

STATUTORY LIABILITY FOR LACK OF CONFORMITY AND GUARANTEE IN THE SALE OF CONSUMER GOODS

These guidelines examine the principles underlying statutory liability for lack of conformity and guarantee. The regulations concerning liability for lack of conformity are set forth in Chapter 5 of the Consumer Protection Act and apply if the product has no guarantee or if the guarantee period has expired. There are no time limits prescribed for statutory liability in respect of lack of conformity, however, the period of liability for lack of conformity is determined according to the expected period of durability for the good in question. A guarantee, on the other hand, is an additional benefit given voluntarily by the final seller, producer or importer. A guarantor is liable for ensuring that a product functions during the period specified.

Under the provisions of Chapter 5 of the Finnish Consumer Protection Act, the seller, importer and producer are liable for any lack of conformity in goods. The provisions apply to the sale of consumer goods when the seller is a trader and the buyer a consumer. In this context, consumer refers to a private person purchasing a product essentially for some other use than pursuing his or her trade, business or profession. Second-hand goods bought at an auction at which a buyer can personally take part are subject to the provisions of the Sale of Goods Act.

When do goods lack conformity?

Assessment of lack of conformity is based on the contract between the parties concerned. By law, the sort, quantity, quality and other criteria of the goods must conform to what can be deemed to have been agreed. Goods lack conformity if, for example,

- they are unfit for the normal use for which they are intended
- they are unfit for the particular purpose for which the consumer intends them. This applies if the purpose has been made known to the seller at the time the contract was concluded and he has not told the buyer prior to the contract that the goods are possibly not fit for that purpose.
- the goods fail to comply with the description, sample or model given by the seller
- the goods fail, as regards durability or otherwise, to conform to what the consumer reasonably expects in purchasing goods of the same type
- the goods do not conform to official requirements regarding, for example, product safety
- the buyer is not, at the time the goods are supplied, given the instructions necessary to install, assemble, use, care for or store the goods

The instructions must be in the buyer's native language, either Finnish or Swedish. Instructions in English may be deemed sufficient if the goods in question are intended for a very narrow customer group having special expertise. The instructions must also be in a form that the consumer can use without difficulty. If, for example, the buyer does not have the possibility to use instructions given on a CD, for example, the instructions must be given to the buyer in a written form.

If goods fail to satisfy these criteria, they lack conformity. However, a buyer may not claim a lack of conformity if he or she can be expected to have been aware of the lack of conformity when the goods were bought.

Furthermore, natural wear and tear can also not be regarded as lack of conformity. However, wear and tear must be assessed on the basis of whether the item has met the consumer's expectations in terms of durability.

If wear and tear has appeared before the end of its expected durability, this wear and tear is not normal and the seller is not released from liability for lack of conformity.

The provisions of Chapter 5 of the Consumer Protection Act shall also apply to **goods made to order**. Buyer may not claim lack of conformity if such circumstances have their origin in the materials supplied by the buyer, except if the seller has acted negligently. The seller shall be liable for lack of conformity if he notices or should have noticed that the materials supplied by the buyer were defective, incorrect or unsuitable so as to be unfit for the use for which they were intended. The seller shall be released from liability for lack of conformity if the buyer has accepted the goods despite the lack of conformity of the materials from which the goods are made.

If installation or assembly forms part of the contract, the same lack of conformity provisions also apply **where installation or assembly is performed** by the seller or someone on behalf of the seller. A typical case in this respect might be the purchase of a washing machine, where the contract includes installation by the seller.

Other factors affecting establishment of lack of conformity include **information provided when marketing the goods or otherwise before the contract was concluded**. Goods lack conformity if they fail to comply with the description of the qualities or use given by the final seller, a previous seller in the same chain of supply or some other party on the seller's account. The seller's liability also extends to information given by a person in the seller's employ.

Nevertheless, the seller shall not be held liable for incorrect information if he can show that he was not, and should not have been, aware of the information given. The seller shall also be released from liability if he can show that the information did not influence the sale or that the information was clearly corrected in time.

Determining lack of conformity in unclear situations

It may sometimes be unclear whether the good lacks conformity or whether the non-functioning of an appliance is due to some other reason. Determining the fault is primarily the responsibility of the seller acting as a professional in that field. The buyer cannot be required to provide a very detailed analysis of the cause of the fault, especially if it concerns complex technical equipment, where the instructions for use may be complicated and difficult to understand.

If a guarantee has been given for the goods, for the seller to be released from liability for lack of conformity the seller must show that the deterioration of the goods is most likely due to an accident, the incorrect handling of the goods or some other reason caused by the buyer. The seller can also show that the appliance is fault-free, and that its non-functioning is caused, for example, by the buyer not being able to follow the instructions. Taking into account the seller's burden of proof, the buyer may not, under the terms of the guarantee, be required to pay for any measures to determine a fault, unless the buyer has taken the goods to be repaired with clearly no reason, or if the fault has been caused by the buyer himself, of which he should have been aware.

If a guarantee has not been given, or if the guarantee period has expired, the buyer must prove that the good lacks conformity. If the good is found to be fault-free when the seller is searching for the fault, the buyer may be required in some situations to make a reasonable payment for the work to establish a fault, on the condition that the seller and buyer have agreed on this payment beforehand.

Six-month rebuttable presumption

Lack of conformity of goods is assessed according to what the goods were like when they were delivered to the customer. The seller shall be liable for lack of conformity that existed at the time of delivery even though such lack of conformity does not become apparent until later.

The consumer must prove that the good lacks conformity. If the lack of conformity becomes apparent within six (6) months of delivery of the goods, the lack of conformity shall be presumed to have existed at the time of delivery and is thus the liability of the seller. To release himself from liability, the seller must show that the goods were in conformity when delivered.

The six-month rebuttable presumption shall not apply if the presumption is incompatible with the nature of the goods or the nature of lack of conformity. This might be, for example, when the normal durability of the goods is less than six (6) months or when lack of conformity is attributable to an accident or to the incorrect handling of the goods. This also applies when the case is one of normal wear and tear, not lack of conformity.

Assessment of the normal durability of goods takes into account the provision under which the durability of goods should comply with what a consumer can generally have reason to expect of sale of goods of the same type. In respect of durability, establishment of lack of conformity is based on a general standard and not on the expectations of individual consumers. Quality differences in goods are often reflected in price levels. This is why price must also be taken into account when assessing lack of conformity.

In principle, the six-month rebuttable presumption applies to the sale of all consumer goods, with some exceptions such as food. Clothing and shoes are also covered by the six-month rebuttable presumption, as is the sale of pets and hobby animals such as dogs. In unclear situations, a separate assessment must be made for each goods as to whether the normal durability is less than six (6) months or whether the case is normal wear and tear rather than one of lack of conformity.

Second-hand goods

The six-month rebuttable presumption shall also apply to second-hand goods. There are often faults in second-hand goods, due to the use of the goods and normal wear and tear. Second-hand goods are therefore not comparable with new goods. Therefore, before applying the rebuttable presumption it should be decided whether, for example, a fault that has appeared in the car renders that car faulty as referred to by the law.

The contract between the parties forms the basis for assessing lack of conformity. However, in the sale of second-hand goods it is not generally agreed in detail as to what the properties of the good should be. In this case the existence of a lack of conformity is assessed in accordance with the provisions of the Consumer Protection Act, Chapter 5, Paragraph 14. The provision concerns goods that are sold “as is”. According to the provisions the goods lack conformity if:

- they do not comply with the information held out by the seller about their qualities or use before the contract was concluded and such information influenced the contract.
- the seller, before the contract, has neglected his responsibility to provide the buyer with information about the qualities of the goods, or an important factor about the use of the goods of which he must have been aware and which the buyer can justifiably expect to be told of. This applies in cases where failure to provide information has influenced the decision to buy.
- the goods are in worse condition than the buyer could justifiably expect given the price of the goods and other circumstances.

The buyer must prove the existence of a lack of conformity, i.e. that the good does not comply with what was agreed or with what the buyer can reasonably expect. If the good is shown to have a lack of conformity and the defect has appeared within six months of the delivery of the good, the buyer does not need to show that the good was already defective at the time of delivery.

Whether the seller has provided the buyer with information about the qualities of the goods or about important factors concerning use of the goods can also influence assessment of lack of conformity. Any lack of conformity and defects can also be included in the contract of sale. The buyer cannot claim lack of conformity if he has received information about it before the contract was concluded. The seller may not make a general list of provisos but must itemise all the defects of which he is aware.

Validity of liability for lack of conformity

The buyer may, after expiry of the six-month rebuttable presumption and the guarantee period, claim lack of conformity if the goods, in normal use, do not last as long as the buyer can justifiably expect by normal standards. The defect that has appeared must, however, be a lack of conformity as referred to in the Consumer Protection Act.

However, the seller shall not be held liable in cases where the goods have broken after an unusually short period of use where they have been subjected to greater stress than that which the good can justifiably be expected to withstand.

The burden of proof rests with the seller if the goods break during the six-month rebuttable presumption or during the duration of the guarantee.

Under Directive 1999/44/EC on certain aspects of the sale of consumer goods and associated guarantees, the seller shall be held liable where lack of conformity becomes apparent within two years as from delivery of the goods. However, this two-year deadline has not been incorporated into Finnish legislation. This is because the government bill applying to the relevant legislation reasons that latent lack of conformity of durable consumer goods may become apparent also much later. According to the preamble of the Act, it is reasonable that the seller be held liable for lack of conformity having its origin in the manufacture of, for example, a vehicle, building materials or household appliance, even though the lack of conformity appears more than two years after the delivery of the good. In practice the longer the time that has elapsed since the good was purchased, the more difficult it becomes for the buyer to prove that a lack of conformity is the liability of the seller.

Notification of lack of conformity

The buyer shall notify the seller of any lack of conformity within reasonable time of having detected such lack of conformity or within reasonable time of when he should have detected it. Notification of lack of conformity may always be made **within two months** of when the buyer actually detected the lack of conformity. Notification may be lodged not only with the final seller, but also with the intermediary trader and a previous seller in the same chain of contracts. If the goods have been given a guarantee, notification may also be lodged with the guarantor. The buyer can choose whom he decides to notify of the lack of conformity.

Because the rectification of a lack of conformity may not incur costs to the buyer, the making of a notification must be free of charge. The trader may not therefore use a premium telephone number for receiving notifications of lack of conformity.

Notification of lack of conformity may always be made within two months of the buyer having detected the lack of conformity. This means that the buyer is also entitled to rely on the six-month rebuttable presumption even after the expiry of the six-month deadline. This is subject to the provision that the buyer has detected the lack of conformity within the six-month period and lodges a notification of lack of conformity within two months of having detected the lack of conformity. This also applies to goods under guarantee: the buyer may rely on the guarantee even after it has expired if he has detected the lack of conformity during the guarantee period and reports the lack of conformity within two months of having detected it.

The seller cannot demand that the buyer should have retained the receipt if he wants to complain about the lack of conformity of goods. Presentation of a receipt makes it easier to deal with the matter, but some other proof of the place and time of purchase will suffice. For example, a bankcard voucher, a bank statement or the retailer's sticker on the package are adequate proof. To be on the safe side with regard to problem situations, several guarantors also themselves maintain a register of current guarantees.

The buyer does not forfeit his rights in every case even if notification of the lack of conformity was made within reasonable time and after the two-month deadline. The buyer may always claim lack of conformity if the seller has shown gross negligence or acted dishonourably and unworthily by, for example, concealing from the buyer a lack of conformity of which he is aware. This also applies if the goods are in breach of the Product Safety Act or otherwise dangerous because of lack conformity.

CONSEQUENCES OF LACK OF CONFORMITY

1. Withholding the selling price

In the event of lack of conformity, the buyer is entitled to withhold payment. The amount withheld must correspond to the lack of conformity, in other words it must be in reasonable proportion to the nature and significance of the lack of conformity.

2. Remedy of lack of conformity: repair or replacement

In the first place, the buyer may require the seller to bring the goods into conformity by repair or replacement. The seller is entitled to repair the defect before replacing the product if the repair can be done within a reasonable time and without any significant inconvenience to the buyer, and without the value of the product decreasing.

The buyer must be reimbursed for any costs incurred by the repair or replacement. If, for example, the buyer has, at his own expense, delivered the defective goods to the seller, the seller should indemnify the buyer for the costs incurred. Assessment of a reasonable time for remedy and the inconvenience to the buyer takes into account the nature of the goods and the purpose for which the buyer required the goods. For example, in a family with children, just a few days might be considered a reasonable time to repair a washing machine, whereas the time allowed to repair a coffee table might be considerably longer.

Nevertheless, the seller shall not be bound to remedy a lack of conformity if this is impossible or if he incurs unreasonable costs as a result. Assessment of whether costs are unreasonable especially takes into account the extent of lack of conformity and the value the goods would have if they were as stated in the contract. Additionally, it is considered whether an alternative remedy is available that could be completed without significant inconvenience to the buyer.

Even though the buyer does not require the goods to be brought into conformity by repair or replacement, the seller may, at his own expense, provide such a remedy. In this case the seller immediately offers to remedy the lack of conformity once the buyer has notified of it. By bringing the goods into conformity by repair or replacement, the seller may avoid rescission of the contract or making a reduction in the price.

The buyer may refuse to have the goods repaired if this would significantly inconvenience him or reduce the value of the goods. There may also be a particular reason, such as the fact that repair is likely to be unsuccessful, for refusing to have the goods repaired.

If the buyer has a justified reason he need not always wait to see how the seller remedies the lack of conformity. Circumstances may force the buyer of a car, for example, to have a lack of conformity appearing in a vehicle repaired in the middle of a journey. In such cases, the seller cannot refer to the fact that the buyer did not complain about the lack of conformity and that the seller was not given a chance to repair it. However, the seller may arrange for a telephone duty service for such situations and require that the buyer telephones this service number first for instructions on an appropriate method of repair.

3. Reduction in price and rescission of contract

If bringing the goods into conformity by repair or replacement is out of the question, the buyer may, except in the case of minor lack of conformity, require **a corresponding reduction to be made in the price or a rescission of the contract**. This also applies if the goods cannot be brought into conformity by repair or if replacement is not completed within a reasonable time and without significant inconvenience to the buyer.

In the purchase of standard goods, the buyer is not generally obliged to give the seller the opportunity for more than one repair attempt. If the good is valuable or has a complex structure, the seller must, however, be allowed the opportunity for several repair attempts.

Assessment of the insignificance of a lack of conformity shall take into account the overall significance to the buyer. Lack of conformity may be deemed insignificant if, for example, it is simply and quickly repairable. Under the preamble of the law, various surface defects, for example, may be insignificant by nature and thus their significance to the buyer may be minor taking into account the whole.

4. Compensation

The buyer shall be entitled to compensation for loss suffered as a result of lack of conformity. Typical losses that may be imposed on the buyer because of lack of conformity include various settlement expenses such as the cost of journeys, postage and telephone calls. Expenses also include the costs of bringing the goods into conformity if the seller does not repair the defect. If the buyer has to hire a similar product for the period the good is being brought into conformity, the seller may also have to indemnify these costs.

If the lack of conformity or loss is owing to negligence on behalf of the seller, the seller shall be obliged to compensate the buyer not only for the direct loss but also for any indirect loss incurred. Indirect loss includes, for example, the loss of earnings suffered by the buyer whilst settling the lack of conformity.

It is also indirect loss if the consumer is significantly disadvantaged as a result of not being able to use the product, or suffers a similar actual disadvantage. In such cases the consumer is entitled to compensation, even though he may not have any direct financial loss. No compensation is payable, however, for any insignificant inconvenience.

5. Product damage

Product damage refers to situations where a fault in the product has caused damage to property other than the product sold. A fault in a washing machine, for example, may harm the clothes being washed.

The producer or importer of a product is liable under the Product Liability Act, for any damage caused by the product to a person or to private property. Under the Product Liability Act the minimum compensation is EUR 395.

Under the Consumer Protection Act the seller is liable for damaged property when the damage involves property that has a direct link to the use of the good sold. This may be, for example, software acquired for a consumer's mobile phone or computer, which is destroyed as a result of a defect in the equipment. There is no lower limit for the compensation.

A consumer's right to receive compensation is also influenced by the principle concerning compensation for damages in general, according to which the consumer must attempt, through his or her own prudent action, to limit any damage that may occur.

Product liability of a previous seller in the chain of supply

The buyer is entitled to direct his or her demand concerning lack of conformity not only to the seller, but also to the producer, importer or other trader at an earlier stage in the supply chain.

The product liability at an earlier stage in the supply chain follows the same principles as for the seller's liability, but not as extensively in all parts. The producer and importer are not liable for lack of conformity arising from a reason that is not to do with them, after they have sent the good to the next stage in the supply chain. The second limitation concerns situations where the buyer demands a price reduction or return of the purchase price because of the product's lack of conformity. The producer and importer are not obligated to refund the buyer more than the party at the next stage in the supply chain could demand on the same basis.

A price reduction is calculated on the basis of what the manufacturer or importer received when supplying the good further on, not on the basis of what the buyer paid.

If the consumer wishes to present his or her claim to a trader at an earlier stage in the supply chain, he or she must also notify this trader directly about the lack of conformity. The buyer does not, however, need to make a new notification of lack of conformity if he or she has made a complaint to the seller and the notification of lack of conformity is conveyed from the seller to the trader at an earlier stage in the supply chain.

The buyer should make the notification of lack of conformity to the trader at an earlier stage in the supply chain within a reasonable period of time after he or she detected the lack of conformity, or should have detected it. However, a notification of lack of conformity can always be made within a period of two months from when the buyer detected the defect. The same period of time also applies when the buyer has made a notification of lack of conformity to the seller, and the trader at previous stage in the supply chain has received information about the notification of lack of conformity from the seller.

A GUARANTEE IS AN ADDITIONAL VOLUNTARY COMMITMENT

In the sale of consumer goods, the seller or, for example, the manufacturer or importer, may provide a **guarantee**. A guarantee is a commitment in respect of the usability or other qualities of the goods for a fixed period. The guarantor shall be liable for lack of conformity that becomes apparent during the validity of the guarantee and for other matters specified in the guarantee. If the goods deteriorate in a manner referred to in the guarantee period then a lack of conformity exists and the buyer can make a claim under the guarantee.

The liability of the seller for any lack of conformity becoming apparent in the goods during the guarantee period is irrespective of whether the primary reason for the lack of conformity existed when the goods were delivered to the buyer. The buyer does not need to prove a lack of conformity already existed in the goods when they were bought.

To release himself from liability, the seller must show that the likely reason for the defect in or other deterioration of the goods is attributable to a reason on the part of the buyer. The burden of proof is thus on the seller.

If the seller wishes to cite the normal wear and tear of the good when assessing the lack of conformity, the presumed useful life of the good must be taken into account: the durability of the goods must conform to what a consumer can justifiably expect of goods of the same type. To release himself from liability, the guarantor must show that the matter concerns a wearing part for which a longer useful life cannot be expected, or that it is attributable to a reason on the part of the buyer, or an external reason.

Correcting the lack of conformity

The seller should remedy the lack of conformity in compliance with the principles defined by law if the terms of the guarantee are less advantageous to the buyer than those provided by law.

For example, from the buyer's point of view a more advantageous term may be that the guarantee includes a promise to refund the buyer's money in the event of even a minor lack of conformity.

In the first place, the remedy shall be made by repairing or replacing the good within a reasonable time. A remedy shall not impose costs or significant inconvenience on the buyer.

The guarantor is obligated to compensate the buyer for direct loss ensuing from a lack of conformity in the same way as the seller. The guarantor is only obligated to pay compensation for indirect loss if the lack of conformity or the damage is due to negligence attributable to it, or if at the conclusion of the contract the goods differed from an express representation made by the seller. The term “express representation” does not refer to the ordinary guarantee given for the functionality of goods. It refers to a guarantee expressly given by the guarantor that the goods have a certain property or that the guarantor has otherwise in its advertising specifically emphasized a particular property of the goods. However, if it subsequently proves that the good does not correspond to that which was specifically promised, the buyer is also entitled to receive compensation for any indirect loss incurred (Supreme Court 2004:123)

Relation of a guarantee to statutory liability for lack of conformity

Guarantees are issued voluntarily. The buyer may not demand a guarantee. If no guarantee is given, the seller is liable for lack of conformity on the basis of relevant legislation. Notwithstanding a guarantee, the buyer has statutory rights that remain unaffected by the terms and conditions of a guarantee.

Expiry of the guarantee period shall not mean that liability for lack of conformity of the goods ends at the same time. For example, the seller is liable for a manufacturing fault originating in a household appliance or car even though such a fault does not become apparent until after expiry of the guarantee period. Not only the seller, but also the manufacturer and importer are also liable under the law for lack of conformity of goods.

A guarantee should be an additional benefit to the buyer, in other words it should afford him better rights than those provided by law.

The preamble to the Consumer Protection Act states that the word “guarantee” gives rise to particular expectations in consumers as to the quality of goods and the legal protection afforded in association with purchase. Several rulings by the Market Court state that the word “guarantee” may not be used in marketing if the guarantee promised fails to provide consumers with a benefit that they would not directly be afforded under the law (e.g. Market Court rulings 1999:17, 1997:8, 1995:14 and 1989:10).

The duration of the guarantee also affects whether the guarantee provides the buyer with an additional advantage compared to the law. The seller is liable for lack of conformity for the first six months from the time of purchase under the provisions of the law concerning the six-month rebuttable presumption. The buyer must, however prove the existence of a lack of conformity.

If a guarantee has been given for the goods, the burden of proof of lack of conformity is with the guarantor. This concerns the six-month rebuttable period and the time thereafter. To be released from liability the guarantor must prove that the deterioration of the goods is most likely caused by accident, mishandling or to some other reason on the part of the buyer. This is an additional benefit to the consumer compared with the provisions afforded under the law.

When specifying the guarantee period it must also, however, be taken into account that the useful life of the goods must meet the buyer’s justifiable expectations. The guarantee should be valid for as long as it and the obligation of proof of the guarantor give the buyer an actual additional benefit (see Market Court ruling 2003:171).

Long guarantee periods

For some products the normal useful life may be very long, in which case a longer than usual guarantee period could also be called for. Some building products, such as roofing materials and various tools, have long-term guarantees of this kind, with periods of validity ranging from 15 to 30 years.

As far as long-term guarantees are concerned, there is a risk for the consumer that the guarantee is simply a promise made in the advertising, without the consumer, in practice, being able to take advantage of a guarantee that was given tens of years earlier. A long guarantee period places specific requirements on the guarantor, as far as being able to prove the validity of the guarantee even after a long time. In cases where a consumer has lost the guarantee certificate he received, the guarantor must keep information on file about the guarantees given during their whole validity. The guarantor must even otherwise be able to demonstrate that he has an efficient system for dealing with claims under the guarantee.

With long-term guarantees there is also the uncertainty about whether the guarantor's business will still be in existence after some decades have elapsed. The credibility of a long-term guarantee is enhanced if the guarantor has been engaged in business for a long time and has an established position within the business sector concerned.

The use of long guarantee periods in advertising is evaluated under the rules of the Consumer Protection Act on misleading and inappropriate marketing. In this case attention is paid to such points as proving the validity of the guarantee and the efficiency of the guarantee system. So-called "eternal" or "lifetime" guarantees are mainly regarded as marketing ploys and not as actual guarantee commitments. The advertising of guarantees of this kind is not generally in compliance with the Consumer Protection Act.

Repair under guarantee is free of charge to the buyer

According to law, the seller shall repair the lack of conformity so that no costs are imposed on the buyer. This also applies to repairs made under guarantee: the guarantor shall be responsible for all costs arising from repair of goods lacking conformity. Costs include the cost of collecting and returning the goods for repair, the spare parts used and the repairer's work and travel expenses.

The buyer may bring small, easily movable goods such as watches and cameras to be repaired. Also then, the buyer should receive compensation for travel expenses. The terms of the guarantee may include instructions as to what the buyer should do in the event of a lack of conformity becoming apparent so that the goods can be expediently repaired and save costs. The costs incurred from travel on public transport, for example, could be compensated if the buyer is able to use public transport. The terms of the guarantee could also mention where the goods are repaired if the seller does not repair them himself. The buyer can, however, also take the goods to the seller, if taking the goods elsewhere would be difficult for the buyer. This is based on the principle that in matters concerning lack of conformity or guarantees the buyer is always also entitled to deal with the seller.

The repair must be made within a reasonable time and without significant inconvenience to the buyer. This also applies when the goods are sent abroad to be repaired. The seller and guarantor must ensure that also in this case that the repair is carried out expediently and that it is otherwise easy for the buyer to deal with guarantee issues

Information to be provided about the guarantee

A guarantee shall be given in writing or in electronic format so that the information cannot be unilaterally altered and remains accessible to the buyer.

By law, the guarantee must clearly state:

- the guarantee content and the fact that the buyer has statutory rights and that the guarantee does not affect those rights,
- the name of the guarantor, the validity and territorial scope of the guarantee as well as the essential particulars required to make a claim under the guarantee. Such particulars may, for example, concern notification of the lack of conformity and presentation of the guarantee certificate.

A buyer is entitled to rely on the guarantee, even though it might not fulfil the requirements mentioned above. This applies, for example, to situations where the buyer only receives from the seller a receipt, on which the guarantee period is stated. In this case the guarantee is valid in the manner required under the product liability provisions, without any limitations concerning the content of the guarantee.

If the purchase receipt is made of thermal paper, the text of the receipt and the information about the guarantee may disappear before the guarantee period has expired. A seller cannot, in practice, reject a warranty claim simply because the receipt is no longer readable, for example if the seller has left the matter only up to the thermal paper receipt given to the customer and the firm's EDP system does not have any record of the buyer and the guarantee. In this case the seller must present some other reliable proof that the guarantee is no longer valid.

Guarantee restrictions

The guarantee shall be valid as widely as the guarantee terms and conditions specify. The guarantee may exclude any lack of conformity attributable to the buyer. This includes failure to follow the instructions for use or care, other incorrect or careless handling of the goods or even an accident taking place after delivery.

However, such costs for which the seller is liable under its legal liability for lack of conformity (e.g. transport and delivery costs for the goods) may not be excluded from the contract.

The guarantee may have exclusions in accordance with the peculiar properties of the goods. The scope of the guarantee may exclude some rapidly wearing parts, for example. If the scope of the guarantee is extremely narrow however, the commitment might not fulfil the nature of a guarantee.

This should also be taken into account in guarantee headings. If the terms of the guarantee exclude most of the components, it can no longer be called a guarantee for equipment but a guarantee for the engine or transmission, for example. The general legal provisions for liability for lack of conformity shall apply to components excluded by the guarantee. A guarantee may not exclude the buyer's statutory rights.

A guarantee is product-specific

A guarantee is given for a product and remains valid even if the product changes ownership. A guarantee is thus not restricted to the first owner of the goods, the guarantor is liable for commitment throughout the duration of the guarantee irrespective of ownership of the goods. However, the purpose of the goods may not significantly change, for instance, from private to professional use. The guarantor may also require written notification of any change of ownership.

Guarantee provided by a producer or importer

The guarantor may be the seller, manufacturer or importer of the goods. The manufacturer and importer are liable for any lack of conformity under the guarantee in exactly the same way as the seller is.

The final seller is liable for a guarantee provided by a previous seller, such as a producer or importer in the chain of supply in exactly the same way as he is held liable for his own guarantee. The final seller may only

disengage from any guarantee provided by a previous seller in the chain of supply by expressly notifying the buyer in clear terms before conclusion of the contract. If the seller has failed to do this, the buyer may choose to which seller in the chain of supply he lodges his claim under the guarantee.

Warranties for goods purchased in other EU Member States and imported in parallel

In their rulings and decisions in the sphere of competition right, the European Court of Justice and European Commission have imposed certain requirements concerning warranties on manufacturers of goods and their licensed distributors in various Member States. These cases have been about warranty services for goods when a device has been imported by a party other than a trader or the manufacturer's licensed distributor (so-called parallel imports).

A warranty granted by a manufacturer in one EU Member State must also be valid on the same conditions in other Member States. A situation where warranty is refused on the basis that the goods were purchased in another Member State, bought in an on-line shop operating in another Member State or imported in parallel to Finland without using the official importer could be in breach of the competition legislation.

In practice this means that when a manufacturer gives a warranty for their products, they may not exclude products imported in parallel from this warranty. The manufacturer should for example arrange for the importer with exclusive rights in Finland to meet warranty obligations, even if the product had been bought from a business engaged in parallel imports into Finland or purchased in another Member State.

The obligation to carry out warranty repairs of products imported to Finland in parallel only applies to the extent that such repairs would be performed on products delivered through an importer in a contractual relation with the manufacturer. Consequently, if a 3-year warranty is given by the Finnish importer, the party carrying out warranty repairs has no obligation to comply with a more extensive warranty applied in another Member State, for example a 5-year warranty given by a local importer.

A situation where the manufacturer's distribution system is completely selective but a batch of goods has regardless of this slipped outside the distribution system would be an exception to the rule concerning the importer's responsibility discussed above. A manufacturer relying on a selective distribution system only delivers their goods to resellers meeting certain criteria. The importer is not responsible for warranties for goods outside this system.

We should note that the competition rules do not entail **a direct right for the consumer to obtain a warranty service from a Finnish importer**. No provision is laid down in the Consumer Protection Act on the importer's responsibility in cases where the goods have been purchased in another EU Member State or imported to Finland in parallel without the licensed importer. The statutory product liability applies to the Finnish seller of goods imported in parallel, however, and the seller is additionally liable for warranties given by preceding links in the sales chain, such as the manufacturer, unless the seller has withdrawn the warranty by informing the buyer of this before concluding the deal.

Chargeable service and repair agreements

Repair under guarantee may not impose costs on the buyer. This means that the guarantee may not include any excess or other charges to be borne by the buyer. The Market Court has prohibited the use of a contractual clause containing an excess used to limit the guarantee, and such terms of the guarantee under which the consumer has to pay an excess for service or repair (Rulings: 1983:2, 1983:12 and 2000:7).

The law in itself does not prevent the provision of a chargeable service and repair agreement as such in connection with the sale of consumer goods. Nevertheless, such agreements must differ in content from agree-

ments classified as guarantees. An agreement may not commit a consumer to payment for repair of a lack of conformity that would otherwise be repairable by law. It is possible to agree to service or repair a lack of conformity that is not covered by law. This might be the case, for example, in a breakdown caused by normal wear and tear or a fault caused by an outside factor. Chargeable service may include cleaning, adjustment, replacement of rapidly wearing parts, for instance, and other measures that would not be repaired under the lack of conformity regulations of the Consumer Protection Act.

GENERAL GUARANTEE TERMS AND CONDITIONS

The guarantor may use these model terms and conditions by specifying the goods for which the guarantee is given and by completing the name and address of the guarantor and the duration and territorial scope of the guarantee. These model terms and conditions include, for example, the compulsory information that must be shown in a guarantee under Section 15b of the Consumer Protection Act.

1. Guarantor

Guarantor's name and address and other contact details in case of claim.

2. Duration and territorial scope of guarantee

This guarantee is given in respect of (specification of goods, any restrictions applying the guarantee content)
Territorial scope of guarantee: _____ (if the guarantee is only valid, for example, in EU countries)

3. Duration of guarantee

This guarantee is valid for _____ years from the date of purchase/delivery of the goods

4. Guarantee content

The guarantor is liable for ensuring that the usability and quality of the goods remain normal throughout the duration of the guarantee. Otherwise the goods lack conformity. For example, production and structural defects and other defects and shortcomings that become apparent during the duration of the guarantee and weaken the usability of the goods are deemed as a lack of conformity.

However, the guarantor shall not be liable for a lack of conformity if the guarantor can show that the deviation in quality or usability is due to a reason on the part of the buyer. This includes accident, failure to follow the instructions for use or care or other incorrect or careless handling of the goods.

5. What to do in the event of lack of conformity

The buyer shall notify the guarantor of any lack of conformity within reasonable time of having detected such lack of conformity or within reasonable time of when he should have detected it. However, notification of lack of conformity may always be made within two months of the buyer actually detecting the lack of conformity.

When notifying of lack of conformity, the buyer shall present the guarantee certificate, receipt of purchase or some other reliable proof of where and when the goods was purchased. Such proof is not necessary, however, if the purchase place and time are evident in records kept by the seller or guarantor.

6. Obligation of the guarantor to bring the goods into conformity by repair or replacement

The guarantor shall bring the goods into conformity by repair or replacement within reasonable time of the buyer having notified of the lack of conformity. Remedying lack of conformity shall not impose costs or significant inconvenience on the buyer. (The guarantor may give the buyer instructions as to what he should do in the case of a lack of conformity becoming evident, so that, for example, delivering the goods for repair would be done in a way that is appropriate and would save costs).

Any assessment of reasonable repair or replacement time shall take into account the properties of the goods and the nature of the lack of conformity, the buyer's need to be able to use the goods and whether the guarantor has provided the buyer with a replacement during the duration of repair.

7. Failure to comply with the obligation to repair or replace goods

If bringing the goods into conformity by repair or replacement is out of the question, the buyer may require an appropriate reduction to be made in the price or a rescission of the contract, except if the lack of conformity is minor. This also applies if the guarantor does not bring the goods into conformity by repair or replacement within a reasonable time and without significant inconvenience to the buyer.

8. Compensation

The buyer shall be entitled to compensation for loss suffered because of lack of conformity. Compensation is payable for direct losses caused by the lack of conformity such as travel, telephone and postage costs etc. The guarantor is obliged to pay compensation for indirect losses only if the lack of conformity or damage is due to negligence on its part, or if the goods at the moment of contract differ from that to which the guarantor has expressly committed.

9. A guarantee does not affect statutory rights

The buyer has statutory rights under Chapter 5 of the Consumer Protection Act that are not affected by the guarantee. The buyer may rely on the statutory liability of the final seller and previous seller in the chain of supply for lack of conformity when, for example, the terms and conditions of the guarantee exclude the lack of conformity in question or if the lack of conformity is not detected until after the guarantee has expired.

If a lack of conformity becomes apparent within six (6) months of the delivery of goods, the lack of conformity is presumed to have existed at the time of delivery. Liability for lack of conformity rests with the seller if he is unable to prove that the goods were in conformity at the time of delivery or if, for example, the question is not one of normal wear and tear, accident or mishandling.

10. Settlement of disputes

In the buyer's notification of lack of conformity does not lead to a resolution of the dispute, the consumer can contact the Consumer Advisor in his own municipality, who can clarify and reach a settlement in the matter on behalf of the consumer.

A consumer as defined under the Consumer Protection Act is entitled to bring any dispute concerning any lack of conformity or guarantee terms and conditions to the Consumer Complaint Board for consideration. If a dispute is taken to a court of law, it shall be considered by the district court of the consumer's place of residence.