



Warranties and Guarantees¹

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Suppose you bought a new boat and found that it would not float, or a new washing machine and discovered it would not wash clothes. If neither carried a written warranty or guarantee, what would you do?

Even though the boat and washing machine had no written warranty, they are covered by an implied warranty. The store is legally obligated to do one of three things -- repair the defective merchandise, replace it or refund your money.

A warranty and a guarantee are the same thing. However, "warranty" is the preferred term. A warranty is a promise of quality given by the seller or manufacturer of a product to the buyer at the time of the sale.

Often sellers and buyers view warranties differently. Many consumers accept the term "warranty" without thinking about it. They assume that it is an assurance of quality. They do not focus on the coverage until there is a problem with the purchase.

Some sellers see warranties as a promotional device or as a way to limit their responsibilities. Others see warranties as a way to assure their customers of quality and avoid misunderstandings.

Historically, the warranty evolved as a part of the bargaining process between buyer and seller. In recent years the obligations of the seller have been precisely spelled out in the Uniform Commercial Code and through the Magnuson-Moss Warranty Act. The Uniform Commercial Code recognizes two basic types of warranties -- implied and express. The Magnuson-Moss Warranty Act spells out conditions involved in the written or express warranty.

The Implied Warranty

Implied warranties are promises that are legally in effect even though they are not in written form. Any ethical and responsible manufacturer or retailer will honor them. Implied warranties include the following provisions:

- **Clear title.** A promise that the item is not stolen or illegal. If the seller does not have a clear title to sell the item it can be taken from you and returned to the rightful owner. You then have the right to demand that your money be

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refunded to you by the person or business who sold you the item.

- **Suitability, or fitness for purpose.** This implied guarantee assures the buyer that the product will do what it is supposed to do. For example, if you tell the seller you want a machine that will sew fabric, or a pair of scissors that will cut fabric, then you can get your money back if the scissors will only cut paper or the machine will only sew leather.
- **Merchantability.** This promise means the product must live up to reasonable expectations of its performance. For example, a boat must float and a television must produce a good clear picture and sound.

Implied warranties are legally valid. If they are not met, the merchant or manufacturer usually will either refund your money or exchange the merchandise. They are most often honored on recently purchased new items. They do not provide much recourse over a longer period of time because it is legally difficult to determine what is a "reasonable expectation" over a "reasonable period of time."

The Express Warranty

Express warranties are written warranties. Until the Magnuson-Moss Warranty Act was passed in July 1975, it was not always easy to know exactly what the terms of a warranty really meant. This law does not require a company to give a written warranty. It was designed to simplify and organize the rights guaranteed in any written warranty so that it could be easily and clearly understood by the consumer. Some parts of the Act became effective in 1976 and other parts in 1977.

Written warranties must now be in one of two forms, "full" or "limited." They must be clearly labeled as such.

- **Full warranties.** As the name implies, it means the entire product is covered by the warranty including both labor and parts, for a specific period of time. If the product is defective during the warranty period, the seller or manufacturer may either repair or replace the item. Or he may give a cash refund. It is up to the manufacturer to

decide which will be done. If a "reasonable" number of attempts fails to repair the problem, the product must be replaced with a new one. If the manufacturer or seller chooses to refund the purchase price rather than make repairs, a small reasonable deduction from the total purchase price can be made to pay for use of the product, if you have used it over a period of time.

- **Limited warranties** have restrictions that full warranties do not have. A limited warranty must tell you specifically what is covered and, if needed for clarity, what is not. For example, a warranty for parts may say "for a period of one year we will replace any parts that prove to be defective, but you, the buyer, will pay the cost of the labor needed to install these parts."

Information in an Express Warranty

The express warranty must be written in simple language and disclose all terms. The Federal Trade Commission (FTC) has issued disclosure rules which apply to all written warranties for consumer products that cost more than \$25. These include:

- A clear description of what is covered and, when necessary for clarification, what is not covered by the warranty.
- What the warrantor will do if the product is defective or malfunctions, including a description of the items or services to be paid for by the warrantor and, if necessary for clarification, what will not be paid.
- To whom the warranty is extended. For example, is it extended to the original owner only or does it extend to second owners of the product?
- How long the warranty is in effect and when it becomes effective.
- A detailed explanation of steps to be followed to get repair or replacement of the product under warranty. This must include: the name of the warrantor and the address; the name, title and address of the department responsible for warranties; and where consumers can get warranty information free. No unrealistic restrictions can be made. For example, the

warrantor may not require the return of a piano to the manufacturer for repairs.

- Information about any settlement mechanism to resolve warranty complaints.

Disclaiming implied warranties is prohibited. Warranties may be limited in duration but not disclaimed.

Pre-Sale Warranty Information

A shopper must be given the opportunity to see the warranty before buying the product. This is important because the warranty should be a major consideration in product selection.

A retailer can use any one of several methods to make the warranty information available for a shopper to see. A copy of the warranty can be on display. A sign can be used to tell shoppers that they can see the warranty upon request. Or, the warranty can be attached to or printed on the item's carton or box.

The Magnuson-Moss Warranty Act also applies to mail orders, catalogs and door-to-door sales. In a catalog or other mail order advertising, the text of the warranty should be placed next to the description of a product or a statement included that a copy of the warranty is available upon request. Door-to-door salespersons must tell their prospective customers that copies of the warranties can be inspected at any time during their presentation.

Dispute Settlement

A unique aspect of the warranty law is that it recognizes the problems and expenses which consumers have sometimes had in resolving disputes. For this reason the legislation encourages the establishment of an informal and independent process to quickly, fairly and inexpensively resolve disputes. The law does not spell out what kind of dispute handling process should be established, but it does establish minimum requirements for the process, including record-keeping, investigative processes and audits.

FTC rules establish the duties of the warrantors who decide to incorporate the dispute settlement

process into the terms of their warranties. These require that the warrantor using a dispute-handling process must disclose this information in the written warranty.

- A statement of the availability of the mechanism and its name and address, or its toll-free telephone number.
- A brief description of the process for using the mechanism and the types of information needed or required for prompt dispute-settlements.
- If the terms of the warranty require that the consumer first use the complaint process before seeking certain legal action, it must be clearly stated in the written warranty.

Other Coverage

Class action suits. The Magnuson-Moss Warranty Act provides legal rights when the warranty is not honored. In some cases consumers can use a "class action" suit when individual action would be too costly. The courts have been given the right to award payments, attorney's fees and other costs to the winning party.

Consumer Responsibilities

The consumer has obligations, too. If you do not live up to your end of the bargain, the warranty will be worthless. Some of your obligations are:

- To use the product as it is intended to be used. For example, don't use a dinner knife as a screw driver, or use aluminum foil over food in a microwave oven.
- Take reasonable care of the product. For example, keep the correct air pressure in your car tires.
- Examine a product carefully before buying it. If that isn't possible, examine it as soon as you buy it. If you wait three months to open a package of dishes, you may not get a replacement for one that is chipped.
- Clearly understand the terms of a warranty before buying. Some offer good protection but others are worthless. For example, shipping and

handling fees may be as much as the cost of a new replacement.

- You do not have to return a registration card for a warranty to be in effect. But, you will need proof of the date of purchase. The card enclosed with a product is a marketing tool. It helps the company know who buys the company's products. However, the card enables the company to notify the buyer in case of a product recall.
- Keep sales receipt and warranty in a safe place. The sales receipt is important to verify.

Improving Warranty Service

The quality of warranty service depends on who has control over the service, the availability of replacement parts and the skill of the repairmen.

From the consumer's point of view, probably the best solution is for the warrantor to have complete control over the warranty service operation. Some large companies have this control. These companies have a strong incentive to provide satisfactory service. Even under these conditions there will still be variations in the quality of service. Decentralized factory service facilities make it easy for consumers to return merchandise and communicate complaints. This type of service is very costly to the company and requires strong, high-level administrative ability.

Less satisfactory from the consumer's point of view are warranties that require the product to be returned to the manufacturer for centralized factory service. Such service is not limited by cost or administrative ability but rather by the nature of the product. For example, who wants to send hard-to-pack items back to the manufacturer?

If the warrantor cannot provide either of these options, he must rely on a type of service over which he has less control. This may be the dealer who sold the merchandise, or an independent organization specializing in providing service. If the dealer holds an exclusive franchise for the sale of the product (for example, automobile dealerships), the warrantor has more control. Policing the warranty standards may involve considerable administrative costs and

authority which the manufacturer may or may not be able to afford or desire. If the dealer sells many competing brands the warrantor has very little control over the quality of service.

The way the servicing organization is paid often influences the quality of the warranty service. There is considerable opportunity for conflict between the warrantor and servicing agent over fair payment and the record-keeping.

Look for the Facts

Before buying, compare warranties of competing products. Look for answers to the following questions. Then choose the warranty that offers you the best protection:

- Is the warranty full or limited?
- How long is the warranty period?
- How easy would it be to obtain repairs or replacement? Who would pay shipping charges or delivery charges?
- What is covered, the entire item or only a certain portion of it?
- Are parts and labor both covered?
- Can you get a similar product on loan while yours is being repaired?
- Who gave the warranty? Will the company be in business if you need repairs or replacement?

Warranty information must be available to consumers in a form that is easy to read and understand. However, it is the consumer's responsibility to read and use this information in comparative shopping. It is up to the consumer to understand the terms of the warranties before buying and to buy only from reputable sellers. A well-written warranty is of little value if the company giving the warranty has disappeared when service is needed. A reputable seller, a responsible consumer, and plain human decency on the part of both the seller and buyer are the ingredients for a satisfactory sales transaction.