Germany

LEGAL GUARANTEE

"Gewährleistung" or "Mängelansprüche" in German

> *Every consumer purchase is covered by a mandatory legal guarantee. No seller can claim otherwise.*

What is the duration of this legal guarantee for new and second-hand goods?

The duration is **2 years** but can be reduced to 1 year for second-hand goods.

If the product is defective, who is responsible for putting things right?

The seller, even for purchases made on an Internet platform. However, the platform may have agreed to act as an intermediary so read the terms and conditions.

By when must the consumer notify the seller of any defects?

There is no deadline other than the legal prescription period of 2 years from delivery of the good.

Who has to prove the presence/absence of a defect and how long do they have to do this?

During the first 6 months the seller must prove that the item was not defective ("reversal of burden of proof"). **After that, the consumer** must prove that it was.

Is there a third party testing body to assist the consumer with providing proof?

The consumer can ask any repair shop for an expert opinion, but their opinion might not be accepted by the seller. In the event of a court procedure, the judge may accept the consumer's expert's opinion or ask for an independent expert opinion.

What remedies is the consumer entitled to free of charge? Is there a deadline for implementing the solution?

There is a so-called hierarchy of remedies. **Firstly, repair or replacement**, according to the consumer's wishes, within a reasonable time frame and free of charge. **Secondly, refund or reduction** of the purchase price if repair or replacement are not possible within a reasonable time frame. What is a reasonable time frame may vary between cases. Therefore, when writing to the trader to ask for application of the legal guarantee, the consumer should fix a deadline for remedy and inform the trader that if this deadline is not met, the consumer will cancel the contract or ask for a reduction in the purchase price.

Is the repaired/replaced product covered by a new guarantee?

The law does not say, but in general, after a replacement, the consumer can claim legal guarantee rights for 2 years. In the case of a repair, the legal guarantee is only extended with regard to the repaired or exchanged parts.

Can the consumer take action against the importer or any intermediary in the supply chain up to and including the producer?

Only if the importer or producer offers their own commercial warranty.

If no amicable solution can be found, what is the deadline for taking the case to court?

The prescription period is **2 years** from delivery of the good (1 year for second-hand products), unless there is a suspension of the statutory limitation period.

Are any other legal guarantees laid down in national law coexisting with the legal conformity guarantee?

No. The consumer may have additional claims according to general contract law or tort law, but in most cases legal guarantee rules take precedence.

COMMERCIAL WARRANTY

> *A trader is free to offer a commercial warranty and to fix the conditions. This does not influence the legal guarantee.*

Who is responsible for application of the warranty?

The party offering the warranty, be it the seller, the producer or a third party guarantor. Always refer to the documentation provided.

What is the average duration of a commercial warranty?

1 to 5 years, and in most cases 2 years, as with the legal guarantee. More expensive goods usually have a longer warranty which often applies to specific parts of the product.

Is it free of charge?

Not necessarily. The trader can fix the conditions, so it can be free of charge or offered against payment.

Does it have to be confirmed in writing?

The seller has to provide the commercial warranty in a written document or in a durable and accessible format.

What information is required?

Content of the warranty, all essential elements such as duration and geographical coverage, details of the company offering it and **a reminder of the legal guarantee.**

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