



FAIR COMPETITION COMMISSION

# THE STANDARD FORM (CONSUMER CONTRACTS) REGULATIONS, 2014

*(A Simplified Guide to the Regulations)*

**Be Empowered! Stop Unfair Market Practices!**

## **Introduction**

Buying goods or services is a routine practice done by all consumers in to satisfy their basic needs. Buying goods or services involves entering into a contract with the provider of particular good or service. It is very important to understand what you are agreeing to, before you purchase any goods or services.

A contract is an agreement entered into between two or more parties. It is legally enforceable and can be either written or verbal. A contract arises when one party makes an offer and the other party communicates an intention to accept it. A contract can be entered by signing a document, selecting a product in a shop and paying for it at the counter or by clicking on an "I agree" button on a web page. However, it is unlawful for businesses to force or coerce you into entering a contract.

Contracts have terms and conditions that set out the rights and responsibilities of each party to the contract. Consumers are advised to make sure they read and understand the terms and conditions of a

contract before they accept them. If consumers are not certain, they should seek legal advice.

In practice, **standard form contracts** provide little or no opportunity for you to negotiate with the provider of goods or services, but there are laws to protect consumers from unfair contract terms in a standard form contracts.

The Standard Form (Consumer Contracts) Regulations, 2014 was published under Government Notice No. 305 on 29<sup>th</sup> August, 2014. The objective of these Regulations is to ensure all consumer standard form contracts do not contain unfair terms.

Section 36 of the Fair Competition Act No. 8 of 2003 (CAP 285), requires all terms and conditions which govern consumer transactions to be registered with the Fair Competition Commission (FCC).

The Standard Form (Consumer Contracts) Regulations has seven parts and two schedules, drafted to make sure that the consumer is protected from unfair terms.

This guide intends to enable suppliers and consumers understand the Regulations and equip them on how best they can learn and use the knowledge to mitigate unfair trade practices in the market.

## ***What is a Standard Form Contract?***

A Standard Form Contract is an agreement that employ standardized, non-negotiated provisions for the supply or sell of goods and/or services. These are usually in preprinted forms i.e. sales receipts, contract of services.

Standard Form Contracts are drafted by or on behalf of one party to the transaction – the party having superior bargaining power and who routinely engages in such transactions.

These Standard Form contracts have the ability to trick or abuse consumers because of the unequal bargaining power between the parties.

### **Example:**

Terms seeking to limit consumer rights and guarantee i.e. restrict consumers rights to refund, exchange and/or warranties.

***“Goods once sold can not be returned!”***

***“No refund! No exchange!”***

***“We may change charges or interest rate at any time without providing you with prior notice!”***

## ***What is the scope of application?***

The Standard Form (Consumer Contracts) Regulations, 2014 will apply to both traditional and electronic standard form consumer contracts involving all consumer transactions.

For easy of reference, **Part I** of the Regulations provides the citation, application and interpretation.

## **Why standard business terms in consumer contracts?**

Standardized terms permit business practitioners to prepare a set of standard business contractual terms to be used in specific fields of trade.

Standard form and business-to-consumer contracts fulfill an important efficiency role in the mass distribution of goods and services. These contracts have the potential to reduce transaction costs by eliminating the need to negotiate the many details of a contract for each instance a product is sold or a service is used.

The objective of having these terms registered by the FCC is to prevent unfair contractual terms from circulating and prevent frequent consumer injuries and loss.

For ease reference, **Part II** of the Regulations defines all technical aspects of contractual obligations, standardized contractual terms, official cover page, investigations, precedence and exemptions.

## **What are specific requirements for standard form consumer contracts?**

The following are the specific requirements for Standard Form Consumer Contracts:

- ✓ Shall be expressed in a specific period.
- ✓ Shall specify producer's obligations (*manufacturers, suppliers, sellers, service providers and operators*) and
- ✓ Shall provide consumer's rights, duties and obligations.

For detailed specific requirements on standard form consumer contracts go through **Part III** of the Regulations.

### ***Who is obliged to register standard form consumer contracts?***

Any person or body corporate that uses standard business terms (manufacturers, suppliers, sellers, service providers and operators) in a contract is required to register the contract (with FCC) by filling **SFC Form No 1**.

For more detailed and specific requirements on standard form consumer contracts registration requirements and procedures go through **Part IV** of the Regulations.

### ***What are unfair terms in standard form consumer contracts?***

Unfair terms include contractual terms that cause a significant bargaining imbalance between a seller and a buyer; does not legitimately protect the interest of seller and causes financial or non-financial harm to consumers.

For ease reference, **Part V** of the Regulations name out all technical aspects on unfair terms, assessment of unfair terms, language, and effect of unfair terms.

### ***How can I tell if a term in a standard form consumer contract is unfair?***

To recognize potentially unfair terms in standard form consumer contracts you need to read the contract **critically** and ask yourself the following four key questions:

- ✓ Does the term in the contract cause a **significant imbalance** between your rights and obligations and those of the provider of goods or services? That is-
  - *Can the provider change important terms of the contract without your consent?*
  - *Is there a disclaimer clause?*
  - *Can only the provider decide whether the contract has been breached?*
- ✓ What is likely **harm** to be caused by the term to you? Whether *financial or non financial – would you lose money or suffer inconveniences if the term is enforced?*
- ✓ How **transparent** is the term? That is-
  - *Is the term presented clearly and expressed in reasonably plain language?*
  - *Can you understand what the term says?*
  - *Is the term hidden and buried in fine print or written in complex technical language?)*
- ✓ Is the term **reasonably necessary** to protect the lawful interests of the provider of goods or services? (*What is a genuine commercial reason to the provider?*)

### **Who can lodge a complaint?**

Any person or body corporate can lodge a complaint to the FCC by filling the complaint form **SFC No. 2** alleging contravention of the provisions of the Fair Competition Act No. 8, 2003 and the Standard Form (Consumer Contracts) Regulations, 2014.

For more detailed and specific requirements on complaint requirements and procedures go through **Part VI** of the Regulations.

### **What are the indicative lists of unfair terms?**

The Standard Form (Consumer Contracts) Regulations, 2014 provide non exhaustive indicative list of unfair terms used in standard form consumer contracts.

#### **Examples:**

- ✓ Contract terms that allow provider of goods or services to alter the contracts without consumer consent<sup>1</sup> i.e. **“we may change subscription fees, terms and conditions at any time without prior notice”**.
  
- ✓ Contract terms that cause confusion about the agency arrangements that apply and seek to unfairly release the agency from liability for any failure to perform the contract<sup>2</sup>. i.e. **“Agency’s errors and omission are exempted”**.
  
- ✓ Contract terms that unfairly restrict the consumer’s right to terminate the contract<sup>3</sup>. **“No postponement neither termination of this agreement”**.

Detailed list of unfair terms and offences are provided in **Part VII** of the Regulations.

---

<sup>1</sup> The Standard Form (Consumer Contracts) Regulations, 2014, Reg. 37(d) and (w).

<sup>2</sup> The Standard Form (Consumer Contracts) Regulations, 2014, Reg. 37(m) and (aa).

<sup>3</sup> The Standard Form (Consumer Contracts) Regulations, 2014, Reg. 37(c).

**Are there any forms and fees associated with standard form consumer contracts?**

The Standard Form (Consumer Contracts) Regulations, 2014 provide five forms namely - *Registration of standard form contract form (FCC/SFC No.1)*, *complaint form (FCC/SFC No.2)*, *complaint notification form (FCC/SFC No.3)*, *reply to notification on complaint form (FCC/SFC No.4)* and *amendment/replacement of standard form consumer contract (FCC/SFC No.5 under the First Schedule*. Detailed registration fee structure is provided under the second schedule.

**Do you need further information?**

If you would like to learn more about the law and The Standard Form (Consumer Contracts) Regulations, 2014 do not hesitate to visit FCC website – [www.competition.or.tz](http://www.competition.or.tz)