

WARRANTIES OR GUARANTEES: GUIDELINES FOR TRADERS

A sound warranty or guarantee policy is a powerful marketing tool as it demonstrates to your customers that your business has faith in the product or service it sells.

Warranties available to consumers

Whether you are a manufacturer, retailer or repairer, you have certain obligations when setting warranty conditions.

Voluntary or 'express' warranties

Voluntary or 'express' warranties are usually written documents provided with goods or services at the point of sale. These are often supplied by the manufacturer of the goods and passed on by the retailer.

Consumers are automatically protected under the Australian Consumer Law and the *Consumer Affairs and Fair Trading Act*, regardless of whether or not the trader or manufacturer chooses to supply a voluntary warranty with the goods or service.

Statutory warranties (also known as 'implied' warranties)

Statutory warranties are not necessarily written down, but are implied and can't be limited in any way. Problems occurring under statutory warranty must be dealt with by the trader. Statutory warranties cover such things as consumer transactions for cash, credit, hire purchase, lease, hire, second-hand or exchange. However, they do not cover items bought under auction, or through a private sale.

Consumer's rights are not affected even if they do not return a manufacturer's guarantee card or notice provided with the goods bought.

Extended warranties

Extended warranties are sometimes provided with cars, television sets, etc., that you would normally expect to last for many years.

Fit for purpose

'Fit for purpose' means the goods must match any description or sample given to the consumer whether face to face, on the labeling or packaging, or in any promotional material.

As a minimum, traders must:

- check products or services are suitable for the purpose for which they are sold;
- ensure products are not faulty;
- ensure products or services perform to an appropriate standard and achieve the requested result;
- make sure samples match the supplied product; and
- as a manufacturer, stand by your warranties and make spare parts available for a reasonable time.

This requirement is a legal obligation, whether or not you decide to provide a written warranty or guarantee.

Remember, you are the expert in your field and the consumer is entitled to expect your advice to be reliable and accurate, and to rely on your skills.

Traders should also be aware that consumers may also be able to claim for any loss or damage (consequential loss) suffered because of faulty goods or services, e.g. a faulty appliance that causes a kitchen fire.

Traders should also take note that if faulty goods have to be returned to the place they were bought, any freight costs incurred to return the goods to the manufacturer should be borne by the seller.

Merchantable quality

Ensure that the goods you supply are not faulty in design or construction, and/or that you have pointed out any defects to the consumer prior to purchase. This requirement applies to both manufacturers and retailers.

You are not liable if:

- The goods become damaged after leaving your control; or
- The defect was brought to the consumer's attention prior to purchase.

To avoid any disputes or misunderstanding, the defect/s should be listed on the receipt given to the consumer at the time of purchase.

Implied conditions

Goods and services performed must last for a reasonable time regardless of the warranty period set by the manufacturer. What is reasonable will depend on the price paid and the type of product.

For example: If a TV that is expected to last five years develops a serious fault after 12 months, the Office of Consumer Affairs' view is that a consumer should be entitled to have the set repaired or replaced. On the other hand, the consumer would probably be more than satisfied with a two-year run from a \$10 watch bought at the markets, but not if it was a \$2,000 exclusive brand watch.

Manufacturer's obligations

When supplying goods that are for personal or household use, manufacturers must be able to back up their warranty or guarantees by ensuring a reasonable supply of spare parts and repair facilities.

In most circumstances, manufacturers or suppliers will remedy problems found in goods supplied to retailers or distributors.

However, if you are a retailer and are unable to obtain satisfaction from the manufacturer, you;

- should refer to the conditions of the contract or supply agreement that you have with the manufacturer; or
- seek legal advice.

Consumers' obligations

Consumers have obligations too. To obtain redress, the consumer must ensure the goods were:

- used in accordance with the manufacturer's instructions;
- not damaged by being used in an abnormal way or by being neglected or abused (eg dropped);
- not disposed of, lost or destroyed; or
- are reduced in value by delaying their return.

Consumers must return the goods or give you details of the problem within a reasonable time after they have had a reasonable chance to inspect or use them.

Service warranties

As a general rule, you must carry out services with due care and skill. The service should achieve the result or the purpose that was agreed upon prior to the work starting. The materials you supply must also be fit for that particular purpose and must be of a quality that reasonably will achieve the result the customer wants.

Limiting traders liability

If a customer returns a faulty item which you sold, you share the liability problem with the manufacturer, but it is ultimately your responsibility to resolve the complaint.

As a supplier, retailer or manufacturer, you cannot limit your liability excluding, modifying or restricting the legal rights and remedies available to consumers for goods that are normally acquired for personal or household use.

Any attempt to alter these legal rights is unlawful and you run the risk of prosecution for making statements that are false or that may mislead consumers about their rights.