Act No.37 of 2002);
- c) any banking services, or the undertaking, underwriting or assumption of any risk by one person on behalf of another, except to the extent that any such service –
  - I. constitutes advice or intermediary service that is subject to regulation in terms of the
  - II. Financial Advisory and Intermediary Services Act, 2002;
  - III. is regulated in terms of the long-term Insurance Act, 1998 (Act No.52 of 1998), or
  - IV. short term Insurance Act, 1998 (Act No.53 of 1998);
- d) the transportation of an individual or any goods;
- e) the provision of –
  - I. any accommodation or sustenance;
  - II. any entertainment or similar intangible product or access to any such entertainment
  - III. or intangible product;



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- IV. access to any electronic communication infrastructure;
  - V. access, or of a right of access, to an event or to any promises, activity or facility; or
  - VI. access to or use of any premises or other property in terms of a rental agreement;
- f) a right of occupancy of, or power or privilege over or in connection with, any land or other immovable property, other than in terms of a rental; and
- g) rights of a franchisee in terms of a franchise agreement;

Irrespective of whether the person promoting, offering or providing the services participates in, supervises or engages directly or indirectly in the service.

**“Supplier”**: means a person who markets any goods or services.

**“Supply Chain”**: with respect to any particular goods or services, means the collectivity of all suppliers who directly or indirectly contribute in turn to the ultimate supply of those goods or services to a consumer, whether as a producer, importer, distributor, or retailer of goods, or as service provider.

**“This Act”**: includes any Schedule to this Act, regulations made or notices issued by the Minister under this Act.

**“Transaction”**: means –

- a) in respect of a person acting in the ordinary course of business –
  - I. an agreement between or among that person and one or more other persons for
  - II. the supply or potential supply of any goods or services in exchange for
  - III. consideration; or
  - IV. the supply by that person of any goods to or at the direction of a consumer for
  - V. consideration; or
  - VI. the performance by, or at the direction of, that person of any service for or at the
  - VII. direction of a consumer for consideration; or
- b) an interaction contemplated in Section 5(6) of this Act, irrespective of whether it falls within paragraph (a).

**“Used Goods”**: when used in respect of any goods being marketed, means goods that have been previously supplied to a consumer, but does not include goods that have been returned to the supplier in terms of any right of return contemplated in this Act.



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## Electronic Communications and Transactions Act, Act 25 of 2002

### Objectives of the Electronic Communications and Transactions Act:

Objectives of the Act are to enable and facilitate electronic communications and transactions in the public interest, and for that purpose to:

- **recognize the importance** of the information economy for the economic and social prosperity of the Republic;
- **promote universal access** primarily in underserved areas;
- **promote the understanding** and, acceptance of and growth in the number of Electronic transactions in the Republic;
- **remove and prevent barriers** to electronic communications and transactions in the Republic;
- **promote legal certainty** and confidence in respect of electronic communications and transactions;
- **promote technology neutrality** in the application of legislation to electronic communications and transactions;
- **promote e-government services** and electronic communications and transactions with public and private bodies, institutions and citizens;
- ensure that electronic transactions in the Republic **conform to the highest international standards**;
- **encourage investment and innovation** in respect of electronic transactions in the Republic;
- **develop a safe**, secure and effective environment for the consumer, business and the Government to conduct and use electronic transactions;
- **promote the development of electronic transactions services** which are responsive to the needs of users and consumers;
- ensure that, in relation to the provision of electronic transactions services, **the special needs of particular communities** and areas and **the disabled** are duly taken into account;
- **ensure compliance with accepted International technical standards** in the provisions and development of electronic communications and transactions;
- **promote the stability** of electronic transactions in the Republic;



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- **promote the development of human resources** in the electronic transactions environment;
- **promote SMMEs** within the electronic transactions environment;
- **ensure efficient use and management** of the .za domain name space; and
- **ensure that the national interest** of the Republic is not compromised through the use of electronic communications.

## Application of the Electronic Communication and Transactions Act.

- Subject to any contrary provision in this section, the Act applies in respect of any electronic transaction or data message.

## Definitions applicable for the Electronic Communications and Transactions Act, No 25 of 2005

In the Act –

“**Commission**”: means The National Consumer Commission as amended by Schedule 1B of the Consumer Protection Act, 2008.

“**Addressee**”: in respect of a Data Message, means a person who is intended by the originator to receive the data message, but not a person acting as an intermediary in respect of that data message.

“**Consumer**”: means any natural person who enters or intends entering into an electronic transaction with a supplier as the end user of the goods or services offered by that supplier.

“**Critical data**”: means data that is declared by the Minister in terms of Section 53 to be of importance to the protection of the national security of the Republic or the economic and social wellbeing of its citizens.

“**Critical database**”: means a collection of critical data in electronic form from where it may be accessed, reproduced or extracted.

“**Critical database administrator**”: means the person responsible for the management and control of a critical database.

“**Automated Transaction**”: means an electronic transaction conducted or performed, in whole or in part, by means of Data Messages in which the conduct or data messages of one or both parties are not reviewed by a natural person in the ordinary course of such natural person’s business or employment.



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**“Data Message”**: means data generated, sent, received or stored by Electronic means and includes:

- a) voice, where the voice is used in an automated transaction, and
- b) a stored record.

**“Electronic Communication”**: means a communication by means of data messages.

**“Transaction”**: means a transaction of either a commercial or non-commercial nature, and includes the provision of information and e-government services.

**“the Act”**: means the Electronic Communications and Transactions Act.





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## Documentation received to be audited from

**Culmen Wes-Kaap CC**

- A. Tax Invoice**
- B. Quotation**
- C. Letterhead**
- D. Written Agreement on OHS**
- E. Sales Record Keeping Process**
- F. Website**
- G. Public liability Insurance**
- H. General**



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## Areas of concern pertaining to

Culmen Wes-Kaap CC

### A. Terms and Conditions of Sale

Standard required according to this Act:

Sections applicable:

1. Changes, deferrals and waivers, and substitution of goods (**Section 46**)
2. Unfair, unreasonable or unjust contract terms (**Section 48**)
3. Notice required for certain terms and conditions (**Section 49**)
4. Written consumer agreements (**Section 50**)
5. Prohibited transactions, agreements, terms and conditions (**Section 51**)

#### A.1) Changes, deferrals and waivers, and substitution of goods – Section 46

- 1.1) 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.
- 1.2) If, after delivery to the consumer of goods that are subject to the agreement, parties 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.



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### A.2) Unfair, unreasonable or unjust contract terms – Section 48

#### 2.1) The supplier may not –

- a) supply, offer to supply, or enter into an agreement to supply any goods or services at a price that is unfair, unreasonable or unjust nor on terms that are unfair, unreasonable or unjust;
- b) market any goods or services, or negotiate, enter into or administer a transaction or an agreement for the supply of any goods or services, in a manner that is unfair, unreasonable or unjust;
- c) require a consumer, or other person to whom any goods or services are supplied at the direction of the consumer:
  - I. to waive any rights;
  - II. assume any obligation; or
  - III. waive any liability of the supplier, on terms that are unfair, unreasonable or unjust, or
  - IV. impose any such terms as a condition of entering into a transaction.

#### 2.2) A term and/or condition of a transaction will be viewed as unfair, unreasonable or unjust if;

- a) it is excessively one-sided in favor of any person other than the consumer or other person to whom goods or services are to be supplied;
- b) the terms of the transaction or agreement are so adverse to the consumer as to be inequitable;
- c) the consumer relied upon a false, misleading or deceptive representation, or a statement of opinion provided by or on behalf of the supplier, to the detriment of the consumer;
- d) the transaction or agreement was subject to a term or condition, and the term or condition is unfair, unreasonable, and/or the fact, nature and effect of that term, condition or notice was not drawn to the attention of the consumer.

### A.3) Notice required for certain terms and conditions – Section 49

#### 3.1) Any notice to a consumer or provision of a consumer agreement which purports to:

- a) limit in any way the risk or liability of the supplier or any other person;
- b) constitute an assumption of risk or liability by the consumer;
- c) impose an obligation on the supplier or any other person for any cause;
- d) be an acknowledgement of any fact by the consumer;



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must be drawn to the attention of the consumer in a manner and form that satisfies the stipulations of this Act.

- 3.2) The supplier must specifically draw the fact, nature and potential effect of that risk to the consumer's attention in writing and in plain language and provide the consumer with adequate opportunity to comprehend the provision or notice, and the consumer must have **assented to that provision or notice by signing or initialing the provision or otherwise acting in a manner consistent with acknowledgement** of the notice, awareness of the risk and acceptance of the provision.

### A.4) Written consumer agreements – Section 50

- 4.1) The minister may prescribe categories of consumer agreements that are required to be in writing.

- 4.2) **Note:** If a consumer agreement between a supplier and a consumer is in writing whether as required by this Act or voluntarily the following will apply:

- a) it applies irrespective of whether or not the consumer signs the agreement and;
- b) the supplier must provide the consumer with a free copy, or free electronic access to a copy, of the terms and conditions of that agreement which must adhere to the following:
  - I. satisfy the requirements of being in plain and understandable language as set out in;
  - II. Section 22 of this Act; and
  - III. set out an itemized break-down of the consumers financial obligations under such;
  - IV. agreement.
- c) if a consumer agreement between a supplier and a consumer is not in writing, a supplier must keep a record of transactions entered into over the telephone or any other recordable form as prescribed.

### A.5) Prohibited transactions, agreements, terms and conditions –Section 51

- 5.1) A supplier must not make a transaction or agreement subject to any term or condition if:

- a) its general purpose is to defeat, mislead or subject the consumer to fraudulent conduct;
- b) it directly or indirectly purports to waive or deprive a consumer of a right in terms of this Act, set aside or override the effect of any provisions of this Act, or authorize the supplier to do anything that is unlawful or fail to do anything that is required in terms of this Act;



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- c) it purports to limit or exempt a supplier of goods or services from liability for any loss directly or indirectly attributable to the gross negligence of the supplier of any person acting for or controlled by the supplier or impose an obligation on a consumer to pay for damage to, or otherwise assume the risk of handling any goods displayed by the supplier, except if consumer is found to be gross negligent;
- d) it results from an offer prohibited by negative option marketing;
- e) it requires the consumer to enter into a supplementary agreement;
- f) it purports to cede to any person charge, set off against a debt, or alienate in any manner, a right of the consumer to any claim against the Guardian's fund;
- g) it falsely expresses an acknowledgement by the consumer that:
  - I. before the agreement was made, no representation or warranties were made by the supplier or representative of the supplier;
  - II. the consumer has received goods or services, or a document that is required by this Act to be delivered to the consumer;
- h) it requires the consumer to forfeit any money to the supplier if the consumer exercises any right in terms of this Act or to which the supplier is not entitled in terms of this Act, or any other law;
- i) it expresses, on behalf of the consumer:
  - I. an authorization for any person action on behalf of the supplier to enter any premises for the purposes of taking possession of goods to which the agreement relates;
  - II. an undertaking to sign in advance any documentation relating to enforcement of the agreement, irrespective of whether such documentation is complete or incomplete at the time it is signed; or
  - III. a consent to a predetermined value of cost relating to enforcement of the agreement, except to the extent that is consistent with this Act;
- j) it express an agreement by the consumer to:
  - I. deposit with the supplier, or with any other person at the direction of the supplier, an
  - II. identity document, credit or debit card, bank account or automatic teller machine
  - III. access card, or any similar identifying document or device; or
  - IV. provide a personal identification code or number to be used to access an account.





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5.2) A supplier may not:

- a) **directly or indirectly require** or induce a consumer to enter into a supplementary agreement, or sign any documentation, that contains a provision as stipulated in 5.1;
- b) **request or demand** a consumer to:
  - I. give the supplier temporary or permanent possession of an instrument, other than for
  - II. the purpose of identification, or to make a copy of such instrument; or
  - III. reveal any personal identification code or number.
- c) **direct or knowingly permit** any other person to do anything referred to in this section on behalf of or for the benefit of the supplier.

5.3) A purported transaction or agreement, provision, term or condition of a transaction or agreement, or notice to which a transaction or agreement is purported to be subject, is void to the extent that it contravenes this section.

5.4) Section 51 does not preclude a supplier to require a personal identification code or number in order to facilitate a transaction that in the normal course of business necessitates the provision of such code or number.



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## Areas of concern pertaining to

Culmen Wes-Kaap CC

### B. Right to fair value, good quality and safety.

Standard required according to this Act:

Sections applicable:

1. Consumer's rights to demand quality service (**Section 54**)
2. Consumer's rights to safe, good quality goods (**Section 55**)
3. Implied warranty of quality (**Section 56**)
4. Warranty on repaired goods (**Section 57**)
5. Warning concerning fact and nature of risks (**Section 58**)
6. Liability for damage caused by goods (**Section 61**)
7. Alternative dispute resolution (**Section 70**)
8. Vicarious liability (**Section 113**)

#### B.1) Consumer's rights to demand quality Service – Section 54

- 1.1) When the supplier undertakes to perform any service for or on behalf of a consumer, the consumer has the following rights:
  - a) the timely performance and completion of those services, and timely notice of any unavoidable delay in the performance of service;
  - b) the performance of the service 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 service; 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.



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### B.2) Consumer's rights to safe, good quality goods – Section 55

2.1) Every consumer has a right to receive goods that:

- a) are reasonably suitable for the purpose for which they were generally intended;
- b) are of good quality, in good working order and free of any defects;
- c) will be usable 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 **Standard Act 1993 (Act No.29 of 1993)**, or any public regulation.

2.2) **Note:** 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 **ordinarily offers** such goods or, **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.

2.3) In determining whether any particular goods satisfied the requirements of the above, 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 purpose for which, the goods were marketed, packaged, and displayed, the use of the trade descriptions or mark, any instructions for, or warnings with respect to the use of the goods;
- b) **the range** of things that might reasonably relate to the goods; and
- c) **the time** when the goods were produced and supplied.

### B.3) Implied warranty of quality – Section 56

3.1) In any transaction or agreement pertaining to the supply of goods to a consumer there is an implied term that the producer, importer, distributor or 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, importer, distributor or retailer as the case may be.



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- 3.2) Within **six (6) 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 as stipulated in Section 55. Accordingly the supplier must at the direction of the consumer either:
- repair** or **replace** the failed, unsafe or defective goods; or
  - refund** the consumer the price paid by the consumer for the goods.
- 3.3) If a supplier **repairs** any particular goods or any component of any such goods, and within **three (3) months** after that repair, failure, defect or unsafe feature has not been remedied, or a further failure, defect or unsafe feature is discovered, the supplier must:
- replace** the goods; or
  - refund** the consumer the price paid by the consumer for the goods.

### B.4) Warranty on repaired goods – Section 57

A service provider warrants every new or reconditioned part installed during any repairs or maintenance work, and the labour required to install it, for a period of **three (3) months** after the date of installation or such longer period as the supplier may **specify in writing**.

**Note:** A warranty in terms of Section 57:

- is concurrent with any other deemed, **implied or express warranty**;
- is void if the consumer has subjected the part, or the goods or property in which it was installed, to **misuse** or **abuse**; and
- does not apply to be **ordinary wear and tear**, having regard to the circumstances in which the goods are intended to **ordinarily used**.

### B.5) Warning concerning fact and nature of risk – Section 58

- 5.1) The supplier of any activity or facility that is subject to any risk of unusual character or nature of risk of which a consumer could not reasonably be expected to be aware, or which any ordinarily alert consumer could not reasonably be expected to contemplate in the circumstances, or risk that could result in serious injury or death, **must specifically draw** the fact, nature and potential effect of that risk **to the attention of consumers** in a form and manner that meets the standards set out in **Section 49**.
- 5.2) A supplier who packages any hazardous or unsafe goods for supply to consumers must display on or within that packaging a notice that meets the requirements of being in plain and understandable language, and any other applicable standards, providing the consumer with adequate instructions for the safe handling and use of those goods.



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5.3) The supplier of any of the aforesaid goods to a consumer must give the consumer **the original copy** of any performance, handling, installation and use of those goods.

### B.6) Liability for damage caused by goods – Section 61

6.1) The producer, importer, distributor or retailer of **any goods** is **liable** for **any harm** 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 a the producer, importer, distributor or retailer as the case may be.

6.2) 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 purpose of this Act.

6.3) In any particular case, if more than one person is liable in terms of this Act, their **liability** is **joint** and **several**.

6.4) Harm for which a person may be held liable in terms of this Act is:

- 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.
- d) **Any economic loss** that results from harm.

### B.7) Alternative dispute resolution - Section 70

7.1) A customer 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 ombud with jurisdiction**, if the supplier is subject to the jurisdiction of any such ombud;
- b) **an industry ombud** accredited in terms of Section 82(6) of this Act, if the supplier is subject to the jurisdiction of any such ombud;





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- c) **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
- d) **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.

7.2) If an alternative dispute resolution agent concludes that there that there is no reasonable probability f 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 of this Act.

- 7.3) 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.

With the consent of a complainant, a consent order confirmed in terms of 9.3 (b) include an award of damages to that complainant.

### B.8) Vicarious liability – Section 113

8.1) If an employee or agent of a person is liable in terms of this Act for anything done or omitted in the course of that person’s employment or activities on behalf of their principal, the employer or principal is **jointly and severally liable** with that person.

8.2) This Section does not apply in respect of criminal liability.



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## Areas of concern pertaining to

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### C. Consumer's right to disclosure and information.

Standard required according to this Act:

Sections applicable:

1. Right to information in plain and understandable language (**Section 22**)
2. Disclosure of price of goods or services (**Section 23**) (**ECTA Section 43**)
3. Sales Record (**Section 26**) (**ECTA Section 43**)
4. Identification of deliverers, installers and others (**Section 28**)
5. Identification of Supplier (**Section 79**)

#### C.1) Right to information in plain and understandable language – Section 22

- 1.1) The supplier must provide a notice, document or visual representation in plain language if it is reasonable to conclude that an ordinary consumer of the class of persons for whom the notice, document or visual representation is intended, with average literacy skills and minimal experience as a consumer of the relevant goods or services, could be expected to understand the content, significance and import of the notice, document or visual representation without **undue effort with regarding to:**
  - a) **the context**, comprehensiveness and consistency of the notice, document or visual representation;
  - b) **the organization**, form and style of the notice, document or visual representation;
  - c) **the vocabulary**, usage and sentence structure of the notice, document or visual representation;
  - d) **the use of any illustrations**, examples, headings, or other aids to reading and understanding.



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### C.2) Disclosure of Price of goods or services – Section 23

- 2.1) A retailer is **not required to display a price** for any goods that are displayed predominantly as a form of advertisement of the supplier, or of goods or services, in an area within the supplier's premises to which the public **does not ordinarily have access**.
- 2.2) A price is adequately displayed to a consumer if, in relation to any particular goods, a written indication of the price, expressed in the currency of the republic, is:
- a) **annexed or affixed to**, written, printed stamped or located upon, or otherwise applied to the goods or to any band, ticket, covering, label, package, reel, shelf or other thing used in connection with the goods or on which the goods are mounted for display or exposed for sale;
  - b) in any way represented in a manner from which it may **reasonably be inferred** that the price represented is a price applicable to the goods or services in question, or
  - c) **published in relation to the goods in a catalogue**, brochure, circular or similar form of publication available to that consumer, or to the public generally if –
    - I. **a time is specified** in the brochure, catalogue, circular or similar form of publication as the time after which the goods may not be sold at that price, and that time has not yet passed, or
    - II. **in any other case**, the catalogue brochure, circular or similar form of publication is dated, and in the circumstances may reasonably be regarded as not out of date.
    - III. the supplier must **not require** a consumer to **pay a price** for any goods or services that is **higher than the displayed price** for those goods or services or, **if more than one price is concurrently displayed**, higher than the lower or lowest of the prices so displayed.

This Section **does not apply** to a transaction if **Section 43 of the Electronic Communications and Transactions Act** applies to that transaction.

### Information to be provided – Section 43 of the Electronic Communications and Transactions Act

A supplier offering goods or services for sale, hire or for exchange by way of electronic transaction must disclose the following information to consumers on its website:

- its **full name and legal status**;
- its **physical address and telephone number**;
- its **web site address and e-mail address**;



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- **membership** of any self-regulatory or accreditation bodies to which that supplier belongs or subscribes and the contact details of that body;
- **any code of conduct** to which that supplier subscribes and how that code of conduct may be accessed electronically by the consumer;
- in the case of a legal person, its **registration number**, the names of its office bearers and its place of registration;
- the **physical address** where that supplier will receive legal service of documents;
- a sufficient description of the **main characteristics** of the **goods or services** offered by that supplier to enable a consumer to make an informed decision on the proposed electronic transaction;
- the **full price** of the goods or services, including **transport costs, taxes** and any other fees or costs;
- the **manner of payment**;
- any **terms of agreement**, including any guarantees, that will apply to the transaction and how those terms may be accessed, stored and reproduced electronically by consumers;
- the **time** within which the goods will be **dispatched or delivered** or within which the services will be rendered;
- the **manner** and **period** within which consumers can **access** and maintain a full record of the transaction;
- the **return, exchange** and **refund policy** of that supplier;
- any **alternative dispute resolution code** to which that supplier subscribes and how the wording of that code may be accessed electronically by the consumer;
- the **security procedures** and **privacy policy** of that supplier in respect of payment, payment information and personal information.

The supplier must provide a consumer with an opportunity-

- to **review** the entire electronic transaction;
- to **correct** any mistakes; and
- to **withdraw** from the transaction, before finally placing any order.

If a supplier fails to comply with the aforesaid provisions, the consumer may cancel the transaction within **fourteen (14) days after receiving** the goods or services.



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If a transaction is cancelled by a consumer within **fourteen (14 days)** after receiving the goods or services:

- the consumer must **return the performance** of the supplier or, where applicable, cease using the services performed; and
- the supplier must **refund all payments** made by the consumer minus the direct cost of returning the goods.

The supplier must utilize a payment system that is sufficiently secure with reference to accepted technological standards at the time of the transaction and the type of transaction concerned.

The supplier is liable for any damage suffered by a consumer should the supplier fail to utilize a payment system that is sufficiently secure.

### C.3) Sales Records – Section 26

3.1) A supplier of goods or services must provide a written record of such transaction to the consumer to whom any goods or services are supplied.

3.2) **This record 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.

This Section **does not apply** to a transaction if **Section 43 of the Electronic Communications and Transactions Act** applies to that transaction. Refer to Section 43 of the Electronic Communications and Transactions including Section 23 of the Consumer Protection Act.





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### C.4) Identification of deliverers, installers and others – Section 28

- 4.1) Whenever a person is engaged in direct marketing in person at the premises of a consumer, or performing any service for a consumer at any such premises, or delivering any goods to, or installing any goods for a consumer, at any such premises that person **must**:
- a) **visibly wear or display** a badge or similar identification device that satisfies any prescribed standards;
  - b) provide **suitable identification** on request by the consumer.

### C.5) Identification of Supplier – Section 79

- 5.1) A person must not carry on business, advertise, promote, offer to supply or supply any goods or services, or enter into a transaction or agreement with a consumer under any name except –
- a) the person's full name as –
    - I. recorded in the identity document or any other recognized identification document, in the case of an individual; or
    - II. registered in terms of a public regulation, in the case of a juristic person; or
  - b) a business name registered to, and for the use of, that person in terms of Section 80 of this Act, or any other public regulation.
- 5.2) A person doing anything as stipulated in 8.1 must include the following particulars on any trade catalogue, trade circular, business letter, order for goods, sales record or statement of account that the person issues:
- a) the name, title or description under which the business is carried on;
  - b) a statement of the primary place at which, or from which, the business is carried on; and
  - c) if the activity is carried on under a business name, the name of the person to whom that business name is registered.
- 5.3) If a person –
- a) does anything as stipulated in 8.1 under a name that is not that person's full name, or a business name registered to that person, the commission may issue a compliance notice to that person, in terms of Section 100 of this Act, requiring the person –
    - I. within a reasonable time, to –
      - (aa) apply for registration of the business name in terms of Section 80 of this Act; or





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(bb) discontinue that conduct under that business name; and

II. if the application to register that business name is unsuccessful for any reason contemplated in this Part, to discontinue that conduct under that name within 40 business days after receiving notice of the failure of the application;

- b) fails to comply with any requirement as stipulated in 8.2, the commission may issue a compliance notice to the person in terms of Section 100 of this Act; or
- c) does anything as stipulated in 8.1 under a business name that is registered to another person, that other person may apply to the court for an order as stipulated in 8.4.

5.4) The court hearing an application as stipulated in 8.3 (c) may make an order directing a person to stop using a business name within a period, and on any terms, that the court considers just, equitable and expedient in the circumstances.



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### D. Right to fair and responsible marketing.

Standard required according to this Act:

#### Sections applicable:

1. Right to restrict unwanted direct marketing (**Section 11**) (**ECTA Section 45**)
2. Unsolicited goods or services (**Section 21**)
3. General standards for marketing of goods or services (**Section 29**)
4. Direct marketing to consumers (**Section 32**)
5. Unconscionable conduct (**Section 40**)
6. False misleading or deceptive representations (**Section 41**)

#### D.1) Right to restrict unwanted direct marketing – Section 11

- 1.1) 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.
- 1.2) To facilitate the realization of each consumer's right to privacy, and to enable consumers to efficiently protect themselves against the activities as stipulated in this Act, 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.
- 1.3) The Commission may establish, or recognize as authoritative, a registry in which any person may register a pre-emptive block, either generally or for specific purposes, against any communication that is primarily for the purpose of direct marketing.



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- 1.4) A person authorizing, directing or conducting any direct marketing—
- a) must implement appropriate procedures to facilitate the receipt of demands as stipulated in this Act; and
  - b) must not direct or permit any person associated with that activity to direct or deliver any communication for the purpose of direct marketing to a person who has—
    - I. made a demand in terms of Section 11 subsection (2) of this Act; or
    - II. registered a relevant pre-emptive block.
- 1.5) No person may charge a consumer a fee for making a demand in terms of Section 11 subsection (2) or registering a pre-emptive block as contemplated in Section 11 subsection (3).
- 1.6) The Minister may prescribe regulations for the operation of a registry contemplated in Section 11 subsection (3).

### Unsolicited goods, services or communications – Section 45 of the Electronic Communications and Transactions Act

Any person who sends unsolicited commercial communications to consumers, must provide the consumer-

- with the **option to cancel** his or her subscription to the mailing list of that person; and
- with the **identifying particulars** of the **source** from which that person obtained the consumer's personal information, on request of the consumer.

Any person who fails to comply with or contravenes the aforesaid, is **guilty of an offence** and liable, on conviction, to the penalties prescribed in Section 111 of the Act.

Any person who sends unsolicited commercial communications to a person who has advised the sender that such communications are unwelcome, is **guilty of an offence and liable**, on conviction to the penalties prescribed in Section 89(1) of the Act.

### D.2) Unsolicited goods or services – Section 21

- 2.1) Goods or Services may become unsolicited if:
- a) **during direct marketing;**
  - b) if a **consumer is a party to an agreement** contemplating the periodic delivery of goods during the life of the agreement;



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- c) **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;
- d) **after the termination of an agreement**, the supplier delivers any further goods to the consumer;
- e) 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;
- f) **if a supplier delivers a larger quantity** of goods than the consumer agreed to buy, the excess goods are unsolicited unless the consumer has rejected the entire delivery;
- g) 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.

2.2) **Note:** The abovementioned aspects become unsolicited if a **supplier informs** a consumer within **ten (10) business days** after delivery of any goods to a consumer, that the goods were delivered in error, and the supplier fails to recover them within **twenty (20) business days**.

2.3) A consumer in possession of goods contemplated as unsolicited as described:

- a) must not frustrate or impede any reasonable action by the supplier or deliverer to recover the goods within the time allowed;
- b) is not responsible for any cost pertaining to the recovery of the goods;
- c) is not liable for any loss or damage to the goods during the time they are in the person's possession or control, other than loss caused by the person's intentional interference with the goods.

### D.3) General standards for marketing of goods or services - Section 29

3.1) A producer, importer, distributor, retailer or service provider **must not market** any goods or services:

- a) in a manner that is reasonably likely to imply a **false or misleading representation** concerning those goods or services, as contemplated in Section 41 of this Act; or
- b) in a manner that is misleading, fraudulent or deceptive in any way, including in respect of –
  - i. **the nature**, properties, advantages or uses of the goods or services.



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- II. **the manner in or conditions** on which those goods or services may be supplied;
- III. **the price** at which the goods may be supplied, or the existence of, or relationship of the comparable or similar goods or services.
- IV. **the sponsoring** of any event, or any other material aspect of the goods or services.

### D.4) ) Direct marketing to consumers – Section 32

- 4.1) A person who is directly marketing any goods or services, and who concludes a transaction or agreement with a consumer, must inform the consumer, in the prescribed manner and form, of the right to rescind that agreement, as set out in Section 16 of this Act.
- 4.2) If a person who has marketed any goods as described in the paragraph above, left any goods with the consumer without requiring or arranging payment for them, those goods are unsolicited goods, to which Section 21 of this Act applies.

### D.5) Unconscionable conduct – Section 40

- 5.1) A supplier or an agent of the supplier **must not use physical force against a consumer**, coercion, undue influence, pressure, duress or harassment, unfair tactics or any other similar conduct, in connection with any –
  - a) **marketing** of any goods or services;
  - b) **supply of goods or services** to a consumer;
  - c) **negotiation**, conclusion, execution or enforcement of an agreement to supply any goods or services to a consumer;
  - d) **demand for**, or collection of, payment for goods or services by a consumer; or
  - e) **recovery of goods** from a consumer.
- 5.2) In addition to any conduct as stipulated in 12.1, it is unconscionable for a supplier knowingly to take advantage of the fact that a consumer was substantially unable to protect the consumer's own interests because of physical or mental disability, illiteracy, ignorance, inability to understand the language of an agreement, or any other similar factor.
- 5.3) Section 51 of this Act applies to any court proceedings concerning this Section.



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### D.6 False misleading or deceptive representations – Section 41

- 6.1) **In relation to the marketing of any goods or services**, the supplier must not, by words or conduct –
- directly or indirectly express or imply a false**, misleading or deceptive representation concerning a material fact to a consumer;
  - use exaggeration**, innuendo or ambiguity as to a material fact, or fail to disclose a material fact if that failure amounts to a deception; or
  - fail to correct an apparent misapprehension** on the part of a consumer, amounting to a false, misleading or deceptive representation, or permit or require any other person to do so on behalf of the supplier.
- 6.2) A person acting on behalf of a supplier of any goods or services must not –
- falsely represent that the person has any sponsorship, approval or affiliation; or
  - engage in any conduct that the supplier is prohibited from engaging as stipulated in 13.1.
- 6.3) Without limiting the generality of the stipulations of 13.1 and 13.2, it is a **false, misleading or deceptive representation** to falsely state or imply, or fail to correct an apparent misapprehension on the part of a consumer to the effect, that –
- the supplier of any goods or services has any particular status, affiliation, connection, sponsorship or approval that they do not have;
  - any goods or services –
    - have ingredients**, performance characteristics, accessories, uses, benefits, qualities sponsorship or approval that they do not have;
    - are of a **particular standard**, quality, grade, style or model;
    - are **new or unused**, if they are not or if they are reconditioned or reclaimed, subject to the stipulations of 13.4;
    - have **been used for a period** to an extent or in a manner that is materially different from the facts;
    - have been supplied in accordance** with a previous representation; or
    - are available** or can be delivered or performed within a specified time;
  - any land or other immovable property –
    - has **characteristics** that it does not have;
    - may lawfully** be used, or is capable of being used, for a purpose that is in fact unlawful or impracticable; or
    - has or is proximate to any facilities**, amenities or natural features that it does not have, or that are not available or proximate to it;





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- d) the **necessary service**, maintenance or repair facilities or parts are readily available for or within a reasonable period;
  - e) **any services**, part, replacement, maintenance or repair is needed or advisable;
  - f) **a specific price advantage exists**;
  - g) **a charge or proposed charge** is for a specific purpose;
  - h) **an employee**, salesperson, representative or agent has the necessary authority to negotiate the terms of, or conclude, an agreement;
  - i) **the transaction affects**, or does not affect, any rights, remedies or obligations of a consumer;
  - j) **a particular solicitation** of, or communication with, the consumer is for a particular purpose; or
  - k) **the consumer will derive a particular benefit** if they assist the supplier in obtaining a new or potential customer.
- 6.4) A representation as stipulated in 13.3 (b)(iii) to the effect that any goods are new is not false, misleading or deceptive if those goods have been used only –
- a) by or behalf of the producer, importer, distributor or retailer; and
  - b) for the purposes of reasonable testing, service, preparation or delivery.
- 6.5) Section 51 of this Act applies to any court proceedings concerning this Section.



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## Areas of concern pertaining to

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### E. Consumer's right to choose.

Standard required according to this Act:

Sections applicable:

1. Discriminatory marketing (**Section 8**)
2. Responsible grounds for deferential treatment in specific circumstances (**Section 9**)
3. Consumer's right to select suppliers (**Section 13**)
4. Pre-authorization of repair or maintenance services (**Section 15**)
5. Consumer's right to cooling-off period after direct marketing (**Section 16**) (**ECTA Section 44**)
6. Consumer's right to cancel advance reservation, booking or order (**Section 17**)
7. Consumer's rights to choose or examine goods (**Section 18**)
8. Consumer's rights with respect to delivery of goods or supply of services (**Section 19**) (**ECTA Section 46**)
9. Consumer's right to return goods (**Section 20**)
10. Over-selling and Over-booking (**Section 47**)

#### E.1) Discriminatory marketing – Section 8

Subject to section 0, a supplier of goods or services must not unfairly –

- a) Exclude any person or category of persons accessing any goods or services;
- b) Grant any person or category of persons exclusive access to any goods or services;
- c) Assign priority of supply of any goods or services to any person or category of persons;
- d) Supply a different quality of goods or services to any person or category of person;
- e) Charge different prices for any goods or services to any person or category of persons;
- f) Target particular communities, districts, populations or market segments for exclusive, priority or preferential supply of any goods or services; or



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- g) Exclude a particular community, district, population or market segment from the supply of any goods or services offered by the supplier

On the basis of one or more grounds of unfair discrimination contemplated in the Constitution or the Promotion of Equality and Prevention of Unfair Discrimination Act.

This section also applies to juristic persons that are a consumer.

### **E.2) Responsible grounds for deferential treatment in specific circumstances - Section 9**

2.1) It is not a contravention of Section 8 of this Act for a supplier to –

- a) refuse to supply or provide access to any particular goods or services to a minor, or to require the consent of a parent, guardian or other responsible adult before supplying or providing access to any particular goods or services to an unemancipated minor–
  - I. in accordance with any public regulation; or
  - II. as a reasonable precaution to protect health, welfare or safety of a minor;
- b) refuse on reasonable grounds to –
  - I. enter into an agreement with a minor for the supply of any goods or services; or
  - II. continue, or renew, an agreement as stipulated in 1.1, unless the supplier has reason to believe that the minor is emancipated;
- c) reasonably designate any facility or service, permanently, or from time to time, for the exclusive use of –
  - I. minors generally;
  - II. minors who are above or below a specified age, or between specified ages; or
  - III. adults who have attained a specified age of at least sixty (60) years; or
- d) advertise, offer or agree to supply, or supply, any goods or services at a discounted price solely on the basis that the consumer –
  - I. is a minor who has not yet attained a specified age; or
  - II. is an adult who has attained a specified age of at least sixty (60) years.

2.2) It is not a contravention of Section 8 of this Act for a supplier to reasonably –



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- a) provide and designate separate but substantially equivalent facilities for the exclusive use of persons of each gender; or
- b) offer to supply or provide access to a facility exclusively to persons of one gender.

2.3) It is **not a contravention of Section 8** of this Act for a supplier to market any goods or services in a manner that **implies or expresses a preference for a particular group of consumers who are distinguishable from the general population** on the basis of a ground of discrimination set out in Section 9 (3) of the Constitution, if the particular goods or services are reasonably intended or designed to satisfy any specific needs or interests that are common to, or uniquely characteristic of, that particular group of consumers.

2.4) Nothing in this Section is intended to limit the authority of a court to –

- I. **assess the reasonableness** of any conduct, to the extent contemplated in subsections, constitutes unfair discrimination within the meaning of the Constitution or the Promotion of Equality and Prevention of unfair Discrimination Act; or
- II. **determine whether any conduct** was fair in the circumstances of a particular transaction or the marketing of any particular goods or services, as the case may be.

### E.3) Consumer's right to select suppliers – Section 13

3.1) A supplier must not require, as a condition of offering to supply or supplying any goods or services, or a condition of entering into an agreement or transaction, that the customer 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.

3.2) **Take note:** The above said may not be applicable if the supplier –

- a) can show that the **convenience** to the consumer in having those goods or services bundled, outweighs the limitation of the consumer's right to choose;
- b) can show that the bundling of those goods or services results in **economic benefit** for consumers;

offers bundled goods or services **separately and at individual prices**.



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### E.4) Pre-authorization of repair maintenance services – Section 15

- 4.1) **Note:** This Section applies only to a transaction or Consumer agreement –
- a) with a price value of above the threshold for pre-authorization of repair or maintenance services which amounts to **one Rand (R 1-00)** excluding value added tax;
  - 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 as stated previously; or
    - II. in any other case, the consumer requests an estimate before any services or goods are supplied.
- 4.2) A service provider to whom this applies, must not charge a customer for the supply of any goods or services, unless –
- a) the supplier or services provider has given the consumer **an estimate** that satisfies the prescribed requirements, and the consumer has subsequently authorized the work; or
  - b) the consumer, **in writing, or by another recorded manner or form**, has declined the offer of an estimate, and authorized work, or pre-authorized any charges up to a specified maximum, and the amount charged does not exceed that maximum.
- 4.3) A service provider to whom this applies **must not charge** a consumer for preparing an estimate required under the conditions as stated previously, 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.**
- 4.4) **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 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 authorized the work to continue.



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### 4.5) Take note: 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/she or it does not do so.

### E.5) Consumer's right to cooling-off period after direct marketing – Section 16

5.1) This Section **does not apply** to a transaction if **Section 44 of the Electronic Communications and Transactions Act** applies to that transaction.

5.2) To the extent that this section applies to a transaction or agreement that may otherwise exist in law between a supplier and a consumer.

5.3) 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 (5) business days** after the later of the date on which –

- a) the transaction or agreement was **concluded**;
- b) the goods that were the subject of the transaction were **delivered** to the consumer.

5.4) A supplier must –

- a) return any payment received from the consumer in terms of the transaction within **fifteen (15) business days** after –
  - I. **receiving notice** of the recession, if no goods had been delivered to the consumer in terms of the transaction; or
  - II. receiving from the consumer **any goods** supplied in terms of the transaction; and
- b) **not attempt to collect any payment** in terms of a rescinded transaction, except as permitted in terms of Section 20(6) of this Act.

### Cooling-off period – Section 44 of the Electronic Communications and Transactions Act

A consumer is entitled to cancel without reason and without penalty any transaction and any related credit agreement for the supply-





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- of goods **within seven (7) days** after the date of the receipt of the goods; or
- of services **within seven (7) days** after the date of the conclusion of the agreement.

The only charge that may be levied on the consumer is the direct cost of returning the goods.

The consumer is entitled to receive a **full refund** of monies paid **within thirty (30) days** of the date of cancellation.

This Section must not be construed as prejudicing the rights of a consumer provided or in any other law.

The cooling off period in terms of the Act **does not apply** to an electronic transaction -

- for **financial services**, including but not limited to, investment services, insurance and reinsurance operations, banking services and operations relating to dealings in securities;
- by way of **an auction**;
- for the supply of **foodstuffs**, beverages or other goods intended for everyday consumption supplied to the home, residence or workplace of the consumer;
- for services which began with the **consumer's consent** before the end of the seven (7) day "cooling-off" period;
- where the price for the supply of goods or services is dependent on **fluctuations in the financial markets** and which cannot be controlled by the supplier;
- where the goods-
  - are made to the **consumer's specifications**;
  - are clearly **personalized**;
  - by reason of their nature **cannot be returned**; or
  - are likely to **deteriorate or expire rapidly**;
- where **audio or video recordings** or computer software were unsealed by the consumer;
- for the **sale of newspapers**, periodicals, magazines and books;
- for the provision of **gaming and lottery** services; or
- for the **provision of accommodation**, transport, catering or leisure services and where the supplier undertakes, when the transaction is concluded, to provide these services on a specific date or within a specific period.



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### E.6) Consumer's right to cancel advance reservation, booking, or order – Section 17

- 6.1) **Take note:** A consumer has the right to cancel any advance booking, reservation or order for any goods or services to be supplied. A supplier who makes a commitment or accepts a reservation to supply goods or services on a later date may:
- require payment of a reasonable deposit in advance; and
  - impose a reasonable charge for cancellation of the order or reservation.
- 6.2) For the purpose of this section, a charge is unreasonable if it exceeds a fair amount in the circumstances, having regard to –
- the **nature of the goods** or services that were reserved or booked;
  - the **length of notice** of cancellation provided by the consumer;
  - 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
  - the **general practice** of the relevant industry.
- 6.3) A supplier may not impose any cancellation fee in respect of a booking, reservation, or order if the consumer is unable to honor the booking reservation or order because of **death or hospitalization of the person for whom**, or for whose benefit the booking, reservation or order was made.

### E.7) Consumer's rights to choose or examine goods -Section 18

- 7.1) **Note:** 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 behavior, or criminal conduct**.
- 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.
  - 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 respect 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.
  - 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, as well as by description, if the goods do not also correspond with the description.



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### E.8) Consumer's rights with respect to delivery of goods or supply of services - Section 19

8.1) **Note:** 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;
  - III. at the **cost of the supplier**, in the case of delivery of goods,
- 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,
- c) goods to be delivered remain at the supplier's risk until the consumer has accepted delivery of them, in accordance with what was stated previously.

8.2) **Note:** 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.

8.3) **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 the consumer does anything in relation to the goods that would be inconsistent with the supplier's ownership of them, or after a lapse of a reasonable time, the consumer retains the goods without intimating to the supplier that the consumer has rejected delivery of them.

8.4) 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 are of a **type** and **quality** reasonably **contemplated** in the **agreement**, and in the case of a **special –order** agreement, **reasonably conform** to the **material specifications** on the special order.

8.5) Should the supplier **fail** to supply the goods or services on a date, time or location other than as agreed with the consumer the consumer may do any of the following:

- a) **accept the delivery** or performance at that location, date and time;



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- b) **require the delivery** or performance at the agreed location, date and time, if that date and time have not yet passed;
- c) **cancel the agreement** without penalty, treating any delivered goods or performed services as unsolicited goods or services.

This Section **does not apply** to a transaction if the performance of that transaction is governed by **Section 46 of the Electronic Communications and Transactions Act**.

### Performance – Section 46 of the Electronic Communications and Transactions Act

The supplier must **execute the order within thirty (30) days** after the day on which the supplier received the order, unless the parties have agreed otherwise.

Where a supplier has failed to execute the order within **thirty (30) days** or within the agreed period the consumer may cancel the agreement with **seven (7) days** written notice.

If a supplier is unable to perform in terms of the agreement on the grounds that the goods or services ordered are unavailable the supplier must immediately notify the consumer of this fact and **refund any payments within thirty (30) days** after the date of such notification.

### E.9) Consumer's right to return goods -Section 20

9.1) **Note:** A consumer **may return** goods to a supplier and **receive a full refund** if the supplier has delivered:

- a) goods to the consumer in terms of an agreement arising out of **Direct Marketing**,
- b) goods that the consumer **did not have an opportunity to examine before delivery** and the consumer has rejected delivery;
- c) a **mixture of goods**, and the consumer has refused delivery of any of those goods;
- d) **goods intended to satisfy a particular purpose**, and within **ten (10) business days** after delivery to the consumer, the goods have been found unsuitable for that particular purpose.

9.2) In determining the right of a supplier to impose a charge, if any goods were returned to the supplier, the following aspects must be taken into consideration:

- a) in the original **unopened** packaging, the supplier **may not** charge the consumer any amount;



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- b) in their **original condition** and **repackaged** in their **original packaging**, the supplier **may charge** the consumer a reasonable amount for 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** of the goods has occurred.
- c) in any other case, the supplier **may charge the consumer a reasonable amount** –
  - I. 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 **conformed** to the description or sample, of fit for the intended purpose.

### E.10) Over-selling and Over-booking - Section 47

10.1) Section 47 **does not** apply to –

- a) a franchise agreement;
- b) a consumer agreement pertaining to the supply of any special order goods.

10.2) A supplier **must not accept payment** or consideration for any goods or services if the supplier –

- a) has **no reasonable basis** to assert an intention to supply those goods or provide those services; or
- b) **intends to supply goods or services** that are materially different from the goods or services in respect of which the payment or consideration was accepted.

10.3) If a supplier makes a commitment or accepts a reservation to supply goods or services on a specified date or at a specified time and, on the date and at the time contemplated in the commitment or reservation, fails because of insufficient stock or capacity to supply those goods or services, or similar or comparable goods or services of the same or better quality, class or nature, the supplier must –

- a) **refund** to the consumer the amount, if any, paid in respect of that commitment or reservation, **together with interest** at the prescribed rate from the date on which the amount was paid until the date of reimbursement; and
- b) in addition, **compensate the consumer for costs directly** incidental to the supplier's breach of the contract, except to the extent that the stipulations of 10.5 provides otherwise.





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10.4) **It is a defense** to an alleged failure to supply any goods or services, as stipulated in 10.3, if –

- a) the supplier offered to supply or procure **another person** to supply a consumer with comparable goods or services of the relevant kind to satisfy the consumer's request; and
- b) the consumer –
  - I. **accepted the offer**, and the supplier has supplied or procured another person to supply the goods or services so offered and accepted; or
  - II. **unreasonably refused that offer.**

10.5) The stipulations in 10.3 (b) does not apply if –

- a) the shortage of stock or capacity is due to **circumstances beyond** the supplier's control, subject to the stipulations in 10.6; and
- b) the **supplier took reasonable steps** to inform the consumer of the shortage of stock or capacity as soon as it was practicable to do so in the circumstances.

10.6) Without limiting the generality of the stipulations in 10.5(a), a shortage of capacity is not “due to circumstances beyond the supplier's control” if the shortage results partially, completely, directly or indirectly from a failure on the part of the supplier to **adequately and diligently carry out any ordinary or routine** matter pertaining to the supplier's business.





## Areas of concern pertaining to

Culmen Wes-Kaap CC

### F. Supplier's accountability to consumer's.

Standard required according to this Act:

Sections applicable:

1. Supplier to hold and account for consumer's property (**Section 65**)
2. Deposits in respect of containers, pallets or similar objects (**Section 66**)
3. Return of parts and materials (**Section 67**)

#### F.1) Supplier to hold and account for consumer's property - Section 65

1.1) The stipulations of (2) does not apply to a supplier that is –

- a) a bank, as defined in the Banks Act, 1990 (Act No. 94 of 1990);
- b) a mutual bank, as defined in the Mutual Banks Act, 1993 (Act No. 124 of 1993);  
or
- c) any other financial institution that is similarly licensed and authorized to conduct business and take deposits from the public in terms of any national legislation.

1.2) 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 utilization 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).

1.3) 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 –



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- (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 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 without knowledge of the existence of the consumer's interest.

### F.2) Deposits in respect of containers, pallets or similar objects - Section 66

- 2.1) The Minister may, in consultation with the Minister of Environmental Affairs and Tourism, prescribe a minimum or maximum deposit that a supplier must or may require a consumer to pay in respect of the return of a bottle, container, pallet, reel, or similar object used in respect of the packaging or delivery of any goods.
- 2.2) If a person returns a bottle, container, pallet, reel or similar object as stipulated in 3.1 to any supplier of goods ordinarily sold in that bottle or container or on that pallet or in or on that reel or similar object, the supplier must pay that person the amount of the deposit –
- a) if any , that is required to be charged in terms of any public regulation on the date on which the object is returned to the supplier; or
  - b) that the supplier charged for that object, or ordinarily charges for such an object, irrespective of whether the person returning the container paid a deposit for that object to that supplier.

### F.3) Return of parts and materials – Section 67

- 3.1) When a supplier is **authorized 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.
- 3.2) Section 67 does not apply to any substance, parts or components that are required –



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- 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.



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The following provisions in terms of the Electronic Communications and Transaction Act will apply to Culmen Wes-Kaap CC (Business Name):

### 1) Legal Recognition of data messages – Section 11

- 1.1) Information is not without legal force and effect merely on the grounds that it is wholly or partly in the form of a **data message**.
- 1.2) Information is not without legal force and effect merely on the grounds that it is not contained in the data message purporting to give rise to such legal force and effect, but is merely referred to in such data message.
- 1.3) Information incorporated into an agreement and that is not in the public domain, is regarded as having been incorporated into a data message if such information is:
  - a) **referred** to in a way in which a reasonable person would have **noticed** the reference there to and incorporation thereof, and
  - b) **accessible** in a form in which it may be read, stored and retrieved by the other party, whether electronically or as a computer printout as long as such information is reasonably capable of being reduced to electronic form by the party incorporating it.

### 2) Writing – Section 12

- 2.1) A requirement in law that a document or information must be in writing is met if the document or information is:
  - a) in the **form of a data message**, and
  - b) accessible in a manner usable for **subsequent reference**.

### 3) Signature – Section 13

- 3.1) Where the signature of a person is required by law and such law does not specify the type of signature, that requirement in relation to a data message is met only if an **advanced electronic signature** is used.
- 3.2) Subject to the aforesaid, an electronic signature is not without legal force and effect merely on the grounds that it is in electronic form.



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- 3.3) Where an electronic signature is required by the parties to an electronic transaction and the parties have not agreed on the type of electronic signature to be used, that requirement is met in relation to a data message if:
- a) a method is used to **identify** the person and to indicate the person's **approval** of the information communicated, and
  - b) having regard to all the relevant circumstances at the time the method was used, the method was as **reliable** as was appropriate for the purposes for which the information was communicated.
- 3.4) Where an advanced electronic signature has been used, such signature is regarded as being a **valid electronic signature** and to have been applied properly, unless the contrary is proved.
- 3.5) Where an electronic signature is not required by the parties to an electronic transaction, an expression of intent or other statement is not without legal force and effect merely on the grounds that:
- a) it is in the **form of a data message**, or
  - b) it is not evidenced by an electronic signature but is **evidenced** by other means from which such person's intent or other statement can be inferred.

### 4) Original – Section 14

- 4.1) Where a law requires information to be presented or retained in its original form, that requirement is met by a data message if:
- a) the **integrity** of the information from the time when it was first generated in its final form as a data message, and
  - b) that information is capable of being **displayed** or **produced** to the person to whom it is to be presented.
- 4.2) For the purposes of 4.1 (a), the integrity must be assessed:
- a) by considering whether the information has remained complete and unaltered, except for the addition of any endorsement and any change which arises in the normal course of communication, storage and display,
  - b) in the light of the purpose for which the information was generated, and
  - c) having regard to all other relevant circumstances.



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### 5) Admissibility and evidential weight of data messages – Section 15

- 5.1) In any legal proceedings, the rules of evidence must not be applied so as to deny the admissibility of a data message, in evidence:
- on the mere grounds that it is constituted by a data message, or
  - if it is the best evidence that the person adducing it could reasonably be expected to obtain, on the grounds that it is not in its original form.
- 5.2) Information in the form of a data message must be given **due evidential weight**.
- 5.3) In assessing the evidential weight of a data message, regard must be had to:
- the **reliability** of the manner in which the data message was generated, stored or communicated,
  - the reliability of the matter in which the **integrity** of the data message was maintained,
  - the manner in which its originator was **identified**, and
  - any other **relevant factor**.
- 5.4) A data message made by a person in the **ordinary course of business**, or a copy or printout of or an extract from such data message **certified** to be correct by an officer in the service of such person, is on its mere production in any civil, criminal, administrative or disciplinary proceedings under any law, the rules of a self regulatory organization or any other law or the common law, **admissible** in evidence against any person and rebuttable proof of the facts contained in such record, copy, printout or extract.

### 6) Retention – Section 16

- 6.1) Where a law requires information to be retained, that requirement is met by retaining such information in the form of a data message, if:
- the information contained in the data message is **accessible** so as to be usable for subsequent reference,
  - the data message is in the format in which it was generated, sent or received, or in a format which can be **demonstrated** to represent accurately the information generated, sent or received, and
  - the **origin** and **destination** of that data message and the date and time it was sent or received can be determined.





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### 7) Production of document or information – Section 17

- 7.1) Where a law requires a person to produce a document or information, that requirement is met if the person produces, by means of a data message, an electronic form of that document or information, and if:
- considering all the relevant **circumstances** at the time that the data message was sent, the **method** of generating the electronic form of that document provided a reliable means of assuring the maintenance of the **integrity** of the information contained in that document, and
  - at the time the data message was sent, it was reasonable to expect that the information contained therein would be **readily accessible** so as to be usable for subsequent reference.
- 7.2) The integrity of the information contained in a document is maintained if the information has remained complete and unaltered, except for:
- the addition of any **endorsement**: or
  - any **immaterial change**, which arises in the normal course of communication, storage or display.

### 8) Notarization, acknowledgement and certification – Section 18

- 8.1) Where a law requires a signature, statement or document to be notarized, acknowledged, verified or made under oath, that requirement is met if the **advanced electronic signature** of the person authorized to perform those acts is attached to, incorporated in or logically associated with the electronic signature or data message.
- 8.2) Where a law requires or permits a person to provide a certified copy of a document and the document exists in electronic form, that requirement is met if the person provides a **print-out** certified to be a true reproduction of the document or information.
- 8.3) Where a law requires or permits a person to provide a certified copy of a document and the document exists in paper or other physical form, that requirement is met if an **electronic copy** of the document is **certified** to be a true copy thereof and the certification is confirmed by the use of an **advanced electronic signature**.

### 9) Other Requirements – Section 19

- 9.1) A requirement in a law for multiple copies of a document to be submitted to a single addressee at the same time is satisfied by the submission of a single data message that is capable of being reproduced by that addressee.



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- 9.2) An expression in a law, whether used as a noun or verb, including the terms “**document**”, “**record**”, “**file**”, “**submit**”, “**lodge**”, “**deliver**”, “**issue**”, “**publish**”, “**write in**”, “**print**” or words or expressions of similar effect, must be interpreted so as to include or permit such form, format or action in relation to a data message unless otherwise provided for in the Act.
- 9.3) Where a seal is required by law to be affixed to a document and such law does not prescribe the method or form by which such document may be sealed by electronic means, that requirement is met if the document indicates that it is required to be under seal and it includes the **advanced electronic signature** of the person by whom it is required to be sealed.
- 9.4) Where any law requires or permits a person to send a document or information by **registered or certified post** or similar service, that requirement is met if an electronic copy of the document or information is sent to the South African Post Office Limited, is registered by the said Post Office and sent by that Post Office to the electronic address provided by the sender.

### 10) Automated transactions – Section 20

#### 10.1) In an automated transaction:

- a) an agreement may be formed where an **electronic agent** performs an action required by law for agreement formation;
- b) an agreement may be formed where all parties to a transaction or either one of them uses an **electronic agent**;
- c) a party using an electronic agent to form an agreement is, subject to paragraph (d), presumed to be bound by the terms of that agreement irrespective of whether that person reviewed the actions of the electronic agent or the terms of the agreement;
- d) a party interacting with an electronic agent to form an agreement is not bound by the terms of the agreement unless those terms were capable of being reviewed by a **natural person** representing that party prior to agreement formation;
- e) no agreement is formed where a natural person interacts directly with the electronic agent of another person and has made a material error during the creation of a data message and-
  - I. the electronic agent did not provide that person with an opportunity to **prevent** or **correct** the error;
  - II. that person **notifies** the other person of the error as soon as practicable after that person has learned of it;



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- III. that person takes **reasonable steps**, including steps that conform to the other person's instructions to **return** any performance received, or, if instructed to do so, to destroy that performance; and
- IV. that person has not used or received any material benefit or value from any performance received from the other person.

### 11) **Non-exclusion – Section 48**

11.1) Any provisions in an agreement which exclude consumers' rights as stipulated in Section 42 – 47 of the Act, are null and void.

### 12) **Complaints to Consumer Affairs Committee – Section 49**

12.1) A consumer may lodge a complaint with the National Consumer Commission in respect of any non-compliance by a supplier in terms of the Act.

### 13) **Accreditation of authentication products and services – Section 37**

13.1) The Accreditation Authority may **accredit** authentication products and services in support of advanced electronic signatures.

13.2) A person falsely holding out its products or services to be accredited by the Accreditation Authority is guilty of an **offence**.

### 14) **Accreditation of foreign products and services – Section 40**

14.1) The Minister may recognize the accreditation or similar recognition granted to any authentication service provider or its authentication products or services in any foreign jurisdiction.

14.2) An authentication service provider falsely holding out its products or services to have been recognized by the Minister is guilty of an **offence**.

### 15) **Non-compliance with Chapter – Section 58(2)**

15.1) A critical database administrator that fails to take the **remedial action** within the period stated in the notice is guilty of an offence.



# Consumer Protection

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### 16) Appointment of cyber inspectors – Section 80(5)

16.1) A person who –

- a) **hinders** or **obstructs** a cyber inspector in the performance of his or her functions; or
- b) **falsely** hold himself / herself out as a cyber inspector, is guilty of an **offence**.

### 17) Power to inspect, search and seize – Section 82(2)

17.1) A person who **refuses** to co-operate or hinders a person conducting a lawful search and seizure in terms of this section is guilty of an offence.

### 18) Unauthorized access to, interception of or interference with data – Section 86

18.1) A person who **intentionally** accesses or intercepts any data without authority or permission to do so, is guilty of an offence.

18.2) A person who intentionally and **without authority** to do so, interferes with data in a way which causes such data to be modified, destroyed or otherwise rendered ineffective, is guilty of an offence.

18.3) A person who **unlawfully** produces, sells, offers to sell, procures for use, designs, adapts for use, distributes or possesses any device, including a computer program or a component, which is designed primarily to overcome security measures for the protection of data, or performs any of those acts with regard to a password, access code or any other similar kind of data with the intent to unlawfully utilize such item to contravene this section, is guilty of an **offence**.

18.4) A person who **utilizes** any device or computer program as stipulated in (3) above, in order to unlawfully overcome security measures designed to protect such data or access thereto, is guilty of an offence.

18.5) A person who **commits** any act described in this section with the intent to interfere with access to an information system so as to constitute a denial, including a partial denial, of service to legitimate users is guilty of an **offence**.

### 19) Penalties – Section 89

19.1) A person convicted of an offence referred to in Sections 37(3), 40(2), 45, 58(2), 80(5), 82(2) or 86(1), (2) or (3) is **liable to a fine or imprisonment for a period not exceeding 12 months**.

19.2) A person convicted of an offence referred to in Section 86(4) or (5) or Section 87 is **liable to a fine or imprisonment for a period not exceeding five years**.



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## Areas of concern pertaining to

### Culmen Wes-Kaap CC

Please note that you indicated at our consultation that majority of your clients are larger businesses. The risk of dealing with clients are that you will not know if the transaction will be exempted from the Act. The changes and areas of concern are therefore relevant to the Consumer Protection Act and although the transaction may be exempted it will be to your benefit to amend your documentation unless the changes are relevant to a critical contract term.

#### A) Tax Invoice

**Section 26, see page 28** of the Consumer Protection Act applies.

The tax invoice does not comply with the Consumer Protection Act in that it does not disclose the address of the premises at which, or from which, the goods or services were supplied;

We suggest you add the following as terms and conditions on invoice (optional)

1. Interest charged on all overdue accounts at the maximum rate as allowed by law from time to time;
2. All goods shall remain under the ownership of the supplier until the invoice price has been paid in full.

#### B) Quotation

**Section 23, Pages 26,27,28, Section 26, Page 28 and Section 48, page 16** of the Consumer Protection Act applies.

The quotation does not comply with the Consumer Protection Act in that it does not disclose the address at which, of from which, the goods and services were supplied.

We suggest you add the following as terms and conditions on the quotation:

- All goods shall remain under the ownership of Culmen Wes-Kaap CC until the invoice price has been paid;





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- The Quotation shall only be accepted in writing by the same customer and by faxing or delivering of the Quotation to Culmen Wes-Kaap CC. Add signature, name, date and time of acceptance of quotation.

The document must include the following in the event of **repairs**:

- The breakdown of the total amount to be charged if the repair is effected;
- The nature and extent of the repair;
- The period of validity of the quote;
- The period within which the consumer must collect the goods and the consequences if he/she does not do so.
- A disposal clause, may be added on a repair quote and an indication from the consumer regarding the return/disposal of used/old parts that the consumer is entitled to receive. Example of the wording may be:

“If the owner should require the old part(s) to be returned after completion of the repair, we could package the part(s) in clear containers or also dispose of used part(s) at the owner’s request. Please tick the preferred option concerning used/old part(s):

Dispose used/old part(s)  Package and return

Signed: \_\_\_\_\_

- Valid for a certain period (30 days for example) and subject to unforeseen damages. Client will be notified for authorization before repairs.
- Price include/exclude VAT.
- The cost for the strip and Quote shall be borne by the client. The cost will be R\_\_\_\_\_(additional)
- All goods and spares shall remain under the ownership of supplier until the invoice price has been paid.
- Risk warning: Although all possible care is taken, there is a risk involved in removing /changing goods. We will not be responsible for damages beyond our reasonable control.





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- The Quotation shall only be accepted in writing by the same customer and by faxing or delivering of the Quotation to the supplier. Add signature, name, date and time of acceptance of quotation.
- It is recommended that the consumer and a representative of the business must sign a check list about the product when it is brought in for repairs and before the business will take possession of the product for repairs. The check list should stipulate any damages to the product (if any) other than the damages as quoted for.
- It is also a recommendation that the risk warnings to be added to the document. Example would be:
  1. "We would like to inform you that we will supply the highest standard of excellence in repairing the customer's goods as well as providing safe storage facilities for the duration of repairs. The owner should be aware that in case of theft of goods occurring whilst on our premises, we cannot be held responsible.
  2. "The owner/representative hereby agrees that he/she has been duly informed/made aware that it is the owner's/representative's duty to kindly remove any valuables from their property ensuring that his/her property is safe and so doing illustrates that he/she has been fairly informed, therefore we are not to be held responsible for any loss incurred if this procedure/requirement is not properly adhered to by the owner/representative.

### C) Letterhead

**Section 79, see pages 29,30** of the Consumer Protection Act applies.

The letterhead complies with the Consumer Protection Act.

### D) Written Agreement on OHS

This is not one of Culment Wes-Kaap CC's documents and is thus not part of the audit.

### E) Sales Record Keeping Process

The documents seems to be in order. As long as your reference numbers can be traced to the invoices.

### F) Website: [www.culmenwc.com](http://www.culmenwc.com)

**Section 29, Pages 33,34** and **Section 41, Pages 35,36** of the Consumer Protection Act applies. Please ensure that your marketing is not false and misleading.



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For example:

Under your scope on your home page the following is stated:

“The inspection and testing of **all** types of lifting equipment and lifting tackle”

This may be misleading depending in the circumstances and should be replaced by -

The inspection and testing of **various** types of lifting equipment and lifting tackle.

Your e-mail signature

The following email disclaimer should be added underneath your signature.

E-mail disclaimer: This e-mail may contain confidential information and may be legally privileged and is intended only for the person to whom it is addressed. If you are not the intended recipient, you are notified that you may not use, distribute or copy this document in any manner whatsoever. Kindly also notify the sender immediately by telephone, and delete the e-mail. The supplier does not accept liability for any damage, loss or expense arising from this e-mail and/or accessing any files attached to this e-mail. Disclaimer is deemed to form part of the content of this email in terms of Section 11 of the Electronic Communications & Transactions Act, 25 of 2002.

### Application of the act to your WEBSITE:

The ECTA legislation applies to all websites, whether it is utilised for online shopping, catalogue marketing ordering of products /services or purposes or marketing your business.

The website: [www.culmenwc.com](http://www.culmenwc.com) was visited and the following concerns were raised:

- Please insert a “TAB” for the following Terms and Conditions

Acceptance of Terms

Culmen Wes-Kaap CC permits the use of this Website subject to these terms and conditions ("the Terms and Conditions"). By using this Website in any way, you shall be deemed to have accepted all the Terms and Conditions unconditionally. You must not use this Website if you do not agree to the Terms and Conditions. Your use of any product offered by us will also be subject to applicable provisions of the Terms and Conditions. In the event of any conflict between the Terms and Conditions and any other conditions stipulated elsewhere, the Terms and Conditions as contained herein will prevail.



PRETORIA (HEAD OFFICE): Roban Centre, Ground Floor, 178 Erasmus Street, Meyerspark, 0184  
SEESA (PTY) Ltd | Registration Number: 2008/015270/07 | VAT Registration Number: 4400252823  
DIRECTORS: B.D Oostendurp | P.D Voges | C.J Badenhorst | H.J Wilken | U. Botha | W.R Le Roux NON-EXECUTIVE: B.R Topham

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### Use of the Website

The contents of this Website, including any content, information, software, icons, text, links, graphics, lay-outs, images, sound clips, trade names, logos, trademarks and service marks are protected by law, including but not limited to copyright and trade mark law, and are owned by or licensed to Culmen Wes-Kaap CC. No license to or right in any of such contents is granted to or conferred upon you. Any unauthorized use, distribution or reproduction of the said contents is prohibited.

By entering this Website, you agree that you will not use any device, software or other instrumentality to interfere or attempt to interfere with the proper working of the Website and that you will not take any action that imposes an unreasonable or disproportionately large load on our infrastructure. In addition, you agree that you will not use any robot, spider, other automatic device, or manual process to monitor or copy the pages of the Website or the content contained herein, without the prior written consent from an authorized Culmen Wes-Kaap CC representative (such consent is deemed given for standard search engine technology employed by Internet search websites to direct Internet users to this Website). You may not use the Website to distribute material which is defamatory, offensive, and unlawful or contains hate speech.

### Disclaimer

While Culmen Wes-Kaap CC takes reasonable measures to ensure that the contents of this Website are accurate and complete, Culmen Wes-Kaap CC makes no representations or warranties, whether express or implied, as to the quality, timeliness, operation, integrity, availability or functionality of this Website or as to the accuracy, completeness or reliability of any information on this Website. Culmen Wes-Kaap CC reserves the right to make changes, corrections and/or improvements to the information and to the products and programs described in such information, at any time without notice.

Culmen Wes-Kaap CC will use reasonable endeavours to maintain the availability of the Website, except during scheduled maintenance periods, and reserves the right to discontinue providing the Website or the service or any part thereof with or without notice to you. Any person who accesses this Website or relies on this Website or on the information contained in this Website does so at his or her own risk.



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In addition to the disclaimers contained elsewhere in these Terms and Conditions, Culmen Wes-Kaap CC also makes no warranty or representation, whether express or implied, that the information or files available on this Website are free of viruses, spyware, malware, trojans, destructive materials or any other data or code which is able to corrupt, destroy, compromise or jeopardise the operation, stability, security functionality or content of your computer system, computer network, hardware or software in any way. Culmen Wes-Kaap CC does not accept any responsibility for any errors or omissions on this Website.

### Linked Third-Party Website and Third-Party Content

This Website may contain links or references to other websites outside of our control, including those of advertisers. These Terms and Conditions do not apply to those websites and Culmen Wes-Kaap CC is not responsible for the practices and/or privacy policies of those sites or the cookies those sites use.

In addition, because Culmen Wes-Kaap CC has no control over such external sites and resources, you acknowledge and agree that Culmen Wes-Kaap CC is not responsible for ensuring the availability of such external websites or resources and does not endorse and is not responsible or liable for any content, advertising, products, or other materials on or available from such websites or resources. Your use of such other websites is entirely at your own risk and we are not responsible for any loss, expense, claim or damage, whether direct, indirect or consequential, arising from your use of such other websites or your reliance on any information contained on those websites.

### Permission for Hyperlinks, Deep Linking, Crawlers and Metatags

Nobody may establish a hyperlink, frame, metatag or similar reference, whether electronically or otherwise (collectively referred to as linking), to this Website or any subsidiary pages before receiving the prior written approval of an authorised representative of Culmen Wes-Kaap CC, which may be withheld or granted subject to such conditions Culmen Wes-Kaap CC may specify from time to time. Furthermore, this Website or any part hereof may not be "framed" or "deep linked" in any way whatsoever. This Website may from time to time contain message boards which allow users to comment on their experience at Culmen Wes-Kaap CC. At times those comments may contain references to matters not related to Culmen Wes-Kaap CC. Those references do not necessarily represent the views of Culmen Wes-Kaap CC.



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### Limitation of Liability

CULMEN WES-KAAP CC SHALL IN NO WAY BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL INJURY, LOSS OR DAMAGES WHICH MIGHT ARISE FROM YOUR USE OF, OR RELIANCE UPON, ANY MATERIAL OR CONTENT CONTAINED IN THE WEBSITE OR ANY LINKED WEBSITE, OR ANY INABILITY TO USE THE WEBSITE, OR ANY UNLAWFUL ACTIVITY ON THE WEBSITE CAUSED BEYOND THE REASONABLE CONTROL OF CULMEN WES-KAAP CC.

YOU HEREBY INDEMNIFY CULMEN WES-KAAP CC AGAINST ANY LOSS, CLAIM OR DAMAGE WHICH MAY BE SUFFERED BY YOURSELF OR ANY THIRD PARTY ARISING IN ANY WAY FROM YOUR USE OF THIS WEBSITE OR THE RECEIPT BY YOU OF AN ELECTRONIC MAIL FROM CULMEN WES-KAAP CC OR ONE THAT PURPORTS TO EMANATE FROM CULMEN WES-KAAP CC, UNLESS THE LOSS, CLAIM OR DAMAGE ARISES AS A RESULT OF THE GROSS NEGLIGENCE OF CULMEN WES-KAAP CC.

### Changes to these Terms and Conditions

Culmen Wes-Kaap CC reserves the right to update and/or amend the Terms and Conditions from time to time and without any notice, and you are accordingly encouraged to check the Website regularly. Any such change will only apply to your use of this Website after the change is displayed on this Website. If you use this Website after such updated or amended Terms and Conditions have been displayed on this Website, you will be deemed to have accepted such updates or amendments.

### Termination

Culmen Wes-Kaap CC may in its sole discretion terminate, suspend and modify this Website and/or your use of this Website, with or without notice to you. You agree that Culmen Wes-Kaap CC will not be liable to you in the event that it chooses to suspend, modify or terminate this Website or your use of this Website.

### Governing Law

The Terms and Conditions shall be governed and interpreted in accordance with the laws of the Republic of South Africa and application for any of the services offered on these pages or sites will constitute your consent and submission to the jurisdiction of the South African courts regarding all proceedings, transactions, applications or the like instituted by either party against the other, arising from any of the terms and conditions pertaining to such services.





# Consumer Protection

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### Privacy Policy

**It is advised that you add the following policy to your website for the purpose of the Protection of Personal Information Act (will be discussed at a later stage).**

All the information (“personal information”) supplied by you voluntarily or mandatory will be recorded and processed regardless of form or medium in which the information was supplied. Culmen Wes-Kaap CC has a strong commitment to providing excellent service to all of our customers, including respecting concerns about privacy. Culmen Wes-Kaap CC will explicitly ask when we need information that personally identifies you or allows us to contact you. If you are under 18 years of age(minor), we will require the consent of your parent/guardian/competent person before we will process the personal information of the minor, unless it is in the public interest.

We will process the following information: Name, cell phone number

Any Other: \_\_\_\_\_

Generally personal information is requested when requesting our services.

Any Other: \_\_\_\_\_

You agree to provide accurate and current information, and not to impersonate or misrepresent any person or entity or falsely state or otherwise misrepresent your affiliation with anyone or anything. The following consequences will apply if you fail to provide accurate information:

\_\_\_\_\_

The purposes for which Culmen Wes-Kaap CC will use your personal information are as follows: to transact with you via sms, telephone, facebook, skype, twitter, postal address, website or email regarding reservations/bookings, to provide services/products to you; to inform you of new features, services, special offers and products (provided you have not declined to receiving such marketing material); to enable us to process, validate and verify reservations/bookings and requests for services or goods and for the purposes for which you specifically provided the information; to improve your experience on our website(if any).

Any other purpose: \_\_\_\_\_





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Culmen Wes-Kaap CC shall be entitled to disclose personal information if required to do so (a) to comply with applicable law or with legal process served on Culmen Wes-Kaap CC; (b) to protect and defend the rights or property of Culmen Wes-Kaap CC, and (c) for the purposes of distributing same to various employees and/or third parties who assist Culmen Wes-Kaap CC in providing services to you and thus need to know your personal information in order to render a proper and efficient service to you. We will ensure that all such employees and/or third party service providers having access to your personal information are bound by appropriate and legally binding confidentiality and non-use obligations in relation to your personal information. If you use our website: You are aware that information and data is automatically collected through our website are the standard operation of the Internet servers and through the use of "cookies." "Cookies" are small text files a website can use to recognize repeat users, facilitate the user's ongoing access to and use of the website and allow a website to track usage behaviour and compile aggregate data that will allow content improvements and targeted advertising. Cookies are not programs that come onto your system and damage files. Generally, cookies work by assigning a unique number to you that has no meaning outside the assigning site. If you do not want information collected through the use of cookies, there is a simple procedure in most browsers that allows you to deny or accept the cookie feature; however, you should note that cookies may be necessary to provide you with certain features (e.g., customized delivery of information) available on our Websites.

WHILST CULMEN WES-KAAP CC IS OF INTENT TO TAKE REASONABLE MEASURES TO KEEP PERSONAL INFORMATION ABOUT YOU CONFIDENTIAL, IT SHALL HOWEVER NOT BE LIABLE FOR ANY LOSS OR DAMAGE, SUFFERED AS A RESULT OF THE DISCLOSURE OF SUCH INFORMATION BEYOND THE REASONABLE CONTROL OF CULMEN WES-KAAP CC.

Culmen Wes-Kaap CC will:

- treat your personal information as strictly confidential;
- take appropriate technical and organizational measures to ensure that your personal information is kept secure and is protected against unauthorized or unlawful processing, accidental loss, destruction or damage, alteration, disclosure or access;
- promptly notify you if we become aware of any unauthorized use, disclosure or processing of your personal information;
- provide you with reasonable evidence of our compliance with our obligations under this policy on reasonable request; and



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SEESA (PTY) Ltd | Registration Number: 2008/015270/07 | VAT Registration Number: 4400252823  
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# Consumer Protection

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- upon your request, promptly return, destroy, rectify any and all of your personal information in our possession or control.

We will not retain your personal information longer than the period for which it was originally needed, unless we are required by law to do so, for historical, statistical, research purposes or you consent to us retaining such information for a longer period.

You have the right at any time to rectify the Personal Information collected, object to the processing of Personal Information (subject to legislation) and to lodge a complaint at Culmen Wes-Kaap CC with contact details: \_\_\_\_\_

The Personal Information processed by Culmen Wes-Kaap CC will/will not (delete which is not applicable) transfer the Personal Information to a third country or International organization and if transferred the following security measures are in place to protect the Personal Information that will be transferred: \_\_\_\_\_

Contact details of Culmen Wes-Kaap CC: \_\_\_\_\_

All enquiries must be addressed to the information officer.

- Furthermore, if any marketing emails or sms's are sent to consumers they must be given the opportunity to opt out or option to cancel and when sending these data messages, the identifying particulars of the source from which the consumers personal info was obtained, must be supplied.

Application of the act to the manner in which you conduct transactions:

The following preventative measures must be implemented in your business in order to limit your risks in the event of a consumer declaring a dispute in terms of ECTA:

### - TELEPHONIC ORDERS/PRICES ISSUED

It is advisable to minimize this manner of communication due to the fact that an UNRECORDED telephonic conversation will lead to HE SAID – SHE SAID situations. This will lead to complications with proving your case.

If the major part of your business is conducted telephonically, please consider the following in order to limit risks:

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- (a) Implementing a recording system whereby all telephonic conversations are recorded for ease of reference;
- (b) If the above is not an option, each and every telephonic order, quotation and conversation needs to be followed up with an e mail/fax or some other written form whereby the contents of the conversation is confirmed.

Taking the above into account, it is therefore clear that this is not the ideal way of conducting business unless you have systems in place limiting your risks.

### - QUOTATIONS

Regardless of the manner in which the quotations are sent, the TERMS AND CONDITIONS must always accompany same.

No quotation must be accepted unless the client has signed same with his full name, signature and contact details

Example 1:

If a quotation is faxed, the client must sign same and return by hand or per fax.

Example 2:

If a quotation is e-mailed – the client must reply on that e mail and specifically mention the fact that he accepts the quotation and terms and conditions.

The alternative to the above is to advise customers to sign the documents with an electronic signature, which is a very costly exercise.

### G) Public liability Insurance

**Section 61** see page 23 of the Consumer Protection Act applies.

During our consultation you indicated that you do have public liability insurance. You however did not send us this document.

Taking the extent of Section 61 into consideration, we recommend that you ensure that you have sufficient insurance for both product liability as well as defective workmanship.



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### H) General

#### a) Vicarious liability

**Section 113, see page 24** of the Consumer Protection Act applies.

If an employee or agent of a person is liable in terms of this act for anything done or omitted in the course of that person's employment or activities on behalf of their principal, the employer or principal is jointly and severally liable with that person.

You can accordingly implement a policy with the following effect:

"Should the employee cause any damage or loss to the employer, or any third party during the course of his/her service, and such damage or loss was due to the employee's negligence or wilfulness; the employer may deduct such damage or loss from the employee's wage/salary.

The deduction will not exceed 25% (Twenty Five Percent) of the employee's wage/salary at any time, and only after inquiring into their circumstances of the incident was held."

#### b) Delivery note

**Section 19, Pages 44,45, Section 54, Page 20 and Section 55, Page 21** of the Consumer Protection Act applies.

The following terms and conditions may be used on a delivery note:

I ..... the customer acknowledge that the goods/services received are in good order and I am fully satisfied with the manner whereby the goods/services were delivered, including the inspection by myself as well as the installation. I fully agree that the goods/services satisfy the requirements of my order placed.

I will not claim a refund or remedy and I accept full responsibility should the goods be damaged due to misuse, abuse or gross negligence on my part.

I do however accept, that should the goods/services have a defect, failure or hazard, I will immediately inform the supplier and promptly claim my refund/remedy/repairs pertaining to the fact that the supplier has provided warning and safety instructions in advance, therefore when handling the goods I must comply with these instructions.

Date: ..... Time: .....



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Customer's Signature: .....

### c) Return of parts and materials

**Section 67 see pages 49,50** of the Consumer Protection Act applies.

Taking the contents of section 67 into consideration, we recommend that you consider adding the following to your quotation and invoice when attending to repairs.

#### DISPOSAL OF OLD PART(S)

"If the owner should require the old part(s) to be returned after completion of the car (truck) service, we could package the part(s) in clear containers or also dispose of used part(s) at the owner's request. Please tick the preferred option concerning used/old part(s):

Dispose used/old part(s)  Package and return

Signed: \_\_\_\_\_

### d) Other terms and conditions you may consider:

**RISK DELIVERY:** Culmen Wes-Kaap Cc shall not be liable for any loss or damage of whatsoever nature, including consequential loss or damage and loss for profit arising out of delays or failure to deliver due to fire, explosion, unavoidable breakdown of machinery, government acts and/or regulations, strikes, war (declared or not) or by any other acts of God or similar circumstances which are reasonably beyond the control of, and unforeseen by, Culmen Wes-Kaap CC.

### e) Warranty on repair services

Culmen Wes-Kaap CC warrants its customer that the repair services to the clients goods shall be free from defects and subject to the following:

- The warranty is effective for a period of three months. The date is determined from date of finalization of the repair services to the goods and the Customer will be entitled to either request a refund; replacement or repair of the repair services if the repair services are believed to be of a substandard quality within such period;
- The warranty shall immediately be rendered null and void in the event of any of the following:
  - Any alterations or modifications or addition made to the repair works, without the prior consent of Culmen Wes-Kaap CC;





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- Failure to use the goods in accordance with the instructions and specifications of Culmen Wes-Kaap CC;
- Damages due to the general mistreatment and abuse of the goods repaired;
- Any damage caused by fire, flood, civil disturbance or act of God.
- Any default that can be attributed to normal wear and tear of the material supplied or installed during the repair work of the goods taking into regard the oldness of the part and the use it was normally put to in the past. All refurbished/reconditioned/previously used material will only be supplied at the Clients specific instructions;
- the repair work have not been inspected by an authorised person of Culmen Wes-Kaap CC, before the customer requested its replacement, repair or refund.

### f) Sign off Form Repair Services Rendered

"I ..... hereby acknowledge that as the services supplied to me by Culmen Wes-Kaap CC is to my satisfaction and satisfies the requirements of the services requested I will refrain from requesting any refunds; replacement of goods or repair of goods. I may however request a refund; repair; or replacement of goods or services if the goods supplied is in terms of the repair services or the repair services itself are established to be of an inferior nature/quality; defective or not according to the specifications agreed by the parties; which refund, replacement or repair must be requested within three months from date of provision of the repair services.

### g) Cancellation Policy

Culmen Wes-Kaap CC requires a deposit of ..... % to confirm the order. The order will only be processed and work initiated when we receive confirmation that such deposit has been received. We may impose a cancellation fee in the event of cancellation before date of finalization of the order. The fee will depend on the nature of the order placed, the length of notice of cancellation before delivery, the reasonable potential to find alternative clients for the goods/services requested and the reason for cancellation. No refunds on deposits in the event of cancellation for already ordered/made Special-Order Goods.





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### h)Refund Policy

Please choose carefully. Culmen Wes-Kaap CC does not normally give refunds if you simply change your mind or make the wrong decision with regard to the goods/services being ordered. You can choose between a refund, exchange or repair , where the goods/services/ products are proven as defective within the warranty period or within 10 business days the products are wrongly described or different from the sample shown to you. We may charge a handling fee if the return is accepted by management.

### i)Warranty

Culmen Wes-Kaap CC warrants its customer that the goods/services supplied by the Company to the Customer shall be free from any material defects subject to the following:

The warranty is effective for a period of six months. The date is determined from date of collection by the Consumer/date of service being rendered.

- The Customer will be entitled to either request a refund; replacement or repair of products/services/goods supplied if the products are proven as defective within such period;
- Culmen Wes-Kaap CC shall not be liable or responsible in any way for any damages of whatsoever nature, including consequential and penal damages, caused by or due to any failure of operation or malfunction of the goods/services supplied, unless such damages can be attributed to any circumstances reasonably within the control of Culmen Wes-Kaap CC.
- The warranty shall immediately be rendered null and void in the event of any of the following:
  - Any alterations or modifications or addition made to the goods/services supplied, without the prior consent of Culmen Wes-Kaap CC.
  - Failure to use the goods in accordance with the instructions and specifications of Culmen Wes-Kaap CC
  - General misuse and abuse of printed products;
  - the Client not having his original tax invoice to be supplied upon delivery;
  - Any damage caused by fire, flood, civil disturbance or act of God;
  - Culmen Wes-Kaap CC has not had to opportunity to determine if the goods/service is actually defective and the reasons for such defectiveness.



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### j) Indemnity

Although the business endeavours to provide work of exceptional quality, Culmen Wes-Kaap CC accepts no responsibility for any loss including consequential loss arising from errors or omissions during goods/services undertaken unless such errors and omissions including consequential loss can be attributed to any circumstances within the Company's reasonable control.

These include but are in no way limited to loss or consequential loss caused by incorrect/insufficient information being supplied by the consumer with regards to the goods/service.

The business will furthermore not accept responsibility for the loss or damage or destruction of any customer goods not supplied by the Company and held on the Company's premises, due to any reason whatsoever, unless such loss; damage or destruction has regard to any circumstances within the Company's reasonable control.



# Consumer Protection

Legal Audit on Consumer Protection Act & Electronic Communication and Transaction Act



## Conclusion

The amendments have been compiled with the objective of guiding **Culmen Wes-Kaap CC** to become compliant with the stipulations of the Consumer Protection Act, No 68 of 2008.

## Resolution

The amendments were accepted in terms of the status of *The Business* at a meeting of Members on ..... (date of meeting).

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

Signature: \_\_\_\_\_

Initials & Surname: \_\_\_\_\_

Designation: \_\_\_\_\_

