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Defective products: consumer rights and guarantees, after-sale responsibilities, means of redress for an injured party

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Modul	Sachverhalt
Leistungsschlüssel	99154076000000
Leistungsbezeichnung I	Defective products: consumer rights and guarantees, after-sale responsibilities, means of redress for an injured party
Leistungsbezeichnung II	Defective products: consumer rights and guarantees, after-sale responsibilities, means of redress for an injured party
Typisierung	11 - SDG: Allgemeine Rechte und Pflichten
Quellredaktion	Bund
Freigabestatus Katalog	unbestimmter Freigabestatus
Freigabestatus Bibliothek	unbestimmter Freigabestatus
Begriffe im Kontext	
Leistungstyp	Leistungsobjekt

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Leistungsgruppierung	SDG allgemeine Rechte und Pflichten (154)
Verrichtungskennung	
SDG-Informationsbereich	Fehlerhafte Produkte: Verbraucherrechte und Garantien, Verantwortlichkeiten nach dem Verkauf, Abhilfemöglichkeiten für eine geschädigte Partei
Lagen Portalverbund	Verbraucherschutz (2140100)
Einheitlicher Ansprechpartner	Nein
Fachlich freigegeben am	08.09.2020
Fachlich freigegeben durch	Federal Ministry of Justice and Consumer Protection
Handlungsgrundlage	
Teaser	
Volltext	<p>Consumer rights and guarantees</p> <p>In the case of defective products, the rights of consumers may arise either from a statutory warranty or from a guarantee issued by the seller.</p> <p>A. Statutory warranty</p> <p>Basic principles</p> <p>Sellers of goods have an obligation to ensure that the goods they supply to buyers are free of defects.</p> <p>If a purchased good nonetheless proves to be defective, the buyer is entitled to make a statutory warranty claim.</p> <p>For a claim to be valid, the defect must have already been present at the time of purchase.</p> <p>Sellers are not responsible for defects arising later, for example as a result of improper use or wear and tear.</p> <p>Warranty claims are filed with the seller of the goods, i.e. the entity that sold the goods, not the</p>

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manufacturer.

When a trader sells a product to a consumer (this transaction is referred to as a 'consumer goods purchase'), they are not permitted to restrict or exclude statutory warranty claims. The legal provisions are binding.

Defectiveness of goods

Purchased goods are deemed to be defective if they do not demonstrate the physical condition or properties that were agreed between the buyer and the seller. If no specific agreements were made between the parties, the goods are deemed to be defective if they cannot be used in a normal fashion or are not in the usual, expected condition.

Time at which the defect occurred

It is only possible to make a warranty claim if the defect in question was already present at the time of purchase.

Sellers are not responsible for defects arising later, for example as a result of improper use or wear and tear.

Burden of proof

It is usually the buyer who must demonstrate and provide evidence that a particular product is defective and that this defect was already present at the time of purchase. In the case of consumer goods purchases, however, the applicable legislation reverses the burden of proof: instead, it assumes that defects evident within six months after delivery of the purchased goods were already present at the time of delivery. This means that in the event of a dispute, the trader is responsible for proving that the product was free of defects at the time of delivery. After this six-month period, the burden of proof once again lies fully with the buyer.

Obligations of sellers in the event of defects

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If a product demonstrates substantial defects, it is first and foremost the seller who is responsible for rectifying the issue. In such cases, buyers can choose whether they wish to have their existing product repaired or receive a new, non-defective product. However, sellers can refuse to comply with the form of rectification selected by the buyer if this would involve disproportionate costs. If a seller rectifies an issue with a product by replacing it with a non-defective product, they may request that the buyer sends back the original defective product.

The costs arising as a result of the rectification process, for example materials and transport costs, must be borne by the seller.

If a seller fails to meet the request of a buyer to repair a defective product or deliver a new, non-defective product within the period specified by the buyer, the buyer may demand to pay a reduced price or withdraw from the contractual agreement. This is also the case if two unsuccessful attempts have been made to repair the product.

Limitation periods

Statutory warranties usually expire after two years. When buying used goods, the parties may agree to reduce this period to one year.

Legal basis

The relevant legal rules on the statutory warranty can be found in Sections 434 to 442 and Sections 474 to 477 of the German Civil Code [Bürgerliches Gesetzbuch , BGB].

B. Guarantees

Basic principles

Guarantees are different from the statutory warranty. A guarantee involves a seller, manufacturer or other third party offering a buyer an additional assurance that goes beyond the statutory warranty. Such

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assurances may include the product remaining in a particular condition for a certain period of time (durability guarantee).

Unlike the statutory warranty, guarantees are always voluntary measures that are not compulsory by law. In practice, guarantees are often provided by the manufacturer or the seller.

Content of guarantees

The provider of the guarantee can decide how long the guarantee will be valid for, what it covers, and whether it is free of charge or offered for an additional fee. Essentially, they are free to design the guarantee however they wish.

Guarantee declaration

When a guarantee is provided in connection with consumer sales contracts, the guarantee declaration must meet certain requirements in terms of its form and content:

- The guarantee declaration must be simple and easy to understand.
- It must contain wording to the effect that the consumer's statutory warranty rights remain unaffected.
- The declaration must describe the scope of the guarantee, any important information required to exercise the rights accorded by the guarantee and the name and address of the guarantee provider.

If one or more of these requirements are not met, the guarantee nonetheless remains valid. Consumers can also request the full guarantee declaration in writing.

Guarantee or warranty?

A manufacturer guarantee does not restrict the statutory warranty rights of the buyer. As a result, sellers may not inform buyers that the manufacturer of the product has taken responsibility for the guarantee and that any claims should therefore be directed to

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them. Even if they are offered an additional guarantee, buyers should always direct their warranty claims to sellers in the event of a defect. They are free to decide whether they wish to exercise their statutory warranty rights with respect to the seller, or whether they want to make a guarantee claim, for example with the manufacturer.

Legal basis

The relevant legal rules on guarantees can be found in Sections 443 to 479 of the German Civil Code.

2. Post-sale responsibilities

A. Possibility of recourse for sellers

Basic principles

If a buyer makes a statutory warranty claim against a seller on account of a defective product, the seller themselves also has a right to make a claim against their suppliers if the defect was already present when the goods were supplied to the seller.

In the case of the sale of new products, the seller can also claim back expenses from the supplier to cover the costs incurred in order to rectify the issue with the buyer (e.g. costs of repair or transport, travel, labour and material costs).

Other claims in the supply chain

The supplier and other buyers in the supply chain can also seek recourse against the sellers they obtained goods from if the latter are traders.

Burden of proof

The burden of proof usually lies with the party who is seeking recourse.

If the most recent contract in the supply chain concerned a consumer goods purchase, the six-month reversal of the burden of proof between the buyer and

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consumer also applies between the seller and the supplier. The start of this six-month period is determined based on the point in time at which the risk is transferred to the consumer.

The relaxation of the burden of proof also applies to the supplier and other parties in the supply chain if the liable party is a trader.

Limitation period

The right of sellers to make a claim against their suppliers usually expires two years after the goods have been delivered. In the case of the sale of newly manufactured goods, however, the right of sellers to make a claim against their suppliers does not expire until two months after the final seller has fulfilled their duties in relation to the buyer's defect rights at the earliest. This suspension of expiry comes to an end no later than five years after the goods have been delivered to the seller.

These limitation periods also apply to claims on the part of the supplier and other parties in the supply chain if the seller against whom the claim is being made is a trader.

Divergent agreements

If the most recent contract in the supply chain concerns the purchase of consumer goods, the rights of recourse between the seller and the supplier cannot be excluded unless the trader making the claim is accorded compensation of equal value.

This also applies to claims made by suppliers and other buyers in the supply chain if the liable party is a trader.

Legal basis

The relevant legal rules on recourse can be found in Sections 445a, 445b and 478 of the German Civil Code.

Erforderliche Unterlagen

Modul	Sachverhalt
Voraussetzungen	
Kosten	
Verfahrensablauf	
Bearbeitungsdauer	
Frist	
weiterführende Informationen	<p>Consumer rights and guarantees</p> <p>Existenzgründungsportal des BMWI</p> <p>BMJV-Verbraucherportal</p> <p>Post-sale responsibilities</p> <p>Existenzgründungsportal des BMWI</p>
Hinweise	
Rechtsbehelf	
Kurztext	
Ansprechpunkt	
Zuständige Stelle	
Formulare	
Ursprungsportal	<p>Defective products: consumer rights and guarantees, after-sale responsibilities, means of redress for an injured party, Fehlerhafte Produkte: Verbraucherrechte und Garantien, Verantwortlichkeiten nach dem Verkauf, Abhilfemöglichkeiten für eine geschädigte Partei</p>