

# UCC Article 2 Express Warranties (OH)

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This Practice Note discusses express warranties under the Ohio Uniform Commercial Code equivalent of model UCC Article 2 in a sale of goods transaction. It explains how express warranties are created under Article 2. This Note also contains pro-buyer considerations about how to include express warranties in a written agreement and conversely, pro-seller considerations about how to limit and disclaim them. This resource includes links to general and state-specific standard documents, standard clauses and practice notes.

The law of warranties under Article 2 of the **Uniform Commercial Code** (UCC) can differ significantly from common law. Express warranties under the UCC may be created without intent and even without words. Therefore, both sellers and buyers entering into a sale of goods transaction should be aware of the treatment of express warranties under Article 2.

This Note explains how express warranties are created under Ohio law. It contains:

- Pro-buyer considerations about how to include express warranties in a written agreement.
- Pro-seller considerations about how to limit and disclaim express warranties.

Article 2 is limited to the sale of goods. For a discussion of express and implied warranties under Article 2A of the model UCC, which governs the leasing of goods, see Practice Note, Equipment Leasing: UCC Article 2A Express and Implied Warranties ([4-516-9614](#)).

## WARRANTIES: A GENERAL OVERVIEW

Under common law, a warranty is an undertaking by the seller, made alongside the formation of the contract, that a certain fact about the goods is or will be as stated or promised. If this fact is not true at the time the warranty is made or ceases to be true within the term of the warranty, the buyer:

- Has a claim for breach of warranty against the seller.
- May be able to recover damages if it can prove they resulted from the breach.

Warranties are either:

- **Express.** An express warranty may be either written or verbal, and is part of the bargain between the seller and the buyer.
- **Implied.** An implied warranty is not bargained for or stated in the contract. It is implied by law, unless it is specifically disclaimed by the seller. Implied warranties for the sale of goods include:
  - the implied warranty of merchantability (see R.C. 1302.27);
  - the implied warranty of fitness for particular purpose (see R.C. 1302.28);
  - the implied warranty of title (see R.C. 1302.25(A));
  - the implied warranty against infringement (see R.C. 1302.25(C));
  - the implied warranty from course of dealing (see R.C. 1302.27(C)); and
  - the implied warranty from usage of trade (see R.C. 1302.27(C)).

For more information on implied warranties in a sale of goods transaction, including how to effectively disclaim them, see Practice Note, UCC Article 2 Implied Warranties (OH) ([w-001-0159](#)).

## REPRESENTATION VERSUS WARRANTY

The terms “representation” and “warranty” are often used together in corporate transactions, but there are distinct differences between them:

- **Representation.** A representation is an assertion of a fact, which is given by one party to induce another party to enter into a contract or take some other action. If a representation is untrue,

it is inaccurate. The maker of the inaccurate statement has made a misrepresentation, and the recipient is entitled to remedies for misrepresentation.

- **Warranty.** A warranty is a promise that an assertion of fact is true, supported by an implied promise of indemnity if the assertion is false. If a warranty is untrue, it is breached and the recipient of the warranty is entitled to damages for breach of contract.

For more information on remedies for misrepresentation and breach of warranty generally, see Practice Note, Representations, Warranties, Covenants, Rights and Conditions: Remedies for Inaccuracy or Breach of Representations and Warranties (9-519-8869). For a discussion of the interrelationship between representations, warranties, covenants, rights and conditions, see Practice Note, Relationship between Representations, Warranties, Covenants, Rights and Conditions (7-519-8870).

### STANDARD VERSUS TRANSACTION-SPECIFIC REPRESENTATIONS AND WARRANTIES

In most commercial contracts, the parties make:

- **Standard representations and warranties.** Standard representations and warranties commonly relate to:
  - the party itself; and
  - the validity and enforceability of the contract.

For more information and sample standard representations and warranties generally, see Standard Clause, General Contract Clauses: Representations and Warranties (2-519-9438) and Standard Document, Sale of Goods Agreement (Pro-Seller): Section 13 (2-518-9260).

- **Transaction-specific representations and warranties.** In a commercial contract, transaction-specific representations and warranties are typically:
  - product warranties, relating to the nature, type, quality and condition of the goods (see Standard Clause, General Contract Clauses: Product Warranty and Disclaimers (4-521-5263) and Standard Document, Sale of Goods Agreement (Pro-Seller): Section 14 (2-518-9260).)
  - service warranties, relating to the nature, type and quality of services (see Standard Document, Services Agreement (Pro-Service Provider) (OH): Section 5 (w-001-7822)).

For more information on the different types of representations and warranties generally, see Standard Clause, General Contract Clauses: Representations and Warranties: Drafting Note: Types of Representations and Warranties (2-519-9438).

### EXPRESS WARRANTIES UNDER UCC ARTICLE 2

Under the UCC, warranties do not need to coincide with contract formation. Words or conduct by the seller during negotiations, or even after the transaction has closed, may be deemed an express warranty (see Timing Not Material). Descriptions, samples, models, affirmations of fact and promises are all express warranties under the UCC (R.C. 1302.26). The critical analysis under Article 2 is to determine whether the seller's words or conduct were "part of the basis of the bargain" with the buyer.

### BASIS OF THE BARGAIN TEST

To be deemed an express warranty under Article 2, the seller's statement or conduct must be "part of the basis of the bargain" between the seller and the buyer. To determine if a statement was part of the basis of the bargain, the UCC looks to what, in essence, the seller has agreed to sell to the buyer, which is "the whole purpose of the law of warranty" (R.C. 1302.26, official cmt. 4).

Despite its importance, the UCC does not define the "basis of the bargain." However, Official Comment 1 to model UCC Section 2-313 (R.C. 1302.26) provides some guidance, stating that an express warranty:

- Is based on the bargained-for aspects of the deal.
- Goes to the essence of the bargain to the extent that a general disclaimer is not enough to negate it.

For example, a contract for the sale of "a Stradivarius violin" may also include a general disclaimer of "all warranties, express or implied." Under Article 2, the seller's general disclaimer is not enough to negate the specific, bargained-for attributes of the bargain, namely, the sale of an authentic Stradivarius violin.

There is a presumption that:

- All statements made by the seller are part of the bargain.
- The exclusion of any statement or conduct relating to the transaction requires proof by the seller.

This is in contrast to common law, where the buyer must prove reliance on the seller's statement or conduct. For additional information, see Reliance Not Needed.

What constitutes the basis of the bargain ultimately is a question of fact to be determined according to the particular circumstances of the deal (see, for example, *Price Bros. Co. v. Philadelphia Gear Corp.*, 649 F. 2d 416, 422 (6th Cir.1981) and *Conservation Load Switch, Inc. v. Ohio Univ.*, 2004-Ohio-1472, ¶¶ 29-32 (Ct. of Cl.)). To avoid ambiguity, it is best to include any express warranties in a written agreement (see Pro-Buyer Considerations: Inclusion of Express Warranties) with clearly drafted disclaimers and limitations (see Pro-Seller Considerations: Limitation and Disclaimer of Express Warranties Under UCC Article 2).

For a sample product warranty clause and an effective disclaimers generally, see Standard Clause, General Contract Clauses: Product Warranty and Disclaimers (4-521-5263). For an example of general representations and warranties, see Standard Clause, General Contract Clauses, Representations and Warranties (2-519-9438).

### CREATION OF EXPRESS WARRANTIES UNDER UCC ARTICLE 2

Under Article 2, there are four ways to create an express warranty. The seller creates an express warranty by:

- Affirmation of fact about the goods (see Express Warranty by Affirmation of Fact).
- Promise about the goods (see Express Warranty by Promise).
- Description of the goods (see Express Warranty by Description).

- Sample or model of the goods (see Express Warranty by Sample or Model).  
(R.C. 1302.26)

In each case, the seller expressly warrants that the goods will conform to the affirmation, promise, description, sample or model.

#### EXPRESS WARRANTY BY AFFIRMATION OF FACT

The seller creates an express warranty by stating a certain fact about the goods (R.C. 1302.26(A)(1)). For example, the seller creates an express warranty by stating to the buyer, “this violin is a Stradivarius” (see *Kaiser v. Hennis*, 5th Dist. Stark No. CA-6832, 1986 WL 6468, \*1-2 (May 27, 1986)). Generally, to find an express warranty, Ohio law requires the seller to make some positive representation of fact that induces a prospective purchaser to buy (*Charleston Marine Containers Inc. v. Sherwin-Williams Co.*, 2016 WL 741281, \*7 (Feb. 25, 2016)).

#### EXPRESS WARRANTY BY PROMISE

The seller creates an express warranty by making a promise to the buyer about the goods (R.C. 1302.26(A)(1)). For example, a statement by the seller to the buyer that a particular truck being sold “will be just right for commercial snow plowing” creates an express warranty by promise (see *Soc. Nat. Bank v. Pemberton*, 63 Ohio Misc. 26, 28, 409 N.E.2d 1073, 1076 (M.C.1979)).

Similar to express warranty by affirmation of fact disputes, however, Ohio courts have found statements that a car “performed fine,” was “good on gas,” or was a “good choice” to be mere sales talk that did not create an express warranty by promise (see *Novak v. Main St. Motors*, 11th Dist. Trumbull No. 98-T-0148, 1999 WL 529530, \*2 (July 16, 1999) and *Mims v. Flynn’s Tire Co.*, 11th Dist. Portage No. 90-P-2253, 1991 WL 230034, \*3 (Nov. 1, 1991)).

#### EXPRESS WARRANTY BY DESCRIPTION

The seller creates an express warranty by describing the goods to the buyer either:

- Verbally.
- In writing.
- By providing technical specifications, drawings or blueprints (R.C. 1302.26 (A)(2)).

(See *Furlong v. Alpha Chi Omega Sorority*, 73 Ohio Misc. 2d 26, 32, 657 N.E.2d 866, 870 (M.C.1993).)

For example, a description concerning a horse’s respiratory condition at the time of the sale constituted an express warranty (see *Slyman v. Pickwick Farms*, 15 Ohio App.3d 25, 29, 472 N.E.2d 380, 385 (10th Dist.1984)).

Similarly, if the parties have previously contracted for the sale of the same goods, the previously sold goods may be deemed to be a description of the goods currently being sold and therefore create an express warranty (R.C. 1302.26 (A)(2), official cmt. 5).

#### EXPRESS WARRANTY BY SAMPLE OR MODEL

The seller creates an express warranty if it provides the buyer with a sample or model of the goods being sold (R.C. 1302.26(A)(3)). The seller warrants that all of the items being sold will conform to the sample or model provided (see *Daniel A. Terrieri & Sons v. Alliance*

*Wall Corp.*, 7th Dist. Mahoning No. 95 C.A. 11, 1996 WL 148596, \*3 (Mar. 29, 1996)).

#### Sample Distinguished from Model

A sample originates from the goods themselves, but a model does not. A model is generally provided when the actual goods are not present or available. While there is a presumption that both a sample and a model become part of the description of the goods and therefore an express warranty, the presumption is not as strong in the case of a model (R.C. 1302.26(A)(3), official cmt. 6 and see *Zion Temple First Pentecostal Church of Cincinnati, Ohio, Inc. v. Brighter Day Bookstore & Gifts*, 1st Dist. No. C-030762, 2004-Ohio-5499, 970 N.E.2d 441, 445, ¶ 18).

#### INTENT, RELIANCE, OR FORMAL WORDS NOT NECESSARY; TIMING NOT MATERIAL

Unlike at common law, the law of express warranties under Article 2 of the UCC does not require:

- Intent by the seller to create a warranty (see Intent Not Needed).
- Reliance by the buyer on the warranty (see Reliance Not Needed).
- Formal words such as “warrant” or “guarantee” (see Formal Words Not Needed).
- Precise timing coinciding with contract formation (see Timing Not Material).

#### INTENT NOT NEEDED

The seller can create an express warranty even if it did not intend to do so if the affirmation, description, sample or model was made part of the bargain (R.C. 1302.26, official cmt. 3). For example, even if the seller did not intend to create an express warranty by stating that the violin for sale was a Stradivarius, an express warranty is still created. If the violin is not an authentic Stradivarius, the buyer has a claim for breach of warranty. Further, even if the seller believed that the violin was a Stradivarius and was merely mistaken and not deceitful, the buyer may still have a claim for breach of warranty even if the buyer does not believe that the violin is a Stradivarius (see *Kaiser v. Hennis*, 5th Dist. Stark No. CA-6832, 1986 WL 6468, \*2 (May 27, 1986)).

#### RELIANCE NOT NEEDED

To create an express warranty, “no particular reliance on...statements [by the seller] need be shown” (R.C. 1302.26, official cmt. 3). For example, the affirmation of fact or the description by the seller that the violin is a Stradivarius is presumptively part of the bargain with the buyer. Therefore, the buyer is not required to prove actual reliance on the seller’s statement. Under the UCC, it is the seller who must prove its statement was not part of bargain. Essentially the UCC has shifted the burden of proof from the buyer to the seller, requiring the seller to prove that the buyer did not rely on the seller’s statement or promise (see *Norcold, Inc. v. Gateway Supply Co.*, 3rd Dist. No. 17-03-02, 154 Ohio App.3d 594, 601, 2003-Ohio-4252, 798 N.E.2d 618, 623, ¶ 16).

#### Reliance Versus Basis of the Bargain

The statement in Official Comment 3 to UCC Section 2-313 (R.C. 1302.26) that “no particular reliance is necessary” has been the subject of some confusion and criticism. Ohio courts have engaged

in a reliance analysis when applying the basis of the bargain test (for example, see *Affirmation of Fact Versus Opinion*).

There is considerable overlap between the UCC's basis of the bargain test and the common law's reliance test. Whether the buyer relied on the seller's statement or whether the statement was part of the basis of the bargain between the buyer and the seller often has the same answer. The UCC does not clearly distinguish one test from the other. One way to clarify the resultant confusion is to view the UCC as shifting the burden of proof from buyer to seller, rather than as completely eliminating the reliance requirement.

In addition, Ohio courts have held that where the express warranties are incorporated in the final written contract, the basis of the bargain test is not applicable and no reliance needs to be shown (*Norcold, Inc. v. Gateway Supply Co.*, 3rd Dist. No. 17-03-02, 154 Ohio App.3d 594, 600, 2003-Ohio-4252, 798 N.E.2d 618, 622-24, ¶¶ 14-17). Whether or not a seller's statement represents puffing or opinion and forms a part of the basis of the bargain between the parties at that stage of the process requires a court to consider:

- The circumstances surrounding the sale.
- The reasonableness of the buyer in believing the seller.
- The reliance placed on the seller's statement by the buyer.

(*Slyman v. Pickwick Farms*, 15 Ohio App.3d 25, 28, 472 N.E.2d 380, 384 (10th Dist.1984); see also *Abele v. Bayliner Marine Corp.*, 11 F.Supp.2d 955, 963 (N.D. Ohio 1997).)

#### FORMAL WORDS NOT NEEDED

The seller can create an express warranty even if formal words such as "warrant" or "guarantee" are not used (R.C. 1302.26(B)). For example, it is not necessary for the seller to say, "I guarantee that this violin is a Stradivarius" (see *Kaiser v. Hennis*, 5th Dist. Stark No. CA-6832, 1986 WL 6468, \*2 (May 27, 1986); see also *Jones v. Kellner*, 5 Ohio App.3d 242, 451 N.E.2d 548, 549 (8th Dist.1982)).

#### TIMING NOT MATERIAL

The particular timing of the promise, statement, description or use of the model or sample does not by itself determine whether the seller has made an express warranty under the UCC (R.C. 1302.26, official cmt. 7). Therefore, under Article 2, the seller can create an express warranty:

- **Before the sale is concluded.** For example, the seller makes a promise to the buyer about the goods during the negotiation process. The seller creates an express warranty, even if the promise is not reduced to writing or verbally repeated when the agreement is signed (see *Soc. Nat. Bank v. Pemberton*, 63 Ohio Misc. 26, 29, 409 N.E.2d 1073, 1076 (M.C.1979)). Therefore, to disclaim an express warranty made before the transaction is concluded, sellers generally include an integration clause (also referred to as an entire agreement clause) in the contract (see, for example, *Robinson Mem. Hosp. v. Hi Temp, Inc.*, 11th Dist. Portage No. 94-P-0096, 1995 WL 453430, \*5 (July 14, 1995); see also *Making the Express Warranty the Only Warranty*). For an example of an integration clause, see *Standard Clauses, Boilerplate Clauses (OH): Section 10. Entire Agreement (w-000-0976)*. For more explanations and drafting and negotiating tips regarding integration clauses, see *Standard Clause, General Contract Clauses: Entire Agreement (9-520-4139)*.

- **At the time the sale is concluded.** This is the most formal or traditional way to create an express warranty. At common law, generally a warranty coincides with contract formation. For example, the seller includes in a written agreement an express warranty that the goods sold will conform to specifications listed in, or the technical drawings attached to, the contract. The timing of the warranty coincides with contract formation. Sellers generally seek to limit an express warranty made at the time the sale is concluded and disclaim all other warranties (see *Caterpillar Fin. Servs. Corp. v. Harold Tatman & Son's Ents., Inc.*, 4th Dist. No. 14CA3449, 2015-Ohio-4884, 50 N.E.3d 955, 961, ¶¶ 14-17; see also *Pro-Seller Considerations: Limitation and Disclaimer of Express Warranties Under UCC Article 2*).
- **After the sale is concluded.** Under the UCC, it is also possible to create an express warranty even after the transaction is concluded. If the seller makes a promise to the buyer about the goods after the closing of the sale and this promise becomes part of the basis of the bargain, the UCC recognizes this promise as an express warranty. No additional consideration is required from the buyer, as the promise is deemed to have modified the contract (R.C. 1302.12(A)). Therefore, to disclaim warranties created after contract formation, sellers often include an amendments clause specifying that only written amendments are effective (see *Cincinnati Ins. Co. v. Quikrete Cos.*, 10th Dist. Franklin No. 96APE04-424, 1996 WL 532188, \*4-5 (Sept. 17, 1996); see also *Making the Express Warranty the Only Warranty*). For an example of an amendments clause, see *Standard Clauses, General Contract Clauses: Amendments (OH) (w-000-0935)*.

#### PUFFERY OR OPINION DOES NOT CREATE AN EXPRESS WARRANTY

Praising the goods does not generally create a warranty. For example, laudatory statements like "the best in class" or "state of the art" are usually deemed by courts to be mere puffery by the seller and do not create a warranty. Puffing generally refers to:

- Expression of opinion not made as a representation of fact.
- Exaggerated blustering or subjective boasting upon which no reasonable person would rely.

(*Davis v. Byers Volvo*, 4th Dist. Pike No. 11CA817, 2012-Ohio-882, ¶ 31.)

Article 2 specifically provides that no warranties are created when a seller merely:

- Confirms the value of the goods.
- Gives its opinion about the goods.
- Commends the goods.

(R.C. § 1302.26.)

For example, a statement by the seller to the buyer that "these are the best boats on the market" will likely be deemed puffery or merely the seller's opinion and would not create an express warranty (see *Risner v. Regal Marine Industries, Inc.*, 8 F.Supp.3d 959, 991-93 (S.D. Ohio 2014)). Similarly, statements in an advertisement to the effect that the car was "nice," looked and ran "great," and that "everything worked" did not create an express warranty for purposes of a purchaser's action against a car dealership for a defective car (*Marable v. Michael J. Auto Sales*, 1st Dist. Hamilton No. C-120373, 2013-Ohio-1750, ¶¶ 13, 14).

## AFFIRMATION OF FACT VERSUS OPINION

The difference between what constitutes an affirmation of fact, which results in an express warranty, and an opinion, which does not, is not always readily evident. The distinction between the two is a question of fact and results vary from jurisdiction to jurisdiction. Ohio courts, however, go beyond the content of the seller's statement and examine:

- **The respective level of sophistication of the buyer and the seller.**  
The less sophisticated the buyer, the more likely that a court will deem the seller's statement to be an express warranty and not an opinion.
- **How reasonable the buyer was in relying on the seller's statement.** The more reasonable the buyer's reliance, the more likely that a court will deem the seller's statement to be an express warranty and not an opinion. (For more information on the reliance requirement, see *Reliance Versus Basis of the Bargain*.)

(See *Natl. Mulch & Seed, Inc. v. Rexius Forest By-Products Inc.*, S.D. Ohio No. 2:02-CV-1288, 2007 WL 894833, \*13-21 (Mar. 22, 2007) and *Robinson Mem. Hosp. v. Hi Temp, Inc.*, 11th Dist. Portage No. 94-P-0096, 1995 WL 453430, \*4 (July 14, 1995).)

## PRO-BUYER CONSIDERATIONS: INCLUSION OF EXPRESS WARRANTIES

The UCC does not require that an express warranty be part of a written agreement between the buyer and the seller. It does not even require that the warranty be expressed in words if it is part of the basis of the bargain (see *Express Warranty by Description and Express Warranty By Sample or Model*). Still, the easiest way for a buyer to prove that the seller's statement was part of the basis of the bargain is to include it in a written agreement.

Therefore, buyers often seek to include in the written agreement for the sale of the goods:

- All statements, promises and descriptions relating to the goods made by the seller during their negotiations or course of dealing.
- A description of and references to any samples or models provided by the seller.
- Anything that the buyer considers important about the quality, character or performance of the goods.
- Any applicable descriptions of the goods incorporating by reference to websites or catalogues.

In addition to memorializing express warranties in a written agreement in as much detail as possible, buyers should retain copies of any correspondence and promotional materials regarding the goods. These can be helpful for the buyer if required to prove the seller's statements.

## PRO-SELLER CONSIDERATIONS: LIMITATION AND DISCLAIMER OF EXPRESS WARRANTIES UNDER UCC ARTICLE 2

Limitation and negation of express warranties is permitted under Article 2 if the limitation or negation is not unreasonable (R.C. 1302.29(A)). The optimal result for the seller is to disclaim all express warranties. However, it may be difficult for a corporate seller to negotiate a written agreement for the sale of goods with a corporate

buyer without providing any express warranties at all. In addition, a general disclaimer by the seller of "all warranties, express or implied" is not effective to negate an express warranty (R.C. 1302.26, official cmt. 4 and see also *Basis of the Bargain Test* and *Barksdale v. Van's Auto Sales, Inc.*, 62 Ohio App.3d 724, 728-29, 577 N.E.2d 426, 429 (8th Dist.1989)).

Therefore, instead of providing a general disclaimer, the seller more commonly provides the buyer with an express warranty in the contract (for example, that the goods will meet the specifications listed in the contract) but then seeks to limit its scope, duration and applicability. The seller should seek to limit the express warranty by:

- Making it the only warranty given (see *Making the Express Warranty the Only Warranty*).
- Limiting the duration of the warranty (see *Limiting the Duration of the Warranty*).
- Specifying conditions that invalidate the warranty (see *Specifying Conditions Which Invalidate the Warranty*).
- Specifying an exclusive remedy for breach (see *Specifying an Exclusive Remedy for Breach*).

## MAKING THE EXPRESS WARRANTY THE ONLY WARRANTY

To make the express warranty the only warranty, the seller generally:

- States in the contract that the express warranty is the buyer's exclusive warranty and that the seller makes no other warranty, express or implied (see *Standard Clause, General Contract Clauses: Product Warranty and Disclaimers: Section 1.2 (4-521-5263)*).
- Does **not** include any language in the contract that the express warranty is cumulative and in addition to any other warranty provided by law or equity.
- Disclaims the implied warranty of merchantability (see R.C. 1302.27(A) and Practice Note, UCC Article 2 Implied Warranties (OH): Implied Warranty of Merchantability ([w-001-0159](#))).
- Disclaims the implied warranties of course of dealing and usage of trade (see R.C. 1302.27(C) and Practice Note, UCC Article 2 Implied Warranties (OH): Implied Warranties Created by Conduct and Custom ([w-001-0159](#))).
- Disclaims the implied warranty of fitness for particular purpose (see R.C. 1302.28 and Practice Note, UCC Article 2 Implied Warranties (OH): Implied Warranty of Fitness for a Particular Purpose ([w-001-0159](#))).
- Ensures the indemnification provision and the cumulative remedies provision do not allow the buyer to pursue any remedies in addition to the remedies provided under any express warranty. For additional information, see *Standard Clauses, General Contract Clauses: Cumulative Remedies (with Exclusive Remedies Carve-Out) (7-508-3001)*.
- Include an integration clause to prevent the buyer from asserting that the seller agreed to any provisions, including any express warranties, outside the four corners of the agreement. For additional information, see *Standard Clauses, Boilerplate Clauses (OH): Section 10. Entire Agreement (w-000-0976)*.
- Include an amendments clause to prevent the buyer from asserting that the seller created an express warranty after

the execution of the agreement. For additional information, see Standard Clauses, Boilerplate Clauses (OH): Section 11. Amendment and Modification ([w-000-0976](#)).

Technically, to make the express warranty the only warranty, a seller would also have to disclaim the warranties of title and against infringement (R.C. 1302.25). However, most buyers would likely balk at this aggressive approach, as buying non-infringing goods with clean title is their minimum requirement. For a standard warranty disclaimer language addressing the exclusion of warranties other than the express warranty, see generally Standard Clause, General Contract Clauses: Product Warranty and Disclaimers ([4-521-5263](#)).

### LIMITING THE DURATION OF THE WARRANTY

The term of an express warranty is usually negotiated between the parties. If none is specified, then state law determines the duration. However, the seller generally seeks to specify a shorter term in the contract. This provides for transactional certainty and decreases the chance for disputes between the parties. For example, depending on the particular industry, any course of dealing and bargaining power, the seller may seek to limit the warranty to six months or one year from the shipment of the goods.

The buyer can seek to either:

- Negotiate a longer warranty term.
- Accept the warranty term, but negotiate a later starting point, such as acceptance of the goods.

For a sample clause limiting the duration of the warranty generally, see Standard Document, Sale of Goods Agreement (Pro-Seller): Section 14.1(b) ([2-518-9260](#)).

### SPECIFYING CONDITIONS WHICH INVALIDATE THE WARRANTY

The seller can generally also limit the applicability of the express warranty by including in the written agreement a list of circumstances which invalidate the warranty. For example, the seller can state that the express warranty is invalidated if the goods have been:

- Subjected to abuse, misuse, neglect or accident.
- Improperly stored or handled.
- Improperly installed or maintained.
- Repaired by any person other than the seller.

For a sample clause specifying conditions which invalidate the warranty, see Standard Document, Sale of Goods Agreement (Pro-Seller): Section 14.2 ([2-518-9260](#)).

### SPECIFYING AN EXCLUSIVE REMEDY FOR BREACH

The UCC permits the contractual limitation of remedies available to the buyer in case of a breach of warranty (R.C. 1302.93). The seller may:

- Include two or more specific remedies in the written agreement to be chosen at the seller's option (R.C. 1302.93(A)(1)).
- Make its selected remedy be the buyer's exclusive remedy (R.C. 1302.93(A)(2)).

For example, the seller commonly includes provisions that, as the buyer's sole remedy, the seller will, at its discretion:

- Repair the non-conforming goods.
- Replace the non-conforming goods.
- Refund the purchase price on the return of the non-conforming goods.

The seller can further limit the scope of an exclusive warranty by inserting provisions in the contract requiring the buyer to follow a specific process for returning defective goods. For example, the seller may seek to:

- Obligate the buyer to obtain the seller's prior written consent before the buyer can return defective goods.
- Limit the time frame during which the buyer may return the goods.

For more information and a sample exclusive remedy clause, see Standard Document: Sale of Goods Agreement (Pro-Seller): Section 14.3 ([2-518-9260](#)) and its accompanying Drafting Notes.

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