



Smartcall Technology Solutions Consumer Protection Rights Notice

1. Applicability

Smartcall Technology Solutions (Pty) Limited (Smartcall) is a privately held company incorporated in and subject to the laws of South Africa.

Smartcall, a Wireless Application Service Provider and Aggregator, is a member of the Wireless Application Service Providers Association of South Africa (WASPA: <http://www.waspa.org.za>) and the Direct Marketing Association of South Africa (DMASA: <http://www.dmasa.org>).

Smartcall subscribes to the Codes of Conduct of both the WASPA (<http://www.waspa.org.za/code/codeconduct.shtml>) and the DMASA (http://www.dmasa.org/dmasa/dma_load.php?str=1/10/17).

South African consumer protection rights arise largely from the Constitution of South Africa 1996, the Consumer Protection Act, 68 of 2008 and Chapter VII of the Electronic Communications and Transactions Act 25 of 2002.

2. Purpose

Smartcall is committed to ensuring the protection of your rights as a consumer in terms of South African law.

The purpose of this Smartcall Consumer Protection Rights Notice is to inform visitors to the Website located at <http://www.smartcall.co.za> about how we treat you as a consumer and to inform you about your rights.

THIS IS A GENERAL NOTICE PROVIDED TO THE PUBLIC FOR INFORMATION PURPOSES ONLY. SPECIFIC CONSUMER PROTECTION PROVISIONS WHICH RELATE TO EACH OF SMARTCALL'S SERVICES WILL BE PUBLISHED ON THE WEBSITE OR WAP SITE RELEVANT TO EACH SERVICE. AS A VISITOR TO EACH SERVICE-SPECIFIC SMARTCALL WEBSITE OR WAP SITE, YOU WILL BE REQUIRED TO ACCEPT THE SERVICE-SPECIFIC TERMS AND CONDITIONS, WHICH WILL INCLUDE YOUR RIGHTS, SPECIFIC TO EACH SERVICE. AS SUCH, NOT ALL OF THE GENERAL CONSUMER RIGHTS MENTIONED BELOW, WILL APPLY.

If you feel we are not meeting our obligations to you please contact the Smartcall Consumer Protection Officer directly. Contact details are provided below.

3. The Consumer Protection Act, 68 of 2008

The summary of the Consumer Protection Act set out below has been reproduced from the website <http://www.thedti.gov.za> of the Department of Trade and Industry, Republic of South Africa, with minor amendments. This summary must be read with the Act and the Regulations to the Act.

3.1 The Consumer Protection Act, 68 of 2008 (CPA) has been legislated to

- Promote a fair, accessible and sustainable marketplace for consumer products and services;
- Establish national norms and standards to ensure consumer protection;
- Make provision for improved standards of consumer information and prohibit certain marketing and business practices;
- Promote responsible consumer behaviour;
- Promote a consistent legislative enforcement framework related to consumer transactions and agreements;
- Establish the National Consumer Commission; and
- Replace, in a new and simplified manner, existing provisions from five Acts.

3.2 Who may lodge consumer complaints

- An individual;
- An authorised person acting on behalf of another;
- A person acting as a member of, or in the interests of, an affected group or class; or
- A person acting in the public interest.

3.3 The Act applies to the following

- Every consumer transaction occurring in the Republic of South Africa;
- The marketing, promotion or supply of goods and services occurring within the Republic; and
- The supply of goods or rendering of services within the Republic in terms of transactions mentioned in the Consumer Protection Act.

3.4 The Act does not apply in respect of

- Goods or services promoted or supplied to the state;
- Industry-wide exemption granted to regulatory authorities;
- Credit agreements in terms of the National Credit Act, 34 of 2005;
- Service and employment agreements;
- Agreements giving effect to collective bargaining agreements; and
- Agreements giving effect to bargaining agreements in terms of the Labour Regulations Act, 66 of 1995.

3.5 Implementation date

The Act has become effective in 2 phases. The provisions establishing consumer protection bodies and those authorising the Minister of Trade and Industry to make regulations came into effect on 24 April 2010. All other provisions came into effect on 31 March 2011.

3.6 Who is a 'consumer'

Consumers are natural persons and juristic persons with an asset value or annual turnover, at the time of the transaction, under the 'threshold' determined by the Minister of Trade and Industry. The threshold is currently R2m.

Franchisees under franchise agreements are also considered to be consumers.

Consumers are persons to whom goods or services are marketed, who have entered into transactions with suppliers and who are users of goods or recipients or beneficiaries of services.

3.7 What are consumer rights

The Bill of Rights enshrines the rights of South Africans, including their consumer rights. The Consumer Protection Act details the key consumer rights, which include the following:

- Right to equality in the consumer market and protection against discriminatory marketing practices;
- Right to privacy;
- Right to choose;
- Right to disclosure of information;
- Right to fair and responsible marketing;
- Right to fair and honest dealing;
- Right to fair, just and reasonable terms and conditions;
- Right to fair value, good quality and safety; and
- Right to accountability by suppliers.

4. The 9 consumer rights

4.1 Consumer right number 1

4.1.1 Right to equality in the consumer market and protection against discriminatory marketing practices

- Your right to free and unlimited access to goods and services;
 - o suppliers may not limit access to goods and services

- suppliers are not permitted to prioritise one consumer group over another
- Your right to high-quality goods and services;
 - suppliers are not permitted to vary the quality of the goods and services in a discriminatory manner
 - consumers have the right to query inferior quality
- Your right to fair pricing of goods and services;
 - suppliers are not permitted to charge unfair prices
 - consumers should be treated equally irrespective of gender, race, socio-economic status or geographic location
- Your right to lodge complaints with the Equality Court in respect of alleged contraventions;
 - proceedings may be instituted before an Equality Court
 - complaints may be filed with the National Consumer Commission which is required to refer complaints, if they appear valid, to the Equality Court

4.2 Consumer right number 2

4.2.1 Right to privacy

- Your right to restrict unwanted direct marketing;
 - consumers have the right to protect their privacy and confidentiality in respect of unwanted or unsolicited correspondence
 - consumers have the right to refuse unwanted SMSs, telephone calls, letters and spam email
- Your right to discontinue receipt of direct marketing;
 - consumers have the right to 'opt-out' of receiving unsolicited direct marketing services by blocking the supplier or marketer
 - consumers have the right to accept, restrict or refuse unwanted direct marketing
 - companies and suppliers are not permitted to continue unsolicited direct marketing of goods and services in the event that consumers have opted-out

4.3 Consumer right number 3

4.3.1 Right to choose

- Your right to select the supplier of your choice;
 - consumers have the right to 'shop around' for the best prices, goods and services
 - consumers are not obliged to enter into additional ('bundled') agreements
 - suppliers may not force consumers to enter into agreements with third parties
- Your right to cancel or renew a fixed term contract;
 - consumers have the right to cancel fixed-term agreements upon expiry of the contract period without penalty or charge
 - consumers are obliged to provide suppliers with 20 (twenty) business day's notice of cancellation of a fixed term agreement
 - suppliers must extend fixed-term agreements on a month-to-month basis if the consumer fails to request cancellation of a fixed term agreement
- Your right to request pre-authorisation for repairs or maintenance services;
 - consumers have the right to request written cost estimates or quotations from suppliers
 - suppliers may not charge consumers for drawing up cost estimates or quotations
 - consumers may refuse additional repairs or maintenance services
 - consumers are not liable to pay for repairs or maintenance undertaken without prior approval
 - suppliers are not permitted to charge consumers for diagnostic work or inspections required to compile cost estimates or quotations
- Your right to cancel direct marketing contracts within the 'cooling-off' period;
 - suppliers are required to include a 'cooling-off' period in direct marketing transactions. 'Cooling-off' periods are generally five (5) business days
 - consumers have the right to cancel agreements in the 'cooling-off' period without providing reasons or incurring penalties

- suppliers are required to return payments received from consumers within fifteen (15) business days of receiving the cancellation notice
- Your right to cancel advance reservations, bookings or orders;
 - consumers have the right to cancel advance reservations, bookings or orders
 - suppliers are entitled to request a reasonable, advance deposit for reservations, bookings or orders
 - suppliers are entitled to impose a reasonable charge for the cancellation of reservations, bookings or orders
- Your right to choose to examine goods even after purchase and delivery;
 - suppliers have the right to charge consumers for loss or damage to property if it resulted from gross negligence, recklessness or deliberate action
 - consumers have the right to refuse previously 'opened' goods and goods that have been on 'display'
 - consumers may reject goods that do not correspond with the pre-approved samples
 - suppliers must provide consumers with a reasonable opportunity to examine goods purchased or delivered
- Your right to return goods and seek redress for unsatisfactory service;
 - consumers have the right to return unsafe or defective goods within a reasonable period and request a full refund
 - consumers have the right to return goods that were not pre-examined prior to delivery
- Your right to retain and not pay for unsolicited goods and services;
 - consumers have the right to return unsolicited goods and services at the risk and cost to the supplier
 - consumers are entitled to retain unsolicited goods or services after twenty business days

4.4 Consumer right number 4

4.4.1 Right to disclosure of information

- Your right to sales records;
 - consumers have the right to demand invoices and receipts
 - suppliers are required to include the following on invoices and receipts;
 - supplier's full contact information, addresses, business names and VAT registration numbers
 - name and description of goods
 - date of transaction
 - unit price of goods purchased
 - quantity of goods purchased
 - total price of the transaction, including applicable taxes
- Your right to disclosure by intermediaries;
 - intermediaries such as brokers, sales representatives and estate agents are required to disclose their relationships, associations or affiliations with the entities or persons they represent
- Your right to identification of deliverers, installers and others;
 - deliverers, installers and others are required to display name badges or similar identification to the satisfaction of consumers when delivering or installing goods and products
 - consumers have the right to demand identification from deliverers, installers and others prior to allowing the delivery and installation of goods

4.5 Consumer right number 5

4.5.1 Right to fair and responsible marketing

- Your right to protection against 'bait' marketing;
 - suppliers are not permitted to mislead consumers in respect of the pricing, nature, properties, advantages, uses and availability of goods and services advertised

- suppliers are obliged to include limitations in respect of the availability of goods or services when advertising
- Your right to protection against 'negative option' marketing;
 - suppliers are not permitted to market and promote goods or services and automatically enter consumers into agreements for the supply of goods and services
- Your right to protection against direct marketing;
 - suppliers or service providers that directly market and promote goods or services to consumers must inform them of their right to cancel the agreement within the 'cooling-off' period of five (5) business days
 - suppliers or service providers which directly market unsolicited goods and services to consumers are not permitted, subject to certain conditions, to solicit payment for these items
- The right to protection in 'catalogue' marketing;
 - suppliers are required to disclose the following;
 - supplier name, registration and licence number
 - address and contact details
 - sales records
 - currency for sales
 - delivery arrangements
 - cancellation, return, exchange or refund policy
 - instructions on lodging a complaint
- Your right to protection in terms of trade coupons and similar promotions;
 - persons are not permitted to make promotional offers with the intention of not fulfilling them or fulfilling them in a manner other than offered
 - persons making promotional offers are required to;
 - specify the nature of the prize, reward, gift, free goods or services, price reduction, enhancement of quality, discount or free item
 - specify the goods or services to which the offer relates

- specify the steps required by consumers to accept the offer or receive the benefits
 - specify the particulars of a person from whom, a place where and a date and time on which the consumer may receive the benefits
 - ensure that the supply of the benefit is sufficient to accommodate reasonably anticipated demand resulting from the offer
 - not limit or restrict capacity to supply such goods or services in response to acceptance of the offer
 - not require the consumer to accept inferior quality of such goods or services
 - not impose a monetary charge for the administration, processing or handling of a transaction when the consumer tenders a trade coupon for membership fees
- Your right to protection in customer ‘loyalty programmes’;
- persons must not offer participation in a ‘loyalty programme’ or ‘loyalty credit award’ with the intention of not providing it or providing it in a manner other than as offered
 - a document setting out an offer must clearly state the following;
 - the nature of the programme, credit or award being offered
 - the goods or services to which the offer relates
 - the procedures to be followed for participation
 - the contact details of where consumers may gain access to the ‘loyalty programme’ or ‘loyalty credit award’

4.6 Consumer right number 6

4.6.1 Right to fair and honest dealing

Note: Unconscionable conduct refers to behaviour that is unethical or improper

- Your right to protection against ‘unconscionable’ conduct;

- suppliers are not permitted to use physical force, coercion, undue influence, pressure, duress, harassment, unfair tactics or other similar conduct against consumers when undertaking the following;
 - marketing goods or services
 - supplying goods or services
 - negotiating, concluding, executing or enforcing agreements to supply goods or services
 - demanding or collecting payment
 - recovering goods or terminating services
- suppliers are not permitted to take advantage of consumers who are unable to protect their interests due to mental or physical disability, poor literacy, ignorance or inability to understand the language of an agreement
- Your right to protection against false, misleading or deceptive representations;
 - suppliers are not permitted to provide consumers with false, misleading or deceptive representations regarding goods or services
 - suppliers are not permitted to use exaggeration, innuendo or ambiguity when referring to goods or services
- Your right to protection against fraudulent schemes and offers;
 - persons are not permitted to initiate, sponsor, promote or knowingly participate in communications or activities with the intent to defraud others
 - persons are not permitted to produce counterfeit currency or purport to increase the sum of money through scientific means or otherwise
 - persons are not permitted to engage in fraudulent or lawless financial transactions
- Your right to protection against 'pyramid' and related schemes;
 - persons are not permitted to promote, join, enter into or participate in the following schemes;
 - multiplication schemes
 - pyramid schemes
 - chain letter schemes

- other fraudulent schemes or scams
- Your right to assume that suppliers are entitled to sell goods;
 - consumers have the right to assume that suppliers have the legal right to supply goods and products
 - consumers have the right to assume that lessors have the legal right to lease goods or products
- Procedure for sale by auction;
 - when auctioning goods or products in lots suppliers are required to auction lots separately
 - auctioneers are required to close auctions by visibly or audibly announcing their completion
 - auctioneers should give notice that a sale by auction is subject to reserve or upset price
- Your right to changes, deferrals, waivers and substitution of goods;
 - deferrals, waivers and substitutions to original agreements must be treated as changes to existing agreements
 - consumers have the right to substitute goods or products
 - suppliers are required to provide consumers with amended sales agreements or records describing the substituted goods
- Your right to protection against over-selling and over-booking;
 - suppliers are not permitted to accept payment or other consideration for goods or services if;
 - they had no intention of supplying those goods or providing the services
 - the intention was to supply goods that are materially different from the goods or services for which payment is accepted
 - suppliers are required to supply the goods and services on the dates and times agreed to
 - consumers have the right to demand refunds for the full amount paid as well as interest at prescribed rates

4.7 Consumer right number 7

4.7.1 Right to fair, just and reasonable terms and conditions

- Your right to protection against unfair, unreasonable and unjust contract terms;
 - suppliers are not permitted to market, supply or enter into an agreement to supply goods and services at prices or terms that are unfair, unreasonable or unjust
 - suppliers are not permitted to require consumers to waive any right, assume any obligation or waive the liability of the supplier on terms that are unfair and unreasonable or unjust
- Your right to notice in respect of certain terms and conditions;
 - suppliers are required to provide consumers with prior written notice of clauses in agreements that may constitute potential risk or liability for consumers
 - suppliers must specifically draw the attention of consumers to the fact and the nature of the potential risk. Concomitantly, consumers must accept responsibility
- Your right to obtain free copies of agreements and contracts;
 - consumers are entitled to obtain free copies or free electronic access to copies of agreements irrespective of whether consumers have entered into such agreements or not
 - a free copy should include an itemised breakdown of financial obligations under such agreements
 - suppliers are required to keep records of transactions entered into over the telephone or other 'recordable' forms if the agreement is not in writing
- Your right to refuse prohibited transactions, agreements and terms and conditions;
 - suppliers are not permitted to make an agreement subject to terms and conditions that are;
 - contrary to this Act
 - mislead or deceive consumers
 - subject consumers to fraudulent conduct
 - directly or indirectly deprive consumers of rights in terms of this Act

- avoid suppliers obligations and duties in terms of the Act
 - limit or exempt suppliers from liability for loss directly or indirectly attributable to the gross negligence of suppliers
 - constitute an assumption of risk or liability by the consumer for loss
 - impose an obligation on consumers to pay for damage or require consumers to enter into supplementary agreements
 - falsely express an acknowledgement by the consumer that before the agreement was entered into no representations or warranties were made by the supplier
 - require consumers to forfeit money to the supplier
- your right to approach a court to ensure fair and just conduct, terms and conditions;
 - if consumers are not satisfied with the outcome of the National Consumer Tribunal's investigation into alleged unconscionable, unjust or unfair conduct they may approach a court for relief

4.8 Consumer right number 8

4.8.1 Right to fair value, good quality and safety

- Your right to demand quality service;
 - Consumers are entitled to the following;
 - timely performance and completion of services
 - timely notice of unavoidable delays in the performance
 - high-quality services
 - delivery and installation of goods that are free of defects and of a generally accepted quality
 - Suppliers are required to remedy defects in the quality of services performed and goods supplied or to refund the consumer a reasonable portion of the price paid
- Your right to safe, good quality goods;

- Consumers are entitled to receive goods or services that comply with applicable standards, are of good quality, in good working order and free of defects
- Your right to implied warranty of quality;
 - it is an implied provision that the producer, importer, distributor and retailer of goods warrant that the goods comply with the requirements and standards of safety, quality and durability
 - consumers are permitted to return goods to suppliers without penalty and at the supplier's risk and expense within six (6) months of delivery if the goods are of inferior quality, unsafe or defective
 - suppliers are obliged to refund, repair or replace the failed, unsafe and defective goods
 - suppliers are obliged to replace goods or refund the consumer the price paid for the goods within a period of three (3) months of repairs undertaken if the repaired goods are found to be defective, have failed or are considered unsafe
- Your right to a warranty on repaired goods;
 - suppliers are obliged to warrant, for a period of three months after the date of installation, every new and reconditioned part installed during repair or maintenance work and the labour required to install it

Note: Warranties are null and void if consumers are found to be misusing and abusing goods or property while under warranty
- Your right to receive warnings on the fact and the nature of risk;
 - suppliers are obliged to make consumers aware of risk of an unusual character or nature
 - suppliers are obliged to bring to the consumer's attention the specific hazards of unsafe goods and, thereafter, provide the consumer with adequate instructions for the safe handling and use of those goods
- Your right to recovery and safe disposal of designated product components;
 - suppliers are responsible for disposing of waste deemed unsuitable for disposal in common waste systems
- Your right to have products monitored for safety or recalled;

- industry codes will make provision for the return or recall of hazardous, unsafe or defective goods
- Your right to claim damages for injuries caused by unsafe or defective goods;
 - Producers, importers, distributors and retailers are liable for harm caused, wholly or in part, as a consequence of the following;
 - supplying unsafe goods
 - hazardous goods, a failure of or defect in goods
 - inadequate instructions or warnings provided to the consumer pertaining to the hazard arising from or associated with the use of the goods

4.9 Consumer right number 9

4.9.1 Right to accountability by suppliers

- Your right to protection in 'lay-bye' agreements;
 - consumers are entitled to the following in 'lay-bye' agreements;
 - equivalent or superior products if the supplier fails to deliver the original products,
 - a full refund of money paid, inclusive of interest
 - to have their deposits kept in an interest-bearing account
- Your right to protection with regard to pre-paid certificates, credits, vouchers and access to pre-paid services and service facilities;
 - suppliers in possession of pre-paid certificates, credits, vouchers, membership fees or other money belonging to consumers must do the following;
 - not treat such property as their own
 - exercise due diligence, care and skill
 - assume liability for losses suffered by consumers

5. Where to complain

The Consumer Protection Act aims to promote consumer activism by making provision for the accreditation of consumer groups tasked with lodging complaints on behalf of consumers as well

as making available support for activities such as consumer advice, education, publications, research and alternative dispute resolution through mediation or conciliation.

The Act gives rise to the establishment of the National Consumer Commission, a body assigned to investigate consumer complaints.

Complaints can also be lodged with the National Consumer Tribunal, which was created by the National Credit Act and is responsible for the adjudication of violations and transgressions of the National Credit Act and the Consumer Protection Act.

Department of Trade and Industry (DTI) – Complaints	
Consumer helpline via the DTI Customer Contact Centre	0861 843 384
The DTI Office of Consumer Protection (OCP)	+27(0)12 3941436 / 1558 / 1076
The DTI email address	contactus@thedti.gov.za
The DTI website address	http://www.thedti.gov.za

National Consumer Tribunal (NCT) - Complaints	
The NCT phone number	+27 (0)12 663 5615
The NCT email address	Registry@thenct.org.za
The NCT website	http://www.thenct.org.za/

National Consumer Commission (NCC) - Complaints	
The NCC phone number	0860 266 786
The NCC email address	ncc@thedti.gov.za
The NCC fax number	0861 515 259

Additionally, complaints can be made to industry bodies as follows:

The Wireless Application Service Providers Association (WASPA) - Complaints	
The WASPA phone number	+27(0) 476 7710
The WASPA email address	complaints@waspa.org.za info@waspa.org.za
The WASPA website	http://www.waspa.org.za/code/complaint.shtml
The WASPA fax number	086 606 2016

The Direct Marketing Association of South Africa (DMASA) - Complaints	
The DMASA phone number	+27(0)11 781 8032
The DMASA email address	info@dmasa.org
The DMASA website	http://www.dmasa.org
The DMASA fax number	+27(0)11 326 1198
The DMASA National Opt-Out Register	http://www.nationaloptout.co.za

6. Smartcall Consumer Protection Officer

Smartcall has appointed a dedicated Consumer Protection Officer who is responsible for the processing of complaints made directly to Smartcall or in connection with a formal complaint to the National Consumer Commission.

In the event of a complaint, we encourage you to contact us directly. Our policy is to promote the resolution of consumer protection complaints as the quickest and most satisfactory way of resolving complaints. Details are provided below on how to contact the Smartcall Consumer Protection Officer.

Smartcall Consumer Protection Officer(s)	
Name	Lorinda Wepener
Phone number	+27 (0)829981145
Fax number	+27 (0)866501081
Email address	help@smartcalltech.co.za

7. Corporate Information and How to Contact Us

Smartcall Technology Solutions (Pty) Limited	
Name	Smartcall Technology Solutions (Pty) Limited
Legal status	Privately held company
Physical address and the address for receipt of legal service of documents	15 Eastwood Road Dunkeld 2024 Johannesburg
Postal address	PO Box 412041

	Craighall 2124
Phone numbers	+27 (0)11 507 4779 (switchboard) +27 (0)11 507 4630 (customer care)
Facsimile number	+27 (0)86 650 1083
Website address	http://www.smartcalltech.co.za
Email address	info@smartcalltech.co.za
Company registration number	2000/006777/07
VAT registration number	4780246692
Place of registration	South Africa
Directors and office bearers	Janene Matsukis
Membership of self-regulatory / accreditation bodies	http://www.waspa.org.za http://www.dmasa.org
Codes of conduct subscribed to	Wireless Application Service Providers Association Direct Marketing Association of South Africa
URL to code of conduct	http://www.waspa.org.za/code/index.shtml http://www.dmasa.org/dmasa/dma_load.php?str=1/10/17
Full price of goods and services	NA (information website only)
Manner of payment	NA
Terms of agreement and URL to access terms	http://www.smartcalltech.co.za
Times for dispatch of goods and performance of services	NA
Manner and period to access transaction records	NA
Return and refund policy	NA
Alternative dispute resolution code subscribed to	http://www.waspa.org.za
Access to alternative dispute resolution code	http://www.waspa.org.za/code/waspa_coc_11.0.pdf
Security procedures and privacy policy	http://www.smartcalltech.co.za

Minimum duration of agreements	NA
Cooling-off rights	NA

