

Column

## Be careful with liability limitations

Someone who buys a product in order to resell it or to assemble it into his own product should be careful with any waiver of warranty claims against the seller. By this, the purchaser does not only limit his warranty claims, but also endangers his insurance coverage. Particular care is required in case of liability limitations or liability exclusions which are not customary to the industry or are agreed upon after conclusion of the insurance contract.

If the purchaser of a product waives his warranty claims, he endangers his insurance coverage under German law. This problem results from section 86 para. 2 s. 2 Insurance Contract Act. Pursuant to this provision, the policy holder has to safeguard his claim, in this case against the seller. If the policy holder breaches this obligation and limits his claim for compensation, the insurer may not be obligated to effect payment.

This legal provision shall ensure that the insurer may take recourse against the seller of the product after satisfying the policy holder, that is the purchaser of the defective product. The seller may though refer both vis-à-vis insurer and his contract partner, the purchaser, to any liability limitation agreed upon in the purchase contract with the purchaser.

Example: The purchaser of an electronic switch limits the liability per electronic switch sold to a maximum of 1,000 Euro in the framework purchase agreement, in case neither intention nor negligence of the seller are given. The purchaser assembles this electronic switch into a complex distribution system and sells it to the end customer. Due to the electronic switch which had been defective from the beginning, the distribution box of a consumer catches fire by which the house burns down.

The purchaser of the electronic switch, who is at the same time the seller of the electronic distribution system, now claims against his product liability insurance for payment of one million Euro, since the end customer asserted justified claims for damages against him in this amount.

The insurer however rejects any insurance payment of more than 1,000 Euros. As a justification he refers to the liability limitation agreed upon among the seller and the purchaser of the electronic switch, which makes recourse of the insurer against the seller beyond 1,000 Euros impossible.

Whether the product liability insurer's refusal in the example case is justified, depends on various circumstances. Liability limitations which are customary to the industry may be agreed by the purchaser of the product without losing his insurance coverage. The purchaser in this case has to answer completely and truthfully the insurer's questions about liability limitations and liability exclusions when concluding the insurance contract.

### **Insurance claim endangered**

Especially problematic are those liability limitations agreed upon between purchaser and seller after conclusion of the insurance contract. In case of doubt, the purchaser should obtain the insurer's written agreement before agreeing on liability limitations with the seller after conclusion of the insurance contract.

Especially liability limitations agreed to at a point of time when it is already expectable that an insured event is about to occur respectively has already occurred regularly endanger the insurance coverage.

In conclusion: those who buy a product in order to resell it or to assemble it into their own product should be cautious with waivers of warranty claims against the seller of the product. This purchaser does not only limit his warranty claims against the seller but may also endanger his insurance cover.

Particular care is advisable in case of liability limitations or liability exclusions which are not customary to the industry or are agreed upon after conclusion of the insurance contract.

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