
A GUIDE FOR RETAILERS

This is a guide to the Consumer Guarantees Act for retail traders supplying consumer goods. Information about services is available in Business Note *Consumer Guarantees Act – A Guide for Tradespeople and Service Providers*.

The Consumer Guarantees Act 1993 sets out:

- guarantees that goods and services must meet when sold by someone in trade
- remedies that either the seller, manufacturer, importer or service provider is required to provide if a guarantee is not met.

Under the Act, goods must meet the guarantees of:

- acceptable quality
- fitness for a particular purpose
- matching description
- matching sample or model
- reasonable price (when the price is not set)
- right to sell the goods.

If a guarantee is not met, you may be required to provide a remedy to the customer to put the problem right.

Manufacturers must meet the guarantees of:

- spare parts and repair facilities
- expressed/written warranty statements.

Goods covered by the Act

The Consumer Guarantees Act covers all goods sold by a supplier in trade that are ordinarily acquired for domestic, personal or household use. The definition of “supplier” includes a person in trade selling goods on behalf of someone not in trade.

This also includes:

- second-hand goods sold in trade
- goods generally used for personal, domestic or household use that are hired out, rented, leased or bought on hire purchase
- free items that you or the manufacturer give away when a customer purchases goods
- goods sold to a business if the goods are the type normally supplied for personal, domestic or household use – *eg, dishwashing liquid and tea towels bought for the office kitchen are covered by the Act.*

Footnote: Amendments in respect of the applicability of the Consumer Guarantees Act to electricity and other network industries, and to software are being proposed by the Ministry of Consumer Affairs. Information for businesses will be made available as soon as the amendments have been enacted.

From 8 July 2003, the Consumer Guarantees Act applies to

- Electricity
- Gas
- Water
- Computer software

This means that from 8 July 2003 you must meet the guarantees contained in the Consumer Guarantees Act when you supply these goods to consumers.

Goods **not** covered by the Act

This includes goods:

- normally acquired for business use – *eg, commercial goods such as farming equipment, plant machinery, even when a person has bought the goods to use in their home*
- used in a manufacturing process
- that will be on-sold – *eg, the Act does not apply to goods bought by the retailer for stock from a wholesaler or manufacturer*
- sold by auction
- sold by competitive tender
- sold by a charity where the sale proceeds directly benefit the customer
- real property – *eg, house or land, although materials bought to build a house will be covered.*

Contracting out of the Act

You can choose to contract out of the Act when consumer goods are purchased by the customer for use in a business – *eg, a customer is purchasing a domestic vacuum cleaner for use in their office.* If so, you must contract out of the Act before the sale is made. You can do this by providing a written agreement that says that the goods will not be subject to the Consumer Guarantees Act. Schools, hospitals, farms and government departments are considered to be businesses.

If you are selling at a distance – *eg, by mail order catalogue or on the Internet* – in our view, you should place a term in the conditions of sale that advise you are contracting out of the Act if the goods are being purchased for use in a business.

If you attempt to contract out in any other circumstances, you will be breaching the Fair Trading Act. The Fair Trading Act says that you must not mislead a customer about their rights. The penalties for doing so are substantial – up to \$60,000 for an individual, and up to \$200,000 for a company.

1 Acceptable quality

Acceptable quality means that the goods must be:

- fit for the purposes goods of that type are normally used for – *eg, a toaster must be able to toast bread*
- acceptable in finish and appearance – *eg, a new toaster should be free of scratches*
- free from minor defects – *eg, the timer knob on the toaster should not fall off when it is used for the first time*
- safe – *eg, the toaster should not overheat*
- durable – *eg, the toaster must function for a reasonable time after it was bought without breaking down.*

There is a test for deciding whether goods meet acceptable quality. It is called the reasonable consumer acceptable quality test.

Would a reasonable consumer find the goods acceptable taking into account:

- the nature of the goods
- the price paid
- any information on the goods or the package
- any statement you made about the goods.

How does this affect second-hand goods?

The customer needs to give careful consideration to the age, price and condition of second-hand goods when deciding if the goods have failed to meet acceptable quality.

What about goods sold as “seconds”?

If you sell goods with a defect you must provide information to your customers in the form of a sign displayed with the goods that specifies the defect – *eg, “These towels are seconds because the hemming is uneven.”*

If you provide correct information to the customer about the fault in the goods, you will not be liable if the customer returns the goods due to that fault. A sign stating that the goods are “seconds” with no information about why they are seconds may not remove you from liability for the defect.

You cannot use a sign to avoid responsibility for possible faults – *eg, “These towels may not be colour fast.”* You can only exclude yourself from liability for specific faults that you **know** exist.

What about goods on sale?

Price is one of the factors that will be considered when judging if goods have failed the guarantee of acceptable quality. Low-priced goods and sale goods still have to meet the guarantee of acceptable quality.

FROM THE COURTS

In a case about a second-hand car the court decided that, just because the car had a current warrant of fitness, did not mean that a trader could claim the car met the acceptable quality test.

A warrant of fitness is “information about the goods”. In this case, it meant that the vehicle was safe when inspected. It does not mean that a trader may not have to provide a remedy for a problem unrelated to the warrant – *eg, a problem with the engine.*

What if the customer has caused the problem?

Sometimes goods will become faulty as a result of misuse or abuse by the customer. In that situation, the customer cannot make a claim under the guarantee of acceptable quality.

2 Fit for particular purpose

This guarantee applies when:

- the customer tells you about or implies that the goods are required for a particular purpose – *eg, “I want a heater to heat my hall and the two bedrooms.”* The heater must be of sufficient strength to heat a number of rooms
- you have stated that the goods will be fit for a particular purpose. Such statements are often made in advertising, in speaking to the customer, on signs, on labels or on packaging – *eg, a display sign says “Work socks”.* The socks should be hard wearing and suitable for use by a labourer wearing boots
and
- the customer relies on your knowledge.

Fitness for a particular purpose is a guarantee that is additional to fitness for “normal” purpose. Goods must be fit for normal purpose under the guarantee of acceptable quality.

Eg, Trevor wants a car that will tow his jetboat. Trevor knows that a car’s normal purpose is to be used as transportation, but he tells the car dealer that the car must also be able to tow a jetboat. A car that has only a 1600cc engine won’t do for Trevor!

The guarantee that the goods will be fit for a particular purpose applies even when the purpose is an unusual one.

Eg, Terry wants to paint his car himself. He goes to the local hardware store and asks for paint suitable for his car. If they sell him the paint then it must be fit for the purpose he has stated. If they have no paint suitable for cars, they should say so.

We recommend that if you advise the customer that goods will be fit for a particular purpose, put this in writing. This may assist you in the event of a dispute at a later date.

Am I always expected to know if the goods will do the job the customer wants?

Everyone working in the shop should know about the normal uses for the goods they are selling – *eg, if you sell paint you should know what each type and brand is suitable for.*

If you do not know if the product can do what a customer wants, you must tell them this.

3 Matching description

Goods must be the same as any description given to the customer. Many goods are sold with a description of some sort – *eg, 100 percent cotton, free-range eggs, recycled paper, toughened steel blade.*

As a retailer you are liable for any description given with the goods, including the descriptions on packaging and the labels.

This guarantee is particularly important when you are selling goods by mail order or from a catalogue when the customer cannot inspect the goods before purchase.

Note The Fair Trading Act also applies to information that you supply about goods for sale. You cannot mislead the public about the goods you sell, or make false representations about the goods. For more information contact the Commerce Commission for a copy of their booklet *The Fair Trading Act – A Guide for Advertisers and Traders* or visit their website at www.comcom.govt.nz

4 Matching sample or demonstration model

If you show a customer a sample or a demonstration model, then the goods the customer buys must be the same as the sample.

Eg, Julie looks at a food processor on display in a shop and takes a box off the stack to the counter. When she gets home she finds it is a different model from the one on display.

This guarantee also applies to goods sold traditionally by sample, such as flooring or wallpaper.

5 Right to sell the goods

1. You must guarantee that you have the right to sell the goods, and
2. You must also guarantee that there are no undisclosed security interests in the goods. This means that there must not be any security interests in the goods that were not disclosed to the consumer **in writing** before he or she agreed to buy the goods. This also means that there must not be any security interests in the goods that were created without the express consent of the consumer, and
3. You must also guarantee that the goods will not be repossessed or seized by you or anyone else
 - unless this is allowed by a term of a hire purchase agreement; or
 - unless this is allowed by a term of a security agreement (eg, a loan agreement) or the sale agreement, and
 - (i) the customer has been told that the goods can be repossessed and has acknowledged this in writing, and
 - (ii) the fact that the goods can be repossessed was explained in a way that would make it clear to a reasonable person, and
 - (iii) the customer has been given a copy of the repossession clause.

Leasing and Hiring

The guarantees in 1 and 2 above do not apply where goods are only hired or leased. However, the guarantee that the goods will not be repossessed or seized only applies for the period of the hire or lease.

6 Reasonable price

This guarantee applies only when you have not agreed on a price with the customer. This situation will not occur very often in normal retail business.

Eg, Kiri orders a load of firewood over the telephone without asking the price. The bill is twice as much as other local merchants are charging. Kiri does not have to pay more than a reasonable price for the goods.

In our view, one method to establish reasonable price is to take an average from the range of prices offered by other local suppliers for that type of good.

A customer cannot use this guarantee if they have agreed to purchase goods from you at a particular price, but found out at a later date that goods are cheaper elsewhere.

MANUFACTURER'S GUARANTEES

Spare parts and repair facilities

The manufacturer or importer must take reasonable steps to provide spare parts and repair facilities for a reasonable time after the goods are sold to the customer.

If a manufacturer or importer does not want to be bound by this guarantee, they must make sure that the customer knows that availability of spare parts and repairs is not guaranteed, or is limited. Manufacturers may choose to inform the customer in writing.

Note This responsibility does not apply to second-hand goods unless they are being sold in New Zealand for the first time – *eg, a second-hand car imported from Japan and sold in New Zealand for the first time will be covered by the Act unless the importer contracts out.*

Expressed warranty guarantee

This guarantee requires a manufacturer to meet all the responsibilities stated in any expressed written warranty that is given with the goods.

If you are either a manufacturer or an importer you can find out more about your responsibilities from our guide *The Consumer Guarantees Act – A Guide for Manufacturers and Importers*.

RIGHTS AND REMEDIES WHEN A GUARANTEE IS BROKEN

The rights of the customer to redress depend on the type of problem they have with the goods.

If the fault is minor or can be repaired

If the problem with the goods can be fixed, the customer can ask you to put it right. You can choose to do this either by repairing the goods or by giving a replacement. You must act within a reasonable time and provide the repair or replacement free of charge.

The customer must accept either the repair or replacement that you choose to offer. When providing a replacement you are required only to provide goods identical to those originally purchased. Where a repair is being provided, the customer must give you reasonable access to the goods to allow that repair to be carried out.

If you refuse to do anything about the faulty goods when it is possible for them to be put right, or if you take more than a reasonable time to put it right, the customer can choose to:

- get a refund of the money paid for the goods
- get a replacement, or
- take the goods somewhere else to be fixed and claim the cost of the repair from you.

It is the customer's decision which of these options they choose.

What is a reasonable time for getting a repair done?

A reasonable time for a repair is not defined in the Act and will depend on the nature of the goods and other circumstances. Often it will be a short time.

Eg, one day would be a reasonable time for a repair of a pair of shoes that the customer needs. Most shoe repairers offer same-day repairs, so this is not unreasonable. Similarly, if a customer has bought something such as a heater, which they need to use, they could not be expected to wait longer than a day for a repair. If this is not possible you could offer another heater on loan while the customer's heater is repaired. It is the customer's choice whether they accept the loan.

If the goods are used only once a week – eg, a lawn mower – a reasonable time for a repair would be one week.

What if a repair will be expensive?

If the cost of the repair will be more than the value of the goods, you do not have to offer a repair. You can replace the goods or, if this is not possible, you can give a refund.

Can a customer get it fixed elsewhere first and ask me to pay the cost?

The customer must give you the opportunity to put the problem right first. If they do not they may lose the right to a remedy from you. Whether the customer can claim the cost of repair from you may depend on whether the goods required the repair, and the cost of the repair in relation to the cost if **you** had repaired the goods.

If you refuse to provide a remedy, or take longer than a reasonable time to provide a repair or replacement, the customer can get the problem fixed elsewhere.

You must pay for the repair. In this circumstance the customer does not have to get your agreement before taking the goods elsewhere and does not have to provide quotes. But you can only be asked to pay reasonable costs for the repair.

What is a reasonable cost for a repair?

A reasonable cost will include the cost of the repair and any other costs such as parking fees or transport costs. A reasonable cost for the repair itself will be a cost within the normal range charged by repairers of the goods.

Eg, the zip on a pair of trousers breaks after one week. The shop tells the customer the repair will take 10 days. The customer needs the trousers for work. He gets the zip replaced by a tailor for \$35. The shop says that their dressmaker would have done it for \$15.

If \$35 is a normal price for a tailor to do the job, the shop must pay it. The fact that you have access to a cheaper repair is not relevant because you did not provide a repair within a reasonable time.

Should the repair return the goods to new?

The repair should return the goods to the condition they were in before they were faulty – *eg, if a shirt that lost its buttons cannot be fixed without the repair being obvious (because the buttons don't match) the customer may ask for a replacement or refund.*

What if the repair does not work?

If the repair was not successful, either because you did not have the skill to do the job or the problem with the goods could not be fixed, the customer may choose to reject the goods and seek either a refund or replacement.

What type of replacement do I have to give?

You are required to provide an identical replacement from available stock. If an identical replacement is not reasonably available you can provide either a repair, or a refund.

If the fault is serious or cannot be repaired

The customer can choose to reject the goods and either:

- get their money back
- get a replacement of similar value and type, or
- keep the goods but get some of their money back in compensation.

The customer chooses which of the three options they prefer.

Under the Act a serious problem is any case where:

- a reasonable consumer would not have bought the goods if they had known that the fault existed – *eg, no-one would buy a washing machine if they knew the motor was going to burn out after three months*
- the goods are significantly different from a description given, or a sample or demonstration model – *eg, a jersey is described as 100 percent wool but is 30 percent acrylic*

- the goods are substantially unfit for their normal purpose and they cannot easily be made fit for the purpose, or this cannot be done within a reasonable time – *eg, a video will not fast forward or rewind tapes and the fault cannot be found*
- the goods are substantially unfit for the particular purpose the consumer bought them for and they cannot easily be made fit for the purpose, or this cannot be done within a reasonable time – *eg, washable wallpaper that is not really washable at all*
- the goods are unsafe – *eg, a bicycle has faulty brakes.*

FROM THE COURTS

The courts have decided that a fault might be considered serious when:

- the cost of the repair is high compared with the overall cost of the goods – *eg, repairs of \$1,000 required to be done to a car that was bought for \$5,000*
- there are a number of small faults with the goods that on their own are minor, but together may be seen as serious.

What if I do not agree that the fault is serious?

Either you or the customer may wish to pursue a second opinion about the nature of the fault to support your different views. If you are still unable to resolve the issue, either you or the customer may take a claim to the Disputes Tribunal or the courts. Information about the Disputes Tribunal is available from your nearest District Court.

Rejecting the goods

The customer must return the goods before they can ask for a refund or replacement. The Act calls this “rejecting the goods”. We suggest that customers give the reasons for the rejection in writing.

Goods cannot be rejected when:

- they have been disposed of, destroyed, lost or damaged after delivery
- they have been attached to other property and cannot be removed without damaging them – *eg, taking defective wallpaper down off the walls will damage it*. If it is possible to remove the installed goods, the customer can ask you to carry out that removal
- the customer has run out of time to reject. The right to reject runs from the date of purchase only until a time that such a fault is likely to appear with reasonable use.

What if the customer has asked me to collect the rejected goods?

If there is a significant cost involved in moving the goods, you should arrange to collect them from the customer. In our view, if the goods had to be delivered to the customer in the first place due to their size, it is reasonable for the customer to expect you to collect the goods.

Can goods be rejected when I have already carried out a repair?

The customer’s right to reject goods after a repair has failed will depend on whether that fault is serious.

FROM THE COURTS

Here are three different cases that were taken to court.

- In a case about a serious failure in a motor vehicle, the court decided that it would be reasonable for the customer to hold onto the goods (but not use them) until a refund had been made.
- The court decided that if a customer was not given enough information about the fault by the trader at the time to make clear that it was serious, the customer may still have the right to reject the goods after a repair is carried out and fails to repair the problem.

We recommend that you provide the customer with enough information about the fault to allow them to make an informed decision to reject the goods if the fault is serious, or accept a repair or replacement if the fault is minor or easily repairable.

- The court decided, in a case about a four-wheel drive vehicle, that the customer should consider the type of goods and the amount of reasonable use such goods could be put to before the defect becomes apparent.

Eg, with a vehicle like a four-wheel drive, you would expect any defects to appear earlier than with a more sedate vehicle. Other relevant factors are the age and condition of the goods at the time of purchase.

Refunds

Do refunds have to be in cash?

When the customer is entitled to a refund it must be given in cash. The customer does not have to accept a credit note. You can wait until a customer's cheque clears before giving a cash refund. You can reverse the charge on a credit card or store card account instead of giving a cash refund if the customer has yet to be billed.

In our view it is acceptable to provide a cash refund in the form of a cheque if the amount is large.

We recommend that you have a system in place at your store to allow refunds to be provided promptly to the customer.

Do I have to give a trade-in back?

Yes, if the customer requests it and it has not been sold. If the trade-in has been sold or disposed of, the customer can claim the value given to the trade-in as part of their refund of the price paid.

Can I reduce the refund because the customer cannot return the goods in their original packaging?

No. The Act entitles the customer to a refund of the amount paid. In our view it is reasonable that packaging might be broken or thrown away before a fault is discovered.

Can I take into account any use the customer has had from the goods?

No. The Act says that the refund must of the amount paid.

No refund signs

Signs that state "No Refunds" are a breach of the Fair Trading Act. The signs imply that it is not possible to get a refund when the Consumer Guarantees Act gives the customers the right to a refund in certain circumstances.

Signs that state "No refunds will be given if you have simply changed your mind" are acceptable.

Refunding for change of mind

You have no legal obligation to provide a refund where a customer has simply changed their mind about the purchase. This is not covered by the Consumer Guarantees Act. The Act only applies where a guarantee has been broken.

It is your choice whether to have a store policy that may offer the customer a refund, replacement or credit note for returned goods.

The Ministry of Consumer Affairs has a free "*Refund Policy*" sign available for use by retailers. Please contact us if you wish to order a copy.

CONSEQUENTIAL LOSS

Extra loss is the damage to the goods or to other property directly caused by a fault with the goods. This extra loss is called consequential loss. The Act allows the customer to recover compensation from you for this loss.

Eg, you sell a video cassette recorder which turns out to have a fault in it. The fault causes damage to a videotape. The damage to the tape is a consequence of the fault. The customer can ask you to compensate them for the loss of the tape as well as ask for the fault to be fixed.

Is there a limit to my responsibility?

Yes. Your responsibility is usually limited to loss or damage that you could reasonably foresee (predict) from a fault with the goods. You may not be responsible for losses that could not be reasonably predicted.

Eg, Simon recently bought a car which is leaking a lot of oil over his driveway. A neighbour's dog runs through the oil, into Simon's house, and makes marks all over the new carpet. The car dealer may not have to pay for the carpet to be cleaned, as he could not predict that a dog would run through the oil and into Simon's house.

BE AWARE

You may not be responsible for a loss that you could reasonably expect the customer to limit or prevent – *eg, Simon could see that the car was leaking oil over the driveway but didn't move the car into the garage or attempt to clean it up.*

Amount of compensation for loss

Compensation for damage is based on the value of the goods at the time of loss. To work out a reasonable value, you should consider the age and condition of the goods before the loss.

Eg, the laundry vinyl which was ruined by a faulty washing machine flooding is twenty years old and the customer was going to replace it in another few months anyway. The compensation will take into account the age and condition of the vinyl.

Can I contract out of the responsibility for consequential loss?

No, unless you sold the goods to someone for use in their business and you contracted out of the Consumer Guarantees Act at the time of sale. In any other situation you may be breaching the Fair Trading Act by misleading the customer about their legal right to be compensated for consequential loss.

GENERAL QUESTIONS

Does the customer have to provide proof of purchase?

You are entitled to ask for proof of purchase as you do not have responsibility for goods sold by another retailer. Proof of purchase may be a receipt, a credit card slip, Eftpos slip (but this won't show *what* was purchased) or a witness. It may be unreasonable to expect a customer to have the receipt if the fault has occurred some time after purchase.

What about the manufacturer's guarantee?

As the seller of the goods you are responsible for them meeting the guarantees included in the Consumer Guarantees Act. If a manufacturer gives a guarantee or warranty in addition to the guarantees in the Act, you are not responsible for *that* guarantee.

The customer has the choice under the Act to claim a remedy from the manufacturer or from you. The customer can claim against the manufacturer for a breach of the guarantees regarding acceptable quality or description (if that description has been given by the manufacturer) and the guarantees applying to manufacturers and importers.

If the customer chooses to come to you, you must accept responsibility. You cannot insist that the customer use the manufacturer's guarantee and approach the manufacturer for a remedy instead.

If you suggest to a customer that they must go to the manufacturer you will be breaching the Fair Trading Act. The Fair Trading Act says that you cannot mislead a customer about their rights.

What if the customer and I can't agree?

If you are unable to resolve a problem, you or the customer may take a claim to the Disputes Tribunal or the courts. For more information about the Disputes Tribunal contact your nearest District Court.

Is there a time limit for the customer to take action?

The customer has six years from the time the problem appears to take legal action. A long delay in complaining may affect your responsibilities to the customer, or make it difficult to prove the problem with the goods. We recommend that customers advise traders as soon as possible after the fault occurs so that the problem can be recorded.

The goods were supplied as part of a service. Do I have to give remedies as a service provider as well?

Eg, a dressmaker makes a made-to-measure wedding dress for a client. The dress is not well made. The dress does not fit and stitching is uneven.

If the contract is one for both services (making the dress) and goods (the dress), the customer may have a right to a remedy for both the poor service and the faulty dress. See our Business Note *Consumer Guarantees Act – A Guide for Tradespeople and Service Providers* for more information.

Related Ministry resources:

Consumer Guarantees Act – A Guide for Manufacturers and Importers

Consumer Guarantees Act – A Guide for Tradespeople and Service Providers

Layby Sales – A Guide for Retailers

For more information you may wish to contact:

A lawyer

Trader organisations

Citizens Advice Bureau

The purpose of this booklet is to provide a general explanation on the law relating to the purchases of motor vehicles. It is not intended as a source of specialist legal advice. You may wish to contact a lawyer for further advice. The Ministry does not accept any responsibility for the manner in which this information is interpreted or for the consequences of relying on it.

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