

Guarantees and their use in Business and Trade: a Guideline from the Danish Consumer Ombudsman

Copenhagen, June 2003

Please note that the sections in brackets refer to the equivalent section in the 2005 Marketing Practises Act. Where the old sections are not followed by references, the section is the same.

The Use of Guarantees

A guarantee is an optional commitment that a trader may agree to undertake in connection with sales of goods and services. It is often used for marketing purposes as well. Guarantees directed at consumers must only be used if the guarantee confers legal rights on the consumer that are significantly better than those provided by the legislation in the area, and hence make the guarantee genuine. The relevant provision, section 4 of the Danish Marketing Practises Act (now section 12), reads as follows:

Section 4 (now section 12)

A statement granting a guarantee or similar arrangement to consumers may be made only if such a statement places the recipient in a substantially better legal position than that he enjoys in law.

(2) If a guarantee is provided, the trader shall set out in plain intelligible language the contents of the guarantee and the essential particulars necessary for making claims under the guarantee. The trader shall also indicate clearly and unambiguously that the consumer's essential rights under the law are not affected by the guarantee. On request by the consumer, the guarantee shall be made available in writing. Written guarantees shall be in Danish.

The Legal Consequences of a Guarantee

A buyer's statutory rights can never be affected by any restrictions stipulated in a guarantee.

A guarantee must afford the consumer a considerably better legal position than otherwise provided by existing legislation.

A guarantee must not be conditioned by **payment of a separate fee** – neither in connection to a purchase or to putting into effect the guarantee.

It lies with the trader to **prove** that defects and malfunctions are not covered by the guarantee unless the parts in question are excluded from coverage under the guarantee.

The consumer **bears the expenses only** if the trader can prove that the defect is not covered by the given guarantee, and that the buyer on handing in the product for repair was informed of and consented to cover the expenses for a repair.

A guarantee is legally **binding** on the guarantor on the terms and conditions stipulated in the actual guarantee and in the marketing of the product.

Some **guarantee terms** may, depending on the contents, be **considered unfair** (terms of contract) and hence be considered a contravention of section 1 of the Danish Marketing Practises Act.

Guarantee Time Limits

A guarantee period for a new product must, as a basis, **extend significantly beyond the two-year claims period** stipulated in the Danish Sale of Goods Act. In the event that the guarantee period does not extend beyond the 2 years in question, the legal rights conferred on the consumer as to the contents of the guarantee must then be a significant improvement of the legal position otherwise provided by the Danish Sale of Goods Act.

If a 2-year guarantee period, or even one shorter than this, comes with the purchase of a used product, this may, depending on the exact contents of the guarantee, be a genuine improvement of the consumer's legal rights. Again, this does not affect the consumer's statutory rights in the form of the 2-year claims period, which also applies to purchases of used products.

The use of very long guarantee periods is in general considered inadvisable, as a guarantee will often be **'empty'** by the time the consumer puts it into effect.

Advertising Guarantees

If the word 'guarantee' refers to anything else than the **total product**, this should be clearly stated and made explicit with words such as 'authenticity guarantee', 'additional guarantee' and 'frame guarantee'.

The length of the guarantee period must be specified in relation to the two-year claims period stipulated by law.

Any **restrictions or limitations** concerning the guarantee must be stated in the marketing.

It is the duty of the trader to inform the consumer that he has the right to receive a copy of the terms of the guarantee before any purchase is made.

A guarantee is **legally binding on the guarantor** on the terms and conditions stipulated in the bond as well as in the marketing activities in relation to the product.

Advertising in relation to guarantees must not be misleading. It would be considered misleading to use the word 'repurchase guarantee' if the consumer is obliged to spend the refund in the shop as 'repurchase' means that the buyer can hand in his purchase to the trader/manufacturer and receive an amount of money in return for the product.

Minimum Requirements in Relation to the Contents of the Terms of the Guarantee

The terms/certificate must be written in **Danish**, and it must **state**:

- the **scope** of the guarantee
- the **name and address** of the guarantor
- the **length of the guarantee** starting from the date of the start of that period

- any **restrictions or limitations**
- **how** the consumer claims the guarantee
- that **statutory requirements** still apply
- that the guarantee **covers all expenses** including spare parts and pay
- that a **limitation of liability** may be invoked for as long as it is considered fair in relation to spare parts and pay when outside the scope of the Danish Purchasing Act. This also applies to used products
- that the **guarantee period is extended upon a complaint** from the date the complaint was made to the date the complaint is settled
- a **new guarantee**, stating the same terms and in force for the same period of time, must be issued for changed, replaced or repaired parts covered by the guarantee
- that a complaint is considered valid, whether made to the trader/manufacturer or to the guarantor (if another person)
- that the **guarantee is good for anyone who owns the product during the guarantee period** whether the product is transferred or not;
- that, if the guarantee does not cover in connection with **disrepair** (lack of proper maintenance), it is a condition that the consumer has have been made familiar with how to maintain the product
- that, if the guarantee is issued on the condition that **scheduled maintenance and service** is carried out by the guarantor or a repairman assigned by the guarantor, the maintenance and service must be free of charge
- that **specified plans for scheduled service and maintenance** - whether handed over to an authorised or unauthorised repairman – must not be withheld
- the guarantee can only be cancelled in connection with **non-payment** when this obligation has been seriously defaulted
- that a guarantee usually means that **spare parts can be procured** during the guarantee period
- that an unlimited guarantee in general means that the **guarantor will keep the product in operation free of charge** during the guarantee period