

Contract Issues For Small Business Owners Warranty Language – Does It Fit the Situation at Hand?

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In this multi-part series, we are highlighting some key contract issues for today's business owners. The first article in the series touched on key considerations when reviewing an indemnification clause. If you missed it, you can read it here [Contract Issues for Small Business Owners - The Indemnification Clause](#). We continue the series with a discussion on warranties, and how they should be particularly crafted to the needs and desires of your specific business.

Implied Warranty of Fitness for a Particular Purpose

You have undoubtedly come across several classic warranties in your business dealings, either because you have asked that a warranty be provided to you or because your buyer has asked you to provide one to them. One warranty that is worth highlighting is the implied warranty of fitness for a particular purpose. This warranty provides as follows:

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.

Don't "Over" Warrant Your Products

Under some business scenarios, it is entirely appropriate to provide this warranty to your buyer. However, if your business builds parts based on prints or plans that are provided by your buyer, who did the design work, while it would be reasonable for you to warrant that the parts you manufactured run true to the print, you would **not** want to warrant that the parts you created are "fit for a particular purpose." In this situation, the specific features of the part at issue were not designed by you, and whether the part actually serves the desired purpose is out of your control. Be careful that you are not asked to provide guarantees that are not within your power to manage. Do not "over" warrant your products as this could lead to increased liability.

Be Deliberate About the Length of a Warranty

The length of the warranty is an important consideration. Be deliberate about the length of the warranty that you provide (or ask for). In some instances, you may be willing to give a lifetime warranty, but make sure that it is right for your product. When making this decision, be realistic about the durability of your product.

Be Cautious About the Remedies a Warranty Provides

It is also important to consider what remedies you are providing through your warranty. Are you warranting the **replacement** of a product, or are you warranting that you will provide a **refund of the cost** of a product? You may also be asked to provide "**cover**" damages where the buyer has the option of buying a replacement, and you have to cover (or make up the difference) in the costs for the buyer. Depending on the type of product you offer, the implications can be extensive. Again, make sure the language you sign off on is right for you product.

The warranty you provide should be something that you wanted to provide and that is specifically tailored to the nature of your product. You need to be careful in your warranty language so that you are not put on the hook for something you did not anticipate. Before you offer warranties on your products, get the assistance of a trusted business attorney to be sure you are fully informed about the risks and obligations you are taking on. They may be more than you bargained for!



Delia Bouwers Bianchin is Senior Counsel at The Lynch Law Group. She has nearly two decades of high level legal experience with exceptional skill in complex commercial litigation from a decade of practice with two prominent Pittsburgh firms. In addition she served for many years as in-house counsel for a diversified contract manufacturer and a dynamic start-up. For more information on warranties or other contract matters, contact Delia at dbianchin@lynchlaw-group.com or (724)776-8000.