

What are my rights if I want my product to have a longer useful life?

As a consumer in Germany, you can make use of a range of legal provisions to extend the useful life of your products. It is worth knowing your rights, not just for financial reasons but also from the viewpoint of sustainability.

Our tips:

- If a product is faulty, you have the right to choose whether to demand its rectification, i.e. a repair by the manufacturer, or, if you prefer, to exchange the item for a new one (Section 439 (1) of the German Civil Code (*Bürgerliches Gesetzbuch* BGB)). Having the product repaired is usually the better option in terms of sustainability.
- If it is not possible to correct the defect by carrying out a subsequent repair, or if the seller fails to do so within the specified time limit, you can reduce the purchase price or terminate the contract. Again, you have the right to choose: rather than terminating the contract, i.e. returning the item for a refund of the purchase price, you have the option to keep the product – whose condition perhaps differs only negligibly from that of a new product – and accept a partial refund of the purchase price.
- Sometimes statements made by the manufacturer about the durability or sustainability of a product can infringe warranty rights, which apply within the statutory warranty period if the statements made are not accurate.
- When exercising consumer rights, you should be aware of the difference between a guarantee that may come with the product and the statutory warranty rights. If you want your product to have the longest possible useful life, "guarantees of durability" (Section 443 (2) BGB) are of relevance. If the manufacturer or seller gives a guarantee, it is worth looking at the terms and conditions.

Know-how:

As the buyer of a product, you have a range of rights if your product is faulty:

- **Cure:** Either by remediation (i.e. removal of the defect, usually by means of a repair) or by supplying a new item (Section 439 (1) BGB). In relation to the other warranty rights – and notwithstanding the right of withdrawal when buying online (see below) – cure takes precedence. That is to say, before you revoke the contract, reduce the purchase price or demand damages, you must give the seller the opportunity to fulfil his contractual obligation by repairing the defect or supplying a new product free of defects. In principle the choice is yours whether you prefer a repair or a new product. However, if your chosen type of cure is not possible or would be disproportionately expensive, the seller's obligation to put things right is restricted to the other type of cure.
- **Revocation:** This is the reversal of the contract. In this case, having first set the seller a time limit for cure, you notify him that you no longer wish to be bound by the contract, demand the repayment of the purchase price and return the defective product. Unlike price reduction, however, termination is not an option if the defect is "trivial" (Section 437 no. 2 in conjunction with Section 323 (5) sentence 2 BGB); in other words, if your product basically works and the defect only relates to minor aspects.
- **Price reduction:** If you want to keep the product, you also have the option of reducing the purchase price. However, there are no regulations stipulating the amount of the reduction: it should be based on the difference between the value of the defective item and the value of an

item free of defects. The precise amount of the reduction is a matter for your own judgement. Differences of opinion with the seller are likely; however, you should persist rather than giving up too easily. At all events it is helpful if you can come to an agreement with the seller on the amount of the reduction and thus avoid legal action.

- **Damages:** Supposing that, after you have specified a reasonable time limit, the seller does not fulfil your request for rectification, you can then also demand damages. For example, you can demand reimbursement from the seller of the difference in price if you had to buy a more expensive replacement product because the original purchase was faulty. In addition, other damage that the defect may have caused, e.g. to other items, must be compensated by the seller.
- In the case of a purchase by distance selling – typically an online purchase – you also have a right to **cancel the contract** within two weeks without giving reasons, **whether or not the item is faulty**. As in the case of revocation, the contract is then reversed.
- The binding statutory rights of warranty against defects and the right of withdrawal in the case of distance contracts need to be differentiated from the rights under a voluntary **guarantee** given by the manufacturer or seller.
- These rights aside, if a defect causes other damage – for example, damage to other items or harm to health – there are also potential claims under the provisions of tort law and product liability law.

How can you make use of these rights if you want to be a sustainable consumer?

Repair rather than replacement

If you want to prolong the useful life of your product, it is worth comparing these different rights: there is in general a right to choose between the two possible types of cure, i.e. repairing the item or supplying a replacement product. The seller may only reject your chosen form of cure if it is impossible or disproportionate; if it would incur excessive costs, for instance. So in general, your right of choice enables you to decide to give your product a longer useful life.

Price reduction rather than revocation

Similarly, you can exercise your right of choice between price reduction and revocation to opt for longer use of the product and against the purchase of a second, new item: instead of reversing the contract, i.e. returning the item for a refund of the purchase price, you can keep the product – whose condition perhaps differs only negligibly from that of a new product – and accept a partial refund of the purchase price.

Warranty rights and environmental qualities of a product

A complaint about a defect, resulting in the said rights becoming applicable, may be made if the purchased product is not of the quality agreed between the parties to the purchase contract or does not work in the usual way or as specifically agreed (Section 434 (1) BGB).

Under certain conditions, it can therefore be considered a defect if a product falls short of certain environmental standards or (advertised) claims. For instance, if the manufacturer publicly makes statements about the environmental friendliness of the product (e.g. on the CO₂ emissions of a car or the minimum service life of an appliance) and if the item you purchased falls short of these statements in reality, this can amount to a defect, meaning that your corresponding warranty rights

apply. It can likewise be considered a defect if certain statutory provisions on energy efficiency (e.g. for motor vehicles or light bulbs) are not met.

How long can I make a claim under my warranty rights?

For new purchases, you can generally make a claim under your warranty rights within a limitation period of two years. For used goods, this period may be restricted to one year. Unlike the statutory warranty rights, voluntary guarantees can be given by manufacturers or sellers for a longer period of time.

Must I prove that the item is faulty?

Warranty rights only apply when the defect in the item was already present at the time of delivery. In the event of a disagreement on this issue, the buyer must prove that the product was faulty at the time of purchase. This kind of proof can be difficult to establish. For consumers, the legislator has therefore made provision for shifting the burden of proof: if a defect comes to light within six months of delivery of the purchased item, then the item is generally assumed to have been defective at the time of delivery. The buyer is not required to substantiate the cause of the defect, nor that it falls within the seller's sphere of responsibility (Federal Court of Justice (BGH), judgement of 12 October 2016, Az. VIII ZR 103/15). On the contrary, the seller must then prove that the defect in the purchased item only arose after delivery.

What are the differences between the warranty against defects and a guarantee?

- A distinction has to be made between guarantees and the statutory warranty rights.
- Unlike the warranty rights prescribed in law, guarantees are given – by the manufacturer, seller or other providers – voluntarily. Often, they take the form of a guarantee of durability, in which case the guarantor undertakes that the purchased item will work or remain intact for the duration of the guarantee's validity period. If a defect occurs during this period, the rights under the guarantee apply, irrespective of the problems of proof mentioned in relation to warranties and, depending on the term of the guarantee, even beyond the statutory limitation periods (Section 443 (2) BGB).
- Rights under a guarantee do not take the place of warranty rights but can be claimed in addition to them. **Your statutory rights are therefore unaffected by the guarantee.** For example, it may be that your rights under a guarantee refer solely to the repair of the defective item, often by an authorised repairer. Alongside the rights under the guarantee, you can then – if the repair fails, for instance – proceed within the scope of your statutory rights to reduce the price or revoke the contract.
- Another point is that unlike a statutory warranty, a guarantee can also be given with restrictions. It is, for example, usual for certain parts that are subject to wear or tear or for particular components to be excluded from the guarantee.
- You must be informed of the conditions of the guarantee – in writing, at your request (Section 479 (2) BGB) – in a simple and understandable form.

To whom can I direct my claim based on my rights?

- Your statutory warranty rights exist in relation to the other party to the purchase contract you entered into – i.e. the seller of the faulty item.

- Guarantees can be given voluntarily, either by the producer in the form of a manufacturer's guarantee, or by the seller or by third parties. In the event of a claim under the guarantee, the guarantor is responsible for honouring the guarantee as promised.
- Pursuing your rights can be more difficult if you purchased the product in a cross-border transaction; for instance, if you bought it from an online shop in another country. If this is the case, we recommend consulting the [Federal Ministry of Justice and Consumer Protection \(BMJV\)](#) website on the issue: its consumer portal (in German) provides information on the cooperation between European authorities organised by the Consumer Protection Cooperation (CPC) network on the enforcement of consumer rights.
- In relation to all the questions dealt with here, consumer organisations also have offers of interest. As well as providing comprehensive information and assistance on your rights as a consumer, they have powers to take legal action as associations against certain illegal practices by companies. Information and offers from the consumer advice centres can be found online at www.verbraucherzentrale-niedersachsen.de/vz-verbandsklage or www.verbraucherzentrale-berlin.de/beratung-be (both in German).

What can I do to prolong the useful life of my devices once my rights under the guarantee or warranty have expired?

- Even if you have no further options for pursuing your rights under a guarantee or warranty, you can of course have your appliance repaired, e.g. by an independent repairer. They are likely to charge less than the manufacturers' customer service centres. Another free-of-charge repair option is offered by Repair Cafés.
- Repair Cafés do not normally assume any liability for defective repairs, however. For the most part, these repairs are understood to be done as a favour which fundamentally does not give rise to any rights or obligations along the lines of the warranty rights described above. The cafés usually exclude any liability for most damage in their general terms and conditions of business.
- In contrast, independent repair firms offering repairs professionally in return for payment bear liability for the success of the repair in accordance with the provisions of the law on contracts to produce a work (Sections 631 ff. BGB).
- Manufacturers frequently include a disclaimer in their guarantee that the appliance should not have been altered, i.e. you should not have attempted to repair it yourself. In particular, in the event that statutory warranty rights still apply, if repairs have previously been attempted by the customer or in a repair café, manufacturers are more than likely to argue that the defect resulted from the repair itself. Therefore visiting a Repair Café is only recommended once your statutory or contractual rights have expired.

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