

New legal requirements for B2C sellers selling defective goods in DE - CBT

GUIDE.SUMMARY What is it?
Impact
On January 1st 2022, a German legislative change came into force, which has legal implications for commercial/B2C Sellers, selling defective goods in Germany. This includes:

https://cskb.qa.ebay.com/csKBapp/art?page_content&id=GUIDE1788&ViewLocale=en_US#negative New requirements for the negative quality agreement

https://cskb.qa.ebay.com/csKBapp/art?page_content&id=GUIDE1788&ViewLocale=en_US#tipps Tips for sellers

https://cskb.qa.ebay.com/csKBapp/art?page_content&id=GUIDE1788&ViewLocale=en_US#faq FAQs

https://cskb.qa.ebay.com/csKBapp/art?page_content&id=GUIDE1788&ViewLocale=en_US#Frist Shortening of the warranty period for used items

Impact: From 1 January 2022 any B2C sellers who are selling on eBay.de

Related Links

https://pages.ebay.de/rechtsportal/gewerbliche_vk_32.html target="_blank" eBay Rechtsportal (legal portal) - in German only
AB Post - (News for seller, coming soon) - in German only

<https://verkaeufportal.ebay.de/negative-beschaffenheitsvereinbarung>

target="_blank" Seller Center - in German only

GUIDE.TALKING_POINTS FAQ for new requirements for the negative quality agreement
I am a private/C2C seller, what should I do?
This applies only to B2C sellers selling on ebay.de and therefore there is no change for private sellers.
Do I need to do this and what

happens if I don't? As a seller on eBay you need to adhere to selling legislations and eBay is providing the means for you to do that. It is recommended that as a commercial seller you ensure you are following any legislation that controls the sales of goods in the country you are selling. For more information please speak to a lawyer or legal advice center.
 . My defect description doesn't fit into the variation box You can write a more descriptive text for the defect under Item Specifics and use the variation dropdown to point to that description, for example variation: "Defects as listed under Item Specifics".
 . If my item is completely fine but the packaging is damaged or missing, is this also considered a defect I need to call out as a variation? It depends on whether the packaging constitutes part of the concrete value of the item. eBay cannot provide legal advice on specific cases therefore if you are unsure, please speak to a lawyer or legal advice center. I sell used goods - should I apply the "Negative condition" variation? It depends - we really cannot provide a clear yes and no to this as eBay can not provide legal advice. See above "For whom is this relevant?" eBay cannot provide legal advice on specific cases therefore if you are unsure, please speak to a lawyer or legal advice center. What happens if accidentally the dummy item has been sold? This is all in case the placeholder item was bought by someone:
 Seller needs to cancel order
 Defect/ feedback will be removed
 Fixed part of the FVF: refund manually
 INR: close with SWBF </h2><h2>GUIDE.DETAILED_INFORMATION New requirements for the negative quality agreement What is it? The amendment to the law relates to sales contracts for items with a so-called negative quality deviation, i.e. items that have a defect. Until now, such defects were just described in the item specifics or mentioned in the item description. From

1 January 2022, this will no longer be sufficient in order to exclude the buyer from defect rights.

In future, a negative quality agreement must be actively made between the seller and the buyer.

This is the only way to exclude any defect rights that a buyer may raise with regard to such a defect.

In this case, the buyer must be specifically informed and the buyer must expressly and separately agree that the goods are being purchased with the specific described defect.

eBay is providing a way for sellers to adhere to this legislation through using the "variations" function in the eBay item listing flow when selling on ebay.de.

Why is it important for a seller?

If a B2C seller does not ensure that a buyer is confirming and accepting a defect prior to purchase, the buyer is legally entitled to defect rights (replacement, damages, etc.).

How eBay is supporting sellers to fulfill the new legislative requirements

If the seller has an item, where such an agreement regarding a specific defect must be made the seller should choose to create a variation. The variation detail/name should be called "Negative Beschaffenheit" and the text/content of the variation should describe (in German) the actual defect of the item.

For example - a seller has an iPhone with a cracked display. Since this item has a "negative quality" (the cracked display), the buyer would need to implicitly agree to this fact before buying the item.

The Seller would create the variation called "Negative Beschaffenheit".


In order for a buyer to be able to actively select the defect, the seller needs to create a Variation with 2 options.

The first option needs to be the actual defect (example Display gesprungen/ cracked display)

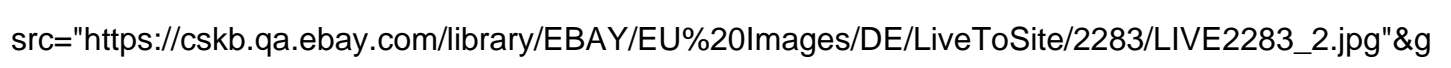
The second option needs to be a placeholder option such as Nicht auswählen. Kein Angebot vorhanden. ("don't select. No item available")

Only this way will the buyer be presented with a variant to be actively selected in a dropdown.

Example how this looks in the selling form for the seller:



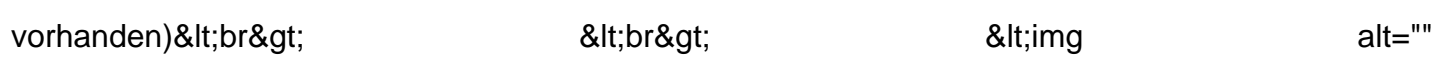
This is how it would then look for the buyer on the view item page:



If there is more than one defect, the seller can create several variations to cover it. For example if it had a cracked display and the camera was defect, the seller can create 2 variations to be selected by the buyer:

1) "Display gesprungen" (+ Nicht auswählen. Kein Angebot vorhanden)

2) "Display gesprungen" (+ Nicht auswählen. Kein Angebot vorhanden)



Important: Due to the use of the placeholder(s), the listing will not end automatically after the sale is completed, but must be ended manually by the seller.

In which cases are variants not available?

Auctions

Certain product categories and sub-categories

For whom is this relevant? - Details and Examples

B2C Sellers who sell items with defects on ebay.de or to Germany - not as partly asserted by other lawyers - per se refurbished or pre-owned items, because e.g. refurbished items are usually sold under the assumption that they are used but fully functional goods.

Sellers should speak to their lawyer or a legal advice center to check whether the law is relevant for them.

Examples where a negative quality agreement shall be made in our opinion:

A new iPhone that is sold as new but has damage (scratches), etc.

A toaster with a broken heating element

A laptop with a broken screen

Example where a negative quality agreement is not required in our opinion:

A refurbished iPhone with slight/common signs of use

If a seller is unsure whether a specific item they are selling falls within the criteria for applying a "Agreement of negative quality" variation to their listing, we cannot advise on specifics

and therefore we must ask the seller to contact a lawyer or other legal advice centre. Our sellers can find more information on this in the legal portal (in German language only): https://pages.ebay.de/rechtsportal/gewerbliche_vk_32.html

https://pages.ebay.de/rechtsportal/gewerbliche_vk_32.html

Shortening of the warranty period for used items

What is it?

Also after January 1, 2022, commercial sellers selling used goods to consumers in Germany may reduce the limitation period for defect claims to at least one year by agreement (with regard to newly produced items, a reduction of the statutory limitation period of two years is generally not possible).

Also in this case, a special agreement must be actively made between the seller and the buyer. The buyer must be specifically informed and the buyer must expressly agree to the shortened limitation period.

Furthermore, this shortened limitation period must be explicitly and separately agreed on in the contract.

How eBay is supporting sellers to implement such an agreement

In order to meet the requirements, our sellers also should choose to create a variation:

As a variant detail (attribute), for example, "Mängelverjährungsfrist" (Defect limitation period) or, if applicable, "Gewährleistungsfrist" (Warranty period) can be specified. In any case, it must be clear to buyers that the selection refers to the limitation period for defect claims.

The duration of the warranty period can be specified as the value of the variant, such as "1 Jahr" (1 year) or "Verjährungsfrist für Mängel verkürzt auf 1 Jahr" (Warranty period shortened to 1 year).

In the variant, two options must therefore also be provided here. In the first option, sellers must enter e.g. "1 year", in the second option a placeholder must be entered, e.g. "Do not select, no item available."

Note: For both options, a quantity and a price must be specified.

Here, too (as with the specification of the negative quality agreement), the listing will not end automatically after the sale is completed, but must be ended manually by the seller.

Our sellers can find more

information on this in the legal portal (in German language only): <a
href="https://pages.ebay.de/rechtsportal/gewerbliche_vk_32.html"
target="_blank">https://pages.ebay.de/rechtsportal/gewerbliche_vk_32.html
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