

13-1428. Creation and breach of express warranty.

A supplier's [description] [statement of fact] about [goods] [a product] which [he] [she] [it] sells, creates a warranty that the [goods] [product] will conform to the [description] [statement of fact], if,

(1) the supplier communicated the [description] [statement of fact] under circumstances which make it fair to regard it as part of the contract, and

(2) the [description] [statement of fact] is of a kind which would influence the buyer's decision to buy the [goods] [product].

[A warranty is not created by sales talk which a reasonably prudent buyer would interpret as merely a salesperson's recommendation or opinion.]

[A sample or model of the [goods] [product] may be used to create a warranty that the [goods] [product] will conform to the sample or model.]

A supplier breaches an express warranty if the [goods] [product] do not conform to the supplier's [description] [statement of fact] of their condition or promised performance.

USE NOTES

The proof in a case will dictate the choice between "goods" and "product." Ordinarily "goods" will be used in a case involving only economic loss.

Only the bracketed second paragraph of this instruction shall be used where sufficient evidence has been introduced at trial to justify a jury's conclusion that the statements relied upon in creating an express warranty were merely "puffing". The third paragraph will be used where the warranty was allegedly created by exhibiting a sample or model of the product.

[As amended, effective November 1, 1991.]