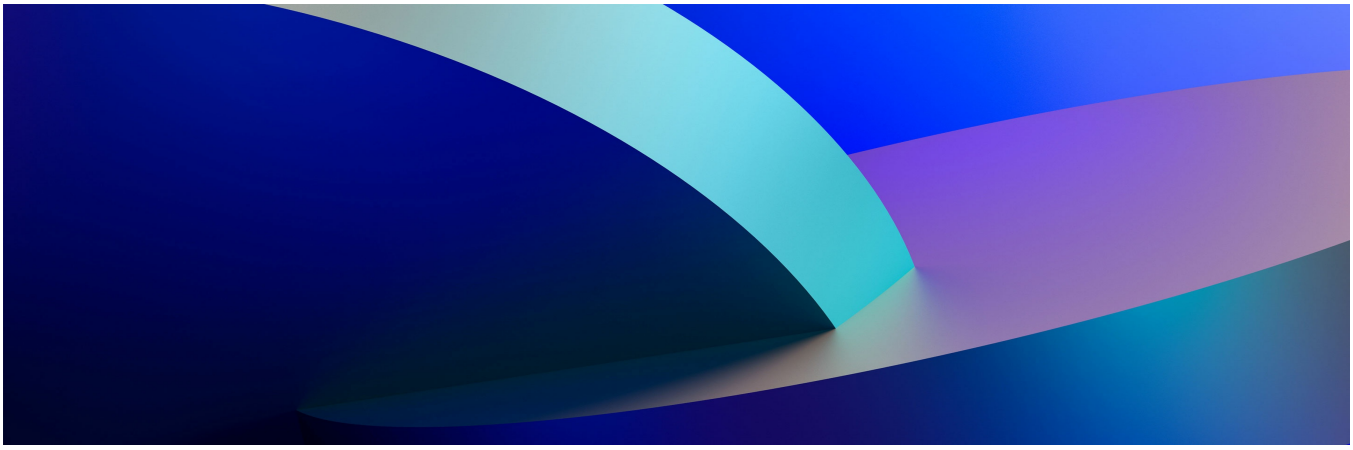


# Warranty law in supply contracts in Switzerland

**General Remarks**

1. In general, the same provisions of the Swiss Code of Obligations apply for B2B contracts as well as for sales contracts vis-à-vis consumers. Additional rules/restrictions apply for certain consumer contracts with regard to the reduction of the warranty period and in the event of door-to-door sales.
2. Swiss contract law is governed by the principle of freedom of contract: To a large extent, the parties may depart from statutory law. In particular, Swiss law allows that, by mutual agreement, warranty rights and claims for damages are limited or excluded – except for wilful intent and (arguably) gross negligence.
3. Under Swiss law, warranty rights and claims for damages may be limited or excluded in individual contracts as well as in General Terms and Conditions.

However, Article 8 of the Swiss Law against Unfair Competition sets a restriction for contracts with consumers – by prohibiting General Terms and Conditions causing a substantial and unjustified disparity of rights and obligations to the disadvantage of the consumer.

**Material Defects**

The seller is liable to the purchaser for any breach of express warranty as well as for any physical or legal defects which would eliminate or substantially reduce the value of the purchased good or its suitability for the designated purpose.

**Legal Defects**

The seller must ensure that no third party deprives the purchaser of the purchased good for legal reasons which already existed when the contract was concluded.

**Rights and Remedies of Purchaser**

Subject to the timely notification of the defect, the purchaser might either withdraw from the purchase agreement, or seek a reduction of the price equal to the reduced value of the purchased good.
In the event of purchase of fungible goods, the purchaser may also ask for replacement of the

defective good.
In addition, the purchaser may seek damage compensation.

**Subsequent Performance**

In the event of purchase of fungible goods, the purchaser may ask for replacement of the defective good.
Swiss statutory law does not provide the purchaser with a right to seek repair.
Swiss law is not mandatory. Parties often agree that the purchaser might (only) seek repair and the seller has the choice whether to repair or to replace the good.

**Right to Choose Subsequent Performance**

See above.

**Costs of Subsequent Performance**

To the extent the purchaser has a legal or contractual right to seek replacement or repair, subject to a deviating agreement of the parties, the seller must bear the costs necessary for subsequent performance.

**Conditions for Damage Claims**

1. If the purchaser withdraws from the contract due to the good being defective: Besides returning the purchase price, the seller must compensate the damage incurred by the purchaser „directly“ as a result of the delivery of the defective good, irrespective of fault. According to the Swiss Supreme Court, „the proximity of the causal link is the right criterion for distinguishing between direct and other damages“. The seller must compensate any further damage unless it can prove that no fault is attributable to it.
2. If the purchaser seeks reduction of the price: Further to the reduction of the price equal to reduced value of the purchased good, the seller must compensate any damage incurred by the purchaser unless it can prove that no fault is attributable to it.
3. If the purchaser seeks replacement: Further to replacing the defective good, the seller must compensate any damage incurred by the purchaser unless it can prove that no fault is attributable to it.

**Extent of Claims for Damages/Limitation of Liability**

Subject to the above-mentioned requirements, the purchaser must compensate any damage incurred by the purchaser as a result of the delivery of the defective good.
Limitation and exclusion of warranty rights and claims for damages is possible within the following restrictions:

1. By mutual agreement, warranty rights and damages claims can be limited or excluded – except for cases of fraudulent concealment of defects. It is unclear whether the liability can be validly limited or excluded for gross negligence.
2. Under Swiss law, the liability may be limited in individual contracts as well as in General Terms and Conditions.
3. The same rules apply for B2B contracts and sales contracts vis-à-vis consumers except that Article 8 of the Swiss Law against Unfair Competition prohibits General Terms and Conditions causing a substantial and unjustified disparity of rights and obligations to the disadvantage of the consumer.

**Withdrawal from Sales Contract**

Subject to the timely notification of the defects, the purchaser has a right to withdraw from the

contract in the event the delivered good is defective.
Unless agreed between the parties, the purchaser does not have to grant the seller the possibility of providing subsequent performance. Exception: In the event of purchasing fungible goods, the seller may discharge its obligation to the purchaser by immediately delivering suitable items of the same kind and making good any damage suffered by the purchaser.
According to statutory Swiss law, even where the purchaser brings action for rescission, the court may allow only a reduction of the price equal to the reduced value of the purchased good if the court considers that the circumstances do not justify withdrawal from the contract. A court is likely to resort to such provision in the event of minor defects.

**Limitation Period for Claims for Defects**

Subject to timely notification, the limitation period for warranty rights is two (2) years after delivery – even if a defect is detected only later.
The limitation period is five (5) years where the good was intended for and becomes part of an immovable property.
The parties may agree on different rules – except that the limitation period must be at least two (2) years (one year for second-hand goods) in the event the seller is professional and the good is intended for the purchaser's personal or family use.
The seller may not invoke the limitation period if it wilfully misled the purchaser.

**Purchaser's Obligation to Inspect Goods and Report Defects in B2B Contracts**

Upon delivery, the purchaser must immediately inspect the goods and notify any defects to the seller without delay. As a rule of thumb, notification must be made within 3–5 days after delivery.
Hidden defects must be notified instantly after detection.
These rules apply for B2B contracts as well as for sales contracts with consumers.
The parties may agree on a different procedure.

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