

Basics of German Sales Law

By means of the purchase agreement the seller of a thing is bound to deliver the thing to the buyer and to convey title to the thing to the buyer. The seller must convey the thing to the buyer free from defects of quality and title. The buyer is bound to pay the seller the agreed purchase price and to accept delivery of the thing purchased.

The thing is free from defects of quality if, upon the passing of the risk (the risk of accidental destruction and accidental deterioration passes to the buyer upon delivery of the thing sold), the thing is in the agreed quality. To the extent that the quality has not been agreed the thing is free of defects of quality if it is suitable for the use specified in the contract or if it is suitable for the normal use and has a quality customary with things of the same kind and which the buyer may expect in the nature of the thing. The buyer has to explain and to evidence the existence of the defect of quality.

It is also a defect of quality if the agreed assembly by the seller or persons employed by him for that purpose is carried out improperly. There is moreover a defect of quality in a thing intended for assembly if the assembly instructions are defective unless the thing has been assembled without any fault.

Supply by the seller of a different thing or of a lesser amount of the thing is equivalent to a defect of quality.

If the thing is defective the buyer may, provided the requirements of the following provisions are met and unless otherwise determined,

as a first step, demand *cure* and

as a second step *withdraw from the agreement* or reduce the purchase price and demand compensation for damage or compensation for wasted expenses.

As *cure* the buyer may, at his option, demand the remedy of the defect or the supply of a thing free from defects. The seller must bear all expenses required for the purposes of cure, in particular carriage, transport, labour and material costs.

The seller may refuse the kind of cure chosen by the buyer, if such cure is possible only with unreasonable expense. In that connection, including without limitation, the value of the thing when free of defects, the importance of the defect and the question must be taken into account whether recourse could be had to another kind of cure without substantial detriment to the buyer. The buyer's claim is restricted in this case to the other kind of cure.

If the seller supplies a thing free from defects for the purpose of cure, he may demand the return of the defective thing.

Instead of *withdrawal from the agreement*, the buyer may, by declaration to the seller, reduce the purchase price. In the case of a price reduction, the purchase price is reduced in the ratio which the value of the thing free of defects would, at the time of the conclusion of the contract, have had to the actual value. Where necessary, the price reduction is to be estimated. If the buyer has paid more than the reduced purchase price, the excess amount is to be refunded by the seller.

The buyer's rights due to a defect are excluded if he is aware of the defect at the time of the conclusion of the contract. If the buyer remains unaware of a defect due to gross negligence, the buyer may for that defect only assert such rights if the seller has fraudulently concealed the defect or has assumed a guarantee of quality of the thing.

The seller may not rely on an agreement excluding or restricting the buyer's rights in respect of defects to the extent the seller fraudulently concealed the defect or has assumed a guarantee of quality for the thing.

Where a *consumer* (consumer means every natural person who enters into a legal transaction for a purpose that is outside his trade, business or profession) buys a moveable

thing from an *entrepreneur* (entrepreneur means a natural or legal person or a partnership with legal personality who or which, when entering into a legal transaction, acts in exercise of his or its trade, business or profession) (*sale of consumer goods*), the following supplementary rules also apply. This does not apply to second-hand goods which are sold at a public auction in which the consumer may take part in person.

An *entrepreneur* may not rely on an agreement which derogates, to the detriment of the consumer, from the standard rights (see above), if it is reached before the entrepreneur is notified of a defect.

If a defect of quality appears within six months of the date on which risk passed, it is presumed that the thing was already defective when risk passed unless that presumption is incompatible with the nature of the thing or of the defect.

The above mentioned claims are time-barred two years. In derogation from this claims are time-barred pursuant to the standard limitation period of 3 years if the seller fraudulently concealed the defect. The maximum limitation period is 10 years. In case of a *sale of consumer goods* the limitation period for the claims may not be shortened by an agreement reached before a defect is notified to an entrepreneur, if the agreement results in a limitation period of less than two years from the beginning of the statutory period or, in the case of second-hand goods, of less than one year.

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