
LEGAL INFORMATION NEWSLETTER

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We are pleased to provide you with the new issue of our legal information newsletter.

Topical legal questions are discussed and those related to issues that you might encounter.

We hope that you will find it of interest. We would welcome any comment you might have.

**THE NEW CODE OF CONSUMERS:
STATUTORY REMEDIES AND
WARRANTIES IN CONNECTION
WITH THE SALES OF CONSUMER
GOODS**

L. 29.7.2003, nr. 229
D.Lgs. 6.9.2005, nr. 206

INTRODUCTION

In accordance with the provisions of the Parliamentary Act 229/03, on July 22nd 2005, the Italian Government enacted the "Consumer Code".

Through this new legislative act, nr. 558 statutory regulations have been harmonized within a single text of law, which consists of 146 articles.

Scope of the legislation is to ensure adequate information to consumers in connection with the sales of goods and to protect their individual and collective rights, both at national and local level.

In addition, the Consumer Code calls for a better transparency, competition and information within the market, aiming at improving quality of products and services, as well as at improving trust among the consumers and business operators.

Several and different are the areas covered by the Code, among which the following may be mentioned: product labelling, product safety, deceiving advertisements and unconscionable contracts.

Indeed, one of the most notable concerns the statutory remedies and warranties applicable to sales contracts involving consumer goods.

**SALES OF CONSUMER GOODS -
DEFINITIONS**

Article 128 of the Consumer Code provides that the rules apply to the sales of consumer goods, including the contracts involving exchange of goods, goods procurement and in general all of those contracts involving delivery of consumer goods.

To the purposes of law, consumer is defined as an individual who is acting for a purpose other than his/her business or professional activity.

Consumer goods are any kind of goods, including those to be assembled, with the following exceptions:

- Goods that are subjected to forced sale from the judiciary authorities
- Water and gas, when not packaged in a determined volume or quantity
- Electric energy.

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Seller is any individual or business entity, public or private that carries out his/her business or professional activity through the above contracts for the sale of consumer goods.

Producer means any manufacturer of consumer goods, the importer of consumer goods within the territory of the European Union or any other person who advertises himself as producer by using his/her name or trademark onto the consumer goods.

Contractual warranty means any obligation by either a seller or a producer, which has been undertaken towards a consumer without additional costs, to pay back consideration received, to substitute, repay or to intervene on the consumer good, whenever the good does not correspond to the terms and conditions that the warranty or its relating advertising set forth.

Reparation means the action of restoring the good in case of its non-conformity to the terms and conditions of the sale contract.

The provisions of the Consumer Code apply to any sale of used consumer goods, considering the time the goods have been used, limited to those defects that did not arise from the normal consumption of the good itself.

CONFORMITY OF GOODS TO CONTRACTUAL PROVISIONS

According to Article 129 of the Consumer Code, the seller undertakes the commitment to deliver goods to the consumer, which are in conformity with the sale contract.

The law sets forth a presumption of conformity of the goods to the sale contract, upon occurrence of the following circumstances:

- The consumer goods are fit for the use to which goods of the same kind are fit to

- The goods are in complete conformity with description made by the seller and have as the same quality as the samples that seller represented to the buyer

- The goods have as the same quality and performance as a good of the same kind has, considering any reasonable expectation by the consumer, the nature of the goods and, if any, the statements publicly made about the specific characteristics and features made by the seller, the producer, its agent or representative

- They are fit for the specific purpose expressed by the buyer to the seller upon entering the contract and accepted by the seller even by way of *facta concludentia*.

If, upon entering the contract, consumer either knew about the existence of the defect, a reasonable person would be aware about it, or the defect itself arises from the instructions or the materials that were furnished by the buyer, goods are not deemed to be defective, unless the buyer may prove that the defect was attributable to the seller.

The seller is not bound by the public statements rendered by the seller himself/herself, the producer, its agent or representative about the specific characteristics and features of the goods, upon showing of the following evidence:

- Seller was not aware about the statement, neither a reasonable person could be aware about it
- The statement was adequately corrected before the parties entered the contract, so that consumer could be aware about it

- Decision to purchase the good was not influenced by the statement.

Non-conformity of the consumer product arising from its defective installation is treated as a material defect of the product itself, whenever:

- Installation was included in the sale contract and was carried out by the seller or under his/her supervision
- Installation was to be performed by the buyer, who did not succeed because of a deficiency in the installation instructions.

CONSUMER REMEDIES

The seller is responsible to the buyer for any non-conformity existing upon delivery of the good.

In case of non-conformity, without expenses, consumer is entitled to claim for restoration of the good to its conformity by way of repairing or substituting the good itself in accordance with provisions of Article 130.

Consumer cannot claim the good to be repaired or substituted, if the restoration is objectively impossible or excessively burdensome.

The following circumstances must be considered in assessing if the remedy claimed would be excessively burdensome:

- Value of the good if not defective
- Extension of non-conformity
- Possibility of an alternative remedy without unnecessary burden to the consumer.

Restoration must occur within a reasonable time from the claim and must be performed without unnecessary burden to the consumer, considering the

nature of the good and the purpose of the consumer who purchased the good.

Alternatively, consumer may claim for a price reduction or he may withdraw from the contract, upon the following circumstances:

- Restoration is impossible or excessively burdensome
- Seller did not restore the good to conformity within a reasonable time
- Substitution or repairing caused unnecessary burdens to the consumer.

After a claim of non-conformity has been received, the seller can offer to the buyer any other available remedy, unless the consumer has already demanded for a specific remedy.

If consumer has not yet claimed for a specific remedy, he must either accept or reject the remedy offered by the seller, in this latter case by specifying which remedy he intends to pursue.

A non-conformity defect of minor entity does not entitle to withdrawal from the contract.

RECOURSE CLAIMS BY THE SELLER

Save as differently agreed upon by the concerned parties, whenever a “final seller” - that is to say a retailer - is liable towards a consumer for any non-conformity which arose from action or omission by either the manufacturer, a precedent dealer of the same supply chain or any other intermediary, that final seller has a claim against any other liable person or business entity that is party to the same supply chain.

The retailer gets one-year period to file the above claim from the date he/her provided the consumer with his/her remedy. Upon expiration of the one-year period without filing the claim, the action is barred to him/her.

STATUTE OF LIMITATIONS

In accordance with provision of Article 132 of the Consumer Code, a seller shall be liable if the defect of non-conformity of the good arises within two years from the date that the good has been delivered to the buyer.

If consumer does not claim against the seller within two months from the date he/she discovered the defect, he/she is prevented from enforce his/her claim, unless the seller either admitted the existence of the defect or he/she hide it.

Save as otherwise evidenced, Article 132 sets forth a presumption that any defect of non-conformity arising within six months from the date of delivery of the defective good, was already existing on such latter date, unless the presumption is not consistent with the nature of either the good or of the defect of non-conformity.

In case of defects there were not hidden by the seller, statute of limitations expires and the relating action is barred, if the action has not been enforced within twenty-sixth months from the date of delivery.

A consumer, who has been requested to fulfil its obligations under the contract may always resort to the remedies that Article 130, paragraph 2nd sets forth, as long as a defect of non-conformity has been claimed within two months from discovery and before expiration of the 26-month period.

CONTRACTUAL WARRANTY

The contractual warranty binds those who made it in accordance with terms and conditions that the warranty itself or the relating advertising set forth.

The warranty shall state at least that:

- Consumer has title to the remedies that Article 130, 2nd paragraph sets forth and that such title is not affected by the warranty

- What is the object of the warranty and the material elements necessary to enforce it, including the length and extension of the warranty itself
- as well as the name and the address of who is offering it.

If required by the consumer, the warranty must be written or recorded in a durable support accessible to him/her. The warranty must be drafted in Italian language with characters, which have as same dimension as those used for the eventual other languages.

If the above-described requirements are not fulfilled, the warranty is valid and enforceable by the consumer.

CASES OF NULLITY AFFECTING CONTRACTUAL PROVISIONS

Any agreement made prior to notice to the seller about the defect of non-conformity, which purpose is to set aside or to limit any remedy that the law reserves to the consumer is null and void.

Consumer can claim the nullity of the contractual clause, as well as the Judge can holds it *ex officio*.

In case of used goods, parties can set a term for the length of responsibility by the seller, which anyhow cannot be less than one year.

Any agreement on the choice of law that, providing that the law of a non-EU Member Country applies to the contract so that consumer loses his/her protection under the above described rules of domestic law is null and void, as long as the contract is strictly connected with the territory of a EU Member Country.

To conclude, it has to be mentioned that the rules that the Civil code sets forth on the matter of sale contracts (Articles 1510 through 1526) remain in full force and effect and apply to the sale of goods to consumers.