

CHAPTER EIGHT

Guard Duty

Warranties

WHAT A WARRANTY IS

You may have seen both the term **warranty** and the term **guarantee**. Both words have the same root, which means "to guard." And for consumers the two terms mean essentially the same thing: Each represents a bundle of obligations taken on by the provider as part of the purchase contract, or imposed on the provider by law.

Express and Implied Warranties

The law divides warranties into **express** and **implied** warranties. **Express warranties** are any promises to back up the product that the seller expresses either in writing or orally. Suppose your friend bought your Edsel and you said, **I guarantee you'll get another ten thousand miles out of this transmission.** That's an express warranty. It isn't an opinion about quality or value, such as, **This Edsel is the best used car for sale in town.** **Best** could mean anything to the speaker -- best color, best looking, best status symbol. You as a consumer are expected to understand that. In contrast, an express warranty is a specific statement of fact or a promise.

In contrast, a **warrantor** -- the person making the warranty -- does not state **implied warranties** at all. They're **automatic**, or implied by law, in certain kinds of transactions. There are two

main types of implied warranties: The implied **warranty of merchantability** and the implied **warranty of fitness for a particular purpose**. There also is an implied **warranty of title** in a sale and an **implied warranty against interference** in a lease.)

The implied warranty of merchantability. When someone is in the business of selling or leasing a specific kind of product, the law requires that the item be adequate for the purpose for which it is purchased or leased. This is a general rule of fairness -- that what looks like a carton of milk in the supermarket dairy case really is drinkable milk and not sour or unusable. The implied warranty of merchantability applies only if the seller is in the business of selling the item that is the subject matter of the sale. So it wouldn't apply to someone buying your Edsel, unless you were in the business of selling cars.

The implied warranty of fitness for a particular purpose. Another type of implied warranty is the implied warranty of fitness for a particular purpose, which means that any seller or lessor (even a nonprofessional) is presumed to guarantee that an item will be fit for any particular purpose for which it is being sold -- as long as the buyer makes that purpose known and the seller knows that the buyer is relying on him to provide a suitable item. When you sell your used Edsel to your friend you make this warranty if you understand your friend's purpose is to race the car, and understand that she is relying on you to provide a car for that purpose, as opposed to basic transportation. Or suppose your friend told you she needed a car that could tow a trailer full of granite up steep mountains in the snow and was relying on your Edsel to do the job. When, with this knowledge, you sell the Edsel to your friend, you make an implied warranty that it can do that. When the car fails in that purpose, your warranty will have been breached. On the other hand, if your friend tells you she's buying your car only because she needs

spare Edsel parts, you can sell your Edsel -- even if it's sitting out back on cinder blocks -- without breaching any warranty.

KINDS OF EXPRESS WARRANTIES

Some express warranties deal with the quality of the goods: Will they do a specific job or meet certain specifications? Are they reasonably fit for their intended purpose? How long after the purchase will the manufacturer make repairs or replace parts, and under what terms? Other warranties might deal with the ownership of the goods: Does the seller have good title or ownership rights that may be lawfully transferred to the buyer? (These warranties of title are part of a home purchase contract, for example, which is covered in [chapter 11](#).)

Durations of warranties may vary considerably, depending on the type of transaction and warranty involved, and the applicable law. In most states, you have up to four years to enforce an implied warranty after the start of the transaction. In cases involving written warranties the period may be much shorter. And unless prohibited by state law, the duration of the implied warranty can be limited to the duration of the written warranty. A written warranty will disclose how long it lasts. It may be as short as ninety days for a portable radio. A warranty on a new car, on the other hand, may last several years or many thousand miles.

The Magnuson-Moss Act

A federal law, the Magnuson-Moss Act, covers written warranties for consumer goods costing more than a few dollars. It does not require that merchants make written warranties. If they do make such a

warranty, however, it must meet certain standards. The warranty has to be available for you to read before you buy. It must be written in plain language, and must include the following information.

- ! the name and address of the company making the warranty;
- ! the product or parts covered;
- ! whether the warranty promises replacement, repair, or refund, and if there are any expenses (such as shipping or labor) you would have to pay;
- ! how long the warranty lasts;
- ! if the warranty does not cover certain legal damages -- usually consequential or out-of-pocket damages, beyond the cost of the product -- then a statement of that fact;
- ! the action you should take if something goes wrong;
- ! if the company providing the warranty requires you to waive certain rights in a dispute or submit to arbitration then a statement of that fact (see chapter 4);
- ! a brief description of your legal rights.

Some states have warranty laws that provide consumers with greater protection than the Magnuson-Moss federal warranty law. One typical example is state **lemon laws**, which mandate new car dealers to refund consumers money when a new car is so defective that it meets the statutory definition of a lemon. Some states even have lemon laws for used cars. (See chapter 9 on auto purchases.)

Warranty Shopping

Consider different manufacturers= warranty terms when you shop. But keep in mind that the terms of a warranty are seldom negotiable, especially the length of the warranty, whether it covers only parts or certain problems, and what you must do to use your rights. You are virtually never buying the product from the manufacturer, after all, and retailers usually are not the ones offering the first-line warranty service themselves (though some stores that offer service plans do take over@even the early warranty service).

On the other hand, you should know the retailer's return policy for defective merchandise. Mail-order and other deep-discount sellers frequently offer five or ten days for returns of defective merchandise, but then require you to turn to the manufacturer with any problems that arise after that initial period. Other merchandisers such as appliance superstores often offer a 30-or-more day no questions asked@return policy, which is very desirable. You don't even have to find a flaw; just change your mind, and they will give you a full refund. And still other stores will ultimately stand behind all products they sell, even beyond the technical cut-off date for returns. The length of that commitment tells you about the strength of that commitment -- to you.

Sidebar

In the language of appliance retailers, warranties, packaging, and service often come from *Athe factory*.⁶ That doesn't really mean, however, the place where the appliance is manufactured. The *real* factory might be in China, Mexico, or Singapore, while *Athe factory*⁶ they mean -- the location of the executive offices, warehouse, or service center -- is in a New Jersey office park or Houston skyscraper. For that matter, the company whose brand name is on a product may not even *own* a factory. You'd be surprised which well-known brands of appliances are merely nameplates, distribution networks and marketing strategies. Thus a *Afactory*⁶ warranty is really the warranty offered by the company that *Aputs out*⁶ the appliance under its name, whether or not there's a factory by that name at all.

FULL AND LIMITED WARRANTIES

The difference between a **full warranty** and a **limited warranty** can be the difference between night and day. Magnuson-Moss requires all written warranties for consumer products costing more than a few dollars to be designated as either a "full" warranty or a "limited" warranty.

Full Warranties

A full warranty is a promise that the product will be repaired or replaced free during the warranty period. State and federal laws require that if the warrantor will repair the item, it must be fixed within a reasonable time without charge and it must be reasonably convenient to get the item to and from the repair site. If the company can't fix the problem in a reasonable number of attempts, it must give the

consumer a refund or replacement. In effect, this is a federal "lemon law." Many stores will offer a short full warranty of their own (thirty to ninety days), above what the manufacturer offers, and some premium credit cards will double a warranty for up to a year for products purchased with the card. Repairs or replacement during the extended warranty period become the responsibility of the card issuer after the manufacturer's warranty expires.

Sidebar

WARRANTY SENSE

The best-made products often have the best warranties, because they're less likely to need them. Thus the manufacturer can guarantee a long period with little risk. A warranty is a statement about the maker's confidence in its products; because it involves the manufacturer's pocketbook, it's a statement you should take seriously. Try to figure the value of a warranty into the price of a product and make it part of your formula for purchase decision-making.

Limited Warranties

A limited warranty is much more common. Not surprisingly, it covers less -- usually only parts, and almost never the cost of labor beyond the first month or so. For more expensive appliances such cars or computers, however, reputable manufacturers may offer limited warranties that are for a longer period

of time and provide greater coverage. For example, you might be able to find a computer warranty covering everything during the first year and including on-site repair (where a technician comes to you) during that period. When warranty coverage like that is out there, there's no reason you should spend a lot of dollars on an important and trouble-prone product without it.

Don't wait until a product needs repair to find out what's covered in any written warranty you get. Compare the terms and conditions of the warranty before you buy and look for the warranty that best meets your needs.

Warranty Disclaimers

A merchant may not disclaim a warranty *after* you've made the purchase. But *before* you buy, in most states implied warranties of merchantability or fitness may be excluded or **disclaimed** if the contract or disclaimer is in writing and the relevant language is obvious. This may not be allowed under federal law, however, if there is a written warranty. For a disclaimer of the implied warranty of merchantability to be valid, the disclaimer must use the word "merchantability," or it must use language that in common understanding makes plain that there is no implied warranty. In contrast, the implied warranty of fitness for a particular purpose may be disclaimed merely by a less communicative written statement. If, however, a manufacturer has given a Magnuson-Moss full or limited warranty the manufacturer may not disclaim any implied warranty. In any event, a person may not disclaim an express warranty that's written in the contract but an oral one may not be enforceable in every case. If there is not a written warranty, a disclaimer is common. In many cases of consumer products, a warranty will be stated in the purchase contract you sign, which will also state a specific remedy if the product fails. This avoids

having to give no warranty while still protecting the seller or lessor to some extent. For example, the contract may provide that the seller will repair or replace the merchandise, if necessary, but that the customer has no right to get back any money. This protects the seller against the worst-case scenario (having to give your back money) while giving you some protection. This is called a **warranty limitation**.

Some warranty limitations exclude some or all forms of **consequential damages**. As explained, earlier, these are losses caused by the product's defect, including your lost time and expense that result from the defect and repair costs. If, for example, your new computer crashes and destroys weeks of work, you may get a new computer. But under the terms of the wording in the warranty that came with the computer (as well as the disks), the warrantor will almost certainly not reimburse you for the lost time, work or software -- much less a lost job or client. At some point, the law expects you to protect yourself, in this case by backing up your computer files. (Computer experts say that one in ten floppy disks is flawed!) An important exception to this is that you usually may recover damages in cases of personal injury that result from a product's defect.

Sidebar

SHORT-TERM SUPPORT

A computer software program gives users 30 days of free support. That might be adequate for most problems, since many arise when first installing and configuring new software. But what if six months

later, you replace your computer and, when re-loading the software on the new unit, it starts spewing garbage onto the screen and won't work? After the first month, the manufacturer charges \$15 a call for support. But the software itself only cost \$30! It might be worth it to buy a newer program, perhaps from a different manufacturer rather than pay 50% of the cost of software you already know has kinks in it.

ON-LINE WARRANTY SUPPORT

Most manufacturers of computers and other sophisticated equipment include **on-line** assistance during the warranty period; better manufacturers include it for life. (This is less impressive than it sounds, since many top of the line computers and office equipment of five years ago are hopelessly obsolete today. If the products aren't in use, the on-line support won't be needed.) On-line assistance is also critical to get the most out of sophisticated computer software. No documentation provided with software has ever been able to anticipate every glitch that these powerful programs, running on powerful machines, can come up with.

On-line assistance consists of a staff of technicians (often called techs) who sit at banks of telephones and computer terminals and answer your questions about difficulties you're having with your computer. Look for these on-line features:

! Long duration of free service. As mentioned above, the difference between

five years of free support and **Alifetime@** support may be meaningless. But while you're likely to have more problems in the first 30 days of a computer application, 30 days isn't a very long time to assume *all* your problems will be ironed out. And some problems can render the product worthless.

Manufacturers of hardware and software will often allow you to buy more time for support, or will offer it on a charge-per-call basis. Once again, put these numbers and durations into the hopper when making your choice.

! **Internet coverage.** Many companies now offer Internet websites with FAQ's (Frequently Asked Questions) related to their products, including common problems and bugs. The real bug is that increasingly many companies consider this resource to be a substitute for providing a human being (who has to be paid, after all) to answer your questions. Usually consumers find Internet warranty assistance to be a distant second in usefulness.

! **Toll free calls.** It is amazing that anyone requires you to make a toll call for **Afree@** support, much less that you might spend ten or twenty minutes or more on hold (see below) while the phone-company is running the meter.

Nonetheless, some major manufacturers continue to nickel-and-dime their customers this way. If all things are equal, or even close, go for the company that's brought its customer service into the modern age and offers an 800 number. You'll be glad you did.

! **Twenty-four-hour availability.** Or at least something like it. Some support

staffs are available at least until midnight. After all, if you're working at that hour you're likely facing some deadline the next morning, and a technical problem could be fatal. Certainly, places that close up shop at 4:30 Eastern time aren't of much use to customers in Oregon, who might not have even eaten lunch yet.

! **Adequate coverage.** One of the biggest powers in computer software is notorious for the virtual impossibility of getting through to its technicians on the line. Busy signals are followed by long Muzak-on-hold phone queues, or even phone systems that just hang up on you after a while. Other, hungrier (not necessarily smaller) manufacturers provide better service. To find out if a company's support is accessible, try to get their phone number before you buy, and make a sample call. Alternatively, ask present customers, read the computer-consumer press, or even ask a salesperson (as long as the store carries a range of competing brands).

! **Technical knowledge.** A few calls to most of these techs will impress you with their knowledge of their products and computing generally. But some staffs are better-trained than others. Again, computer professionals and the computer press are the best guide for this kind of information.

! **E-mail option.** Many manufacturers offer an electronic mail address where their technicians can get to less urgent questions. This is an excellent option, because it saves you time on the phone and the frustrations of trying to get through. Also, some of the better-known software programs are supported@

by on-line bulletin-boards run by fellow users (and perhaps sponsored or moderated by the manufacturer) who know just what you're going through. Again, this is a great supplementary service, but is often a very frustrating approach to support when no other alternative is offered.

Sidebar

SILICON ALCHEMISTS

If one on-line technician's advice about your problem doesn't ring right, sounds radical, or still doesn't produce the hoped-for results, call again. You're 99% certain not to get the same tech, and 80% certain not to get the same advice. There are many ways to skin an algorithm. Computing isn't as exact a science as you might think!

EXTENDED WARRANTIES AND SERVICE AGREEMENTS

Many companies offer **extended warranties** or **service contracts** for varying lengths of time and for varying amounts of money (see below). Both of these will cost you extra. Take a hard look and ask if the benefits are worth the cost. Consider how the extended warranty or service contract enhances your regular warranty. Find out where you'll have to send the product for repairs.

Keep in mind that some products tend to be durable, making service contracts less valuable, while others are trouble-prone. Some office managers swear by service contracts for anything having to do with a facsimile machine or laser printer. Considering how temperamental computers can be, they may also be good candidates for extra coverage. Freezers, on the other hand, will usually last decades with minimal maintenance. Clock radios kept out of the bathtub are also long-lived. Appliances like these don't usually need service contracts.

Also look, especially in service contracts, at whether there's a deductible amount. For example, the contract might not cover repairs costing less than fifty dollars. The deductible amount, or a per-repair flat fee that you agree to pay, can add up to erase all the expected savings. Sometimes it pays to wait until after the warranty has expired before deciding to buy a service contract, if you can. Then you have a sense of a product's reliability.

Be sure to take a good look at who is backing up the contract or warranty. Is it a well-known manufacturer? The store where you got it? Or a company you have never heard of with only a post-office box for an address? Also, see if you can get an extended warranty on your own, from another company. These are easy to find on the Internet, and may offer a better deal than the one being pitched by the company selling you the appliance.

Ultimately, don't be pressured by a salesperson into taking one of those contracts. They're frequently an important source of profit on the transaction. Stores can't get back, with the sale of a service contract, some or all of what they've given up to a savvy negotiator. Think hard before you fall for this sales pitch.

PROTECTING WARRANTY RIGHTS

Just like any other right, there's no sense fighting (or shopping for) warranty rights only to lose the ability to use them when you need them. There are a few simple rules to follow.

! **Save the box.** Many warranties require shipping in the original packaging to service centers for warranty service. Sometimes this gets the manufacturer off the hook completely. But it also makes sense, since the original packaging is custom-designed to protect the product through the rigors of shipping. It's true that these boxes, and all that styrofoam, take up a lot of space. If space is at a premium, you can collapse the boxes by cutting the tape or pulling the large staples that hold the flaps together. New shipping (not masking!) tape will make the boxes as good as new. And any specially-molded styrofoam may store better out of the boxes; you may be able to get it to interlock or stack efficiently, taking up less space than it did in the original container. Also keep any documentation, software, or demonstration videos, etc., that came with the product, in case you have to return the product for a refund.

! **Play by the rules.** Any violation of the manufacturer's operating and service instructions probably will void the warranty. If you think you can save the time and trouble of getting authorized warranty service with your own power screwdriver, that's your call to make. But doing so often voids your warranty coverage, since -- with all due respect -- most consumers are likely to make things worse than once they start poking around in there.

! **Keep good records.** Hang onto your receipts through the warranty period. They are your proof of when the warranty period starts and ends, and are more important than the warranty return card. (That card often is just a marketing device that enables the manufacturer to learn more

about you.)

If you do end up contacting the manufacturer, do so only as instructed in the warranty. It's a good idea to contact the manufacturer in writing, keeping copies of all correspondence, at the address specified in the warranty. That's especially true if you aren't getting quick responses. Your correspondence file will protect your warranty rights near the end of the coverage period. For more details, see chapter 15 on contract remedies.

If you give in to the modern urge to use the phone, by all means keep a log of whom you have spoken to, with the date and time of the conversation, and what they've told you. And, once again, if one telephone call doesn't do it, try another one. You might get someone more helpful the next time around.

The Savvy Consumer

The quality of the retailer you are working with often comes full circle. Say a problem arises with warranty service, and after all the advice, repairs, or even replacements the manufacturer has sent you, you've had it with the product. You want a refund. But don't count on getting one from the manufacturer. They have little to gain -- they've lost you as a customer either way.

At this point you might try the store where you got the item. It may be able to "go around" the warranty process, especially if it's fairly soon (say, a few months) after you acquired the product. Stores often are able to ship back defective products that the manufacturer wouldn't have accepted back from you directly. Manufacturers are, after all, more connected to retailers than to consumers, and have to work with them. Conversely, the retailer *needs* you, and a better one will bend over backwards to

find a way to help. Doing so is an investment in a long-turn customer relationship -- the old-fashioned, and still successful, way to make money. That's why going to a more reputable dealer could even be worth paying a reasonable premium over the place that charges -- and gives -- the least.

[Click here to go to Chapter 9](#)