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## Key contacts



**Emmanuel Gbahabo**  
Partner and Head,  
Investigations, White Collar, &  
Compliance and Dispute  
Resolution  
[Emmanuel.gbahabo@templars-law.com](mailto:Emmanuel.gbahabo@templars-law.com)



**Nkechi Obichere**  
Senior Associate,  
Investigations, White Collar &  
Compliance  
[nkechi.obichere@templars-law.com](mailto:nkechi.obichere@templars-law.com)



**Jewel Egelege**  
Associate,  
Corporate & Commercial  
[jewel.egelege@templars-law.com](mailto:jewel.egelege@templars-law.com)

## TEMPLARS ThoughtLab

# The Legality of No-Refund Policies Under Nigerian Consumer Protection Law

## Introduction

In the dynamic landscape of Nigerian commerce, businesses deploy various strategies to mitigate financial risks and streamline operations. Among these, the pervasive no-refund policy stands out, often perceived as a safeguard against potential losses. While designed to protect sellers from fraudulent returns and inventory management challenges, these policies often clash with consumer rights, raising critical questions about fairness and their regulatory compliance. Across both formal and informal markets—from bustling online marketplaces to traditional brick-and-mortar stores—the enforcement of no-refund policies has become a contentious issue, particularly when juxtaposed with the robust consumer protection framework enshrined in Nigerian law. The rising tide of consumer complaints, amplified by social media's power to voice grievances, underscores the urgent need for greater clarity and reform.

## Understanding the Policy and Its Implications: A Customer's Dilemma

A no-refund policy, at its core, is a unilateral declaration by a seller that, once a purchase is made, the consumer forfeits any right to a refund, regardless of defects, dissatisfaction, or change of mind. Businesses communicate this policy through in-store notices, disclaimers on receipts, or buried within the terms and conditions of online transactions. While these policies are meant to set clear expectations and protect against fraudulent returns, their rigid application often leaves consumers feeling aggrieved, especially when products or services do not meet reasonable standards.

This rigidity can lead to significant consumer dissatisfaction, especially in sectors like electronics, fashion, and custom-made goods, where the potential for product defects or misrepresentations is higher. For example, in the online fashion industry, no-refund policies are often concealed within lengthy terms and conditions, leaving consumers unaware of their limited recourse until after purchase. The surge in consumer complaints lodged with the Federal Competition and Consumer Protection Commission (FCCPC) underscores the growing discord between business practices and consumer expectations. This highlights the urgent need for a more nuanced and legally compliant approach.

## The Incompatibility of No-Refund Policies with the FCCPA's Core Consumer Rights

The Federal Competition and Consumer Protection Act 2018 (FCCPA) establishes a robust framework for consumer protection in Nigeria, encompassing all commercial activities within Nigeria. Among its key provisions are rights that directly contradict the common practice of implementing a no-refund policy.



### Right to Refund

Full refund for defective or unsafe goods. In addition to the consumer's right to return unsafe or defective goods...the consumer may return goods to the supplier and receive a full refund (Sec. 122)



### Freedom from Unfair Terms

You can't waive your rights unfairly. Prevents businesses from enforcing any agreement that is "manifestly unfair, unreasonable or unjust (Sec. 127)



### Timely Services

Refunds apply for delayed/unrendered services. The FCCPA guarantees consumers the right to refunds when businesses do not render services as stipulated



### Transparency

No hidden clauses. Terms must be clear. The right to transparency is one of the ways the FCCPA prohibits businesses from concealing critical consumer obligations within complex contractual agreements

## 1. Right to refunds for defective, unsafe, or unsuitable products

The FCCPA mandates that goods must conform to their pre-agreed specifications or samples.<sup>1</sup> Specifically, section 122 states that "... in addition to the consumer's right to return unsafe or defective goods...the consumer may return goods to the supplier and receive a full refund...". A no-refund policy unjustly compels consumers to accept goods that do not fulfil their intended purpose or agreed-upon characteristics. For instance, a consumer acquiring a malfunctioning electronic device may be entitled to a refund under section 122. A no-refund policy essentially attempts to abrogate this entitlement, thereby transferring the burden of a defective product to the consumer.

<sup>1</sup> Federal Competition and Consumer Protection Act 2018, section 122.

## 2. Prohibition of unfair contract terms

Section 127 prevents businesses from enforcing any agreement that is “manifestly unfair, unreasonable or unjust”.<sup>2</sup> A no-refund policy, particularly when applied indiscriminately, constitutes an inequitable contractual term. It compels consumers to relinquish their statutory rights to redress, imposing an unreasonable burden upon them. This is especially problematic when consumers possess limited or no bargaining power. The FCCPA aims to mitigate such imbalances, acknowledging that consumers should not be subjected to terms that significantly disadvantage them. A no-refund policy exemplifies such a disadvantage.

## 3. Right to timely performance of services

The FCCPA guarantees consumers the right to refunds when businesses do not render services as stipulated.<sup>3</sup> A no-refund policy disregards this fundamental right, leaving consumers without recourse when services remain unfulfilled by the agreed time. For example, if a consumer remits payment for a service that is not subsequently provided within the agreed time, a no-refund policy effectively permits the service provider to retain payment without fulfilling their contractual obligations. This directly contradicts the FCCPA's intent to ensure fair and timely service delivery.

## 4. Right to transparency in consumer agreement

The right to transparency is one of the ways the FCCPA prohibits businesses from concealing critical consumer obligations within complex contractual agreements. This is particularly relevant for clauses limiting the risk or liability of a vendor or constituting an assumption of risk or liability by the consumer.<sup>4</sup> A no-refund policy can be deemed non-transparent, especially if obscured within fine print or intricate legal jargon. The FCCPA mandates clarity and transparency in consumer agreements, ensuring that consumers are fully aware of their rights and obligations prior to entering into a transaction. A concealed or inadequately disclosed no-refund clause violates this principle.

## Rights of Consumers under the Sale of Goods Act

While the FCCPA is the primary legislation governing consumer rights in Nigeria, the Sale of Goods Act, which predates the FCCPA, also contains provisions relevant to the sale of goods and the rights of buyers. While the FCCPA takes precedence in cases of conflict, the Sale of Goods Act outlines fundamental principles regarding the quality and fitness of goods. Specifically, implied conditions within the Sale of Goods Act dictate that goods sold must be of merchantable quality and reasonably fit for the purpose for which they are bought.<sup>5</sup> These implied conditions inherently limit the enforceability of absolute no-refund policies, particularly when goods do not meet these standards. In the event that a product is defective or not fit for its intended purpose, the buyer has the right to seek remedies, which could include a refund, despite the existence of a no-refund policy. The interplay between the older Sale of Goods Act and the more recent and comprehensive FCCPA underscores a consistent legal stance against businesses absolving themselves entirely from responsibility for the quality and suitability of the goods they sell.

<sup>2</sup> Federal Competition and Consumer Protection Act 2018, section 127.

<sup>3</sup> Federal Competition and Consumer Protection Act 2018, section 130.

<sup>4</sup> Federal Competition and Consumer Protection Act 2018, section 128

<sup>5</sup> Sale of Goods Act 1893, section 14.

## Striking the Balance: When Business Interests Prevail

While the FCCPA rightly prioritizes consumer rights, it is equally important to acknowledge that businesses, particularly in Nigeria's dynamic market, have legitimate interests. Customized goods, perishable items, and digital products where usage is difficult to verify present unique challenges. Businesses also need to prevent fraudulent returns and abuse of policies. Therefore, no-refund policies can be justifiable in specific, clearly defined circumstances, provided they are transparently communicated to consumers before the transaction.

However, even when business interests are paramount, transparency and fairness must prevail. No-refund policies should never shield businesses from liability for defective or misrepresented goods. Businesses can offer partial refunds or store credit for certain returns, balancing consumer satisfaction with operational realities. The FCCPC can establish clear guidelines for acceptable no-refund policies, ensuring fairness and transparency. Clear communication, accessible complaint mechanisms, and a balanced approach that considers the practical limitations of small businesses are essential. Ultimately, a collaborative effort involving businesses, regulators, and consumers is necessary to foster a fair marketplace.

## Case Studies: Legal Precedents

The Nigerian judiciary has consistently reinforced the primacy of consumer protection laws, particularly the FCCPA, in commercial transactions. In **Patrick Chukwuma v. Peace Mass Transit Limited**,<sup>6</sup> the Enugu State High Court established a significant precedent by ruling that blanket no-refund policies are illegal, particularly when service failures occur. In this case, Patrick Chukwuma was denied a refund for a delayed trip he ultimately did not take. The court found the company's policy to violate the FCCPA and consequently ordered Peace Mass Transit to pay the sum of ₦500,000 in damages. This case underscores the legal obligation of businesses to provide services as advertised and the consumer's right to redress when they do not.

Similarly, **Edem Ewa Ekeng & Anor v. Wakanow.com Limited**,<sup>7</sup> decided by the Magistrates' Court of Lagos State, affirmed the illegality of no-refund policies in instances of business negligence, where a travel company did not provide services as purchased. In this case, Wakanow.com Limited's no-refund policy was declared illegal by the court, which ordered the company to refund money to Edem for air tickets. The ruling followed Wakanow's failure, as a travel agent, to purchase tickets for a rescheduled flight until the fare increased, which the court deemed negligent. In addition to the refund, the court awarded damages to the claimants for losses incurred due to the delay and failure to reschedule the flight after an agreed payment. This demonstrates that the courts are ready to ensure that companies do not evade responsibility for service failures through no-refund policies.

These legal precedents have profound implications for Nigerian businesses. They signal a clear judicial commitment to upholding consumer rights and enforcing the FCCPA. Businesses must ensure their policies, particularly those related to refunds and returns, comply with these legal standards. Implementing transparent and fair practices and ensuring clear communication of terms and

<sup>6</sup> Suit No: E/514/202 (Unreported).

<sup>7</sup> Suit No. SCC/LAG/184/2022 (Unreported).

conditions is not only a legal imperative but also a strategic advantage in building consumer trust and fostering long-term business success. The relative ease with which consumers can escalate grievances to the FCCPC serves as a deterrent to unfair practices. The FCCPC has made it easier for consumers to file complaints online and via telephone, making justice more accessible.

### Beyond No-Refund: Other Vendor Policies Impacting Consumer Rights

Vendors employ a variety of strategies that, while seemingly distinct from no-refund policies, serve a similar purpose, aimed at protecting business interests. No-Exchange and No-Return policies, often applied to discounted or hygiene-sensitive items, eliminate the possibility of swapping or returning purchased goods, unfairly limiting consumer recourse. The Pay Before Delivery model, prevalent in e-commerce and custom orders, shifts the risk of order cancellation or fraudulent buyers to the consumer, requiring full payment upfront. This can be seen as unfair, as it places all the risk on the consumer, even when the seller is at fault. In informal markets, the Touch and Carry practice pressures customers to purchase items they have handled, discouraging casual browsing and potentially leading to impulsive purchases. This practice can pressure consumers into buying items they may not want, simply because they touched them. Some businesses offer Store Credit Only, allowing them to retain revenue while providing limited compensation to dissatisfied customers. This limits the consumer's financial recourse and keeps their money within the business. Finally, Limited Warranty Policies restrict returns and replacements to specific timeframes and conditions, often excluding damages caused by misuse, creating a narrow window for consumer remedy. These policies often create unfair limitations that remove consumer rights.

### Conclusion

No-refund policies, while seemingly a straightforward tool for businesses, must be implemented with careful consideration of consumer rights and legal obligations. The FCCPA provides a robust framework for consumer protection, but its effective implementation requires a delicate balance between business interests and consumer welfare. Businesses must prioritize transparency and fairness, ensuring that their policies do not infringe upon consumer rights. Consumers, in turn, must be aware of their rights and exercise them responsibly. It is imperative that Nigerian businesses and consumers work together to establish a fair and transparent marketplace, where no-refund policies are used judiciously and consumer rights are fully respected. Furthermore, consumer education regarding their rights is crucial for creating a culture of mutual respect and adherence to legal principles. By fostering a culture of mutual respect and adherence to legal principles, Nigeria can create a commercial ecosystem that benefits both businesses and consumers alike.