

## Legal Alert October 2007 **Warranties & Sale of Goods**

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### Legal Alert for October 2007 - Warranties & Sale of Goods

The representation by a Seller that the goods he sells comes with a warranty is a very strong influencing factor in convincing the Buyer to make the purchase. Unfortunately, the Buyer's attempt to claim the benefits under the warranty when there is a problem with the product is usually not as easy and simple as when the purchase and the payment for the goods is or are made. Some Sellers refute out-rightly all liability or adopt delay measures aimed at either frustrating the Buyer to abandon his or her right to the benefits provided under the warranty or to settle for less of the benefits provided under the warranty.

Insufficient information about what a warranty entails or whether the warranty is actually a condition as opposed to a warranty of the contract, sometime results in the buyer not making a claim at all. The time and cost of prosecuting the claim is another discouraging factor to the purchaser of the product.

What therefore is a Condition & What is a Warranty?

A condition is a substantial term of a contract which is so essential to the contract that a substantial failure of it defeats the contract and entitles the Buyer to the repudiation of the entire contract and to claim for damages.

A warranty on the other hand is an ancillary or collateral term of a contract. Unlike a condition, which is a substantial term and whose breach can lead to cancellation of the entire contract, the breach of a warranty only leads to an award in compensatory damages. See Section 53 of the Sale of Goods Act.

### Applicability of Condition and Warranty

It is common for the two legal terms to be used interchangeably by business people even though their legal implications are not the same. Where a dispute arises, it is the intention of the parties at the time they entered into the contract or the intention of a reasonable business person in the same circumstances as the one under consideration that determines whether a term of a contract is a condition of the contract or a warranty under the contract.

It must be mentioned that though a term of a contract is stated in the contract to be a condition, the Courts may not deem the term to be a condition where its breach does not affect the substance of

the contract or where the injured party elects to treat the condition as a warranty, i.e. by accepting the goods but demanding damages for an ancillary loss resulting from the breach.

### Measure of Damage

The amount of compensation that may be awarded for the breach of a warranty is the estimated loss directly and naturally resulting in the ordinary course of the event that caused the breach i.e. the law does not permit an injured person to make a profit over and above his or her actual estimated loss.

Compensation for the breach of a contract may however be refused where the injured party has waived the breach or acquiescence to it or is in contributory negligence or wrongfully prevents the performance of the contract or does not mitigate his loss by proactively reducing the damage. For Nigerian Court cases on damages see the Supreme Court decisions in *OMONUWA V. WAHABI* (1976), *SWISS NIGERIA WOOD INDUSTRIES V. BOGO* (1995).

### Remoteness of Damages

The right to claim for damages is limited by the legal principle of remoteness of damage. This principle provides that a party can only claim for damages that are not too remote to the damage itself. This is because in some cases where a breach has occurred, the damage is neither substantial nor ancillary as to cause the injured party more than some trifling inconvenience.

### Conclusion

Buyers would do well to be more vigilant and circumspect when making their purchases. Where a product comes with a warranty, they should demand for a Warranty Certificate to be issued or at the minimum for the receipt of purchase to describe the product and itemise the nature and the tenure of the warranty. Where in doubt, the Buyer should ask questions and if the doubt persists, the Buyer should not make the purchase until sufficient convincing information is provided.

Remember that once your money leaves your control, you are at the mercy of others who may be too willingly not to return it to you.

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