

Q & A on Warranties

Q: What is the primary law governing all contracts of sales with conditions and warranties?

A: The provisions of the New Civil Code on conditions and warranties shall govern all contracts of sales with conditions and warranties.

Q: What are the responsibilities of a seller / vendor under the New Civil Code in cases of express warranties?

A: Under Article 1561, a vendor or a seller has the responsibility to ensure that the item he or she sells has no hidden defects.

Q: What kind of defects of the item sold shall make the vendor or seller liable?

A: If the defects should render the item sold totally unfit for the use for which it is intended, the seller or the vendor shall be liable for such defects. For example, a consumer buys a brand new TV set that becomes defective after a week's use. The seller is liable for the defect especially if such defect prevents the consumer from using the TV for the purpose it was intended, that is, for entertainment.

Second, if the defect should diminish or decrease its fitness or its use to the extent that if the buyer was aware of such defect he would not have bought the product or would have demanded a lower price for it. An example is a TV set which was bought as brand new but the buyer later found out that the remote control was not working properly. Although such defect does not totally decrease the TV's use, the buyer would not have bought such product if he had known that the remote control was defective.

Q: What are the instances where a vendor or seller may not be held liable in case of defects?

A: A vendor or seller may not be held liable in cases of patent defects or those which are clearly visible upon inspection, of the product bought. In case the defects are not visible, and the buyer is an expert, who by reason of his trade or profession should have known the defects, then the vendor or seller may not be held liable.

Q: What are the responsibilities of the seller or vendor as to the quality or fitness of the product sold in case there is no express warranty given to him?

A: The seller or vendor is liable to the buyer in an implied warranty, if such buyer make known to the seller expressly or impliedly, the particular purpose for which the goods are acquired. The vendor, by implication, warrants the general fitness or quality of the product sold to the buyer. Second, the seller or vendor is liable to the buyer if such buyer relies on the seller's skill or judgment.

Q: Aside from the provisions of the New Civil Code, what are other laws that may apply in cases of express warranties?

A: In addition to the New Civil Code provisions on sale with warranties, the provisions of Title III, Chapter III of the Consumer Act of the Philippines shall govern the sale of consumer products with warranty.

Q: What are the minimum terms of express warranty under the Consumer Act that shall be given by a seller or manufacturer?

A: The following shall be stated in an express warranty:

- The terms of warranty, written in clear and readily understandable language;
- The warrantor's identity;
- The party's identity to whom the warranty is extended
- The products or parts covered;
- The warrantor's action plan in the event of a defect, malfunction or failure to conform to the written warranty;
- The directive to the consumer to avail of the rights which accrue to the warranty;
- The period within which, after notice of defect, malfunction, or failure to conform to the warranty, the warrantor will perform any obligation under the warranty.

Q: What is the difference between a Full warranty and Limited warranty (express)?

A: There is a **Full warranty** if the warranty conforms to the minimum standards for warranties. To conform with the requirements, the following should be found in a full warranty: **First**, there should be a remedy or relief offered to a consumer within the reasonable time and without charge in case of defect, malfunction, or failure to conform with such written warranty. **Second**, the warranty should give the consumer an option to either ask for a refund or replacement without charge of such product or part, as the case may be, where after reasonable number of attempts to remedy the defect or malfunction, the product continues to have the defect or to malfunction.

A **Limited warranty**, on the other hand, is when the written warranty does not meet the above mentioned minimum requirements.

Q: When shall the retailer be subsidiarily liable under the express warranty?

A: The retailer may be subsidiarily held liable attaches in the following instance:

- In case where both the manufacturer and the distributor failed to honor the warranty the retailer shoulder the expenses and costs necessary to honor the warranty but the retailer is not prevented from pursuing actions against the distributor and manufacturer.

Q: What are the documents to be presented to the seller or vendor in case the consumer opts to have the defective product repaired, replaced, or refunded under an express warranty?

A: The consumer should present a copy of the warranty card or documents and the official receipt of the product sold or bought.

Q: What is the minimal duration or period of an express or implied warranty?

A: The duration of a warranty shall be reckoned with the following circumstances:

- If there is a stipulation of the period agreed between the seller and the consumer within which the express warranty shall be enforceable;
- If the implied warranty on merchantability accompanies an express warranty, both will be of equal duration;
- Any other implied warranty: not less than 60 days nor more than one year following the sale of a new consumer product.

Q: What are the options given to a consumer in case of a breach of an express warranty?

A: **First**, the consumer can have the goods repaired. Warranty work must be made within 30 days. Such period may be extended by conditions beyond the control of the warrantor or his representatives. **Second**, the product or its parts may be replaced. **Third**, the consumer may ask for a refund from the warrantor. The amount directly attributable to the use of consumer prior to the discovery of the non-conformity shall be deducted.

Q: What are the options given to a consumer in case a breach of an implied warranty?

A: The consumer may retain the goods and recover damages, or reject the goods, cancel the contract, and refund the amount paid for the product, including damages.

Q: Are secondhand consumer products covered by a warranty?

A: Generally, there is no implied warranty in the sale of secondhand articles, except when the goods are sold as to raise an implied warranty, i.e. if such buyers makes known to the seller, the particular purpose for which the goods are acquired. Doing so warrants the general fitness or quality of the product sold to the buyer. Second, the seller or vendor is liable to the buyer of the secondhand product if such buyer relies on the seller's skill or judgment.

The seller or vendor is also liable under a warranty in the sale of secondhand products if the seller has given an express written warranty.

Q: What is the jurisdiction of the Department of Trade and Industry (DTI) in the sale of secondhand consumer products?

A: DTI takes jurisdiction of complaints regarding secondhand products if such secondhand / surplus products are sold by persons engaged in the business of

selling products and they have, in effect, power to enforce the warranty provided for such products.

On the other hand, the complaint shall be filed with the appropriate regular courts if the person who sold the secondhand product is not engaged in the business of selling products, commodities, merchandise, and goods.

Q: What is the penalty for violation of this provision?

A: Criminal Penalties:

- A fine of not less than two hundred pesos (P200.00) but not more than five thousand pesos (P5, 000.00) or imprisonment of not less than one (1) month but not more than six (6) months or both, at the discretion of the court.
- A violation for the second time shall also carry with it the penalty of revocation of business permit and license. (Article 95b, Consumer Act)

Administrative Penalties:

- Imposition of administrative fines in such amount as deemed reasonable by the Secretary, which in no case shall be less than five hundred pesos (P500.00) nor more than three hundred thousand pesos (P300, 000.00) depending on the gravity of the offense, and an additional fine of not more than one thousand pesos (P1, 000.00) or each day of continuing violations. (Please refer to Article 164, Consumer Act, for other Administrative Penalties).