



## WHAT IS A WARRANTY?

Answer:

war·ran·ty

ˈwɔrən(t) , wɔrən(t) /

*noun*

noun: **warranty**; plural noun: **warranties**

1. a written guarantee, issued to the purchaser of an article by its manufacturer, promising to repair or replace it if necessary within a specific period of time.

“the car comes with a three-year warranty”

synonyms:

[guarantee](#), [assurance](#), [promise](#), [covenant](#), [commitment](#), [agreement](#)

"a three-year warranty"

- (in contract law) a promise that something in furtherance of the contract is guaranteed by one of the contractors, especially the seller's promise that the thing being sold is as promised or represented.
- (in an insurance contract) an engagement by the insured party that certain statements are true or that certain conditions shall be fulfilled, the breach of it invalidating the policy.



## KINDS OF WARRANTIES

Habitability

Constructability

Merchantability

Fitness

Service

Warranty Deed

Etc. etc. etc.

Landlord/Tenant

Construction Contracts

Consumer Goods

Consumer Goods

Consumer Goods/Repair

Real Estate



## ELEMENTS OF A WARRANTY

(Typically Express Warranties)

- Who is covered by the warranty, i.e. buyer, seller, manufacturer, distributor??
- Length of warranty
- Description of the products, parts, properties, or characteristics
- Actions/Steps for a buyer/customer must take in the event that the warranty coverage comes into play
- Warrantor's response when confronted with product/service malfunctions, defects, or failures.
- Any exclusions of or limitations on relief such as incidental or consequential damages (recovery of attorney's fees)



## TYPES OF A WARRANTIES

### Implied Warranties

- Implied warranties are unspoken, unwritten promises created by law that go from the seller to the customer/buyer
- The Uniform Commercial Code (which governs the sales of goods) provides for two types of implied warranties
  - Merchantability – seller's promise that the goods sold will do what they are supposed to do
  - Fitness for particular purpose – seller's promise that products will perform as advertised or as represented by the seller. E.g. "this pump will put out 100 gals/minute 24 hrs a day. . . etc".

### Express Warranties

- Not automatically part of the sales transaction or contract of purchase for services.
- Promises made by the seller/manufacturer about the product or service
- Includes generally a promise to fix/repair or replace at no cost to the consumer any defect which, through no fault of the buyer, is discovered within the warranty period.
- Primary dispute between the seller and buyer in warranty space is whether buyer operated the equipment in accordance with manufactures/sellers instructions.



## RCW 62A.2-314 Implied warranty: Merchantability; usage of trade.

- (1) Unless excluded or modified (RCW [62A.2-316](#)), a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale.
- (2) Goods to be merchantable must be at least such as
  - (a) pass without objection in the trade under the contract description; and
  - (b) in the case of fungible goods, are of fair average quality within the description; and
  - (c) are fit for the ordinary purposes for which such goods are used; and
  - (d) run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all units involved; and
  - (e) are adequately contained, packaged, and labeled as the agreement may require; and
  - (f) conform to the promises or affirmations of fact made on the container or label if any.
- (3) Unless excluded or modified (RCW [62A.2-316](#)) other implied warranties may arise from course of dealing or usage of trade



## RCW 62A.2-315 Implied warranty: Fitness for 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 unless excluded or modified under the next section an implied warranty that the goods shall be fit for such purpose.



## RCW 62A.2-313 Express warranties by affirmation, promise, description, sample.

(1) Express warranties by the seller are created as follows:

(a) Any affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise.

(b) Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods shall conform to the description.

(c) Any sample or model which is made part of the basis of the bargain creates an express warranty that the whole of the goods shall conform to the sample or model.

(2) It is not necessary to the creation of an express warranty that the seller use formal words such as "warrant" or "guarantee" or that he or she have a specific intention to make a warranty, but an affirmation merely of the value of the goods or a statement purporting to be merely the seller's opinion or commendation of the goods does not create a warranty



# WARRANTY



## SERVICES

### WARRANTY

- A. Subcontractor warrants that the work shall comply strictly with the provisions of this Subcontract and all specifications, drawings and standards referred to in this Subcontract or thereafter furnished by Buyer, and that the work shall be first-class in every particular and free from defects in materials and workmanship and in any design or engineering furnished by Subcontractor. Subcontractor further warrants that all materials, equipment and supplies furnished by Subcontractor for the work shall be new, merchantable, of the most suitable grade and fit for their intended purposes unless specifically provided in this Subcontract. Without limitation of any other rights or remedies of Buyer, if any defect in the work in violation of the foregoing warranties arises within the period set forth below, Subcontractor shall, upon receipt of written notice of such defect, promptly furnish, at no cost to Buyer, design and engineering, labor, equipment and materials necessary to correct such defect and cause the work to comply fully with the foregoing warranties.
- B. Subcontractor's warranties set forth in clause 10.0-A shall extend for twenty-four (24) months after the date of final written acceptance of the work by Buyer, or eighteen (18) months after the start of regular operation or use of the work by Buyer, whichever occurs first. Any period wherein the work is not available for use due to defects in materials, workmanship or engineering furnished by Subcontractor shall extend the warranty period by an equal period of time.
- C. Design and engineering, labor, equipment, and materials furnished by Subcontractor pursuant to clause 10.0-A to correct defects shall be warranted by Subcontractor in accordance with the warranties set forth in clause 10.0-A for a period of eighteen (18) months from the date of completion of the correction, or for the remainder of the warranty period set forth in clause 10.0-B above, whichever is longer.



## SERVICES (Cont'd)

- D. Subcontractor warrants that all services supplied by Subcontractor in performance of this Subcontract shall be supplied by personnel who are careful, skilled, experienced and competent in their respective trades or professions. At any time and for any reason, Buyer may require Subcontractor to withdraw the services of any person and, in addition, request that Subcontractor promptly provide replacements for such persons satisfactory to Buyer. In addition to the other indemnification provisions within this Subcontract, Subcontractor specifically agrees to indemnify and hold harmless Buyer, from and against any liabilities, claims, charges, or suits for alleged losses, costs, damages or expenses arising from Buyer's exercise of its rights under this Article.
- E. In the event Subcontractor shall have been notified of any defects in the work in violation of Subcontractor's foregoing warranties and shall fail to promptly and adequately correct such defects, Buyer shall have the right to correct or to have such defects corrected for the account of Subcontractor, and Subcontractor shall promptly pay Buyer the costs incurred in correcting such defects.
- Subcontractor shall include, at a minimum, the foregoing warranty requirements in any Subcontract that it places.



## Fixed Price - Product

### WARRANTY

A. Subcontractor warrants that the work shall comply strictly with the provisions of this Subcontract and all specifications, drawings and standards referred to in this Subcontract or thereafter furnished by Buyer, and that the work shall be first-class in every particular and free from defects in materials and workmanship and in any design or engineering furnished by Subcontractor. Subcontractor further warrants that all materials, equipment and supplies furnished by Subcontractor for the work shall be new, merchantable, of the most suitable grade and fit for their intended purposes unless specifically provided in this Subcontract. Without limitation of any other rights or remedies of Buyer, if any defect in the work in violation of the foregoing warranties arises within the period set forth below, Subcontractor shall, upon receipt of written notice of such defect, promptly furnish, at no cost to Buyer, design and engineering, labor, equipment and materials necessary to correct such defect and cause the work to comply fully with the foregoing warranties.

B. Subcontractor's warranties set forth in clause A. above shall extend for twenty-four (24) months after the date of final written acceptance of the work by Buyer, or eighteen (18) months after the start of regular operation or use of the work by Buyer, whichever occurs first. Any period wherein the work is not available for use due to defects in materials, workmanship or engineering furnished by Subcontractor shall extend the warranty period by an equal period of time.

C. Design and engineering, labor, equipment, and materials furnished by Subcontractor pursuant to clause A. above to correct defects shall be warranted by Subcontractor in accordance with the warranties set forth in clause A for a period of eighteen (18) months from the date of completion of the correction, or for the remainder of the warranty period set forth in clause B. above, whichever is longer.



## Fixed Price – Product (Cont'd)

D. In the event Subcontractor shall have been notified of any defects in the work in violation of Subcontractor's foregoing warranties and shall fail to promptly and adequately correct such defects, Buyer shall have the right to correct or to have such defects corrected for the account of Subcontractor, and Subcontractor shall promptly pay Buyer the costs incurred in correcting such defects.

- Subcontractor shall include, at a minimum, the foregoing warranty requirements in any Subcontract that it places.
- Subcontractor warrants that all services supplied by Subcontractor in performance of this Subcontract shall be supplied by personnel who are careful, skilled, experienced and competent in their respective trades or professions. At any time and for any reason, Buyer may require Subcontractor to withdraw the services of any person and, in addition, request that Subcontractor promptly provide replacements for such persons satisfactory to Buyer. In addition to the other indemnification provisions within this Subcontract, Subcontractor specifically agrees to indemnify and hold harmless Buyer, from and against any liabilities, claims, charges, or suits for alleged losses, costs, damages or expenses arising from Buyer's exercise of its rights under this Article.



## WARRANTY DISCLAIM LANGUAGE

**THE FOREGOING WARRANTIES ... ARE GIVEN IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, IN FACT OR BY LAW, OR ARISING BY REASON OF CUSTOM OR USAGE IN THE TRADE OR BY COURSE OF DEALING, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE**

To be effective, generally Warranty disclaimer language whether for goods or services, will typically be written by the Seller in **Bold** and in all **CAPITAL LETTERS**.

**Why??**



## SOME KEY QUESTIONS FOR DISCUSSION

- When does the Warranty remedy go into effect for the buyer
- What must the buyer do to protect right under the warranty
- What constitutes a breach of warranty.