

CONTRACT

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CHAPTER: 3 NEGOTIATION INSPECTION AND DEFECTS LIABILITY

The Problem:

When things go wrong with the exported products, repair and replacement can be ruinously expensive. There are some special steps that the exporters can take to minimize the risk of the goods being rejected or of heavy defects liability claims.

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The Principle:

- + The exporter should ensure that all exported goods meet or exceed the quality specified, that marking and packaging are correct and that delivery is on time.
- + The agreement between the parties should contain specific quality specifications.

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In more depth:

The quality of the product is a key issue, and customer satisfaction is essential to successful business. Many companies have quality assurance programs to ensure that customers get what they pay for.

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In more depth:

Until things are going well in the local market, it makes little sense to export, because quality assurance and customer satisfaction are much tougher when the customer is in another country, and distance makes communication, transport, inspection, payment and verification of claims expensive and time-consuming.

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A well-designed set of specifications offers vital protection the both sides.

The importer is protected against inferior products. Moreover, the seller is protected also-through more subtly. If the products are fully specified and the consignment meets the specifications, the buyer will be unable to find any excuse for rejection or for exaggerated defects liability.

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Pre-delivery Inspection

Many importers require inspection of their goods in the manufacture's factory before delivery. With sophisticated items or capital equipment, the buyer may also want to inspect the goods at pre-agreed times during manufacture.

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The Buyer may, **at the Buyer's option**, inspect the Goods prior to shipment. At least fourteen days before the actual delivery date, the seller shall **give notice to the Buyer**, or to any **agent nominated by the Buyer**, that the Goods are available for inspection. The Seller shall permit access to the Goods for purposes of inspection at a reasonable time agreed by the parties

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Some countries, Indonesia for example, require that all imported goods are inspected by an inspections service immediately before shipment. This inspection prevents exporter and buyer agreeing an unrealistically low invoice price in order to avoid customs duties in the buyer's country. This also prevents shipments of patently defective goods.

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The next step, assuming FOB delivery, is examination of the goods by the carrier. The carrier does not unpack the goods or check their quality, although leaks and obvious damage – as well as incorrect shipping marks, defective packaging or discrepancies in weight and size – are noted on the shipping documents.

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Inspection and Acceptance

The principle is clear- the buyer has the right to inspect the goods when they arrive and to reject them if they are incorrect. At this point, ***exact specification is of great value to exporter if the goods conform to specifications, the buyer is obligated to accept them.***

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+ Defects Liability Period

Once the goods are accepted by the buyers as apparently correct, they must jump to the final hurdle – the defect liability period. The manufacturer accepts liability for defects that come to light after acceptance: if anything is wrong with any item, they will repair or replace it. Such defects are called "***latent defects***".

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The defects liability period is negotiable, this is likely to be *several months from the date of delivery or the date of arrival*.

Protection against dishonest claims or excessive demands should be written into the contract.

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To sum up, in negotiating the terms of the contract, we can look at the process in steps.

Step 1. Inspection: When are the goods inspected? And when can the buyer to reject them?

Step 2. Terms: Warranty or guarantee?

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Step 3. Definitions: What is, and what is not, a defect?

Step 4. Timing: How long is the defects liability period? When does it begin? What about other timings?

Step 5. Corrective action: What must the seller do to cure defects?

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II. INSPECTION, ACCEPTANCE AND REJECTION

The problem

When goods are delivered, the buyer inspect them. What are the buyer's right of rejection?

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II. INSPECTION, ACCEPTANCE AND REJECTION

The principle

The buyer can inspect goods and they can cancel the contract if the goods do not conform the contract.

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II. INSPECTION, ACCEPTANCE AND REJECTION

In more depth

The seller promises to delivery perfect good but if they break the promise they still have the contract because they will fixe the problem

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II. INSPECTION, ACCEPTANCE AND REJECTION

Implied Warranties

Implied warranty of conformity with contract

Goods must conform with their description in the contract. but what is “ conformity with contract? There are law to deal with problem. Most laws have a way of “grading” non-conformity.

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II. INSPECTION, ACCEPTANCE AND REJECTION

Implied Warranties

Implied warranty of merchantable quality

Goods might well conform with the contract but be of seriously inferior quality.

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II. INSPECTION, ACCEPTANCE AND REJECTION

Implied Warranties

Implied warranty of fitness for intended purpose

Goods might conform with the contract and be merchantable but still be useless to the buyer. If exporter knew the buyer's intended purpose, and if the buyer trusted the exporter to supply correct goods, then most laws allow the buyer to reject unusable items.

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II. INSPECTION, ACCEPTANCE AND REJECTION

Rejection: Total or partial

English law requires rejection of all the contract goods unless contract expressly allows part rejection. German law and the Vienna Sales Convention both allow rejection of only defective or non-conforming goods.

The buyer must notify the exporter that the goods have been rejected “within a reasonable period”.

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III. WARRANTY AND GUARANTEE: TERMINOLOGY

The problem

Are a warranty and a guarantee the same thing? Why do some contract replace a warranty with a “defects liability provision”?

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III. WARRANTY AND GUARANTEE: TERMINOLOGY

The principle

A guarantee is a promise about somebody else's performance; a warranty is a promise about your own.

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III. WARRANTY AND GUARANTEE: TERMINOLOGY

In more depth

A warranty is a promise you make about your own performance. A product warranty is a promise by the exporter to cure defects in his products.

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III. WARRANTY AND GUARANTEE: TERMINOLOGY

In more depth

Guarantee and warranty are often used colloquially and in commercial transactions as having the same signification. Therefore, internationally, the distinction between warranty and guarantee is often blurred.

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III. WARRANTY AND GUARANTEE: TERMINOLOGY

In more depth

A warranty is an absolute undertaking on the part of the warrantor.

A guarantee is a promise of the guarantor.

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IV. THE DEFECTS LIABILITY PERIOD: A CHANCE TO PUT THINGS RIGHT

The problem: the exporter is liable for defects in his products.

The principle: a warranty protects both the exporter and the buyer.

In more depth: a defects liability provision puts into words what everyone knows.

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IV. THE DEFECTS LIABILITY PERIOD: A CHANCE TO PUT THINGS RIGHT

Three Types of Defect:

Defects may be in workmanship, in materials, or in design.

Defective workmanship: a product with defective workmanship is incorrectly built.

Defective Material: Defective materials are materials or parts of a product that are inferior or somehow incorrect.

Defective design: defective design means that a product does not meet specifications

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V. TIMING OF THE DEFECTS LIABILITY PERIOD

- 1. The Defect Liability Period**
- 2. The Notification Period**
- 3. The Rectification Period**
- 4. The Legal Action Period**

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Q & A

- 1. What are 5 steps in negotiating Defect Liability Period?**

CHAPTER: 3 NEGOTIATION INSPECTION AND DEFECTS LIABILITY

Q & A

- 1. What are 5 steps in negotiating Defect Liability Period?**
- 2. Why do companies have quality assurance programs?**
- 3. Why do conflicts may arise in negotiating specifications?**
- 4. What is the benefit of a well- designed set of specifications?**
- 5. Which kind of goods need pre- delivery inspection?**

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Q & A

- 6. What are the functions of independent inspection?**
- 7. What does customs inspection reveal?**
- 8. What is the real inspection for goods?**
- 9. How to set the Defect Liability Period?**
- 10. What is patent (open defect)?**
- 11. What is latent (hidden) defect?**

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Q & A

- 12. Give some examples of patent defects.**
- 13. What are Implied Warranties?**
- 14. What are 3 types of Implied Warranties?**
- 15. What is the main different between Warranty and Guarantee?**
- 16. What is a Product Warranty?**
- 17. What is a Product Guarantee?**

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Q & A

- 18. What are the 3 types of defects? Give examples.**
- 19. What is not a defect?**
- 20. What does the Defect Liability Provision often mention?**
- 21. What are the 4 Timing problems in Defect Liability Period?**
- 22. What are the 5 options for curing Defects?**