

REGULATIONS OF THE CONSUMER DEFENCE LAW



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Following the approval of the Consumer Defence Law (Law no. 22/2009 of 28 September), the Regulations of this law have finally been published after being approved by Decree no. 27/2016 of 18 July. The Regulations will come into force 90 days after their publication.

These Regulations have been long-awaited as they are necessary to put the law that establishes and protects consumer rights into effect.

The absence of information or the provision of defective or deficient information that compromises the appropriate use of the product or service gives the consumer the right to rescind the purchase or services contract within seven working days of the date of receipt of the product or the date of signature of the contract for provision of services.

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The Regulations now approved set out the mechanisms to prevent damage and they establish the mandatory information that must be provided to the consumer. Every product must be labelled with information in Portuguese on any probable risks associated with its consumption, and with its price expressed in Mozambican currency.

Suppliers of goods or service providers must make a complaints book available to the consumer. In the event of breach of the duty of information, suppliers of goods or service providers and any other persons involved are jointly and severally liable for any damage they cause to the consumer.

The suppliers of products and services that are potentially harmful or dangerous to health or safety must provide information about the potential harm or danger in a clear and appropriate way. If suppliers of any such products or services become aware of the degree of risk to public health that their products or services present after they have been introduced onto the market, they must communicate this fact immediately to the authorities and to consumers. Communication must be by advertisements published in the press and paid for by the suppliers.

As regards the requirement to provide guarantees to the consumer, the Regulations require:

- i) a guarantee for the product to be in good working order for a period of not less than one year from the date of its acquisition; and
- ii) a minimum guarantee of five years from the date of acquisition for real estate, proved by contract and/or invoice.

The term of any guarantee is suspended during any period in which the consumer is deprived of the use or consumption of the product or service.

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Any damage caused to the consumer is remedied as follows:

a) Liability for the product or service

The manufacturer, trader, cellar, producer, constructor and importer are liable to remedy any damage caused to consumers by a defective product.

A product is considered to be defective when it does not meet quality and safety requirements including the presentation, the validity period, the absence of information in Portuguese on the characteristics of the product and the guarantee period.

Sellers are also liable for any defect in the product when it does not adequately conserve the product under the terms of the applicable legislation and when it provides the product without identifying the manufacturer, producer constructor or importer.

The manufacturer, producer, constructor or importer is not liable for the defect if it can prove, among other circumstances, that:

- i) it did not place the product on the market;
- ii) although it placed the product on the market, the defect did not exist; or
- iii) the consumer or a third party is exclusively responsible for the defect.

In the case of services, the supplier is responsible for remedying any damage caused by the provision of defective services. Under the terms of the Regulations, the service is defective when it does not provide safety to the consumer, also considering other circumstances such as the form and period of the supply.

A supplier of services may be exempt from liability for remedying any damage as long as it can prove that the defect did not exist at the time the services were provided or that the consumer or a third party is exclusively responsible for the defect.

Suppliers of products are jointly and severally liable for any defects in quality or quantity that make the products inappropriate or inadequate for consumption, whether the products are durable or not.

b) Liability for defects in products or services

Suppliers of products are jointly and severally liable for any defects in quality or quantity that make the products inappropriate or inadequate for consumption, whether the products are durable or not. The consumer can demand the replacement of any defective parts.

If the defect is not remedied within 30 days, the consumer may opt to require, in the alternative:

- i) the replacement of the product for another the same type in perfect conditions of use. If it is not possible to replace the product, it may be replaced by another of a different type or brand, with compensation or repayment of the price difference;
- ii) the immediate repayment of the amount paid, without prejudice to any losses or damage;
- iii) the proportional reduction in the price.

The parties may agree to reduce or extend the deadline for remedying the defect, as long as the period is not less than seven days or longer than 180 days.

c) Liability of the supplier

Besides individual liability for quality defects that make the services inappropriate for consumption or reduces their value, the supplier is jointly and severally liable for the acts of its representatives. It is also jointly liable with any others involved in the process from production to distribution, for any defects in the quality and quantity of the products.

The supplier is liable to remedy any damage caused to the consumer even if it is not aware of the defects in quality and quantity because of the inadequacy of the products and services.

The Regulations also prohibit any exclusion of liability for compensation through contractual clauses that exclude or reduce this obligation.

The Regulations also establish some commercial practices that must be adopted including for advertising, the character of the information passed on to the consumer and post-sale assistance. The Regulations prohibit the use of misleading and abusive advertising.

When it comes to contractual protection, besides the right of rescission referred to above, the Regulations also provide that any abusive clauses, any reversal of the burden of proof against the consumer and any renunciation of the right to compensation, among others, are null and void.

It is important to highlight the administrative sanctions that are applied by the authority responsible for supervision of economic activities, without prejudice to any sanctions of a civil, criminal or other nature provided for in specific legislation.

Any infringement of the consumer defence rules will be subject to:

- i) A fine;
- ii) Seizure of the product;
- iii) Destruction of the product;
- iv) Prohibition on manufacturing the product;
- v) Suspension of supply our products or services;
- vi) Temporary suspension of the activities that gave rise to the proceedings;
- vii) Revocation of the permit or licence to carry on economic activity;
- viii) A full or partial ban on the establishment, the works or the activity;
- ix) The imposition of counter-advertising.

Additionally, the products related to the infringement may be seized or declared forfeited in favour of the State.

Consumer rights have been systematically violated and ignored, and until now, they have lacked the legislation necessary to ensure their protection. Even with the approval of legislation to defend consumer rights, the authorities responsible for guaranteeing their effective application will have to work to guarantee consumer protection and safety, so that consumers can acquire good quality products and services, without suffering any damage or loss.

It is important to highlight the administrative sanctions that are applied by the authority responsible for supervision of economic activities, without prejudice to any sanctions of a civil, criminal or other nature provided for in specific legislation.

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