



What Warranties Apply To Your Products?

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*This is the first installment of the three-part series discussing warranties and addresses implied warranties that could apply to your products whether you offer them or not. **Part 2** addresses the impact of federal law on warranties you specifically offer your customers. **Part 3** discusses what requirements must be met for you to label your warranty a "full" warranty.*

Do you offer a warranty with your products? If you sell consumer products, you may offer some warranties without knowing it. Michigan law recognizes two types of warranties—express warranties and implied warranties. Express warranties are those you explicitly offer to your customers in connection with the sale of your product. Implied warranties are imposed by law and exist even if you never mention a warranty in connection with a sale. It is important to understand what these implied warranties require and when you may want to disclaim them.

There are two types of implied warranties. The first is the "Warranty of Merchantability." This warranty is an implied promise to your customer that your product is without significant defect and will do what it is supposed to do. For example, if you are in the business of selling refrigerators, you are making an implied promise with every sale that the refrigerator will keep food cold. If a particular refrigerator is defective and fails to keep food cold, you will have breached the warranty of merchantability. Accordingly, the law requires you to offer your customer a remedy such that they have a working refrigerator.

The second type of implied warranty is the warranty of "Fitness for a Particular Purpose." This warranty is imposed by law any time you tell your customer that your product can be used for some specific purpose. For example, if you are in the business of selling office supplies and you tell a customer that a stapler can handle 25 pages, you have made an implied warranty that the stapler is fit for the particular purpose of stapling 25 pages. If it is unable to do so, you have breached this warranty, even if it can staple 20 pages.

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Because implied warranties do not come with a particular term, these warranties continue until the statute of limitations has expired. In Michigan, implied warranties last for four years. MCL 440.2725. To avoid the application of implied warranties, you must conspicuously make a disclaimer. Generally, disclaimers are accomplished by providing that a product is sold "as is" or "with all faults." The disclaimer must be in writing and must be easily seen by the customer. Importantly, if you provide written warranty for your product, federal law prohibits you from disclaiming implied warranties. More information on what is required under federal law will be presented in Part 2 and Part 3 of this series.

If you have a question about what warranties apply to your particular products, please contact one of Foster Swift's Business and Corporate attorneys.

