

# GREYCHAPEL

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## THE LEGALITY OF A “NO REFUND” POLICY

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### Introduction

A No-Refund policy is simply a policy which indicates that payments will not be refunded to a purchaser under any circumstances, upon the completion of a sale transaction and delivery of the goods and/or services.

The “No-Refund” policy is quite prevalent in the Nigerian online and physical market, having been adopted by a large number of sellers of goods, in particular. While some sellers expressly stipulate the circumstances under which a refund would be applicable, majority have expressed that a refund is inapplicable in all circumstances.

In a physical transaction, the policy would typically be included in a sale agreement, purchase receipt or the invoice of the Seller. In an online transaction, the policy will typically be included in a conspicuous space on the seller’s website or in the bio of the seller on social media platforms or incorporated as part of the terms and conditions which the purchaser must accept in consummating the purchase.

### Is a No-Refund Policy Legal?

Section 122 of the Federal Competition and Consumer Protection Act 2018 is instructive in this regard and is reproduced below for ease of reference:

*“In addition to the consumer's right to return unsafe or defective goods under any law or enactment, the consumer may return goods to the supplier and receive a full refund of any consideration paid for those goods, if the supplier has delivered:*

- a. goods intended to satisfy a particular purpose communicated to the supplier and within a reasonable time after delivery to the consumer, the goods have been found to be unsuitable for that particular purpose; or*
- b. goods that the consumer did not have an opportunity to examine before delivery, and the consumer has rejected delivery of the goods within a reasonable time after delivery to the consumer for the reason that the goods do not correspond with description, sample or that they are not of the type and quality reasonably contemplated in the sales agreement.*

It can be deduced from the above provisions that a purchaser has a right to return goods and receive full refund of any consideration (including money) paid for such goods where:

1. the goods are unsafe or defective<sup>1</sup>
2. the goods do not satisfy the particular purpose for which they were intended, provided that:
  - a. the Seller was informed of the purpose for which it was intended
  - b. the purchaser discovered within a reasonable time, after receipt of the goods that they were not fit for purpose
3. the purchaser had no opportunity to inspect the goods before delivery, provided that the purchaser rejected the goods within a reasonable time after delivery because the goods received differed from the goods the purchaser reasonably contemplated in the contract

**“Where the goods differ from what the purchaser reasonably contemplated, the purchaser is entitled to return such goods and the seller is obligated to provide a full refund of the payment made by the purchaser for the goods”**

As a corollary, it is clear that the law imposes an obligation on a seller to provide a full refund to a purchaser in the circumstances stipulated above.

The obligation is more compelling for sellers of goods online, in view of the fact that a prospective purchaser rarely has the opportunity to examine the goods before the contract is consummated. Thus, the prospective purchaser is constrained to rely on the picture and description of the goods as provided by the seller. Usually, the reasonable expectation of such purchaser is that the goods, upon delivery, would correspond at the minimum with the description provided by the seller.

Where the goods differ from what the purchaser reasonably contemplated, the purchaser is entitled to return such goods and the seller is obligated to provide a full refund of the payment made by the purchaser for the goods. The obligation of the seller in this regard is however subject to the purchaser rejecting the goods within a reasonable time.

The issue may arise as to what constitutes reasonable time. The courts have consistently held that what constitutes reasonable time is subjective and will be assessed on a case by case basis. In our view, reasonable time in this context would mean the amount of time that is fairly required by the purchaser to:

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<sup>1</sup> See Section 132 of the FCCPA

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- a. make the discovery that the goods do not match the description/ sample or that they are not of the type and quality reasonably contemplated by the purchaser;
- b. notify the seller accordingly; and
- c. return the goods to the seller, where same has been agreed with the seller.

Clearly, it behoves the purchaser to ensure that the seller is promptly notified of the discovery and where applicable, the goods sought to be rejected are returned without any delay.

### Liability of the Seller

An aggrieved purchaser may file a complaint with the Federal Competition and Consumer Protection Commission (“the Commission”) in the prescribed manner and form<sup>2</sup>. The Commission upon receipt and investigation of the complaint has extensive powers to order the payment of compensation and temporary closure of premises/facilities amongst others.

It is also instructive to note that a contravention of a consumer’s rights is an offence under the FCCPA and is punishable as follows:

- a. in the case of a natural person, imprisonment for a term not exceeding five years, or to payment of fine not exceeding ₦10,000,000.00 (Ten Million Naira) or to both the fine and imprisonment.
- b. in the case of a body corporate, a fine of not less than ₦100,000,000.00 (One Hundred Million Naira) or 10% of its turnover in the preceding business year, whichever is higher.
- c. in the case of a body corporate, each director is also liable to be proceeded against and dealt with as specified in paragraph (a)<sup>3</sup>.

### Conclusion

The foregoing is a call on sellers to:

- a. amend their refund policy in compliance with the requirements of the law;
- b. ensure that goods sold online are accurately described to minimize the occurrence of events where full refund to the purchaser would be payable; and
- c. consider carefully, the purpose for the purchase of goods (if disclosed by a prospective purchaser) and only provide goods fit for such purpose.

Furthermore, buyers are also advised to:

- a. peruse carefully, the description of goods provided by sellers;
- b. disclose to the seller, where applicable, the particular purpose for which a good is required;
- c. notify and promptly return any goods purchased which is not fit for purpose or which differs from the goods reasonably contemplated having regard to, amongst other things, the description provided by the seller;
- d. promptly seek advice where, in their view, their rights to refund have been violated.

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<sup>2</sup> Section 148 of the FCCPA

<sup>3</sup>Section 155 of the FCCPA

*For any comments and additional information on the issues discussed, please contact any of the under-listed persons:*

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