

**Relations between supplier and retailer: questions and answers on the issues
of guarantee**

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Let us suppose that the supplier TOM (manufacturer, importer, wholesaler) sells mobile phones to the buyer DICK (retailer) which are then purchased by the consumer HARRY. Hence, the aim of this article is, first, to outline the aspects of the legal B2B guarantee due by TOM to DICK and the right of redress of DICK against TOM provided by the Consumer Code in case of guarantee to a final non-professional consumer, and second, to answer some frequently asked questions that are currently posed on the guarantee relations between supplier and retailer.

The two legal guarantees It is to be noted that when we speak of legal guarantee between undertakings we are referring to the so-called “business to business” or B2B guarantee, which binds the supplier *Tom* towards the buyer *Dick* (in our example, the retailer). Instead, the products sold by Dick to a final non-professional consumer (thus as part of a “business to consumer” or B2C transaction) have another form of guarantee far more burdensome for the seller as well as subject to other rules, and which is harmonized – at least in large part – at EU level and regulated in Italy by the Consumer Code (Legislative Decree No. 2006 of 6 Sep 2005).

Contents of the legal guarantee in the B2B supply of goods The seller must guarantee to the purchaser that the thing sold has no “**Flaws**”, i.e., defects that may possibly affect its value, nor “**Lack of quality**”:**(1)** Are considered “Flaws” of the thing sold those defects that render it unsuitable for the use intended (e.g., a mobile phone that does not function at all) or that diminish appreciably its value (such as an electrical device connected to the mains via a power cable that is too small, bound to last only a limited time). **(2)** The thing sold may also not have the promised or essential qualities for the use to which it is intended (example of lack of promised quality: an air conditioner less powerful than the one agreed upon).

AVAILABLE REMEDIES:

- **(a)** a proportional price reduction (or a “discount”, in commercial terms), a remedy not however applicable in case of lack of quality, or,

- **(b)** termination of the contract, i.e., the return of the product to the seller with consequent price refund.

DURATION of the guarantee: 1 year from delivery of the guaranteed product.

COMPLAINTS: must be submitted within 8 days of the discovery.

Relation between B2B Guarantee and B2C Guarantee The B2C guarantee has implications, albeit indirect, on the parallel B2B guarantee, since if the retailer *Dick* has had to honour the B2C guarantee towards the non-professional consumer *Harry*, he will have a consequent **right of redress** against his supplier *Tom*: such recourse action – unless otherwise contractually agreed between *Tom* and *Dick* – will thus overlap and make inoperative, so to speak, any other ordinary rule of the legal B2B guarantee between the two “professionals”, *Tom* and *Dick*. In particular, Article 131 of the Italian Consumer Code states:

“ 1. Where the final seller is liable to the consumer because of a lack of conformity resulting from an act or omission by the producer, or a previous seller in the same chain of contracts or any other intermediary, the final seller shall be entitled to redress, unless agreed otherwise or unless such right is waived, against the person or persons liable in the chain of contracts”. “ 2. If the final seller has fulfilled the remedies required by the consumer, he may take action of redress, within one year from completing the performance, against the party or parties responsible to obtain reimbursement of the sum given”.

Frequently asked questions concerning the B2B guarantee:1) Question (expiry of limitation and prescription periods): *“If we understand correctly, in our B2B relations the Italian law would require our company (wholesale distributor of various products) to provide to its client (retailer) a one-year guarantee with the commitment from our client to report any defect within eight days (preferably in writing) from when it is detected. In this scenario, we could then say that our legal guarantee expires (in the longer case) after one year and eight days. Is this interpretation correct? If so, does this term start from the date of our sales invoice or from the date of receipt by our retailing client?”***Answer:** The time limit for the action of the legal B2B guarantee, as set out in Article 1495 of

the Italian Civil Code, is one year after delivery of the product (not 1 year plus 8 days); the limitation period for reporting defects is 8 days from their discovery. The limitation period of this latter term, if the defect is not hidden (such as a different colour from that agreed upon), could coincide with the time of delivery of the product, while if it is hidden (i.e., an occasional malfunction of the device mechanism) it starts from its actual discovery by the purchaser. In any case, shall apply the limitation period of one year from delivery of the product.2) **Question (Product sold to the final consumer after more than one year after its delivery to the reseller):**

“Our retailing client could sell the products purchased from us after a period which may also be of a few years after having received the goods from us: in these instances, does the burden of the B2C guarantee that the retailer should provide to his customer fall entirely on him? The Consumer Code requires the retailer to guarantee the end consumer for 24 months with a right of redress against us within 12 months after the service has been provided to the end consumer. In such case, it could thus happen that a retailer sells to a final consumers in January 2015 a product purchased from us in November 2013 and that the consumer ascertains in December 2016 (almost at the end of the 24-month guarantee) the breakage of the product and takes it back in January 2017 to the retailer whom (without even consulting us on the legitimacy of the guarantee) replaces the product to the end consumers and after a further 12 months requests to be redressed by asking us to replace the product in February 2017. Have we understood this correctly?”

Answer: The retailer who has complied with the legal guarantee has a right of redress against the person or persons (in the sales chain that goes from the producer to the retailer) liable for the defectiveness of the product: such right must be exercised within a year from the performance of the services under guarantee, but (unlike other jurisdictions, such as for example in Germany, where the time limit is 5 years) there are no limitation or prescription periods with respect to the time when the product that later turned out to be faulty was sold to the retailer: thus, according to your example, the recourse action of the retailer may be exercised even in February 2017.3) **Question (Sale chain and retailer’s recourse against the last wholesaler/reseller):** ***“The supplier TOM who***

has indemnified the retailer DICK as a result of the redress action by the same for the legal guarantee due to the final consumer, can in turn request his own supplier for the refund of the amount paid?"Answer: This, unfortunately, is a rather common issue that, in law, takes the name of "***responsibility in the sales chain***": your company, in the event of having to indemnify its client/reseller as a result of the guarantee action taken out against the same by the final purchaser of his products, can ONLY claim against whoever is immediately before in the sales chain, namely, against the Supplier who has sold you the products later found "flawed" when arrived in the hands of the final purchaser. However, such recourse_action – excepting the case in which the contractual agreements between you and your suppliers provide otherwise – is governed by the provisions and time limits of the "standard" legal B2B guarantee: in particular, the limitation period is 8 days from the "discovery" (thus, supposedly, from when the retailer exercises the recourse_action against your company or notifies you of the product's defects), while the prescription period for the purposes of the redress action of your company against its supplier shall (always) be of one year from your original delivery of the product to the retailer, and thus it could be outside the time limit due to the expiry of the limitation period.**4)**

Question (Sale chain, retailer's recourse, supplier's recourse): ***"In the above case, how should our company (reseller/supplier) act towards its retailing client?"***Answer: - First, it should be pointed out that the recourse action of the retailer must be exercised, as stated in Article 131 of the Consumer Code "...***against the person or persons liable in the chain of contracts***", namely against whoever is accountable (due to an action or omission) for the defectiveness of the product: in this present case, there is no rule that says that such liability is attributable to your company, as importer of products manufactured by others and not the producer of the good sold and, in any case, in my opinion (there are differing views on this specific issue), it is up to who exercises the right of redress to provide proof of such responsibility. Therefore, the first line of defence is to refuse (at least in borderline cases such as the sale of the product to the final consumer after years from its delivery to the retailer) the liability for the defectiveness of the product, leaving to the

reseller the burden to prove its existence. - Another alternative or additional solution, may be to contractually agree (if not the conventional exclusion of the right of redress) at least a limitation period for the recourse action after a certain number of years from the date of sale of the product to your reselling client.

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