

Replacement parts: are they covered by warranty? If so, when, how, and for how long?

Maurizio Iorio, Attorney at Law ©

Replacement parts can be supplied as a finished product or can be incorporated into a product during a repair. They can be new or refurbished, be intended for a household or professional product, may or may not be subject to warranty and the warranty can be statutory or contractual: in such cases, issues and interpretative problems may arise, which I aim to answer in this article, mainly focused on the relationships between companies and non-business consumers.

LEGAL CONSTITUENT ELEMENTS OF THE TWO WARRANTIES

Let me start by saying that in the B2C case there are two types of warranties: a non-derogable statutory warranty, governed by the Italian Consumer Code (Legislative Decree No. 206 of 06/09/2005) and regarding only non-business buyers, and a warranty so-called contractual since mainly governed by agreements or contracts between the parties.

For our present purpose, the **main questions** arising from this categorisation are the following:

- (1) To which products does the statutory warranty refer to?

Are only covered (i) **consumer goods** supplied to (ii) **a consumer** as part of (iii) **a contract of sale and any contract assimilated to it** since deemed “*contracts for the supply of consumer goods to be manufactured or produced*”. “.

With **contracts ‘assimilated’ to a contract of sale**, are meant “*...barter and supply contracts, tender and work contracts and all other contracts for the supply of consumer goods to be manufactured or produced*”.

- (2) Who is responsible for the statutory warranty?

Responsible for the statutory warranty is the seller.

The seller, however, has a right of recourse (“*within one year after performance of the service*”) against his supplier or preceding intermediary in the supply chain (provided the defect or lack of conformity is attributable to one of these actors), to obtain “*reimbursement for the service granted*”.

- (3) Can a contractual warranty, other than the statutory one, be agreed between seller and consumer?

To answer this question, let’s take an example: the producer TOM sells a TV set to the reseller DICK who in turn resells it to the consumer HARRY; DICK is therefore required to provide the standard warranty on the equipment sold to HARRY: however, TOM (but in theory also DICK) can offer HARRY, in ADDITION to (NOT as a substitute for) the standard warranty, a private warranty defined as ‘contractual’. This is, so to speak, the warranty whose details are contained in the ‘Warranty Certificate’ that may accompany each product and/or made available for download from the Internet and which must comply with certain substantive requirements established by the Italian Consumer Code.

REPLACEMENT PARTS INCORPORATED INTO A PRODUCT AND WARRANTY

After these premises on the regulatory framework, the question arises whether replacement parts incorporated into a product as a result of a repair under the statutory warranty are covered by a new and independent statutory warranty period.

In the writer’s opinion, the answer is no.

In fact, Chapter III of the Italian Consumer Code, in regulating the statutory warranty and, partially, the contractual one, establishes that such rules refer “ **...to all contracts for the supply of consumer goods to be manufactured or produced...**” (Article 128 (1)); however, the repair is NOT included in this group of contracts, as it is NOT a form of ‘supply’ but, as specified by the Consumer Code repair means “ **... bringing consumer goods into conformity with the contract of sale ... in the event of lack of conformity** ” (Article 128 (2) (d)). It follows that replacement parts incorporated into the product during the warranty period are NOT covered by a new, separate two-year warranty period, while if the repair involving the incorporation of the part is carried out outside the statutory warranty period it will have precisely this consequence.

Incidentally, this position is also supported by the Ministry of Economic Development (MISE), as expressed in the ministerial guidelines issued at the time on such question (downloadable in Italian at the link http://garantia3.es/file/libro_garanzie_it.pdf), where in paragraph 7.2.1 (Repair or replacement) it is stated:

“It is possible for the repair/replacement remedies to be repeated.

*However, in the case of **composite goods**, this distinction must be made:*

*1) If, **during the period of validity of the statutory warranty**, the consumer pursues the remedy of repair, involving, for example, the fitting of a replacement part, a new two-year period does not begin in respect of the replacement part, but the term related to the first delivery of the good continues to run.*

*2) If, **after the expiration of the period of validity of the statutory warranty**, the consumer has a repair carried out, involving, for example, the fitting of a replacement part, the replaced item will be covered by the two-year statutory warranty from the time of its delivery or installation”.*

REPLACEMENT PARTS PURCHASED SEPARATELY AND WARRANTY

Replacement parts purchased separately and independently from repairs under warranty are products like any other and thus follow the warranty’s general conditions: in the case of purchases of replacement parts by non-professional end users (B2C) shall apply the statutory warranty period provided by the current Consumer Code (24 months plus two months, relating to the action), while in the case of purchases by ‘professionals’ (B2B) shall apply the rules for the standard warranties provided by law for the sale (Articles 1490 and following of the Italian Civil Code) or the applicable contract depending on the case (tender, work contract, etc.). With regard to the nature of the purchase (B2B transaction, in which the replacement part/component is covered by the one-year statutory warranty period referred to in the Civil Code, or B2C transaction, in which the product is covered by the two-year statutory warranty period referred to in the Consumer Code), it should be noted that – at least in abstract terms – not always what matters is whether the purchase was made with an invoice (B2B) rather than a cash receipt (B2C). The fact, for example, that the solicitor X buys with a purchase invoice (by his own tax choice) a new graphics card for PC, will not prevent him from providing proof – with the testimony, for instance, of the computer user, moreover, freely appreciated by the ruling judge in the event of a dispute – that the purchased card was subsequently installed in a home computer for recreational use, and therefore covered by a two-year warranty period.

USE OF REFURBISHED REPLACEMENT PARTS IN REPAIRS

The use by repairers of used replacement parts (or rather, refurbished), raises the following two questions:

- (1) First, it is doubtful whether in such a case the producer and/or actors down his supply chain, such as a service centre or an after-market dealer, are subject to recent regulations on the sale of used electrical or electronic equipment, pursuant to which: *“Refurbished products, placed on the market after 90 days from the entry into force of this regulation and recognisable by final consumers due to the special label bearing the indication ‘refurbished product’ are covered by a minimum 12-month guarantee”* (Ministerial Decree No. 140/2016, Article 5).

In my opinion, however, that provision does not apply to replacement parts, apart from when they (exceptionally) constitute a finished product.

In fact, the aforementioned provision (for its positioning, context, purpose) refers only to EEE, intended as electrical and electronic equipment subject to WEEE regulations (Legislative Decree No. 49/2014); an AEE is such only if it has a direct and independent function: DIRECT, if it is equipped with its own casing and plug-in fittings enabling its connection to an equipment/device by the end user, without the need for qualified installers, and INDEPENDENT (or autonomous) if it is able to perform its primary function independently from its incorporation into another equipment and is not exclusively designed and marketed to manufacture or repair other products (consider in this regard the *“Operating Guidelines of the Ministry of the Environment on the definition of open scope”*, downloadable in Italian at the following address: http://www.minambiente.it/sites/default/files/archivio/allegati/rifiuti/Ind_oper_applicaz_DL_49_2014.pdf).

To give an example, an inverter intended for a photovoltaic plant, even though it is a component, is an EEE subject to WEEE regulations as it is characterized by a direct (it is contained in a defined casing and can be immediately and simply connected to the plant) and independent function (is able to perform its primary function regardless of the connection to the plant even if, of course, it is of no practical use unless connected to it), while an inverter PCB board intended to be assembled into a monitor or a portable PC or TV set, it has no independent or direct function and therefore does not fall under the category of EEE subject to WEEE regulations.

- (2) While keeping in mind the above, the question arises whether the end user, household or professional, could legitimately refuse a repair if this involves the use of refurbished replacement parts and demand, instead, the use of new parts.

In such cases, I believe first of all that the end user must always be properly informed that refurbished replacement parts will (or could) be used in the repair (unless they are objectively and demonstrably equivalent to new ones), as failure to do so would amount to a misleading practice by omission pursuant to Article 22 of the Consumer Code (in the case of household consumers) or Article 3 of Legislative Decree No. 145/2007 (in the case of professional users).

Having said that, I believe that in the B2C market, in the case of repair work performed during the statutory warranty period, the consumer may NOT oppose the use of refurbished replacement parts as, in fact, it would not be in his interest to do so, provided of course that the repair is properly carried out, given that, as previously mentioned, replacement parts incorporated into the repaired product DO NOT enjoy any new and separate statutory warranty period.

In the case of repairs outside the warranty period, since this is a matter between the parties (with the exception of the statutory warranty duration of at least one year for the used products supplied, established by the Consumer Code), the consumer can certainly refuse, if he wants to, the use of refurbished replacement parts for the repair.

In the B2B market (except in the case of contract work), the standard warranty provides for the termination of the contract or a price reduction but not the repair (which, if accepted by the purchaser, is left to the agreements between the parties), while in the case of repairs outside the warranty period, everything is left to the agreement between the parties and the party concerned may, if he wants to, refuse the use of refurbished replacement parts.

Maurizio Iorio, Attorney at Law