As Tommy Callahan asks his customers in the high-brow ‘90s movie, *Tommy Boy*, “why would somebody put a guarantee on a box?” What does it mean and why it is useful? This post provides a high-level primer on commercial and consumer warranties on products.

I. Types of Warranties

There are two types of warranties: express warranties and implied warranties.

A. **Implied Warranties.**

Sections 2-314 and 2-315 of the U.C.C. impose on sellers broad implied warranties of merchantability and fitness for particular purpose, and provide for the possibility of other, implied warranties arising from course of dealing or usage of trade (in addition to the warranties of title and freedom from infringement found in U.C.C. § 2-312).

1. **Implied Warranty of Merchantability.** There is an implied warranty of merchantability in each sale of goods contract when the seller is a “merchant”, unless it is excluded or modified. In order to be merchantable, goods must at least:
   - Pass without objection in the trade under the contract description;
   - Be of fair average quality within the description (for fungible goods);
   - Be fit for the ordinary purposes for which such goods are used;
   - Run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all units involved;
   - Be adequately contained, packaged, and labeled as the agreement may require; and
   - Conform to the promise or affirmations of fact made on the container or label, if any. C.C. § 2-314(2).

2. **Implied Warranty of Fitness for a Particular Purpose.** Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller’s skill or judgment to select or furnish suitable goods, there is also, unless it is excluded or modified under U.C.C. § 2-316, an implied warranty that the goods will be fit for such purpose. U.C.C. § 2-315.

3. **Course of Dealing or Usage of Trade.** Other implied warranties may arise from course of dealing or usage of trade (unless excluded or modified). U.C.C. § 2-314(3).

4. **Disclaimer of Implied Warranties.** As adopted in most states, the U.C.C. permits implied warranties to be disclaimed. The primary requirements for an effective disclaimer are: (1) notice of the disclaimer before purchase, and (2) use of **CONSPICUOUS** type. For the disclaimer of the warranty of merchantability, the disclaimer must also mention merchantability to be sufficient. A phrase that the goods are being sold “**AS IS**” is also sufficient to disclaim implied warranties. U.C.C. § 2-316.

B. **Express Warranties.**

Express warranties are created by (a) any statement of fact or promise made by the seller to the buyer which relates to the goods, (b) any description of the goods, and (c) any sample or model, in each case which is made part of the basis of the agreement to sell. It is not necessary that the seller use formal words such as “warrant” or “guarantee” or that the seller have a specific intention to make a warranty. U.C.C. § 2-313.

II. **Warranty Remedies.**
A. **U.C.C. Remedies.** The “warrantor” (the person giving the warranty) is responsible to the buyer for all losses that can be shown to have resulted from the breach (see U.C.C. §§ 2-714 and 2-715).

B. **Limitation on Remedies.** Remedies can be limited, but

1. Damages for personal injury caused by a consumer product cannot be limited (U.C.C. § 2-719(3)),
2. The remaining remedy must fulfill its “essential purpose”, which is generally considered to mean that the buyer must get something commensurate with the product it bought (U.C.C. § 2-719(2)), and
3. The disclaimer must be **CONSPICUOUS** and carefully drafted.

C. **Sole and Exclusive Remedies.** Warranty remedies in supply agreements are typically limited to repair or replacement of the non-conforming products or reimbursement of the purchase price paid by the buyer for the non-conforming products. From the Seller’s perspective, the foregoing remedies should expressly state that they are the sole and exclusive remedies available to the buyer for a breach of the warranties. U.C.C. § 2-719(1)(b).

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### III. Consumer Warranties.

There are additional warranty laws and regulations in place to protect consumers when a warranty is given. The below is a brief overview of such laws and regulations:


1. The statute applies only to **written warranties** and only when the products warranted are purchased for personal, family or household use. Sellers are not required to furnish written warranties.
2. Provisions affecting warranties on **all products**: If the warrantor designates a warranty as “full”, the warranty includes certain minimum protections. Implied warranties may not be entirely disclaimed; at most, they may be limited to the duration of the written, express warranty.
3. Additional provision affecting warranties on **products costing more than $5 at retail**: the warrantor may not require the consumer, in order to get the warranty, or enforce it, to pay for anything identified by a brand name.
4. Additional provision affecting warranties on **products costing more than $10 at retail**: the warranty caption must include either the word “full” or the word “limited.”
5. The statute may be enforced by the Federal Trade Commission (or the U.S. Department of Justice), state attorneys general and consumers (including class actions), and permits a court to award attorneys’ fees to a successful plaintiff. Remedies are damages and injunctions.

B. **FTC Rules Regulating Written Consumer Warranties (16 C.F.R. Parts 701, 702 and 703).** These rules apply only to warranties on **products costing more than $15 at retail**. Disclosures required include:

- specific wording, and additional specific wording if implied warranties are disclaimed or damages are limited; both warrantors and retail sellers must make the full warranty text available pre-sale, through the use of one or more specified means. Those rules have the force of law; and violations may lead to FTC fines, mandated consumer protection and/or injunctions. Consumers may not enforce them.
Most state “little FTC” laws permit consumers to make claims under the principles embodied in the FTC Magnuson-Moss rules.

D. General Federal Anti-Deception Law.

1. The Federal Trade Commission Act (15 U.S.C. §§ 41-58) prohibits “unfair or deceptive acts or practices” generally; many states have similar laws.

2. On the subject of consumer warranty advertising, the FTC has adopted “guidelines” (16 C.F.R. Part 239) instructing:
   1. any mention of a written warranty should include reference to the availability of the full warranty text, pre-sale, at the place of sale, and
   2. if the word “lifetime” or “life” is used, an indication of what life is referred to should be included.

3. The guidelines are not enforceable by anyone as such; but failure to heed them can lead to FTC actions for injunctions against conduct that it considers unfair or deceptive. (State “little FTC” laws may be enforced by state attorneys general, and in some states directly by consumers.)