

# Whether You Know it or Not You Gave a Warranty

By Stephen Bucaro

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Whether You Know it or Not You Gave a Warranty

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You may not know it, but when you sell a product you automatically provide the buyer with a very extensive warranty. Article Two of the Uniform Commercial Code provides buyers with implied warranties of merchantability, fitness, and noninfringement. Few sellers are even aware of the existence of these warranties, yet they expose the seller to liability far in excess of the products price.

## \* Implied Warranty of Merchantability

The Implied Warranty of Merchantability means your product must be "fit for the ordinary purposes for which such goods are used". Because the standard for "merchantability" has never been defined, this warranty is very ambiguous. Over the years, merchantability has been defined on a case-by-case basis.

When you sell a product, a warranty that the product is "merchantable" is implied, unless you specifically exclude that warranty. The Warranty of Merchantability can be excluded only with "conspicuous" text. The exclusion text must use a different size or color of text than the rest of the contract. The exclusion language must explicitly mention "merchantability".

### \* Implied Warranty of Fitness

The Implied Warranty of Fitness means your product must be "fit for a particular purpose". Will The court interpret the Warranty to mean fit only for the purpose for which the product was designed? Do you know every purpose and situation for which your product may be used?

When you sell a product, the ambiguous "warranty of fitness for a particular purpose" is implied. Specifically exclude the implied warranty of fitness for a particular purpose, or clearly document that the product is sold "as-is".

### \* Implied Warranty of Noninfringement

The Implied Warranty of Noninfringement means that your product does not infringe on a third parties intellectual property rights. Can you guarantee that every aspect of your product does not infringe on some patent, trademark, or copyright?

If your product does infringe on a third parties property rights, you will be liable to reimburse the buyer for "consequential" damages, (costs of the lawsuit resulting from the infringement), and "incidental" damages (costs to replace the product).

when you sell a product, a Warranty of Noninfringement is implied. Specifically exclude the implied warranty of noninfringement. Clearly document that "In no event shall you be liable for incidental, or consequential damages arising out of the use of the product.

### = Offer a Limited Warranty

When you sell a product, you should exclude all of the Uniform Commercial Code's implied warranties. Instead, provide your own limited warranty. Warrent only that the product will, for a limited period of time, be free from defects in materials and craftsmanship when used for the purpose for which it was designed. The warranty should limit the buyer's remedy to repair of the defect in the product, replacement of the product, or refund of the purchase price.

Any statement that you publish in your advertising and marketing creates an "express" warranty. Be careful about what your advertising and marketing says. Avoid making express warranties that you don't mean to make. If your products are being sold through distributors, make sure that your distributors are aware of the limited warranty

and that they avoid making statements that create express warranties.

If you sell products online, make sure that customers are required to review the warranty before completing the transaction. They should have to read the limited warranty and then click on an [I Accept] button prior to completing the transaction. Make sure they have the ability to print the limited warranty.

Disclaimer: This information is provided with the understanding that the author is not a lawyer. If legal advice is required, the services of a competent professional should be sought. By using this material, the user assumes complete responsibility for any and all damages resulting from that use.

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