

**13-1429. Creation of implied warranty of merchantability.**

[Unless excluded], a supplier who regularly deals in [goods] [products] of the kind that [he] [she] is selling or holds [himself] [herself] out as having special knowledge or skill concerning the [goods] [products], warrants that the [goods] [products] shall be merchantable. The warranty of merchantability is implied by law and exists independent of any statement made by the seller to the buyer.

[The warranty of merchantability is included in any sale or service of food or drink.]

USE NOTES

Unless the warranty has been excluded as a matter of law, applying the rules of Section 55-2-316 NMSA 1978, the first paragraph of this instruction shall be used in every case where plaintiff states a cause of action for breach of the implied warranty of merchantability. The bracketed second paragraph is to be given in a case involving the sale or service of food products or beverages.

[As amended, effective November 1, 1991.]