

3205 IMPLIED WARRANTY: EXCLUSION OR MODIFICATION

The seller may exclude or modify an implied warranty of merchantability, or any part of the warranty, provided, at the time of the sale, the seller specifically informs the buyer that any implied warranty as to merchantability is to be excluded or modified.

Any written exclusion or modification of an implied warranty set forth in any contract, advertisement, label, or brochure must, at the time of sale, be called directly to the attention of the buyer.

Unless the circumstances indicate otherwise, all implied warranties are excluded by expressions such as "with all faults," "as is," or other language which in common understanding calls the buyer's attention to the exclusion of warranties and makes plain that there is no implied warranty.

COMMENT

The instruction and comment were originally published in 1971 and revised in 2009.

This instruction is given only in situations where it is contended that an exclusion or modification was made orally, or where there is a written inconspicuous exclusion or modification of an implied warranty which it is contended was at the time of sale called to the attention of the buyer. When the modification or exclusion is made in writing only, no instruction is required because the existence or nonexistence of a modification or exclusion is for the court to decide.

Wis. Stat. § 402.316(2); Wis. Stat. § 402.316(3).

"Conspicuous" is defined in Wis. Stat. § 401.201(10).

Pokrojac v. Wade Motors, Inc., 266 Wis. 398, 402, 63 N.W.2d 720 (1954); Hyland v. GCA Tractor & Equip. Co., 274 Wis. 586, 589-591, 80 N.W.2d 771 (1957); 24 A.L.R.3d 465 (1966).

See Wis JI-Civil 3206 for another means of exclusion.

Murray v. Holiday Rambler, Inc., 83 Wis.2d 406, 414, 265 N.W.2d 513 (1978); Recreatives, Inc. v. Myers, 67 Wis.2d 255, 226 N.W.2d 474 (1975).