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Consumer rights and guarantees related to buying goods and services, including procedures for consumer dispute resolution and compensation

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Modul	Sachverhalt
Leistungsschlüssel	99154045000000
Leistungsbezeichnung I	Consumer rights and guarantees related to buying goods and services, including procedures for consumer dispute resolution and compensation
Leistungsbezeichnung II	Consumer rights and guarantees related to buying goods and services, including procedures for consumer dispute resolution and compensation
Typisierung	11 - SDG: Allgemeine Rechte und Pflichten
Quellredaktion	Bund
Freigabestatus Katalog	unbestimmter Freigabestatus
Freigabestatus Bibliothek	unbestimmter Freigabestatus
Begriffe im Kontext	

Modul	Sachverhalt
Leistungstyp	Leistungsobjekt
Leistungsgruppierung	SDG allgemeine Rechte und Pflichten (154)
Verrichtungskennung	
SDG-Informationsbereich	Verbraucherrechte und Garantien im Zusammenhang mit dem Kauf von Waren und Dienstleistungen, einschließlich Verfahren für die Beilegung von Verbraucherrechtsstreitigkeiten und die Verbraucherentschädigung
Lagen Portalverbund	Veranstaltungen und Feste (1110100), Fischen und Jagen (1110200), Tierhaltung (1110300), Außergerichtliche Verfahren und Streitschlichtung (1150100), Gerichtliche Verfahren, Anzeige und Klage (1150200), Verbraucherschutz (1150300)
Einheitlicher Ansprechpartner	Nein
Fachlich freigegeben am	04.09.2020
Fachlich freigegeben durch	Federal Ministry of Justice and Consumer Protection
Handlungsgrundlage	
Teaser	
Volltext	<p>Legal guarantee of conformity for goods</p> <p>A. Concept of a legal guarantee</p> <p>Consumers have a right to purchase goods that are free from defects.</p> <p>If purchased goods are found to be faulty, the buyer has a right to redress under the legal guarantee.</p> <p>Any claim under the legal guarantee is made against the seller of the goods, i.e. the party that sold the goods, not against the manufacturer.</p> <p>If a business sells goods to a consumer (known as a consumer sale), the seller can neither limit nor exclude the legal guarantee. The legal obligations are binding.</p>

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B. Definition of faulty goods

Purchased goods are considered to be faulty if they do not match the description or qualities agreed between the buyer and seller. In the absence of any specific agreement between the parties, an item is considered to be faulty if it is not fit for purpose or does not show the quality and performance normal or expected for products of its kind.

C. Timeframe for occurrence of defects

For the buyer to seek redress under the legal guarantee, the defect must have existed at the time of purchase.

The seller is not responsible for defects that occur at a later date, as a result of improper use or wear.

D. Burden of proof

If the buyer wishes to seek redress under the legal guarantee, they must demonstrate, and where applicable prove, that the goods are faulty and that the defect existed at the time of purchase. Since it is often not easy for consumers to identify the cause of a defect, the legislation on consumer sales relaxes the burden of proof, such that any defect which becomes apparent within six months of delivery of the purchased goods is presumed to have existed at the time of delivery. In the event of a dispute, the seller must prove that the goods were free from defects at the time of delivery. Once the six month period has elapsed, the burden of proof reverses and the buyer bears the full burden of proving non-conformity. In this case, they may choose to commission an expert report.

E. Rights of the buyer in the event of defects

If goods are found to be faulty within the required timeframe, the buyer may, in the first instance, request that the item be repaired or replaced with a new product that is free from defects. The seller must bear any costs associated with these remedies, e.g. for

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materials or transportation of the goods.

The buyer should grant the seller a reasonable time period in which to complete any repair work or deliver a new product that is free from defects. If the seller fails to meet their obligations within the agreed period, the buyer may request the purchase price be reduced or withdraw from the contract. Likewise, the buyer has the right to these same remedies should attempts to repair the product prove unsuccessful on two occasions.

F. Limitation period

The legislation does not stipulate a timeframe, within which the buyer must notify the seller of the defect. However, the legal guarantee expires after two years. In the case of second-hand goods, the parties may agree to reduce the limitation period to one year. Given that the burden of proof reverses after six months, it is also in the consumer's interest to act swiftly.

G. Legal basis

The relevant legislation on the legal guarantee with respect to consumers can be found in Sections 434 to 442 and 474 to 477 of the German Civil Code.

Commercial warranty

A. Concept of a commercial warranty

A commercial warranty is distinct from the legal guarantee. A warranty is a separate assurance granted to the buyer by the seller, manufacturer or another third party, which goes beyond the protection offered under the legal guarantee. For instance, a warranty may stipulate that the goods will retain a specific quality or performance level for a defined period (durability warranty).

Unlike the legal guarantee, a warranty is voluntary; it is not a legal requirement. However, it is common for manufacturers and sellers to offer a warranty.

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B. Content of a warranty

The warranty provider can decide: how long the warranty will last; what is covered; and whether the warranty is provided free of charge or for an additional fee. They are not subject to any restrictions when designing their warranty.

C. Declaration of warranty

If a warranty is provided, the declaration of warranty contained in the contract of sale with the consumer must meet the following requirements:

- It must be straightforward and comprehensible.
- It must confirm that consumers rights under the legal guarantee are in no way limited.
- It must set out the terms of the warranty and include all key information needed to make a claim under the warranty, as well as the name and address of the warranty provider.

Even if one of these requirements is not met, the warranty remains in force.

Consumers can request that the declaration of warranty be provided in text format.

D. Commercial warranty vs legal guarantee

It is important for consumers to understand that a manufacturers warranty does not limit their rights under the legal guarantee. For instance, if you purchase a faulty television, the seller cannot insist that since there is a manufacturer's warranty, you should direct your claim to the manufacturer. Regardless of the terms of the warranty, in the event of a defect, the buyer always has a right of redress against the seller under the legal guarantee. The buyer is free to choose whether they wish to assert their rights against the seller under the legal guarantee, or against the manufacturer under the warranty.

E. Legal basis

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The relevant legislation on warranties with respect to consumers can be found in Sections 443 and 479 of the German Civil Code.

Right of withdrawal

In Germany, consumers have no right of withdrawal for off-premises contracts where the service is provided and paid for immediately on conclusion of the negotiations, and the fee owed by the consumer is no more than EUR 40.00.

There is no requirement in Germany to obtain written consent from the consumer in the case of contracts agreed over the phone.

Businesses in Germany can demand payment for off-premises contracts during the 14-day cooling-off period.

Settling consumer disputes (for goods and services)

Disputes between businesses and consumers concerning the purchase of goods or services do not necessarily need to result in court action. Instead, disputes can be resolved through consumer dispute conciliation. The conciliation process enables consumers to resolve disputes quickly, without lawyers or complicated formalities.

In Germany, conciliation is provided by officially approved consumer conciliation bodies, all of which must meet specific requirements to maintain their official status. These include: employing independent conciliators; providing consumers with enough information about the process; and ensuring their proposals at the end of the conciliation process are in line with the relevant legislation, in particular binding consumer protection laws.

There are currently 27 official consumer conciliation bodies in Germany. 24 of these are specialist bodies, meaning they cover disputes relating to particular sectors of the economy or types of business. If a

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dispute does not fall within the scope of a specialist consumer conciliation body, then general consumer conciliation bodies or Germany's national General Conciliation Body can provide assistance.

Consumer conciliation is a voluntary process for both sides and there are usually no fees for consumers. You can apply and complete the process online. If the business in question is also willing to take part in the conciliation process, the conciliation body will gather the necessary information and submit their conciliation proposal, including their reasoning, to the parties within 90 days. The parties then decide whether they are happy to accept the proposal. If the proposal is not accepted by both parties, that marks the end of the process. The parties still have the option to pursue the matter in court and there is no specific deadline for doing this.

Consumer conciliation can also be used to resolve disputes with businesses from other EU member states, Norway, Iceland or Lichtenstein. The European Consumer Centre (ECC) Germany helps direct consumers to the right consumer conciliation body for their needs.

The European Commission has also set up an online dispute resolution (ODR) platform for disputes arising from contracts concluded online between consumers in EU member states and businesses based in the EU. The platform can be used to contact conciliation bodies across Europe or to liaise directly with businesses in order to find a resolution to a dispute. The ODR platform is available in all EU languages as well as Icelandic and Norwegian.

As Germany's national contact point for online dispute resolution, the ECC Germany also provides guidance on using the ODR platform.

Erforderliche Unterlagen

Voraussetzungen

Kosten

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Verfahrensablauf	
Bearbeitungsdauer	
Frist	
weiterführende Informationen	<p>Legal guarantee of conformity for goods</p> <p>BMJV-Verbraucherportal</p> <p>European Consumer Centre Germany</p> <p>Kommerzielle Garantie/Gewährleistung</p> <p>BMJV-Verbraucherportal</p> <p>European Consumer Centre Germany</p> <p>Right of withdrawal</p> <p>BMJV-Verbraucherportal</p> <p>Settling consumer disputes (for goods and services)</p> <p>The legislation on consumer conciliation in Germany is set out in the Act on Alternative Dispute Resolution in Consumer Matters.</p> <p>The German Federal Office of Justice publishes a list of all consumer conciliation bodies.</p> <p>The website of Germanys national General Conciliation Body includes information about applying for conciliation and how the process works.</p>
Hinweise	
Rechtsbehelf	
Kurztext	
Ansprechpunkt	
Zuständige Stelle	
Formulare	

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Ursprungsportal

Verbraucherrechte und Garantien im Zusammenhang mit dem Kauf von Waren und Dienstleistungen, einschließlich Verfahren für die Beilegung von Verbraucherrechtsstreitigkeiten und die Verbraucherentschädigung, Consumer rights and guarantees related to buying goods and services, including procedures for consumer dispute resolution and compensation