

# ATTACHMENT A

CHAPTER 15. COMMERCIAL LAW  
WARRANTIES

Sec.	
2301.	Definitions.
2302.	Rules governing contents of warranties.
2303.	Destination of written warranties.

(1) The term “consumer product” means any tangible personal property which is distributed in commerce and which is normally used for personal, family, or household purposes (including any such property intended to be attached to or installed in any real property without regard to whether it is so attached or installed).

(2) The term “Commission” means the Federal Trade Commission.

(3) The term “consumer” means a buyer (other than for purposes of resale) of any consumer product, any person to whom such product is transferred during the duration of an implied or written warranty (or service contract) applicable to the product, and any other person who is entitled by the terms of such warranty (or service contract) or under applicable State law to enforce against the warrantor (or service contractor) the obligations of the warranty (or service contract).

(4) The term “supplier” means any person engaged in the business of making a consumer product directly or indirectly available to consumers.

(5) The term “warrantor” means any supplier or other person who gives or offers to give a written warranty or who is or may be obligated under an implied warranty.

(6) The term “written warranty” means—

(A) any written affirmation of fact or written promise made in connection with the sale of a consumer product by a supplier to a buyer which relates to the nature of the material or workmanship and affirms or promises that such material or workmanship is defect free or will meet a specified level of performance over a specified period of time, or

(B) any undertaking in writing in connection with the sale by a supplier of a consumer product to refund, repair, replace, or take other remedial action with respect to such product in the event that such product fails to meet the specifications set forth in the undertaking,

which written affirmation, promise, or undertaking becomes part of the basis of the bargain between a supplier and a buyer for purposes other than resale of such product.

(7) The term “implied warranty” means an implied warranty arising under State law (as modified by sections 2308 and 2304(a) of this title) in connection with the sale by a supplier of a consumer product.

(8) The term “service contract” means a contract in writing to perform, over a fixed period of time or for a specified duration, services relating to the maintenance or repair (or both) of a consumer product.

(9) The term “reasonable and necessary maintenance” consists of those operations (A) which the consumer reasonably can be expected to perform or have performed and (B) which are necessary to keep any consumer product performing its intended function and operating at a reasonable level of performance.

(10) The term “remedy” means whichever of the following actions the warrantor elects:

(A) repair,

(B) replacement, or

(C) refund;

except that the warrantor may not elect refund unless (i) the warrantor is unable to provide replacement and repair is not commercially practicable or cannot be timely made,



tations which are similar to expressions of general policy concerning customer satisfaction and which are not subject to any specific limitations.

**(c) Exemptions by Commission**

In addition to exercising the authority pertaining to disclosure granted in section 2302 of this title, the Commission may by rule determine when a written warranty does not have to be designated either "full (statement of duration)" or "limited" in accordance with this section.

**(d) Applicability to consumer products costing more than \$10 and not designated as full warranties**

The provisions of subsections (a) and (c) of this section apply only to warranties which pertain to consumer products actually costing the consumer more than \$10 and which are not designated "full (statement of duration) warranties".

(Pub. L. 93-637, title I, § 103, Jan. 4, 1975, 88 Stat. 2187.)

**§ 2304. Federal minimum standards for warranties**

**(a) Remedies under written warranty; duration of implied warranty; exclusion or limitation on consequential damages for breach of written or implied warranty; election of refund or replacement**

In order for a warrantor warranting a consumer product by means of a written warranty to meet the Federal minimum standards for warranty—

(1) such warrantor must as a minimum remedy such consumer product within a reasonable time and without charge, in the case of a defect, malfunction, or failure to conform with such written warranty;

(2) notwithstanding section 2308(b) of this title, such warrantor may not impose any limitation on the duration of any implied warranty on the product;

(3) such warrantor may not exclude or limit consequential damages for breach of any written or implied warranty on such product, unless such exclusion or limitation conspicuously appears on the face of the warranty; and

(4) if the product (or a component part thereof) contains a defect or malfunction after a reasonable number of attempts by the warrantor to remedy defects or malfunctions in such product, such warrantor must permit the consumer to elect either a refund for, or replacement without charge of, such product or part (as the case may be). The Commission may by rule specify for purposes of this paragraph, what constitutes a reasonable number of attempts to remedy particular kinds of defects or malfunctions under different circumstances. If the warrantor replaces a component part of a consumer product, such replacement shall include installing the part in the product without charge.

**(b) Duties and conditions imposed on consumer by warrantor**

(1) In fulfilling the duties under subsection (a) of this section respecting a written warranty,

the warrantor shall not impose any duty other than notification upon any consumer as a condition of securing remedy of any consumer product which malfunctions, is defective, or does not conform to the written warranty, unless the warrantor has demonstrated in a rulemaking proceeding, or can demonstrate in an administrative or judicial enforcement proceeding (including private enforcement), or in an informal dispute settlement proceeding, that such a duty is reasonable.

(2) Notwithstanding paragraph (1), a warrantor may require, as a condition to replacement of, or refund for, any consumer product under subsection (a) of this section, that such consumer product shall be made available to the warrantor free and clear of liens and other encumbrances, except as otherwise provided by rule or order of the Commission in cases in which such a requirement would not be practicable.

(3) The Commission may, by rule define in detail the duties set forth in subsection (a) of this section and the applicability of such duties to warrantors of different categories of consumer products with "full (statement of duration)" warranties.

(4) The duties under subsection (a) of this section extend from the warrantor to each person who is a consumer with respect to the consumer product.

**(c) Waiver of standards**

The performance of the duties under subsection (a) of this section shall not be required of the warrantor if he can show that the defect, malfunction, or failure of any warranted consumer product to conform with a written warranty, was caused by damage (not resulting from defect or malfunction) while in the possession of the consumer, or unreasonable use (including failure to provide reasonable and necessary maintenance).

**(d) Remedy without charge**

For purposes of this section and of section 2302(c) of this title, the term "without charge" means that the warrantor may not assess the consumer for any costs the warrantor or his representatives incur in connection with the required remedy of a warranted consumer product. An obligation under subsection (a)(1)(A) of this section to remedy without charge does not necessarily require the warrantor to compensate the consumer for incidental expenses; however, if any incidental expenses are incurred because the remedy is not made within a reasonable time or because the warrantor imposed an unreasonable duty upon the consumer as a condition of securing remedy, then the consumer shall be entitled to recover reasonable incidental expenses which are so incurred in any action against the warrantor.

**(e) Incorporation of standards to products designated with full warranty for purposes of judicial actions**

If a supplier designates a warranty applicable to a consumer product as a "full (statement of duration)" warranty, then the warranty on such product shall, for purposes of any action under section 2310(d) of this title or under any State law, be deemed to incorporate at least the mini-

num requirements of this section and rules prescribed under this section.

(Pub. L. 93-637, title I, § 104, Jan. 4, 1975, 88 Stat. 2187.)

**§ 2305. Full and limited warranting of a consumer product**

Nothing in this chapter shall prohibit the selling of a consumer product which has both full and limited warranties if such warranties are clearly and conspicuously differentiated.

(Pub. L. 93-637, title I, § 105, Jan. 4, 1975, 88 Stat. 2188.)

**§ 2306. Service contracts; rules for full, clear and conspicuous disclosure of terms and conditions; addition to or in lieu of written warranty**

(a) The Commission may prescribe by rule the manner and form in which the terms and conditions of service contracts shall be fully, clearly, and conspicuously disclosed.

(b) Nothing in this chapter shall be construed to prevent a supplier or warrantor from entering into a service contract with the consumer in addition to or in lieu of a written warranty if such contract fully, clearly, and conspicuously discloses its terms and conditions in simple and readily understood language.

(Pub. L. 93-637, title I, § 106, Jan. 4, 1975, 88 Stat. 2188.)

**§ 2307. Designation of representatives by warrantor to perform duties under written or implied warranty**

Nothing in this chapter shall be construed to prevent any warrantor from designating representatives to perform duties under the written or implied warranty: *Provided*, That such warrantor shall make reasonable arrangements for compensation of such designated representatives, but no such designation shall relieve the warrantor of his direct responsibilities to the consumer or make the representative a co-warrantor.

(Pub. L. 93-637, title I, § 107, Jan. 4, 1975, 88 Stat. 2189.)

**§ 2308. Implied warranties**

**(a) Restrictions on disclaimers or modifications**

No supplier may disclaim or modify (except as provided in subsection (b) of this section) any implied warranty to a consumer with respect to such consumer product if (1) such supplier makes any written warranty to the consumer with respect to such consumer Product, or (2) at the time of sale, or within 90 days thereafter, such supplier enters into a service contract with the consumer which applies to such consumer product.

**(b) Limitation on duration**

For purposes of this chapter (other than section 2304(a)(2) of this title), implied warranties may be limited in duration to the duration of a written warranty of reasonable duration, if such limitation is conscionable and is set forth in clear and unmistakable language and prominently displayed on the face of the warranty.

**(c) Effectiveness of disclaimers, modifications, or limitations**

A disclaimer, modification, or limitation made in violation of this section shall be ineffective for purposes of this chapter and State law.

(Pub. L. 93-637, title I, § 108, Jan. 4, 1975, 88 Stat. 2189.)

**§ 2309. Procedures applicable to promulgation of**



(B) if the amount in controversy is less than the sum or value of \$50,000 (exclusive of interests and costs) computed on the basis of all claims to be determined in this suit; or

(C) if the action is brought as a class action, and the number of named plaintiffs is less than one hundred.

**(e) Class actions; conditions; procedures applicable**

No action (other than a class action or an action respecting a warranty to which subsection (a)(3) of this section applies) may be brought under subsection (d) of this section for failure to comply with any obligation under any written or implied warranty or service contract, and a class of consumers may not proceed in a class action under such subsection with respect to such a failure except to the extent the court determines necessary to establish the representative capacity of the named plaintiffs, unless the person obligated under the warranty or service contract is afforded a reasonable opportunity to cure such failure to comply. In the case of such a class action (other than a class action respecting a warranty to which subsection (a)(3) of this section applies) brought under subsection (d) of this section for breach of any written or implied warranty or service contract, such reasonable opportunity will be afforded by the named plaintiffs and they shall at that time notify the defendant that they are acting h a13



**(b) Effective date of section 2302(a)**

Section 2302(a) of this title shall take effect 6 months after the final publication of rules respecting such section; except that the Commission, for good cause shown, may postpone the applicability of such sections until one year after such final publication in order to permit any designated classes of suppliers to bring their written warranties into compliance with rules promulgated pursuant to this chapter.

**(c) Promulgation of rules**

The Commission shall promulgate rules for initial implementation of this chapter as soon as possible after January 4, 1975, but in no event later than one year after such date.

(Pub. L. 93-637, title I, §112, Jan. 4, 1975, 88 Stat. 2192.)

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§ 701.1

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§ 701.1 Definitions.

(a) The Act means the Magnuson-Moss Warranty Federal Trade Commis-

(3) A statement of what the warrantor will do in the event of a defect, malfunction or failure to conform with the written warranty, including the items or services the warrantor will pay for or provide, and, where necessary for clarification, those which the warrantor will not pay for or provide;

(4) The point in time or event on which the warranty term commences, if different from the purchase date, and the time period or other measurement of warranty duration;

(5) A step-by-step explanation of the procedure which the consumer should follow in order to obtain performance of any warranty obligation, including the persons or class of persons authorized to perform warranty obligations. This includes the name(s) of the warrantor(s), together with: The mailing address(es) of the warrantor(s), and/or the name or title and the address of any employee or department of the warrantor responsible for the performance of warranty obligations, and/or a telephone number which consumers may use without charge to obtain information on warranty performance;

(6) Information respecting the availability of any informal dispute settlement mechanism elected by the warrantor in compliance with part 703 of this subchapter;

(7) Any limitations on the duration of implied warranties, disclosed on the face of the warranty as provided in section 108 of the Act, accompanied by the following statement:

Some States do not allow limitations on how long an implied warranty lasts, so the above limitation may not apply to you.

(8) Any exclusions of or limitations on relief such as incidental or consequential damages, accompanied by the following statement, which may be combined with the statement required in paragraph (a)(7) of this section:

Some States do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation or exclusion may not apply to you.

(9) A statement in the following language:

This warranty gives you specific legal rights, and you may also have other rights which vary from State to State.

(b) Paragraphs (a) (1) through (9) of this section shall not be applicable with respect to statements of general policy on emblems, seals or insignias issued by third parties promising replacement or refund if a consumer product is defective, which statements contain no representation or assurance of the quality or performance characteristics of the product; Provided

That:

(1) The disclosures required by paragraphs (a) (1) through (9) of this section are published by such third parties in each issue of a publication with a general circulation, and (2) such disclosures are provided free of charge to any consumer upon written request.

#### § 701.4 Owner registration cards.

When a warrantor employs any card such as an owner's registration card, a warranty registration card, or the like, and the return of such card is a condition precedent to warranty coverage and performance, the warrantor shall disclose this fact in the warranty. If the return of such card reasonably appears to be a condition precedent to warranty coverage and performance, but is not such a condition, that fact shall be disclosed in the warranty.

### PART 702, PRE-SALE AVAILABILITY OF WRITTEN WARRANTY TERMS

Sec.

702.1 Definitions.

702.2 Scope.

702.3 Pre-sale availability of written warranty terms.

AUTHORITY : 15 U.S.C. 2302 and 2309.

SOURCE : 40 FR 60189, Dec. 31, 1975, unless otherwise noted.

#### § 702.1 Definitions.

(a) The Act means the Magnuson-Moss Warranty Federal Trade Commission Improvement Act, 15 U.S.C. 2301, et seq.

(b) Consumer product means any tangible personal property which is distributed in commerce and which is normally used for personal, family, or household purposes (including any such property intended to be attached to or installed in any real property without regard to whether it is so attached or

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installed). Products which are purchased solely for commercial or industrial use are excluded solely for purposes of this part.

(c) Written warranty means,

(1) Any written affirmation of fact or written promise made in connection with the sale of a consumer product by a supplier to a buyer which relates to the nature of the material or workmanship and affirms or promises that such material or workmanship is defect free or will meet a specified level of performance over a specified period of time, or

(2) Any undertaking in writing in connection with the sale by a supplier of a consumer product to refund, re-



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regard to whether it is so attached or installed).

(c) Written warranty means:

(1) Any written affirmation of fact or written promise made in connection with the sale of a consumer product by a supplier to a buyer which relates to the nature of the material or workmanship and affirms or promises that such material or workmanship is defect free or will meet a specified level of performance over a specified period of time, or

(2) Any undertaking in writing in connection with the sale by a supplier of a consumer product to refund, repair, replace, or take other remedial action with respect to such product in the event that such product fails to meet the specifications set forth in the undertaking, which written affirmation, promise or undertaking becomes part of the basis of the bargain between a supplier and a buyer for purposes other than resale of such product.

(d) Warrantor means any person who gives or offers to give a written warranty which incorporates an informal dispute settlement mechanism.

(e) Mechanism means an informal dispute settlement procedure which is incorporated into the terms of a written warranty to which any provision of Title I of the Act applies, as provided in section 110 of the Act.

(f) Members means the person or persons within a Mechanism actually deciding disputes.

(g) Consumer means a buyer (other than for purposes of resale) of any consumer product, any person to whom such product is transferred during the duration of a written warranty applicable to the product, and any other person who is entitled by the terms of such warranty or under applicable state law to enforce against the warrantor the obligations of the warranty.

(h) On the face of the warranty means:

(1) If the warranty is a single sheet with printing on both sides of the sheet, or if the warranty is comprised of more than one sheet, the page on which the warranty text begins;

(2) If the warranty is included as part of a longer document, such as a use and care manual, the page in such document on which the warranty text begins.

§ 703.2 Duties of warrantor.

(a) The warrantor shall not incorporate into the terms of a written warranty a Mechanism that fails to comply with the requirements contained in §§ 703.3 through 703.8 of this part. This paragraph shall not prohibit a warrantor from incorporating into the terms of a written warranty the step-by-step procedure which the consumer should take in order to obtain performance of any obligation under the warranty as described in section 102(a)(7) of the Act and required by part 701 of this subchapter.

(b) The warrantor shall disclose clearly and conspicuously at least the following information on the face of the written warranty:

(1) A statement of the availability of the informal dispute settlement mechanism;

(2) The name and address of the Mechanism, or the name and a telephone number of the Mechanism which consumers may use without charge;

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2) The name and address of the

charge;







(1) Both warrantor and consumer expressly agree to the presentation;

(2) Prior to agreement the Mechanism fully discloses to the consumer the following information:

(i) That the presentation by either party will take place only if both parties so agree, but that if they agree, and one party fails to appear at the agreed upon time and place, the presentation by the other party may still be allowed;

(ii) That the members will decide the dispute whether or not an oral presentation is made;

(iii) The proposed date, time and place for the presentation; and

(iv) A brief description of what will occur at the presentation including, if applicable, parties' rights to bring witnesses and/or counsel; and

(3) Each party has the right to be present during the other party's oral presentation. Nothing contained in this paragraph (b) of this section shall preclude the Mechanism from allowing an oral presentation by one party, if the other party fails to appear at the agreed upon time and place, as long as all of the requirements of this paragraph have been satisfied.

(g) The Mechanism shall inform the consumer, at the time of disclosure required in paragraph (d) of this section that:

(1) If he or she is dissatisfied with its decision or warrantor's intended actions, or eventual performance, legal remedies, including use of small claims court, may be pursued;

(2) The Mechanism's decision is admissible in evidence as provided in section 110(a)(3) of the Act; and

(3) The consumer may obtain, at reasonable cost, copies of all Mechanism records relating to the consumer's dispute.

(h) If the warrantor has agreed to perform any obligations, either as part of a settlement agreed to after notification to the Mechanism of the dispute or as a result of a decision under paragraph (d) of this section, the Mechanism shall ascertain from the consumer within 10 working days of the date for performance whether performance has occurred.

(i) A requirement that a consumer resort to the Mechanism prior to com-

mencement of an action under section 110(d) of the Act shall be satisfied 40 days after notification to the Mechanism of the dispute or when the Mechanism completes all of its duties under paragraph (d) of this section, whichever occurs sooner. Except that, if the Mechanism delays performance of its paragraph (d) of this section duties as allowed by paragraph (e) of this section, the requirement that the consumer initially resort to the Mechanism shall not be satisfied until the period of delay allowed by paragraph (e) of this section has ended.

(j) Decisions of the Mechanism shall not be legally binding on any person. However, the warrantor shall act in good faith, as provided in § 703.2(g) of this part. In any civil action arising out of a warranty obligation and relating to a matter considered by the Mechanism, any decision of the Mechanism shall be admissible in evidence, as provided in section 110(a)(3) of the Act.

#### § 703.6 Recordkeeping.

(a) The Mechanism shall maintain records on each dispute referred to it

(10) A statement of the warrantor's intended action(s);

(11) Copies of follow-up letters (or summaries of relevant and material portions of follow-up telephone calls) to the consumer, and responses thereto; and

(12) Any other documents and communications (or summaries of relevant and material portions of oral communications) relating to the dispute.

(b) The Mechanism shall maintain an index of each warrantor's disputes grouped under brand name and subgrouped under product model.

(c) The Mechanism shall maintain an index for each warrantor as will show:

(1) All disputes in which the warrantor has promised some performance (either by settlement or in response to a Mechanism decision) and has failed to comply; and

(2) All disputes in which the warrantor has refused to abide by a Mechanism decision.

(d) The Mechanism shall maintain an index as will show all disputes delayed beyond 40 days.

(e) The Mechanism shall compile semi-annually and maintain statistics which show the number and percent of disputes in each of the following categories:

(1) Resolved by staff of the Mechanism and warrantor has complied;

(2) Resolved by staff of the Mechanism, time for compliance has occurred, and warrantor has not complied;

(3) Resolved by staff of the Mechanism and time for compliance has not yet occurred;

(4) Decided by members and warrantor has complied;

(5) Decided by members, time for compliance has occurred, and warrantor has not complied;

(6) Decided by members and time for

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available to any person for inspection and copying.

(b) Except as provided under paragraphs (a) and (e) of this section, and paragraph (c) of § 703.7 of this part, all records of the Mechanism may be kept confidential, or made available only on such terms and conditions, or in such form, as the Mechanism shall permit.

(c) The policy of the Mechanism with respect to records made available at the Mechanism's option shall be set out in the procedures under § 703.5(a) of this part; the policy shall be applied uniformly to all requests for access to or copies of such records.

(d) Meetings of the members to hear and decide disputes shall be open to observers on reasonable and nondiscriminatory terms. The identity of the parties and products involved in disputes need not be disclosed at meetings.

(e) Upon request the Mechanism shall provide to either party to a dispute:

(1) Access to all records relating to the dispute; and

(2) Copies of any records relating to the dispute, at reasonable cost.

(f) The Mechanism shall make available to any person upon request, information relating to the qualifications of Mechanism staff and members.

# ATTACHMENT B

Date

Consumer  
Address  
CSZ

Re: MINI Warranty Language

## YOUR NEXT STEPS

As part of our settlement, we've agreed to stop making these representations and to correct the language the FTC has challenged. Please place this notice in your Service and Warranty Information Statement for your reference. If you've sold your MINI, please complete the enclosed prepaid postcard and mail it to us.

If you have questions, please call us at [phone number] or the FTC at 877-382-4357.

Sincerely,

MINI Division of BMW of North America, LLC