



# AUCTIONEERING

CONSUMER PROTECTION ACT RE: AUCTIONS

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- (aa) in the case of a new development, the total cost thereof, including the market value of the land. The contractor or contractors are to confirm in an affidavit the total costs, including the costs of any improvements;
- (bb) the sales history of the property for the past ten years, including details of -
  - (A) the various legal entities who owned the property according to the title deeds and the selling price of the property with each change of ownership and the relevant dates; and
  - (B) if one or more legal entities owned the property according to the title deeds, any changes in the ownership of the legal entities, the selling price of the property with each change of ownership and the relevant dates.
- (f) The fees for valuations must not be dependent upon the amount of the valuation.

**16. Prohibition on feasibility studies promising funding**

No person may by false pretence and with the intention to defraud offer, conduct, sell or otherwise provide an agreement for a feasibility study or a feasibility study itself which states, promises or otherwise intimates that the purchase or use of the feasibility study guarantees funding, financing, sponsorship or any other backing, whether from within the Republic or elsewhere.

**17. Calculation of interest for multiplication scheme**

For purposes of section 120(1)(e) read with section 43(3) of the Act, the REPO rate is the rate which applied at the date of the investment or commencement of participation. The effective annual interest rate will be:

$$r = \frac{R}{C \times T} \times 1200$$

where -

r = the effective interest rate,

R = the interest in Rand, which is the difference between the amount paid out to the investor or participant and the amount invested,

C = the amount invested by the investor or any amount paid by a person to become a member of a scheme, and

T = the period of the investment in months.

## 18. Definitions, interpretation and application: auctions

- (1) In regulations 19 to 30, unless the context indicates otherwise, any word or expression to which a meaning has been assigned in the Act has the same meaning, and -

“**auction house**” means a company or other juristic person which from time to time conducts auctions as part of its business;

“**auction without reserve**” means an auction at which -

- (a) goods are sold to the highest bidder without reserve;
- (b) the auction does not require a minimum bid;
- (c) the auction does not allow competing bids of any type by the seller or an agent of the seller; and
- (d) the seller of the goods cannot withdraw the goods from auction after the auction is opened and there is public solicitation or calling for bids;

“**auctioneer**” means the person conducting an auction, irrespective of whether he or she is doing so for his or her own account or as employee of or agent for an auction house or other person;

“**bidders’ record**” means the document contemplated in regulation 26;

“**closed auction**” means an auction where the auctioneer or the owner, as the case may be, issues an invitation to take part in an auction only to a finite list of consumers;

“**game**” means game as defined in section 1 of the Game Theft Act, 1991 (Act No. 105 of 1991);

“**goods**” includes, where appropriate, services;

“**livestock**” means cattle, sheep, goats, pigs, horses, mules and donkeys;

“**lot**” means any group of goods sold or offered for sale as a unit and identified as such;

“**vendor’s roll**” means the document contemplated in regulation 28(4); and

“**URL**” means an operational uniform resource locator, providing access to information on the internet.

- (2) Regulations 19 to 30 must be read together with section 45(6) of the Act.

- (3) Subject to subregulation (4), these regulations apply to all auctions, irrespective of the nature of the goods offered on auction, the value of the property or the reason for conducting the auction.
- (4) These regulations do not apply to -
- (a) transactions concluded under the auspices of a registered or licensed stock exchange or similar institution; or
  - (b) an auction where the goods for sale have been donated for sale at an auction and the proceeds of the auction are paid to a bona fide religious, educational, cultural, welfare, social or sports organisation or body which does not as its primary activity undertake commercial or business operations,

but an auction conducted as a sale in execution or ordered by a court of law does not constitute an auction contemplated in paragraph (a).

- (5) Any provision in any agreement relating to goods sold or bought at an auction or advertised or offered for sale at an auction, or any agreement providing for conducting the auction itself, in conflict with these regulations, does not from the moment of its conception or conclusion, as the case may be, have any force or effect, but this subregulation must not be interpreted so as to prevent holding a person liable for any relevant contravention.
- (6) These regulations do not detract from any law providing for or related to the advertising, sale, purchase, delivery, rendering or financing of goods.
- (7) An auctioneer selling immovable property by way of auction must comply with any other applicable law in respect thereof, including legislation regulating the activities of estate agents.
- (8) An auctioneer must comply with all general provisions of these regulations as well as those applicable to the category of auction or auctioneer provided for in regulations 32 and 33.

#### **19. Mandatory advertising of auctions**

- (1) Subject to regulations 33, no goods may under any circumstance whatsoever be sold by auction unless the inclusion of such a particular item or lot or service in that auction has been advertised in compliance with these regulations in such a manner that the general public has had a reasonable opportunity to become aware of the auction, the goods on offer and of the rules governing the auction.
- (2) The onus to prove that an auction was advertised as contemplated in subregulation (1) rests on the auctioneer.

- (3) An auctioneer must for purposes of subregulation (1) advertise the auction of a particular item or lot at least 24 hours prior to the commencement of the auction, but-
- (a) any goods may be withdrawn at any time prior to the commencement of the auction;
  - (b) in the event of an auction where goods offered for sale include immovable property, this period must exceed five business days.
- (4) If an auction or part thereof relates to goods sold in execution or by order of court, the advertisement must clearly state that fact.

## **20. General rules on advertising of auctions**

- (1) Despite the rules and rulings of any advertising standards body, all advertising of auctions must -
- (a) be accurate; and
  - (b) provide sufficient information for a reasonable consumer to -
    - (i) understand that it relates to an auction; and
    - (ii) be able to find the place where the auction is to be held.
- (2) Advertising relating to an auction must subject to subregulation (3) -
- (a) be in a legible format and size;
  - (b) contain a reference to these regulations, together with the URL of an operational internet site where a copy of these regulations can be obtained;
  - (c) state the date, place and time of the auction;
  - (d) state the name of the auctioneer and the auction house, if any, and if registration or licensing of auctioneers or auction houses after the commencement of these regulations becomes mandatory, such registration or licensing number;
  - (e) state where the rules of auction can be obtained;
  - (f) state the particulars of the goods offered on auction;
  - (g) if applicable, state that the auction will be held over a number of days;

- (h) state, if applicable as contemplated in section 45(4) of the Act, that a sale by auction is subject to -
  - (i) a reserved or upset price; or
  - (ii) a right to bid by or on behalf of the owner or auctioneer, in which case the owner or auctioneer, or any one person on behalf of the owner or auctioneer, as the case may be, may bid at the auction; and
  - (iii) contain a reminder that all prospective bidders must register as such prior to making bids during the auction and that such registration requires proof of identity and of residence as contemplated in regulation 26;
- (i) disclose as accurately as possible the total costs of advertising and conducting the auction.
- (3) The requirements of subregulation (2) do not apply to roadside advertising or classified advertising in printed newspapers, but such advertising must -
  - (a) at the top of the advertising prominently display the word “auction”;
  - (b) indicate where a full advertisement as contemplated in subregulation (2)(b) can be obtained; and
  - (c) state the date, place and time of the auction.
- (4) A consumer may at any time during ordinary business hours request an auctioneer to provide him or her with access to an advertisement contemplated in subregulation (2), and the auctioneer must forthwith without charging any fee whatsoever comply with such a request, but -
  - (a) a consumer is entitled to only one free copy;
  - (b) the auctioneer may provide a URL of an operational website which will provide a copy of the full advertisement in a format generally used.
- (5) Any material or publication not meeting all of the requirements of this regulation does not constitute advertising for purposes of regulation 19 and this regulation.
- (6) An auction may not be advertised as a “sale in execution” or use similar wording implying court action unless -
  - (a) at least 75 percent of the items or lots in the auction are being offered pursuant to a court order;

- (b) the items or lots were clearly not purchased or attained for the purpose of resale at auction; and
  - (c) the advertising contains an explanation of the court order including identification of the court.
- (7) Unless all items or lots being offered at auction are pursuant to a court order, then the advertising must indicate that the auction is “with additions”, “supplemented” or use similar wording.
- (8) Subregulations (6) and (7) do not prohibit clear, non-misleading advertising of the inclusion of specific goods being offered pursuant to a court order in an auction if such goods are offered pursuant to a court order and were clearly not purchased or attained for the purpose of resale at auction.
- (9) An auction may not be advertised as an “insolvency auction” or use similar wording implying insolvency unless -
  - (a) at least 75 percent of the items or lots in the auction are being offered pursuant to an order of the Master of the High Court;
  - (b) the items or lots were clearly not purchased or attained for the purpose of resale at auction; and
  - (c) the advertising contains the order number of the Master of the High Court.
- (10) Unless all items or lots being offered at the auction are pursuant to an order of the Master of the High Court, then the advertising must indicate that the auction is “with additions”, “supplemented” or use similar wording.
- (11) Subregulations (9) and (10) do not prohibit clear, non-misleading advertising of the inclusion of specific goods being offered pursuant to an order of the Master of the High Court in an auction if such goods are offered pursuant to an order of the Master of the High Court and were clearly not purchased or attained for the purpose of resale at auction.
- (12) An auction may not be advertised as “deceased auction” or use similar wording implying insolvency unless -
  - (a) at least 75 percent of the items or lots in the auction are being offered pursuant to an order of the Master of the High Court;
  - (b) the items or lots were clearly not purchased or attained for the purpose of resale at auction; and
  - (c) the advertising contains the order number of the Master of the High Court.

- (13) Unless all items or lots being offered at the auction are pursuant to an order of the Master of the High Court, then the advertising must indicate that the auction is “with additions”, “supplemented” or use similar wording.
- (14) Subregulations (12) and (13) do not prohibit clear, non-misleading advertising of the inclusion of specific goods being offered pursuant to an order of the Master of the High Court in an auction if such goods are offered pursuant to an order of the Master of the High Court and were clearly not purchased or attained for the purpose of resale at auction.
- (15) An auction shall not be advertised as “divorce auction” or use similar wording implying court action unless -
- (a) at least 75 percent of the items or lots in the auction are being offered pursuant to a court order;
  - (b) the items or lots were clearly not purchased or attained for the purpose of resale at auction; and
  - (c) the advertising contains an explanation of the court order including identification of the court.
- (16) Unless all items or lots being offered at the auction are pursuant to a court order, then the advertising shall clearly indicate that the auction is “with additions”, “supplemented” or use similar wording.
- (17) Subregulations (15) and (16) do not prohibit clear, non-misleading advertising of the inclusion of specific goods being offered pursuant to a court order in an auction if such goods are offered pursuant to a court order and were clearly not purchased or attained for the purpose of resale at auction.
- (18) No auction may be advertised as “absolute” or “without reserve”, no advertising may contain the words “auction without reserve”, “absolute auction” or “without reserve”, or the word “absolute” or words with similar meaning and no auctioneer may offer or sell any goods at auction without reserve unless -
- (a) there are no liens or encumbrances on the goods, except property tax obligations, easements, or restrictions on record, in favour of any person other than the seller, or unless each and every holder of each and every lien and encumbrance has in writing agreed to the unqualified acceptance of the highest bid for the property, without regard to the amount of the highest bid or the identity of the high bidder, or that a financially responsible person in writing absolutely guarantees the immediate and complete discharge and satisfaction of any and all liens and encumbrances immediately after the sale or at the closing, without regard to the amount of the highest bid received, or the identity of the high bidder; and
  - (b) there is the bona fide intention at the time of the advertising and at the time of the auction to transfer ownership of the goods, regardless of the amount of the highest and last bid, to the highest bidder, that intent existing without reliance on any agreement that any particular bid or



bid level must be made or be reached, below which level the goods will not be transferred to the highest bidder; and

- (c) the rules of auction contain a binding requirement that the auction be conducted without reserve.

(19) Subregulation (18) does not prohibit -

- (a) a secured party or other lien holder who is not the seller from bidding at an auction without reserve, but such bidding does not constitute, nor is it tantamount to the direct or indirect establishment or agreement to the establishment of a reserve price on the goods by the seller or by the auctioneer, or by anyone aiding or assisting, or acting upon behalf of, the seller or the auctioneer;
- (b) any individual party to the dissolution of any marriage, partnership, or corporation from bidding as an individual entity apart from the selling entity, on goods being sold at auction pursuant to that dissolution;
- (c) any individual party or heir of a deceased person's estate from bidding as an individual entity, apart from the selling entity, on goods being offered at auction pursuant to that estate being settled; or
- (d) the inclusion of non-misleading advertising of certain goods to be sold at "auction without reserve" and the non-misleading advertising of certain goods to be offered at auction with reserve, within the same advertisement, or for sale at the same date and place, but that advertisement must make clear, through appropriate emphasis, which goods are being offered by each method.

## **21. Rules of auction**

(1) An auctioneer must -

- (a) in writing compile the rules of auction; and
- (b) except in the case of a livestock or game auction or a closed auction, make the document available to the general public at least 24 hours prior to the commencement of the auction.

(2) The rules of auction must, as a minimum -

- (a) on the first page of the document in large letters display the words "rules of auction", and immediately beneath that the date, place and time of the auction;

- (b) contain the full names, physical address and contact details of the auctioneer, and where applicable, of the auction house;
  - (c) contain all mandatory information required by these regulations, and if applicable, the information contemplated in section 45(4) or (5) of the Act;
  - (d) contain a statement to the effect that the rules of auction comply with section 45 of the Act and with these regulations;
  - (e) contain the text of subsection (2) of section 45 of the Act;
  - (f) provide that an auction will commence at the published time and that it will not be delayed to enable any specific person or more persons in general to take part in the auction;
  - (g) provide that a person who attends at the auction to bid on behalf of another person must produce a letter of authority meeting the requirements of regulation 26(3) in order to so bid on behalf of that person;
  - (h) unless the auctioneer is also the owner or rightful holder (who has the right to sell) of the goods to be auctioned, contain a statement to the effect that the auctioneer has a trust account into which all moneys will be paid for the benefit of the seller, minus the agreed commission;
  - (i) contain a statement to the effect that the auctioneer will during the auction announce the reason for the auction unless that reason is the normal and voluntary disposal of goods by the owner;
  - (j) provide that a person who intends to bid at the auction must register prior to the commencement as contemplated in regulation 26(2) together with a description of the requirements for registration;
  - (k) provide that the bidders' record contemplated in regulation 26 and the vendor roll contemplated in regulation 28(4) are available for inspection during normal hours without the charge of a fee; and
  - (l) contain a breakdown of the total cost of advertising and conducting an auction and a statement indicating whether additional costs may be added and if so, how such additional costs will be computed.
- (3) The rules of auction may not -
- (a) exclude liability in respect of inaccurate information provided in the advertising of the auction;

- (b) exclude liability in respect of the rules of auction not meeting the requirements of these regulations; or
  - (c) contain any qualification, reservation or diminution of the requirements of these regulations unless expressly provided for.
- (4) In the event that the rules of auction are amended after their initial publication, the auctioneer must expressly indicate that the new version is an amended version.
- (5) The rules of auction must be signed by the auctioneer who is going to conduct the auction and he or she must certify that the rules of auction to the best of his or her knowledge meets the requirements of this regulation 21.
- (6) If on the day of the auction the auctioneer who signed the rules of auction as contemplated in subregulation (5) is unavailable to conduct the auction, the auctioneer who then conducts the auction will be deemed to have so certified the rules of auction.
- (7) An auctioneer is personally accountable and liable for the contents of the rules of auction applicable to a specific auction.
- (8) The rules of auction need not be read out at an auction to be valid, but only if -
- (a) the rules of auction were, where applicable, available to the general public at least 24 hours prior to the commencement of the auction;
  - (b) in the case of a livestock or game auction contemplated in regulation 33 are the same as for previous auctions and are generally available on the auction house or the auctioneer's website or at the auction house or the auctioneer's business premises during normal business hours;
  - (c) in the case of a closed auction, were made available to all persons to whom an invitation to take part in that auction was issued; or
  - (d) at an auction other than an internet auction, the auctioneer invites any person present to object to the rules of auction not being read upon, and nobody does.
- (9) The rules of auction may not exclude the right of inspection as contemplated in regulation 28(5).

## **22. Auctioneer and auction house to hold and account for consumer's property**

- (1) An auctioneer and auction house must at all times strictly comply with section 65(2) of the Act.

- (2) Unless the auctioneer is also the owner or rightful holder (who has the right to sell) of the goods to be auctioned, no auctioneer may sell goods on auction until he or she has first entered into a written agreement with the owner or rightful holder (who has the right to sell) of such goods to be sold, whether for a specific auction or auctions on general, which agreement contains the terms and conditions upon which that auctioneer accepts the goods for sale.
- (3) An agreement contemplated in subregulation (2) must as a minimum contain -
- (a) the name and physical address of owner of the goods to be sold or the owner's agent or the rightful holder (who has the right to sell) thereof;
  - (b) if the goods are to be sold at a specific auction, the date of the auction or if the goods are to be sold at a number of auctions, a termination date of the agreement;
  - (c) the address of the premises where the auction is to be held;
  - (d) the rules of auction;
  - (e) a description of all of the fees to be charged by the auctioneer or the auction house, which must include commissions, storage, advertising and labour, or a method by which such fees will be determined;
  - (f) an explanation of the settlement of the auction that includes the disbursement of interest money, if applicable;
  - (g) a statement indicating whether the auction is an auction without reserve or not;
  - (h) a brief description of the goods to be sold;
  - (i) if the sale is of goods at auction without reserve, a statement affirming that the seller of the goods has a bona fide intention to transfer ownership of the property to the highest bidder;
  - (j) an exact copy of section 65(2) of the Act;
  - (k) an exact copy of subsections (1) to (5) of section 45 of the Act.
- (4) An auctioneer must retain a copy of every agreement contemplated in subregulation (2) signed by the owner or rightful holder of the goods to be auctioned for a period of at least three years from the date of the auction.
- (5) In performing the duties of an auctioneer, every auctioneer -

- (a) is the agent of the owner or rightful holder (who has the right to sell) of the goods for all aspects of an auction;
  - (b) must follow all lawful and reasonable requests of the owner or rightful holder of the goods or immovable property sold at auction;
  - (c) must perform his or her duties so that the highest or most favourable offer made by a bidder is accepted; and
  - (d) must otherwise perform his or her duties in accordance with the highest standards applicable to auctions.
- (6) An auctioneer must keep abreast of current market conditions of goods at all times in order to be in a position to advise and perform services for his or her clients to the best of his or her ability.
- (7) An auctioneer -
- (a) owes a duty of care towards his or her client;
  - (b) must protect and secure the goods whilst under his or her control or in his or her possession;
  - (c) must at all times preserve a professional, confidential relationship with his or her client;
  - (d) must timeously reveal estimated costs and services for conducting the auction; and
  - (e) if he or she is aware or ought reasonably to be aware of any risks associated with the auction of particular goods, must forthwith disclose such risks to the client.
- (8) All unsold property must be returned to the owner or rightful holder immediately upon the completion of an auction unless otherwise agreed.
- (9) The owner or rightful holder (who has the right to sell) must be provided with an itemised account of all goods sold immediately upon completion of the auction unless otherwise agreed, which as a minimum must contain -
- (a) the item or lot sold,
  - (b) amount received for the sold item or lot; and
  - (c) the name of the buyers of every item or lot.

### **23. Disqualification to conduct auction**

A person who -

- (a) has been found guilty by a court of law, whether in the Republic or elsewhere, of an offence of which fraud or dishonesty is an element, or of any other offence for which such person has been sentenced to imprisonment exceeding five years without the option of a fine;
- (b) is of unsound mind; or
- (c) is an unrehabilitated insolvent,

may not conduct an auction or in any other way act as an auctioneer or hold him or herself out as an auctioneer.

#### **24. Prohibited behaviour**

An auctioneer may not -

- (a) charge or receive any fee or commission in respect of the sale of movable goods unless such goods have been delivered to the purchaser;
- (b) charge or receive any fee or commission in respect of the sale of immovable property until the purchaser and the seller have signed a written agreement in respect of the sale of such immovable property;
- (c) charge or receive any fee or commission from the purchaser if the seller defaults or where such fee or commission has already been paid by the purchaser to the auctioneer, the auctioneer shall immediately refund the purchaser the amount paid, including deposit;
- (d) charge or receive any fee or commission from the purchaser, if the purchaser defaults, exceeding ten percent of the purchase price or the total cost of advertising and conducting an auction and such additional costs as may have been reasonably incurred in accordance with regulation 21(2)(l), whichever is the lesser;
- (e) charge or receive any fee or commission from the seller, unless agreed otherwise in writing, if the buyer defaults or where such fee or commission has already been paid by the seller to the auctioneer, the auctioneer shall immediately refund the seller the amount paid;
- (f) charge or receive any fee or commission from the seller if the seller defaults, unless agreed otherwise, exceeding ten percent of the purchase price or the total cost of advertising and conducting an auction and such additional costs as may have been reasonably incurred in accordance with regulation 21(2)(l), whichever is the lesser;

- (g) enter into any agreement or arrangement with the seller to sell any goods unless the auctioneer has first provided the seller with an estimate of the total cost of the auction;
- (h) accept a bid from a person unless he or she is registered in the Bidders' Record as contemplated in regulation 26;
- (i) set a minimum or reserve price without the express written permission of the seller;
- (j) remove an item or lot from an auction without the express written permission of the seller;
- (k) allow bidding on an item or a lot if the auction thereof has not been advertised as contemplated in regulations 19 and 20;
- (l) during an auction deviate from the sequence of goods as advertised;
- (m) knowingly misrepresent, or cause or permit to be misrepresented the value, composition, structure, character or quality or manufacture of the goods put up for sale at an auction;
- (n) hinder the access of any person to any advertisement contemplated in these regulations, rules of auction or vendor's roll; or
- (o) pay any other person in order to be appointed as auctioneer, whether in general or for a particular auction or in respect of any specific goods.

## **25. False entry in auction record**

Without detracting from any other applicable law, an auctioneer, including an employee of the auctioneer or the auction house, may not knowingly enter in any record kept or required to be kept by the auctioneer under or in terms of these regulations or any other applicable law, any name or other details other than the real name and details of the actual successful bidder.

## **26. Bidder's record**

- (1) An auctioneer must for every auction have a bidders' record to record the identity of all bidders at an auction.
- (2) Subject to regulation 30(2), the auctioneer must ensure that every prospective bidder must prior to the commencement of an auction register his or her identity in the bidder's record, and such registration must with the necessary changes meet the requirements of Chapter 1 of the regulations in terms of the Financial Intelligence Centre Act, 2001, published in Notice No. R.1595 in Gazette No. 24176 of 20 December 2002, in respect of establishment and verification of identity, and sign that entry.

- (3) The auctioneer must ensure that a person who intends to bid on behalf of another, produces a letter of authority expressly authorising him or her to bid on behalf of that person, and both that person and the person bidding on his or her behalf must meet the requirements of subregulation (2)
- (4) The auctioneer must ensure that if a person will be bidding on behalf of a company, the letter of authority contemplated in subregulation (3) must appear on the letterhead of the company and must be accompanied by a certified copy of the resolution authorising him or her to do so.
- (5) The bidders' record is available for public inspection in respect of the names of bidders and the bidders numbers referred to in subregulation (6) only, at any time, free of charge -
  - (a) during an auction, at the premises where the auction is being held; and
  - (b) before or after an auction, at the auction house or auctioneer's place of business and during normal business hours.
- (6) An auctioneer must record the bidder number contemplated in regulation 28(1) in the bidders' record.

## **27. Ownership**

The auctioneer must ensure that a person who wishes to dispose of his or her property by way of an auction signs a declaration stating that he or she is the owner or rightful holder of the goods (who has the right to sell) and submits that declaration to the auctioneer.

## **28. Bidding**

- (1) An auctioneer must provide a prospective bidder whose name appears in the bidders' record with a bidder number before he or she may bid, as well as a paddle or other device to which that number is attached in such a way that it is clearly visible to the persons present at the auction.
- (2) A bid taken from an unregistered person is invalid.
- (3) The place where an auction is held must be open and accessible to any member of the public, subject to the auctioneer's right to refuse a person the right to remain on the auction's premises in the event that that person repeatedly behaves in such a way so as to disrupt the auction.
- (4) An auctioneer must have a vendor's roll in which all details of the auction are recorded, which must, as a minimum, include -
  - (a) the advertising of the auction;
  - (b) the rules of auction;



- (c) the bidders' record;
  - (d) the declarations contemplated in regulation 21(2)(h) and 27;
  - (e) a list of all goods on auction, including goods which were withdrawn from auction;
  - (f) the names of the successful bidders, the goods or lots bought and the prices paid in respect thereof;
  - (g) the details of any challenges to the validity of the auction or the conduct thereof, and the particulars of the persons making such challenges, if available;
  - (h) any items or lots not sold;
  - (i) the details of any reserved price or any matter contemplated in subsections (4) and (5) of section 45 of the Act.
- (5) The auctioneer must afford consumers a reasonable period of time and opportunity to inspect the goods on offer prior to the commencement of an auction, and no fee may be charged for such opportunity, but an auctioneer may -
- (a) refuse or restrict access to such goods if the consumer after gaining access in any way acts unlawful or in contravention of the applicable rules of auction;
  - (b) require the consumer to adhere to or submit to any security measures reasonably applicable in the circumstances.
- (6) Subject to any reserved price and acceptance of the highest bid by the seller, the highest bidder, when the auctioneer announces the completion of a sale by the fall of the hammer, or in any other customary manner, is the purchaser of the goods or lots on auction.
- (7) No fee may be charged for participation in an auction, but this does not apply to refundable deposits.
- (8) The auctioneer must upon concluding the proceedings of an auction -
- (a) announce that the auction has come to an end;
  - (b) sign the vendor's roll; and
  - (c) certify that the proceedings of the auction were to the best of his or her knowledge conducted in accordance with these regulations, any other applicable law and the rules of auction.

## **29. Mock auction**

- (1) A mock auction is an auction in which -
  - (a) goods are sold for less than the highest bid, or part of the purchase price is repaid or credited to the purchaser;
  - (b) the right to bid for goods is restricted to persons who have bought or have agreed to buy other goods; or
  - (c) any goods are given away as gifts.
- (2) No person may promote, facilitate, conduct or take part in a mock auction.
- (3) If it can be proved that the reduction in the purchase price or the repayment credit was due to a defect which the auctioneer only became aware of after the highest bid was made, or because of damage sustained after the highest bid was made, the auction will not be considered to be a mock auction.
- (4) No person may promote, organize, participate in or benefit from any kind of conspiracy between an auctioneer, any participants in an auction or any other persons who agree not to bid against each other at an auction or who otherwise conspire to decrease or increase the number or amounts of bids offered at auction.

## **30. Internet or electronic auctions**

- (1) An auction may be conducted via the internet or other electronic medium or platform, irrespective of where the server or other electronic medium or platform is situated, only if -
  - (a) it meets all requirements in respect of an auction provided for in these regulations or other applicable law, but with the necessary changes, if any, to suit an electronic medium or platform;
  - (b) the relevant internet website or electronic medium or platform is generally available to anyone over the age of 18 years at any time of the day;
  - (c) the relevant internet website or electronic medium or platform provides high standards of security for electronic transactions;
  - (d) the relevant internet website or electronic medium or platform provides for easy access to all records prescribed in these regulations in a generally used or accepted medium or format;
  - (e) the internet auction provider keeps the information contemplated in regulation 28(4).

- (2) For purposes of regulation 26(2), a prospective bidder in an auction to be held via the internet or other electronic medium or platform must register by providing -
  - (a) his or her full names, identification or passport number, age, physical address, internet protocol address, and where applicable, login code or name, and password; and
  - (b) the details of the means by which payment will be effected.
- (3) An auctioneer conducting an auction via the internet or other electronic medium or platform may not exclude liability if any goods purchased by auction are not delivered to the purchaser thereof.

### **31. Records**

- (1) Irrespective of any other provision to the contrary in these regulations, all records prescribed in regulations 18 to 33 must be kept for a period of at least three years.
- (2)
  - (a) Any person in possession of any record contemplated in regulations 18 to 33 must forthwith upon receipt of a written request at his or her own cost provide the Commission or any forum empowered to administer the Act or an owner or rightful holder (whose goods were on auction at the auction in question) or a registered bidder (at the auction in question) with true copies of the record so requested or which may be relevant to any record so requested, but if the original record is expressly requested, that original record must be made available for inspection.
  - (b) The Commission may not provide copies of any documents which have come into its possession pursuant to paragraph (a) of this subregulation to anyone, unless by order of court, or where it is in the interests of justice to do so.

### **32. Motor vehicle auctions**

In addition to any other requirement in these regulations, an auctioneer may not conduct an auction unless a notice containing the particulars and statements required in this subregulation relating to the vehicle, being a motor vehicle as defined in section 1 of the National Road Traffic Act, 1996 (Act No 93 of 1996), is attached to the vehicle and has been attached to the vehicle at all times when the vehicle was available for inspection by prospective bidders, which must include -

- (a) the name and business address of the auctioneer;
- (b) if the auctioneer or auction house is conducting the sale on his, her or its own behalf, whether the auctioneer or auction house is liable to discharge the duty of repair, or not;
- (c) if the auctioneer or auction house is conducting the sale on behalf of -

- (i) a motor vehicle dealer or bank or other financing entity, the name in which that dealer, bank or entity is licensed and the business address of the dealer, bank or entity and whether the dealer, bank or entity is liable to discharge the duty of repair, or not; or
  - (ii) another person, a statement on whether there is a duty to repair, who is liable to discharge that duty to repair and the details of the repair, and if applicable, the name and address of the last owner of the vehicle who was not a dealer, bank or entity, or alternatively a statement that the last owner's name and address are available on request from the auctioneer or auction house;
- (d) if the owner let the vehicle on hire to another person under a vehicle leasing agreement, the name and address of such other person, alternatively a statement that such person's name and address are available on request from the auctioneer;
- (e) the vehicle's year of manufacture, if known;
- (f) the vehicle's year of first registration;
- (g) the vehicle's manufacturer and model designation;
- (h) the vehicle's registration number;
- (i) the vehicle's engine number;
- (j) the vehicle's identification number (VIN);
- (k) a statement whether or not the reading of the odometer of that vehicle is guaranteed; and
- (l) a statement contemplated in regulation 21(2)(i).

**33. Livestock, game and closed auctions**

The provisions of regulation 19(1) does not apply to -

- (a) a closed auction; or
- (b) a livestock or game auction, if such is conducted regularly on a weekly or monthly basis -
  - (i) at the same time, the same place and by the same auctioneer or auction house;
  - (ii) subject to the same rules of auction; and

- (iii) nothing but livestock or game is on offer.

#### **34. Maximum amount of cancellation penalty for lay-by's**

- (1) For purposes of section 62(6) of the Act, a penalty shall be reasonable but may not exceed one percent of the full purchase price of the good.
- (2) On cancellation, the supplier must upon request by a consumer immediately provide the consumer with written details on how the penalty was calculated, unless the consumer waives this right in writing.
- (3) Any notices exchanged in respect of the cancellation of lay-by's may be transmitted or stored electronically if the requirements of the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002) are met.

#### **35. Initiating complaint to Commission**

- (1) For purposes of section 71(1) of the Act, any person may submit -
  - (a) information concerning an alleged contravention or instance of non-compliance in terms of or under these regulations to the Commission, in any manner or form; or
  - (b) a complaint against an alleged contravention or instance of non-compliance in terms of or under these regulations to the Commission, in the form contained in Annexure "E" to this Schedule, together with certified copies of any documents the Commission should consider, by mailing it to (Postal Address), delivering it by hand to \_\_\_\_\_ (Physical Address), by filing it electronically at \_\_\_\_\_ (Website) or by e-mailing it to \_\_\_\_\_ (e-mail address).
- (2) Nothing in this regulation prevents the Commission from initiating its own investigation.
- (3) Upon initiating or receiving a complaint in terms of this regulation, the Commissioner must direct an inspector to investigate the complaint as quickly as practicable.
- (4) At any time during an investigation, the Commissioner may designate one or more persons to assist the inspector.
- (5) The Commission must -
  - (a) as often as may be reasonable inform the complainant of progress or other developments in an investigation; and

- (b) upon completion of its investigation in writing inform the complainant of the outcome thereof, and if it is not taking the matter further, the reasons for its decision to not do so.

**36. Investigation by Commission**

For purposes of section 72(1)(a) of the Act, the Commission may issue a notice of non-referral in the form contained in Annexure “F” to this Schedule.

**37. Outcome of investigation**

For purposes of section 73(1)(a) of the Act, the Commission may issue a notice of non-referral in the form contained in Annexure “G” to this Schedule.

**38. Standards, procedures and related matters for Commission to follow in assessing applicant for accreditation as consumer protection group**

(1) For purposes of this regulation, “applicant” means any consumer protection group that wishes to be accredited by the Commission in terms of section 78 of the Act for the purposes contemplated in that section or elsewhere in the Act, and “instrument establishing and governing the applicant” means in the case of a -

- (a) juristic person, certified copies of the memorandum and articles of association, certificate of incorporation or founding statement, as the case may be;
- (b) partnership, the partnership agreement; or
- (c) trust, the applicable trust deed.

(2) For purposes of section 78(6) of the Act, the Commission must in its sole discretion consider the aspects relevant to the applicant and the application in assessing whether that applicant for accreditation meets the applicable requirements of section 78 from -

- (a) the objectives or purpose of the applicant;
- (b) whether the applicant engages in, or makes a realistic proposal to engage in, actions to promote and advance the consumer interests of persons contemplated in section 3(1)(b) of the Act;
- (c) the applicant’s ability to sustainably provide a service to historically disadvantaged, low-income consumers in rural or peri-urban areas;
- (d) the efficiency and effectiveness of the applicant in promoting the interests of consumers;

- (e) whether the applicant's infrastructure and support mechanisms are adequate and appropriate for the function it intends to fulfil;
  - (f) the procedures and processes required by the applicant to determine whether to pursue a matter on behalf of consumers;
  - (g) whether the applicant has a strict policy on conflicts of interest;
  - (h) whether the applicant has or holds any interest of whatever nature, whether directly or indirectly, in any company operating in the industry within which the applicant operates or plans to operate;
  - (i) any other factor which may be relevant.
- (3) The Commission must on its website publish all relevant information to inform a prospective applicant of the requirements in respect of an application for accreditation in terms of section 78 of the Act, including criteria it will utilise to assess the factors contemplated in subregulation (2).
- (4) Any applicant must submit an application providing all information contemplated in subregulations (2) and (5), as well as a statement by its chairperson, chief executive or other person in charge of its operations, supported by a resolution taken at a meeting of its members or stakeholders, that the applicant is committed to achieving the purposes of the Act.
- (5) The Commission must upon receipt of an application publish a notice in the Gazette and any newspaper distributed in the geographical area in respect of which the application has been submitted, and on its own website, stating -
- (a) the name of the applicant;
  - (b) the applicant's registered address;
  - (c) the industry and the geographical area in respect of which the application has been submitted;
  - (d) the time period within which and the address where objections to the possible accreditation of the applicant may be submitted.
- (6) The Commission may upon receipt of an application request the provision of any additional information it may deem relevant.
- (7) The Commission may in its sole discretion invite the applicant and other interested persons to make oral submissions in support of or opposition to the application.

- (8) The Commission must within a reasonable period of receipt of an application consider the application and any objection to the application submitted timeously, and must then take a decision on the accreditation of the applicant in terms of section 78(3) of the Act.
- (9) The Commission must forthwith after deciding on the application in writing inform the applicant and any person who lodged an objection of -
  - (a) the outcome of the matter; and
  - (b) their rights in terms of or under the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).
- (10) An accreditation is valid for a period of five years, after which such accreditation expires, and a previously accredited consumer protection group must re-apply for accreditation.
- (11) The Commission may provisionally accredit an applicant, and the applicant must within a time period determined in writing by the Commission meet any additional requirements set by the Commission, which, if the applicant fails to timeously and fully meet such conditions, expires on the date on which such time period ends.
- (12) The Commission must in the case of a successful application -
  - (a) issue a certificate of accreditation with a unique number, signed by a Commissioner, to the applicant, who must display the certificate in a prominent place at his, her or its main office; and
  - (b) on its website add the name of the applicant in a list of all accredited consumer protection groups.
- (13) The Commission may at any time after accreditation -
  - (a) request the accredited consumer protection group to provide it with any additional information the Commission may require;
  - (b) in its sole discretion and when it deems it necessary in the interest of consumers to do so, suspend or withdraw such accreditation of the accredited consumer protection group, but the Commission must in such instances inform the applicant of and apply all his, her or its rights provided for in the Promotion of Administrative Justice Act, 2000, and amend its data bases and website accordingly.



- (14) An accredited consumer protection group must annually, within 30 business days of completing each year of accreditation, submit a full report, to the Commission on its activities during the preceding year unless the Commission has agreed otherwise in writing.
- (15) An accredited consumer protection group may not charge a consumer any fee other than out of pocket expenses.

**39. Form, manner and fee to register business names**

- (1) For purposes of section 80(1) of the Act, a person may file a notice with the Registrar in the form contained in Annexure “H” to this Schedule, by mailing it to \_\_\_\_ (Postal Address), delivering it by hand to \_\_\_\_ (Physical Address), by filing it electronically at\_\_\_\_(Website) or by e-mailing it to \_\_\_\_ (e-mail address).
- (2) A person filing a notice with the Registrar as contemplated in subregulation (1) must pay an application fee of R 50.00 (Fifty Rand).
- (3) Payment of the application fee contemplated in subregulation (2) may be effected by payment in cash at \_\_\_\_ (Physical Address), by electronic funds transfer or payment into the account of the Registrar at \_\_\_\_ Bank with branch code \_\_\_\_ and account number \_\_\_\_.
- (4) The Registrar may not accept a notice contemplated in subregulation (1) unless the notice is accompanied by an original receipt for the payment of the application fee.
- (5) The Registrar may in his or her sole discretion require additional proof of payment of the application fee before accepting a notice contemplated in subregulation (1).

**40. Notice to cancel registration**

- (1) For purposes of section 80(4)(a) of the Act, the Registrar may give notice to the person concerned in the form contained in Annexure “I” to this Schedule, together with any documents he or she wishes to attach.
- (2) For purposes of section 80(4)(b) of the Act, the Registrar may cancel the registration of a business name in accordance with the provisions of section 80(4)(b) in the form contained in Annexure “J”.
- (3) The person to whom the business name is registered must within 30 days of receipt of the notice contemplated in subregulation (1) by registered mail or by hand submit his or her reply at the address stated in that notice.

**41. Official languages to be used by Commission in documents**

For purposes of section 92(4) of the Act, the official languages to be used by the Commission in any documents it is required to deliver in terms of this Act are English and isiZulu.

#### **42. Compliance notice**

For purposes of section 100(1) of the Act, the Commission may issue a compliance notice in the form contained in Annexure “L”.

#### **43. Confidential information**

- (1) Confidential information includes any information containing or consisting of-
  - (a) trade secrets;
  - (b) financial, commercial, scientific or technical information, if disclosure of the information is likely to cause harm to the commercial or financial interests of a person; or
  - (c) information supplied in confidence by a person, if the disclosure of the information could reasonably be expected to-
    - (i) put that person at a disadvantage in contractual or other negotiations; or
    - (ii) prejudice that person in commercial competition.
- (2) Any alleged confidential information forming part of an application, response or other written submission to the Tribunal must be contained in a separate annexure and clearly marked ‘confidential’.
- (3) Subject to an eventual finding that information is not confidential, information marked as confidential may be excluded from documents required to be served on parties.
- (4) When submitting any information claimed to be confidential, such person must simultaneously submit the form in Annexure “M” to this Schedule which will include a written statement setting out the grounds for the claim of confidentiality.
- (5) Within ten business days of submission of the Form in Annexure “M”, the Commission, Tribunal, inspector or investigator must notify such person as to whether or not the Commission, Tribunal, inspector or investigator will treat the information submitted as confidential.
- (6) If the Commission, Tribunal, inspector or investigator has notified such a person that the information will not be treated as confidential, it, he or she may not make the information available to any other party at a time earlier than five days after having notified such person in terms of subregulation (5).

#### **44. List of contract terms which are presumed not to be fair and reasonable**

- (1) For purposes of section 120(d) of the Act, a term of a consumer agreement between a supplier operating on a for-profit basis and acting wholly or mainly for purposes related to his or her business or profession and an individual consumer or individual consumers who entered into it for purposes wholly or mainly unrelated to his or her business or profession is presumed to be unfair if it -
  - (a) has the purpose or effect of a term listed in subregulation (3), and
  - (b) does not fall within the ambit of subregulation (4).
  
- (2)
  - (a) The list in subregulation (3) is indicative only, so that a term listed therein may be fair in view of the particular circumstances of the case.
  - (b) The list in subregulation (3) is non-exhaustive, so that other terms may also be unfair for purposes of section 48 of the Act.
  - (c) A term which falls within the ambit of subregulation (4) remains subject to sections 48 to 52 of the Act.
  - (d) This regulation does not derogate from provisions in the Act or other law in terms of or in respect of which a term of an agreement is prohibited.
  
- (3) A term of a consumer agreement subject to the provisions of subregulation (1) is presumed to be unfair if it has the purpose or effect of -
  - (a) excluding or limiting the liability of the supplier for death or personal injury caused to the consumer through an act or omission of that supplier subject to section 61(1) of the Act;
  - (b) excluding or restricting the legal rights or remedies of the consumer against the supplier or another party in the event of total or partial breach by the supplier of any of the obligations provided for in the agreement, including the right of the consumer to set off a debt owed to the supplier against any claim which the consumer may have against the supplier;
  - (c) limiting the supplier's obligation to respect commitments undertaken by his or her agents or making his or her commitments subject to compliance with a particular condition which depends exclusively on the supplier;
  - (d) limiting, or having the effect of limiting, the supplier's vicarious liability for its agents;
  - (e) forcing the consumer to indemnify the supplier against liability incurred by it to third parties;
  - (f) excluding or restricting the consumer's right to rely on the statutory defence of prescription;

- (g) modifying the normal rules regarding the distribution of risk to the detriment of the consumer;
- (h) allowing the supplier to increase the price agreed with the consumer when the agreement was concluded without giving the consumer the right to terminate the agreement;
- (i) enabling the supplier to unilaterally alter the terms of the agreement including the characteristics of the product or service;
- (j) giving the supplier the right to determine whether the goods or services supplied are in conformity with the agreement or giving the supplier the exclusive right to interpret any term of the agreement;
- (k) allowing the supplier to terminate the agreement at will where the same right is not granted to the consumer;
- (l) enabling the supplier to terminate an open-ended agreement without reasonable notice except where the consumer has committed a material breach of contract;
- (m) obliging the consumer to fulfil all his or her obligations where the supplier has failed to fulfil all his or her obligations;
- (n) permitting the supplier, but not the consumer, to avoid or limit performance of the agreement;
- (o) permitting the supplier, but not the consumer, to renew or not renew the agreement;
- (p) allowing the supplier an unreasonably long time to perform;
- (q) allowing the supplier to retain a payment by the consumer where the latter fails to conclude or perform the agreement, without giving the consumer the right to be compensated in the same amount if the supplier fails to conclude or perform the agreement (without depriving the consumer of the right to claim damages as an alternative);
- (r) requiring any consumer who fails to fulfil his or her obligation to pay damages which significantly exceed the harm suffered by the supplier;
- (s) permitting the supplier, upon termination of the agreement by either party, to demand unreasonably high remuneration for the use of a thing or right, or for performance made, or to demand unreasonably high reimbursement of expenditure;
- (t) giving the supplier the possibility of transferring his or her obligations under the agreement to the detriment of the consumer, without the consumer's agreement;

- (u) restricting the consumer's right to re-sell the goods by limiting the transferability of any commercial guarantee provided by the supplier;
  - (v) providing that the consumer must be deemed to have made or not made a statement or acknowledgment to his or her detriment, unless -
    - (i) a suitable period of time is granted to him or her for the making of an express declaration in respect thereof; and
    - (ii) at the commencement of the period the supplier draws the attention of the consumer to the meaning that will be attached to his or her conduct;
  - (w) providing that a statement made by the supplier which is of particular interest to the consumer is deemed to have reached the consumer, unless such statement has been sent by prepaid registered post to the chosen address of the consumer;
  - (x) excluding or hindering the consumer's right to take legal action or exercise any other legal remedy, including by requiring the consumer to take disputes exclusively to arbitration not covered by the Act or other legislation;
  - (y) restricting the evidence available to the consumer or imposing on him or her a burden of proof which, according to the applicable law, should lie with the supplier;
  - (z) imposing a limitation period that is shorter than otherwise applicable under the common law or legislation for legal steps to be taken by the consumer (including for the making of a written demand and the institution of legal proceedings);
  - (aa) entitling the supplier to claim legal or other costs on a higher scale than usual, where there is not also a term entitling the consumer to claim such costs on the same scale;
  - (bb) providing that a law other than that of the Republic applies to a consumer agreement concluded and implemented in the Republic, where the consumer was residing in the Republic at the time when the agreement was concluded.
- (4) (a) Paragraph (k) of subregulation (3) does not apply to a term in terms of which a supplier of financial services reserves the right to unilaterally terminate an open-ended agreement without notice, but the supplier is required to immediately inform the consumer thereof,
- (b) Paragraph (h) of subregulation (3) does not apply to -

- (i) a transaction in transferable securities, financial instruments and other products or services where the price is linked to fluctuations in a stock exchange quotation or index or a financial market rate that the trader does not control;
  - (ii) an agreement for the purchase or sale of foreign currency, traveller's cheques or international money orders denominated in foreign currency;
  - (iii) a price-indexation clause, where lawful, but the method by which prices vary must be explicitly described.
- (c) Paragraph (i) of subregulation (3) does not apply to -
- (i) a term under which a supplier of financial services reserves the right to alter the rate of interest payable by the consumer or due to the latter, or the amount of other charges for financial services without notice where there is a valid reason, but -
    - (aa) the supplier must immediately inform the consumer thereof; and
    - (bb) the consumer is free to dissolve the agreement at the earliest opportunity;
  - (ii) a transaction in transferable securities, financial instruments and other products or services where the price is linked to fluctuations in a stock exchange quotation or index or a financial market rate that the trader does not control;
  - (iii) an agreement for the purchase or sale of foreign currency, traveller's cheques or international money orders denominated in foreign currency;
  - (iv) a term under which the supplier reserves the right to unilaterally alter the conditions of an open-ended agreement, but -
    - (aa) the supplier must forthwith inform the consumer thereof; and
    - (bb) the consumer is free to dissolve the agreement immediately;
- (d) Paragraphs (r) and (s) of subregulation (3) do not apply to any penalty, fee or compensation which the supplier is entitled to charge under the provisions of this Act or any other law.

## **ANNEXURES**

Annexure A - Regulation 4(2)

Annexure B - Section 14(4)(c)

Annexure C - Section 16

Annexure D - Regulation 6(1)

Annexure E - Regulation 35

Annexure F - Regulation 36

Annexure G - Regulation 37

Annexure H - Regulation 39

Annexure I - Regulation 40(1)

Annexure J - Regulation 40(2)

Annexure K- Section 88

Annexure L - Regulation 42

Annexure M - Regulation 43

[\(Select this link for access to Annexures A – M\)](#)

## **NOTICE**

### **PROHIBITED TIME FOR CONTACTING CONSUMERS**

1. For purposes of section 12(2) of the Act, the following are days, dates, public holidays or times of days when a supplier may not engage in any direct marketing directed to a consumer at home:
  - (a) Sundays or public holidays contemplated in the Public Holidays Act, 1994 (Act No. 36 of 1994);
  - (b) Saturdays before 09h00 and after 13h00; and
  - (c) all other days between the hours of 20h00 and 08h00 the following day, except to the extent that the consumer has expressly or implicitly requested or agreed otherwise.
2. Direct marketing may not be timed to be delivered to the consumer during the prohibited times referred to in item 1 above unless expressly, in writing, agreed to by the consumer.
3. A direct marketer is not in breach of item 1 if it has sent out the direct marketing within the period provided for in item 1, even if the consumer received the direct marketing outside of the

aforementioned period, but the onus to prove that the direct marketing was dispatched during the allowed period rests fully on the direct marketer.

#### **NOTICE**

##### **THRESHOLD FOR PRE-AUTHORISATION OF REPAIR OR MAINTENANCE SERVICES**

1. For purposes of section 15(1)(a) and (5) of the Act, the threshold for pre-authorisation of repair or maintenance services generally is R 1.00 (One Rand) excluding value-added tax, unless differently provided for by regulation or industry code contemplated in section 82 of the Act.
2. 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 or she or it does not do so.

#### **NOTICE**

##### **EXEMPTION FOR CERTAIN CATEGORIES OF GOODS OR SERVICES, OR CIRCUMSTANCES OF TRADE FROM PROVIDING SALES RECORD**

1. In this notice, "hawker" means a natural person lawfully engaged, solely for his or her own benefit, in the selling of goods on the street or in public places or spaces in respect of which all members of the public enjoy unrestricted and unconditional access subject only to law.
2. For purposes of section 26(4) of the Act, any person trading as a hawker is hereby exempted from the application of subsections (2) and (3) of section 26 of the Act.
3. Without detracting from any other law, a supplier is exempted from the application of subsections (2) and (3) of section 26 of the Act where the consumer expressly does not require a sales record.