

## Fact Sheet on warranty

### General information

In the context of a contract of sale, the warranty determines the claims to which the buyer is entitled in the event of delivery of defective goods. The seller is basically liable for 2 years from the time of delivery if the goods are defective. In the case of special offers and second choice products, which are sold as new, the full warranty applies. An exclusion of liability exists only for defects to which an explicit reference has been made.

Towards consumers, traders can limit the warranty for used goods to a minimum of 1 year by using a clause in the T&Cs. In principle, there is no liability for age-related defects which are typical for the product, e.g. oil loss of a 9 year old motor vehicle. There is also a warranty right for wearing parts depending on the product-specific durability.

### Differences to guarantee

By contrast, guarantee is an additional and voluntary performance of the manufacturer/seller – guarantee is therefore to be distinguished from the warranty and/or can exist next to it.

**A so-called case of warranty occurs** if defective (e.g. manufacturing defects), wrong goods or fewer goods than ordered are delivered to the customer.

The buyer is obligated to make available the object of purchase to the seller for verification.

The consumer may choose between

- Remedy of defects, e.g. by way of repair (so-called subsequent improvement) or
- Delivery of goods free from defects (so-called replacement delivery).

However, this is only possible if this choice does not entail disproportionate costs. For example no delivery of a new washing machine may be required if there is only one defective button which can be exchanged without problems.

### Eligible costs

The seller has to bear all costs of the supplementary performance (e.g. labour, material, infrastructure, postage, telephone and storage costs). The seller also has to bear the transport costs, i.e. the costs for collection, of repair as well as the returning.

### **Unjustified notice of defects**

If the buyer reports a defect, even though there is no defect, he may render himself liable for damages. Example: The buyer attaches a TV to the wall and damages it. There is no case of warranty because the customer is responsible for the damage.

In the case of uncertainty, the buyer may exercise warranty rights without having to fear liability for damages, even if his request proves to be unjustified at a later point in time (e.g. an electronic device has supposed malfunctions).

### **Distribution of evidence in the case of B2C contracts**

Should a defect become apparent within 6 months from delivery, it is presumed that the object of purchase was already defective at the moment of delivery/transfer. The defect must already exist at the time of delivery.

After the expiry of the 6 months, the consumer must prove the defect to the seller in an ample and plausible way (e.g. by means of photos). However, he does not commission an expert or a surveyor in order to provide “complete evidence”.

### **Recommendation for action**

If the customer approaches the seller, the seller should examine whether the goods are defective or not. The seller may request the customer to send photos or to return the goods. Since the seller bears the costs of returning in the case of a defect, he should send a return label to the customer.

Following an examination and if a defect has been discovered, traders must either send new goods to the customer or repair it and return the repaired item to the customer.