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» update

HAVER & MAILÄNDER
RECHTSANWÄLTE

Germany: Don't Put Your Warranty Claims at Risk!

Under German law, a commercial buyer is under a strict obligation to inspect the delivered goods and to give immediate notice of any defects to the seller. If he fails to do so, the buyer risks loss of all warranty claims. Therefore, the buyer should have an effective system of incoming goods inspection in place. Also, the buyer is well advised to negotiate favorable terms with the seller.

In the case of a commercial sale of goods, in order to preserve its warranty rights, German law requires the buyer to immediately inspect the goods and give notice of any defects to the seller. This provision of § 377 German Commercial Code (Handelsgesetzbuch – "HGB") aims to enable the seller to take necessary action, e. g. to contact its supplier or to arrange a covering purchase for replacement of the defective product. If the buyer fails to undertake due inspection and give timely notice to the seller, the consequence is extensive: the goods are considered to be approved and the buyer loses all warranty claims. Therefore, the provision of § 377 HGB has far-reaching practical relevance.

Statutory requirement to examine purchased goods and notify defect

With regard to the scope of the inspection and the available time frame, the Commercial Code does not give any further details. Rather, it is left to case-law to define the requirements more closely, whereby the circumstances of every single case are decisive. Here is a choice of case-law.

The examination must be made, "insofar as it is feasible in the orderly course of business", which means that it must be done as it can be reasonably expected from the buyer under the circumstances of the specific case. What is "feasible" is determined by an objective measure. For example, preserved mushrooms must not be heated, dyed fabric must be washed; if the condition of the product can only be examined upon processing, then this must be done test-wise. Machines must be put into operation. In the case of large amounts of goods, random samples are sufficient (five out of 2400 mushroom cans can be sufficient).

With regard to the time-frame available to the buyer for inspection, this must generally be done upon delivery,

or “immediately” thereafter, i. e. “without undue delay”. Therefore, even a slight avoidable delay may render the inspection late. As a rule of thumb, an inspection within one week is generally considered as timely, or even two weeks in the case of a sophisticated technical appliance, however not more than four weeks.

Latest case law defining the scope of inspection

In a current judgment, the higher regional court of Munich (dated 24 Sept. 2015, file no. 23 U 417/15) has now given some additional guidance on the requirements of § 377 HGB. In that case, the seller had supplied a large amount of multiplex boards (flooring) to the commercial buyer. According to the buyer, about 30 % of the multiplex boards did not have the agreed coloring, i. e. the color of these boards was overly bright. However, the buyer argued, this color deviation was only detectible when placing a defective multiplex board next to a proper board without color deviation. Upon delivery, the buyer had only done a visual examination of random samples and not detected the defect.

The court denied any warranty claims. It held that the buyer had violated its obligation to properly inspect the multiplex boards. It decided that it could have reasonably been expected from the buyer to test-wise lay several randomly selected multiplex boards on the floor. It found that such a test would have been possible without any noteworthy costs, within a reasonable time frame and that in doing so there would not have been any risk to damage the multiplex boards. The court also found that in applying this standard of inspection, it would have been very unlikely not to discover the improper coloring.

Key aspects

- Due to the drastic legal consequences, i. e. the risk of losing any warranty claims, the buyer / dealer of goods should make sure that the internal incoming goods inspection procedures are in line with the strict requirements of German law.

- The underlying provision of § 377 HGB is accessible to contractual modification. By agreement between the parties, the requirement of inspection and notification can be intensified, relieved, or cancelled altogether. It is customary to implement the requirement of a written notification and to set a specific time period for the notification. Also, a specific test method can be agreed (e. g. in the case of chemical substances) or the inspection can be limited to externally recognizable damages, or a specific number of test samples.

- However, when using pre-formulated General Conditions of Purchase, the requirement of inspection and notification cannot be randomly modified to the benefit of the buyer. The drafting of such clauses requires legal skill in order to achieve the intended benefit for the buyer in a legally secure manner.

About our commercial practice

Successful sales and trade are at the core of every company and form a focal point of our services in the following and other fields: mechanical engineering, automotive, foodstuffs, leisure and luxury goods, disposal and facility management, advertising and financial products. The areas our advice focuses on include product purchasing and sales, the structuring and processing of distribution systems, and the resolution of any disputes arising out of such relationships before courts or arbitral tribunals, also with regard to indemnification issues and prohibition of competition.

Our practice in distribution law is ranked Band 6 by Juve German Commercial Law Firms and our international presence is described as follows: “Via its international network of partner law firms, Haver & Mailänder succeeds time and again to advise foreign groups in their German distribution and to escort German clients worldwide” (JuVe Handbook of Commercial Law Firms 2015/16, Band 6). Haver & Mailänder and Kai Graf v. der Recke are recommended by the Legal500.de 2016 for Dispute Resolution – Commercial Conflicts (Band 4).

Contact

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