

3206 IMPLIED WARRANTY: EXCLUSION BY REASON OF COURSE OF DEALING OR USAGE OF TRADE

An implied warranty can be excluded or modified by (a course of dealing or course of performance) or (usage of the trade). This means that a warranty will not be implied if the conduct of the parties by reason of a (course of dealing or course of performance) or (usage of the trade) indicates that no warranty existed.

(A "course of dealing" is defined as a sequence of previous conduct between the parties to a particular transaction which is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.)

(A "usage of trade" is defined as any practice or method of dealing having such regularity or observance in a place, vocation, or trade as to justify an expectation that it will be observed with respect to the transaction in question.)

COMMENT

The instruction and comment were originally published in their present form in 1971. The comment was updated in 1980. Editorial changes were made in 1994. No substantive changes were made to the instruction.

Wis. Stat. § 402.316(3)(c).

Wis. Stat. § 401.205(1).

Wis. Stat. § 401.205(2).

See Wis. Stat. § 401.205(6) in regard to the notice requirement for "usage of trade" evidence.

See Wis. Stat. § 402.208(2) for rules of construction for usage of trade and course of dealing, course of performance.

Wis JI-Civil 3205 should be used when the exclusion or modification is expressed.