

Fair Trading Act

Extended warranties



This fact sheet provides an overview of the rules for selling extended warranties. It is intended to help businesses to understand their obligations. Penalties can be imposed on businesses that do not comply with the rules.

The Fair Trading Act 1986 (**FTA**) contains rules for businesses which offer optional extended warranties for consumers to buy for an additional price when they buy goods or services. The rules are found in ss 36T – 36W of the FTA, available online at www.legislation.govt.nz.

The rules require businesses to:

- Explain the protections that consumers are provided under the Consumer Guarantees Act 1993 (**CGA**)
- Compare the CGA protections with the protections offered by the extended warranty
- Explain that if consumers buy an extended warranty, they can change their minds within a specified period of time, cancel the extended warranty and obtain a full refund of the price paid for the extended warranty.

This information enables consumers to make informed choices about whether they are better protected with an extended warranty than without one, whether they want or need the extended warranty, and whether it is worth the price they are required to pay.

Businesses that breach these rules may be liable to an infringement notice and a fine of **\$1,000** for each breach, or to prosecution and a fine of up to **\$30,000**. Individuals may also be liable to an infringement notice and a fine, or to prosecution and a fine of up to **\$10,000**.

Types of warranties and guarantees

There are three kinds of warranties or guarantees that can apply to goods and services supplied to consumers:

- Guarantees that are implied by the CGA into every contract for the supply of goods or services

- A manufacturer's express warranty that is usually supplied with the goods or services free of charge
- An extended warranty that is sold for an additional price around the time the goods or services are purchased.

The Consumer Guarantees Act

When a consumer buys a good or service it comes with a series of guarantees set out in the CGA. These guarantees are implied into all contracts of sale where the consumer acquires a good or service ordinarily bought for personal, domestic or household use. The guarantees do not have to be written into the contract and they apply for a reasonable period of time having regard to the nature of the goods or services supplied.

The CGA guarantees cannot be avoided except in limited circumstances such as where personal or household goods or services are bought for business purposes or when they are bought from someone who is not in trade.

The CGA guarantees apply regardless of any other warranty provided or sold to the consumer. Businesses must not mislead consumers about their rights under the CGA. Doing so may breach the FTA. For example, because CGA guarantees apply for a reasonable period of time, depending on the nature of the goods or services, they may continue to apply after any other written warranty has expired. If a business states that consumers' CGA rights are limited to a specified number of years this may mislead consumers about the duration of their CGA rights.



What protections are provided to consumers under the Consumer Guarantees Act?

Under the CGA, **goods** must:

- be of acceptable quality
- be fit for a particular purpose that the consumer made known to the supplier, unless it was unreasonable for the consumer to rely on the supplier's skill when selecting the goods for that purpose
- match any description given to the consumer
- match any sample or demonstration model shown to the consumer
- be able to be legally sold to the consumer
- arrive on time and in acceptable condition
- have spare parts and repair facilities available for a reasonable time, unless the consumer is notified that the manufacturer does not undertake that repair facilities and parts will be available
- comply with any express guarantee given by a manufacturer.

Under the CGA, **services** must:

- be carried out with reasonable care and skill
- achieve the result the consumer made known to the business that the consumer was seeking, unless it was unreasonable for the consumer to rely on the businesses' skill to expect that result
- be finished by the agreed date or within a reasonable time if no completion date was agreed
- be supplied at the agreed price or at a reasonable price if no price was agreed.

If a guarantee is not met, the supplier of goods or services, or in some cases, the manufacturer of goods must remedy the problem. The type of remedy, and whether the consumer can choose the remedy, depends on the nature of the failure to meet the guarantee.



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Manufacturers' warranties

At the time that goods or services are supplied, they sometimes come with a free manufacturer's express warranty, usually guaranteeing that the manufacturer will repair or replace faulty goods if they fail within a specified period of time.

A manufacturer that fails to meet the terms of its express warranty may be liable to a consumer for breach of contract. It may also be liable for breach of applicable CGA guarantees because a manufacturer's warranty applies in addition to the guarantees that apply under the CGA. It does not limit or replace them.

In addition, businesses must not mislead consumers about their rights under a manufacturer's warranty. Doing so may breach the FTA.

Extended warranties

A consumer may also purchase an optional extended warranty. Extended warranties are sold as an add-on item around the time the consumer buys goods, such as computers and washing machines, or services, such as trade services.

The FTA contains specific rules which relate to the sale of extended warranties. The rules apply to an extended warranty that is an agreement that:

- is between a consumer and a "warrantor" in relation to the purchase of goods or services
- is entered into around the same time as the goods or services are purchased
- provides specific warranties, guarantees or undertakings (either directly or through a third person) relating to those goods or services; and
- is purchased at a cost additional to the price paid for the goods or services.

An extended warranty is different to a manufacturer's warranty, which may be included in the purchase price at no extra charge as described above. It is also different from the guarantees implied by the CGA, which apply regardless of any written warranty agreement and can be avoided only in limited circumstances.

When businesses sell extended warranties they must provide consumers with information described in specific rules contained in the FTA. Those rules are discussed in the remainder of this fact sheet. The rules are designed to ensure that the consumer is informed about the benefits that the warranty provides, and can decide if they are better protected through purchasing the extended warranty.

Who is a warrantor?

A warrantor is someone who provides an extended warranty. A warrantor can be:

- The business who supplies the goods or services (if they also arrange or provide the extended warranty agreement), such as a retailer who sells extended warranties with the goods or services they are selling; and
- Any business that enters into the extended warranty directly with the consumer, for example an insurer or manufacturer.

In cases where a retailer arranges a warranty supplied by a third party, both the retailer and the business providing the warranty may be responsible for compliance with the requirements of the FTA.

Disclosure rules - what does the warrantor have to provide?

The warrantor must provide the consumer with a written copy of the extended warranty agreement at the time the extended warranty is purchased. If the warrantor sells the extended warranty over the phone, then they need to provide a copy of the agreement within 5 working days after the date it is purchased. The agreement must be in plain language, legible and clearly presented.

The **front page** of the extended warranty agreement must contain the following key information:

- a summary of the consumer's rights and remedies under the CGA

- a summarised comparison between the relevant CGA guarantees and the protections provided by the extended warranty agreement
- a summary of the consumer's right to cancel the extended warranty agreement under the FTA; and
- the warrantor's name, street address, telephone number and email address.

The front page containing the key information should not be preceded by a cover page. For example, the extended warranty should not include a promotional cover page or a cover page containing details of the terms of the extended warranty. The first information that the customer reads must be the key information, although a simple dust jacket to protect the warranty will in most cases be acceptable.

The extended warranty agreement must be dated and include all of its terms and conditions – these cannot be communicated in a separate document or webpage. This includes how long the warranty is for, when it expires and the total price payable under the agreement.

Businesses should not use product names, marketing slogans and other promotional statements that are capable of misleading consumers about the extent of the benefits offered by the extended warranty or the need for the extended warranty. Statements that mislead in this way



may not breach the warranty disclosure rules but may breach the general prohibitions against false and misleading representations contained in the FTA.

The duration of the extended warranty

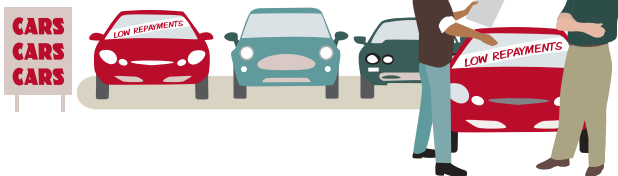
The agreement must clearly set out its duration and expiry date. Consumers must be able to easily identify the duration and expiry date that applies to their particular extended warranty.

The duration and expiry date for the extended warranty will be clearest if they are identified in the extended warranty agreement with specified calendar dates.

However, if a business uses standard terms and conditions for its extended warranties, then it should separately provide for the commencement and expiry of an extended warranty to be clearly disclosed to consumers in accordance with the requirements of the FTA.

For example:

- If the extended warranty expires when the consumer makes a claim either under the extended warranty or the CGA, this condition must be clearly stated.
- If standard terms and conditions record that the extended warranty may be 2, 3 or 5 years depending on the product and warranty purchased, then an additional personalised terms sheet including the duration and expiry date of their particular extended warranty should be given to each consumer at the same time as the standard terms and conditions. The standard terms and conditions should clearly identify the personalised terms sheet and remind consumers to refer to it, because together the standard terms and the personalised terms sheet comprise the extended warranty agreement.
- If standard terms and conditions state that an extended warranty commences on the expiry of the manufacturer's warranty, the warrantor should ensure that consumers have sufficient information to clearly and easily identify the dates upon which both the manufacturer's warranty and the extended warranty commence and expire.



What should be in the summary of the CGA rights and remedies?

Regulations may be introduced in the future which provide detailed information about what is required to comply with the disclosure rules. At the time of publication of this fact sheet, there are no such regulations in force.

The summary must clearly and accurately describe the rights and remedies available to consumers under the CGA. Businesses should take particular care to ensure that the summary does not misrepresent the availability of any particular CGA guarantee.

What should the comparison of the CGA and the extended warranty contain?

The purpose of the comparison is to help consumers decide whether they are better protected with an extended warranty than without one, whether they want or need the extended warranty, and whether it is worth the cost. This is because the extended warranty is purchased in addition to the CGA guarantees which automatically apply to the goods and services and in addition to the protection of any manufacturer's warranty which may be provided free of charge with goods.

Without an accurate comparison, consumers may be misled into paying for extended warranties that offer little or no extra protection beyond the rights they already have under the CGA or their manufacturer's warranty.

The comparison should be accurate, meaningful and identify the differences between the protections offered by the CGA and the extended warranty. It should identify any additional protections and benefits offered by the extended warranty that are not available under the CGA. For example, the comparison could list the protections available under the CGA and 'compare-and-contrast' the benefits provided under the extended warranty. However the comparison is provided, warrantors should ensure that:

- The comparison does not describe vague or imprecise differences that may mislead consumers. For example, describing the extent of CGA protection as "depending on the circumstances" while at the same time including a specific explanation of the protections offered by the extended warranty. This may breach the FTA if it wrongly implies that the specific protections are not available under the CGA.
- The comparison is not presented in a way that misrepresents that the extended warranty offers additional protections if the same, or greater, protections are available to consumers under the CGA.
- Any conditions or qualifications to any benefits listed in the comparison are prominent and easily understood by consumers. Relevant information disclosed later in the extended warranty or in fine print must not qualify an earlier description of a benefit in a way that makes the earlier description misleading.

Some common scenarios to consider when making a comparison between the CGA and the extended warranty

When comparing CGA guarantees with the benefits offered by an extended warranty, warrantors should avoid suggesting that the extended warranty protects consumers in a way that the CGA does not if this is not the case.

For example, some common scenarios include:

- **Failure due to fair wear and tear.** When a good fails from fair wear and tear before it might reasonably have been expected to, it may breach the CGA guarantee of acceptable quality. Offering protection against fair wear and tear for a defined period of time which is less than, or the same as, the reasonably expected life of the good may offer no greater protection than is available to consumers under the CGA. The only differences between the CGA and the extended warranty may be certainty about the duration of protection offered under the extended warranty.
- **Durability.** The CGA requires that goods must be as 'durable' as a reasonable consumer would regard as acceptable, taking account of factors such as the nature of the goods, how the goods can be expected to be used, and how the consumer uses them. Some goods might reasonably be expected to last for longer than the duration of an extended warranty.
- **A 'Lemon Guarantee'.** A number of failures with a good may amount to a failure of a 'substantial character' under the CGA. In such a case, consumers could be entitled to return their goods and obtain a refund or replacement or keep their goods and obtain compensation for any reduction in value of the goods below the price paid. A 'lemon guarantee' which provides consumers a replacement good after a defined number of warrantable failures gives certainty about the number of failures required before a replacement is provided, but could provide fewer options for consumers than the CGA.
- **Store vouchers.** The CGA requires suppliers to repair, replace or refund customers whose goods breach the CGA guarantees. Consumers cannot be required to accept a credit or store voucher. An extended warranty that offers store vouchers to consumers who return faulty goods may offer a less flexible remedy than is available under the CGA.

- **Choice of remedies.** Consumers also have a choice of remedy under the CGA in the case of a failure of a substantial character. An extended warranty that always gives the choice of remedy to the supplier or manufacturer may offer less than the CGA.
- **Limiting claims for faulty goods.** The CGA does not limit the claims that consumers can make for breach of the CGA guarantees. Extended warranties that limit the number of claims that can be made for faults that would be covered by the CGA, or expire when consumers make a claim, may offer less protection to consumers than the CGA. Inaccurate comparisons of these entitlements could mislead consumers about their rights in relation to goods that breach the CGA guarantees.
- **Call out costs and costs of returning faulty goods.** Under the CGA, consumers can recover from their supplier all costs that were reasonably foreseeable as a result of a failure of goods. This is likely to include the costs associated with returning goods to the supplier or technician call out costs if the goods breach a CGA guarantee. An extended warranty which reimburses those costs irrespective of whether the good is found to be faulty or covered by the extended warranty, or regardless of how substantial the fault is, may offer a benefit additional to the benefit available to consumers under the CGA.



- **Consequential losses.** Under the CGA consumers can recover from the supplier costs that were reasonably foreseeable as a result of a good failure. Compensation of that kind is not capped at a particular amount of money. For example, in the case of electrical items such as refrigerators and freezers, consumers may be entitled to compensation for spoiled food if the refrigerator or freezer malfunctions in breach of the CGA guarantees. Or they may be entitled to the cost of hiring a replacement washing machine while a faulty washing machine is repaired or replaced. Depending on their terms, extended warranties may offer less, the same, or greater assistance to consumers.

Consumers' rights against manufacturers do not limit the liability of suppliers

Consumers may have rights against manufacturers as well as suppliers under:

- The CGA, for example if a good is not of acceptable quality or if the manufacturer fails to comply with a manufacturer's warranty or extended warranty as described above
- A manufacturer's warranty which is neither a CGA guarantee nor part of an extended warranty as described above
- An extended warranty.



However, suppliers are obliged to deal with product complaints under the CGA even if the manufacturer might also be liable in one of these ways. Consumers can choose whether to contact the manufacturer and/or the supplier in most cases. Suppliers must not tell consumers that the manufacturer is the first or only party liable to deal with a complaint or fault with the goods.

If a supplier wants to co-ordinate with the manufacturer to assess the issue, the supplier should tell the consumer and clarify that they are not avoiding their own responsibilities. Suppliers that tell consumers that their decision as to whether to provide a remedy depends on the manufacturer may mislead consumers as to their rights under the CGA in breach of the FTA.

Consumers can seek a remedy from the supplier who sold them the goods under the CGA whether or not:

- they also seek a remedy under the CGA from the manufacturer
- the manufacturer's warranty still applies; and/or
- they have purchased an extended warranty or the extended warranty gives rights to claim against the manufacturer.

Cooling off and cancellation

Consumers who purchase extended warranties have a right to a 'cooling off period' during which they can think about their purchase and change their minds if they want to. If they change their minds within the specified period, they can cancel the extended warranty and claim a full refund of the price they paid for it. These rules apply only to the extended warranty agreement. They do not give consumers rights to cancel the purchase of their goods or services.

A summary of the consumer's **right to cancel** the agreement must be on the front page of the agreement. Warrantors must also, where practical (for example, at retail premises or over the telephone) verbally tell consumers about the right to cancel before the agreement is entered into.

Both the **summary** and the **verbal explanation** should include the following information:

- The consumer has 5 working days to cancel from the time of receiving a copy of the agreement
- The consumer can cancel the agreement by giving notice in writing or orally using the contact details provided by the warrantor, or using some other method agreed with the warrantor. For example, the agreement might include head office details but the consumer and the warrantor can agree between themselves that it is acceptable to cancel the agreement by speaking to a manager in a retail store. Warrantors cannot require consumers to return to a retail outlet to cancel the agreement. The notice must make clear the consumer's intention to cancel the agreement. For example, an inquiry about the right to cancel will not be sufficiently clear as to constitute notice of the cancellation.

On cancelling the agreement the consumer is immediately entitled to a full cash refund of the price paid for the extended warranty. This does not affect the purchase of the goods or services to which the extended warranty applied – cancellation of the warranty does not entitle the consumer to return the goods. If an extended warranty extends the time for cancellation but imposes more restrictive terms, then this should be made clear in the extended warranty and must not limit the right to cancel within 5 working days.

Consumers who purchase extended warranties have a right to a 'cooling off period' during which they can think about their purchase and change their minds if they want to.

A consumer can cancel an extended warranty agreement at any time if the warrantor has not complied with the disclosure rules discussed above, unless the alleged breach is minor and the consumer is not materially prejudiced. For example, if the warrantor did not include their email details at the front of the agreement but included them later in the agreement, this would not be grounds for cancellation, although it may breach the disclosure rules. If a copy of the agreement is not provided on time but the consumer suffers no material prejudice then this would not provide grounds for cancellation either.

Credit-related warranties

Where a consumer credit contract¹ involves the sale of an extended warranty, that warranty is treated as forming part of the credit agreement for the purposes of the Credit Contracts and Consumer Finance Act 2003 (CCCFA).² Note that for the CCCFA to apply to the warranty, the warranty must be the subject of a direct contract between the lender or lessor and the borrower or lessee.³

Responsible lending

This means that the lender needs to be aware of their responsibilities under the CCCFA.

In particular, where an extended warranty is offered in connection with credit, the lender is required to comply with the Lender Responsibility Principles.⁴ In relation to an extended warranty, lenders should note that they are obligated to exercise the care, diligence and skill of a responsible lender, including especially through:

- Assisting the borrower to reach informed decisions; and
- Ensuring that any information provided is clear and not misleading.

You can read about the lender's responsibilities in our *lender responsibility principles* on our website at www.comcom.govt.nz

Additional guidance on how to comply with the Responsible Lending Principles can be found in the Responsible Lending Code, available online at www.consumerprotection.govt.nz

Specific rules

As well as the Responsible Lending Principles, the CCCFA imposes some specific rules on extended warranties sold in connection with consumer credit.

When a borrower is entering into a consumer credit contract, it is unlawful for the lender to make **unreasonable requirements** as to the terms on which an extended warranty must be purchased.⁵ As below under "Penalties and remedies", the extended warranty can be annulled and the borrower compensated where unreasonable requirements are made.⁶

The disclosure rules are also tighter. When providing a credit-related extended warranty, the lender must disclose to every borrower a copy of the terms before the warranty is arranged.⁷ Whereas, for a non-credit extended warranty, disclosure must be made "at the time" the warranty is purchased. If the non-credit extended warranty is sold over the phone, then disclosure must be made within 5 working days after the date it is purchased.⁸

Penalties and remedies

The Commission can issue an infringement notice if a warrantor fails to comply with the extended warranty disclosure rules contained in the FTA. Each infringement offence carries a penalty of \$1,000.

Alternatively, we can prosecute breaches of the FTA and the Courts can fine businesses found guilty of breaching the extended warranty provisions up to \$30,000 and individuals up to \$10,000.

Courts can fine businesses found guilty of breaching the misleading and deceptive conduct provisions of the FTA up to \$600,000 and individuals up to \$200,000.

Where a lender imposes unreasonable requirements on the purchase of a credit-related extended warranty, the Court has specific powers to annul the warranty and/or reimburse the borrower for its cost.

1. "Consumer credit contract" is defined in section 11 of the CCCFA.
2. Section 9B(4) of the CCCFA.
3. Section 5 CCCFA definition of "extended warranty."
4. Section 9C CCCFA.
5. Section 69 CCCFA.
6. Section 94(1) CCCFA.
7. Section 70(2) CCCFA.
8. Section 36U(1) FTA. Note that the different disclosure rules under the FTA and the CCCFA can affect the number of days within which the warranty-buyer can cancel. Both Acts confer a right on the consumer to cancel the warranty within 5 working days of receiving disclosure: see section 36V(1) and (2) FTA which excludes credit-related extended warranties; and section 27(1) CCCFA. But note that under the CCCFA the date on which disclosure is 'given' is lengthened when the disclosure is made by email or post, which can confer a longer window for cancellation: section 35 CCCFA.

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This fact sheet provides guidance only. It is not intended to be definitive and should not be used in place of legal advice. You are responsible for staying up to date with legislative changes.

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