



Warranties

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Background

In simplest terms, a [WARRANTY](#) (also called a guarantee) is an agreement between a seller and a buyer to ensure that a product will work properly. While the concept is simple, the actual application of a warranty can be quite complex. There is no law requiring a company to offer a written warranty on a product it manufactures or sells. The absence of a written warranty, however, does not mean that a product is not warranted to perform according to expectation. When a written warranty does exist, it binds the company under federal law into assuming responsibility in the event that a product malfunctions.

Warranties promise that a product will perform properly; when a product fails to perform, it will be replaced or repaired, or the consumer will be given a refund or a credit toward another product. The retail pioneer John Wanamaker, who introduced the concept of the "department store" in Philadelphia in 1876, is also credited with introducing the money-back guarantee. Wanamaker was a progressive businessman who was among the first to offer benefits such as paid vacations to his employees. He was also a deeply ethical man who believed that his customers should be satisfied with their purchases. The money-back guarantee earned the trust and the loyalty of Wanamaker's customers.

Trust and loyalty represent sound business practice for most companies. In fact, it is not uncommon for companies to use warranties as a selling point; by offering a better warranty than their competitors, they are saying in effect that they believe more strongly in the quality of their products.

Warranty problems occur when the company has misstated its policy, or when the language included in the warranty is confusing. The concept of the "life-time warranty" provides a good illustration of how this sort of confusion can develop. The Federal Trade Commission (FTC) offers the example of an automobile muffler with a so-called "lifetime" guarantee. "Lifetime" can mean the life of the automobile in which the new muffler was installed or it can mean the duration of the buyer's ownership of the car, or it can mean the buyer's actual lifetime. It is an unfortunate fact that some companies are unscrupulous and try to renege on their warranty agreements. But as the seemingly straightforward example of the muffler shows, sometimes the problem is misinterpretation. That said, it is the seller's responsibility to make sure that the warranty's language and intent is clear.

Types of Warranties

Under the law, there are two types of warranties, *implied* and *express*. Implied warranties exist under state law, as outlined in the [UNIFORM COMMERCIAL CODE](#) (UCC). The UCC, which covers all 50 States and the District of Columbia, is a means of consolidating laws regarding commerce as a means of streamlining interstate legal issues. This allows each state to adopt the same definitions of, in this case, implied warranties.

Implied Warranties

Implied warranties are exactly what the term says they are: unspoken and unwritten promises made by a seller to a buyer that the product being sold works. The concept that encompasses the [IMPLIED WARRANTY](#) comes from [COMMON LAW](#), specifically, the principle of "fair value for money spent." Actually, there are two types of implied warranties, both outlined under Section 2 of the UCC.

The *implied warranty of merchantability* is simply the promise that the product sold is in good working order and will do what it is supposed to do. A vacuum cleaner is expected to pick up dirt and dust from carpets and floors. A refrigerator is expected to keep food cold. A toaster is expected to toast bread. If the consumer buys a product and the product does not work, then this constitutes a breach of the implied warranty. The seller is required to remedy the problem, whether by repairing or replacing the product. (It should be noted that the section of the UCC covering this type of implied warranty, Section 2-314, is law in every state except Louisiana.)

The *implied warranty of fitness for a particular purpose* is the promise that the seller's advice on how to use the product will be correct. For example, if a consumer asks an appliance dealer whether a particular air conditioner can cool a 600 square-foot room and the dealer says yes, that dealer has effectively created a warranty of fitness. If the air conditioner can only cool a 400 square-foot room effectively, the dealer has breached the warranty. The idea behind this is that the dealer is expected to know which product will be best for which use.

Express Warranties

An express warranty is an explicit offer made voluntarily by the seller that a product will perform according to particular expectations. The typical express warranty offers specific remedies in the event that the product is defective. Express warranties can be oral or written. Written warranties are covered under the federal Magnuson-Moss Act, which is explained in detail later.

If a seller offers an express warranty, the product in question is still covered under implied warranty.

The length of a warranty may be specified, but if it is not the general rule is that consumers have four years from the date of purchase to enforce a warranty claim. This does not mean that the product must last four years. Rather, it means that if there was a defect in the product at the time of purchase that manifests itself later, the consumer is entitled to some sort of remedy.

Used and "As Is" Goods

Used goods are covered under implied warranties if the seller is a merchant who is in the business of selling similar products. A private individual who chooses to sell a toaster at a flea market is not expected to take responsibility for the product's performance.

In most states, goods can be sold "as is." These goods do not require the seller to offer even an implied

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warranty. What the seller is required to do for these products is make clear to consumers that the product is being sold in less than prime condition and that the consumer assumes all responsibility for any faults and flaws. The following states do not allow as-is sales: Alabama, Connecticut, Kansas, Maine, Maryland, Massachusetts, Minnesota, Mississippi, New Hampshire, Vermont, Washington, West Virginia, and the District of Columbia.

If a product is sold [AS IS](#) and it turns out to have a defect that results in [PERSONAL INJURY](#), the seller is liable even in the absence of any warranty.

Extended Warranties

Anyone who has purchased appliances, stereos, computers, or similar items knows that most stores will try to sell an "extended warranty" along with the standard one. These warranties, also known as service contracts, are often unnecessary; often, they duplicate current warranty coverage. The reason merchants are so eager to sell service contracts is that they make a handsome profit off those agreements. Service contracts are not illegal and in some cases they may be useful, but it is a good idea to read the existing warranty before spending unnecessary money on redundant coverage.

An important point that consumers should know is that if they *do* wish to purchase a service contract, they are allowed by law to do so up until 30 days from the regular warranty's expiration date. Stores that claim a "now or never" policy are being deceptive.

Magnuson-Moss Warranty Act

In 1975, Congress passed the **MAGNUSON-MOSSWARRANTY ACT** as a means of providing comprehensive information to consumers about their rights under product warranties. It is important to note once again that companies are not required to provide written warranties on their products. If they do, however, they are subject to the regulations spelled out under Magnuson-Moss.

Oral warranties are not covered by Magnuson-Moss, nor are warranties on services or commercial products. Only written warranties on consumer goods are covered. The company issuing the warranty (the warrantor) or the seller must meet three basic requirements under the Act:

- The warranty must be designated as either full or limited
- The warranty must be written in a single document that is clearly written and easy to understand
- The warranty must be readily available for inspection where the product covered is being sold

Anyone who offers a written warranty is prohibited from disclaiming or modifying implied warranties. In other words, consumers are protected under the implied warranty of merchantability no matter how broad or narrow the scope of the written warranty. The only exception is that the company can restrict the duration of an implied warranty to match that stated in a written limited warranty. If a company offers a three-year limited warranty on a product, it is permissible to limit the implied warranty to three years as well.

Magnuson-Moss prohibits companies from including tie-in sales provisions in its warranties. In other words, the company cannot state that owners of product X must use only product X accessories or have the product serviced at specific locations. However, companies can void a warranty if the consumer has it serviced or repaired inappropriately or incorrectly. Moreover, if the company can prove to the FTC that its products must be serviced or maintained through tie-in services, the FTC may waive this requirement.

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No deceptive or misleading terms are permitted in a written warranty under Magnuson-Moss. A common example is a warranty covering moving parts in an item that has no moving parts. Moreover, the company cannot claim to offer services that it either cannot or will not provide.

Magnuson-Moss makes breach of warranty a violation of federal law and allows plaintiffs to recover court costs and reasonable attorney's fees. In general, most warranty-related lawsuits are brought in state courts, but [CLASS ACTION](#) suits can be brought in federal court. This is not to say that Magnuson-Moss has [LITIGATION](#) as its goal. Rather, the goal is to make companies think carefully before they breach a warranty.

Under Magnuson-Moss, companies can include a provision in their warranties that requires customers to attempt to resolve warranty disputes through informal means (informal in the sense that they do not require the same rules of [EVIDENCE](#) and procedure as found in a courtroom). These informal means are known as *dispute resolution mechanisms*. For a company to be able to require this option, it has to meet certain requirements as stated in the FTC's *Rule on Informal Dispute Settlement Procedures*. The "rule" is actually a set of guidelines that requires the company to provide a means of resolution that is adequately funded and staffed to resolve disputes quickly, free of charge to customers, able to gather all necessary facts and make decisions independently, and audited annually to ensure compliance. This function can be performed by a third party (such as the Better Business Bureau) or by employees specifically on staff to handle warranty disputes objectively. Among the means of settling the dispute can be [CONCILIATION](#), [MEDIATION](#), and [ARBITRATION](#); if either party is still dissatisfied, the matter can still be brought to court.

While having an informal dispute procedure in place eliminates the necessity of going to court, it is clearly still enough of a burden on a company that it makes more sense to offer clear-cut warranties and honor them.

Lemon Laws

The automobile industry has spawned its own set of laws to help consumers deal with faulty or defective cars. The image of the automobile salesperson as a deal-makers of questionable integrity may be nothing more than a stereotype, but cars represent the largest "consumer goods" purchase most people make, and buyers want to know they are getting a good deal on a good product.

Cost is only one factor. A serious defect in an automobile is more than just an inconvenience for people who need a dependable car. More unnerving is the fact that a serious defect in an automobile can cause it to malfunction on the road, which could result in injury or death.

Automobiles are covered under federal laws such as Magnuson-Moss, but each state also has what are known as *lemon laws*. Although each state's laws differ (for example, some states cover motorcycles and used cars while others do not), the basics are the same:

- Under state [LEMON LAWS](#), a car is a "lemon" if it displays defects that significantly affect its use or safety, and if repeated attempts to repair the defects have been unsuccessful.
- For serious defects, the manufacturer may be given one attempt to repair the problem; for less serious problems the manufacturer may be allowed two or more attempts.
- The defect must be evident within a specific time frame (usually 12 to 24 months) or number of miles (usually 12,000 to 24,000).
- The car has to have spent a certain number of days in the shop (usually 30 days) within the first year.

Depending on the scope of the defects, the consumer will be entitled to either a refund or a replacement. For car manufacturers, this is not an inexpensive proposition, especially if it turns out that a particular model

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seems to have more than its share of performance problems. From the consumer's standpoint, people often get attached to their cars to the point that they may be reluctant to part with their lemon. When one considers the costs of being without an automobile for lengthy periods and the potential danger of driving a car with defects, it is clear that lemon laws serve a valuable function for both manufacturers and consumers.

Two useful websites that provide general information about lemon laws in plain English, and that offer links to state and federal agencies are the Autopedia lemon law site (http://www.autopedia.com/html/HotLinks_Lemon.html) and the Cars.com lemon law site (<http://cartalk.cars.com/Got-A-Car/Lemon/>).

Additional Resources

A Businessperson's Guide to Federal Warranty Law. U. S. Federal Trade Commission, 1987.

The Consumer Movement: Guardians of the Marketplace. Mayer, Robert N., Twayne Publishers, 1989.

Consumer Reports Law Book. Haas, Carol, and the editors of Consumer Reports Books, Consumer Reports, 1994.

Extraordinary Guarantees: A New Way to Build Quality Throughout Your Company and Ensure Satisfaction for Your Customers. L. Hart, Christopher W. L., AMACOM, 1993.

Return to Sender: Getting A Refund or Replacement for Your Lemon Car. Barron, Nancy, National Consumer Law Center, 2000.

Understanding Consumer Rights. Parisi, Nicolette, Dorling Kindersley, 2000.

Organizations

Center for Auto Safety

1825 Connecticut Avenue, NW, Suite 330
Washington, DC 20009 USA
Phone: (202) 328-7700
URL: <http://www.autosafety.org>
Primary Contact: Clarence Ditlow, Director

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101 Truman Avenue
Yonkers, NY 10703 USA
Phone: (914) 378-2000
Fax: (914) 378-2928
URL: <http://www.consumersunion.org>
Primary Contact: Jim Guest, President

Federal Trade Commission (FTC)

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Primary Contact: Timothy J. Muris, Chairman

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