

QUICK LAW

WARRANTIES

CLASSIFICATION OF TERMS

Japanese law does not generally make classifications between different contract terms as is the case with certain jurisdictions, such as England and Wales or Hong Kong. In this Quick Law article, the term “warranties” (*hosho*) should therefore be considered broadly to incorporate warranties, representations, conditions and other similar categories but exclude guaranties which are also called “*hosho*” in Japanese.

GENERAL LEGISLATION FRAMEWORK

Under Japanese law, there are no particular statutory warranties except for the provisions regarding certain warranty responsibilities in contracts for value, such as sales, supply, lease or construction type contracts. Any mutual agreements by the parties with respect to warranties, such as the representation and warranties in a credit agreement or the commitment to the level of services in a service agreement are generally valid. The Civil Code (Law No. 89 of 1896, as amended) provides certain warranty responsibilities in contracts for value. Where the Commercial Code (Law No. 48 of 1899, as amended) provides a provision different to the Civil Code, the provision in the Commercial Code is applied. These legislative provisions may, to some extent (as discussed below), be modified or excluded upon agreement between the contracting parties.

EXPRESS CONTRACTUAL WARRANTIES IN SALES CONTRACT – DEFECTS IN GOODS

There are no provisions regarding express warranties in the Japanese Civil Code equivalent to the express warranties found in laws from other

countries, such as the US Uniform Commercial Code (“UCC”). In sales contracts, which are typical of contracts that generally require warranty provisions, the parties can generally express or exclude warranties from their agreements at their discretion. However, there are some exceptions. For example, according to Article 8.1.5 of the Consumer Contract Act, when there is a latent defect in goods sold, a provision entirely excluding a business operator from liability to compensate a consumer affected by such defect for damages is void. These provisions may, however, be “watered down” to some extent provided they are not unreasonable.

If terms are expanded unfairly, they may be interpreted as invalid if they infringe public policy under Article 90 of the Civil Code or are prohibited as an unfair trade practice by the Anti-Monopoly Law of Japan.

In relation to a breach of an express contractual warranty, if the parties agree the scope of damages such as liquidated damages, the non-breaching party is entitled to such damages as stipulated by the clause in the contract. If the parties do not expressly provide for liquidated damages, the non-breaching party may recover such damages as would ordinarily arise from the breach.¹ In addition, the non-breaching party may also recover damages that have arisen in special circumstances provided that the parties could have reasonably foreseen such special circumstances.² The non-breaching party may also be able to rescind the contract.³

IMPLIED WARRANTIES AND THE WARRANTY OF TITLE IN SALES CONTRACTS – DEFECTS IN GOODS

Where parties do not express a warranty in their contract, no-fault liability may be imposed on the seller under the Civil Code and/or Commercial Code. For example, where the seller does not expressly warrant the quality of goods and the parties' intention cannot be construed by established practices and there is a defect in the goods that was impossible for the buyer to discover with reasonable care at the time of agreement, generally, the buyer can claim compensation for damages and/or rescind the contract where its purpose has not been achieved.⁴ If the buyer did not know that the goods purchased were subject to an encumbrance such as a pledge or other similar restriction at the time of agreement, the buyer has the right to rescind the contract where the purpose of the contract has not been achieved and claim damages.⁵

These buyer's remedies should be executed within one year from the date that the buyer discovers the defect or encumbrance. The scope of buyer's claim for damages are limited to "*Shinrai-rieki*", which covers the damages resulting from the buyer's belief that the goods did not have a defect, such as the expense of repairing the defect.

The Commercial Code is applied where the contract is made for business, or one or both parties are business entities/persons. Under Article 526 of the Commercial Code, if both parties are business entities/persons, a buyer is required to examine goods received upon delivery without delay. If the buyer discovers any defect or deficiency in the

quantity, the buyer must promptly notify the seller. If the buyer fails to do so, the buyer may lose its right to rescind the contract, claim damages or seek a reduction in price (provided the seller has not acted in bad faith). If the nature of the defect is not immediately discoverable then the buyer must notify the seller of any defect within six months of delivery.

GENERAL MARKET PRACTICE

Japanese local companies, and even larger and more international Japanese companies, often prefer agreements that are shorter and simpler than may be documented, for example, in a US or UK sale and purchase agreement. It is not uncommon that the sales contract is made by a simple purchase order and an acceptance. As a consequence, details commonly covered by terms in such overseas contracts might not be stipulated, but may be implied by Japanese law or may be construed pursuant to principle of good faith in Japan. Representations and warranties are therefore often somewhat shorter in domestic Japanese agreements when compared to contracts from other jurisdictions.

CONTACT US

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DISCLAIMER:

This note is intended to jog memories and provide a simplified overview of the law in Japan. It is not a substitute for taking legal advice. The law is summarised as at the date of publication.

1 Civil Code, Article 416, Paragraph 1.

2 Civil Code, Article 416, Paragraph 2.

3 Civil Code, Article 541.

4 Civil Code, Article 570, 566.

5 Civil Code, Article 566