



7th JMTC Legal Assistance Information

The Sale and Purchase of Used Cars in Germany

Please note that this Information Paper only provides basic information and is not intended to serve as a substitute for personal consultations with a Legal Assistance Attorney.

1. Formation of the Contract

- a. Verbal sales/purchase contracts are valid and fully enforceable in Germany. However, the written form is recommended for memory and evidence purposes. Oral stipulations may be forgotten, denied or remembered differently by the other party. Salespersons are usually very eloquent. It is part of their profession.
- b. Only a written agreement enables you to adequately prove the terms of the agreement and to clarify each others obligations thereunder. All terms should be reduced to writing and signed by the parties because written contracts are presumed to be correct, complete and without binding oral (side) agreements. If the parties agreed that a written contract was to be executed, it is presumed that no contract is concluded before both parties have signed it

2. Defects

- a. By far not every defect entitles the buyer to reduce the agreed upon purchase price or to demand a refund of the purchase price in return for the purchased car. The seller is only responsible for relevant defects existing at the time when the car is turned over from the seller to the purchaser - right at that one specific moment. Legally relevant defects of used cars are only those defects, which exceed the normal wear and tear in consideration of the age, the mileage and the price of the car.
- b. Unless normal wear and tear, determined by the age and condition of the car, fully

rusted parts may constitute a defect especially if that is why the vehicle cannot be registered for operation in public traffic any more. In Germany the average total life span of a car is 10 years. At least after eight years, the rust-problem is a significant danger for almost every car in Germany and, therefore, considered to be normal wear and tear.

c. Where the car cannot pass inspection any more without outrageous repair cost, even otherwise irrelevant defects may become relevant. After all, every party to a contract expects a fair consideration. However, typical irrelevant - subsequent defects are problems connected with manual transmissions.

3. Disclosure of Defects

A seller is responsible to inform the buyer of all major accidents and of all major defects, which the seller knows, or which the seller presumes to exist. The burden of proof is on the buyer to show the seller failed to obey that duty. If the seller intentionally failed to disclose the defects, he or she may be subject to criminal liability.

4. Assurances, Guarantee. Warranty

Normal wear and tear usually does not constitute a legally relevant defect, even if it impairs the function of a used car, unless the buyer demanded a clear, concrete and binding representation from the seller to the contrary. Furthermore, any exclusion of warranty does not extend to specific assurances, guarantees or expressed warranties made by the seller. Note, not every statement will count as a guarantee, assurance or warranty e.g. a clause like "Inspection guaranteed" means only that the seller has the duty - and the right - to place the car into such a condition that it passes inspection. Moreover, most representations are not intended to cover future defects but are only related to the condition of the car when it is turned over from the seller to the buyer.

5. Total Exclusion of Liability

a. The private seller can fully exclude his liability with respect to the sale of used goods, unless he acts in a fraudulent or malicious manner, e.g. when the seller conceals a significant known accident or defect from the buyer, realizing that the buyer would not buy the car at all, or only for a much lower price. If the buyer knew about the accident or defect, the burden of proof is on the buyer.

b. The most common German liability exclusion clause, which is similar to the American "sold as is" or "with all faults" reads "**gebraucht wie gesehen**" or "**gebraucht wie baschtigt**". It means that the buyer has had a chance to look at the car and to test it and, therefore, the buyer is well aware of car's condition.

6. Statute of Limitations

For relevant defects at the time of the turnover there exists a Two and one half-year statute of limitation for litigation. The buyer must prove that a legally relevant defect existed already at the time of the turnover, which is a pretty heavy burden. The seller can defend himself with the argument that the liability has been excluded, whereas a

guarantee might even prolong the Statute of Limitations, depending on how it is to be interpreted.

b. When a seller acts in a malicious or fraudulent manner, the Statute of Limitations is an even thirty years. However, a malicious or fraudulent intent, for which the buyer has the burden of evidence, is even harder to prove

7. Protect Your Interest

a. The buyer should have the car thoroughly checked out and tested before the sale is concluded. The car should be inspected by a trustworthy independent third party, e.g. a garage. Passing inspection is hardly enough proof that the car will remain a reliable one since it does not say anything about the real condition of the car. It just shows that the car is doing fine at that one moment

b. Moreover, the buyer should ask the seller for specific assurances, express warranties or guarantees if a certain condition is important to him or her. It should all be put down into writing. Maybe a manufacturer's warranty still exists which can be validly assigned to the buyer. Yet, a US manufacturer's warranty is probably no good in Europe and vice versa.

c. The seller should make his or her intent to sell the used car "**as is**" and "**with all faults**" or "**Gebraucht wie besichtigt**" quite clear and give the buyer a fair change to verify the condition of the car. That way both sides will know their risks and obligations.

8. Return to the USA

a. Where the buyer intends to take the used car back home, he or she should contact vehicle registration, customs and the environment agency first. It is crucial to gather as much information as you can get up front.

b. A car with German specifications can probably not be easily brought into the USA because of different environmental and safety standards. Most likely it would require substantial modifications, e.g. a catalytic converter is a must, but not every German catalytic converter system satisfies the US gas exhaustion standards.