

The distinction between new and second-hand goods

1. Definition: When are goods “new” and when are they “second-hand”?

There is no legally stipulated definition of when goods are new and of when they are second-hand. The condition of the packaging provides no information.

In the following, some indications for distinction are provided:

Goods are considered as second-hand goods...	Goods are considered as new goods which...
<p>...when they are already put to their ordinary use by the manufacturer, seller or a third party and therefore bear a higher risk of material defects.</p> <p>A technically sensitive spare part (here: a ball bearing stored for 20 years in unused condition) may no longer be promoted as “new” if there is a risk of damage due to storage.</p>	<ul style="list-style-type: none"> • have not been used, • have not suffered damage due to storage, • have been manufactured from new materials, • are still manufactured in the same design. <p>A car sold as new car is no longer “brand-new” if the particular model concerned is no longer manufactured in unchanged form.</p> <p>The single switching on and off of an electrical device for test purposes does not regularly mean that the product becomes a second-hand item.</p>

Why is a distinction between new and second-hand goods important, amongst other things:

- Item description (information of the customer on the characteristics of the goods),
- Length of the warranty period,
- Special product labelling (e.g. textile labelling, labelling of electrical devices).

B-stock

Goods which are defined as “B-stock” are not automatically used goods. This also applies to special offers and second choice goods which are sold as new.

B-stock is usually not used but only slightly damaged and/or the original packaging is missing. But there will be no increased risk that there is a defect if the goods have been unpacked or presented.

Items which are sold as “B-stock” are only second-hand goods if they are already put to their ordinary use and therefore have been actually used.

2. Limitation of the warranty period for second-hand goods

In the case of a sale of new goods, the seller is basically liable for obvious and hidden defects of the item for a period of 2 years (from delivery).

If the sold objects are second-hand goods, the warranty period can be limited. In the case of second-hand goods, the trader's liability for defects may be reduced to a minimum of 1 year. This requires an effective clause in the T&Cs.

Incidentally, the trader must not be responsible for defects which have been expressly indicated as well as for age-related defects which are typical for a product, e.g. defects of an old car.

3. Right of withdrawal

Contrary to widespread belief, the condition of the item has no influence on the right of withdrawal. The regular right of withdrawal also exists in the case of second-hand goods.

4. Labelling obligations

Toys:

There is no distinction between second-hand or new toys for the labelling of toys. Thus, there is also a labelling obligation for second-hand toys.

Textiles:

The Textile Labelling Regulation excludes second-hand textile products from the mandatory labelling.

Electrical and electronic devices:

In the case of a purchase of electrical and electronic devices, online traders of certain products (e.g. vacuum cleaners, televisions, large household appliances) have extended labelling obligations. However, second-hand products are not covered by the special regulations.