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This *Contracts Bulletin* will provide a general overview of warranties (both in your contracts and imposed by law). It is intended to give you a basic understanding of warranties and will help you identify issues that may arise when dealing with warranties.

First, this *Contracts Bulletin* will provide a brief definition of a warranty and the different types of warranties you may encounter. Next, ways in which a warranty can be modified and time frames to keep in mind will be addressed. A brief outline of the requirements under federal law when dealing with residential HVAC warranties will be provided and, finally, this Bulletin will point out helpful tips on organizing warranty paperwork.

What Is a Warranty?

According to Merriam–Webster, a warranty is a “usually written guarantee of the integrity of a product and of the maker’s responsibility for the repair or replacement of defective parts.” Warranties can be expressed and/or implied.

Express Warranty

An “express warranty” is a given, actual promise regarding the condition of a product. For example: “ZZZ HVAC’s dampers *never* fail.” This is an “express warranty” given by ZZZ HVAC to its customers.

Under the Uniform Commercial Code or “UCC” (a body of law that deals with commercial transactions including sales), an express warranty is created by an affirmation of fact or promise, a description of goods, or a sample. Express warranties are created through the bargaining process and are contractual. The UCC also states that the words “warranty” or “guaranty” are not necessary to establish a specific intent to make a warranty.

Implied Warranty

Implied warranties, on the other hand, are a creature of the law and not by agreement of the parties. Implied warranties protect the consumer when the product fails to conform to the commercial standard or meet the buyer’s stated purpose. However, an implied warranty extends only to the ordinary use of the product and does not cover when a product is used in an unapproved or unusual manner. An implied warranty is distinct from an express warranty and can be found along with an express warranty or in the absence of an express warranty.

There are two types of implied warranties. One is based on the premise that the product is fit for the ordinary purposes for which it is used (often called the “implied warranty of merchantability”). The second type of implied warranty arises when the seller has reason to know of the buyer’s particular purpose for the product and the buyer relies on the seller’s expertise to provide a suitable product for that purpose (often called the “implied warranty of fitness for a particular purpose”).

It is important to remember that even if no express warranty is given, an implied warranty may be created by the law.

Modification of Warranties

Modifications or exclusions of express and implied warranties are regulated by UCC § 2–316. This section of the UCC has been adopted in some form or another by almost all states, except Louisiana. The purpose of this section is not to prohibit modifications or waivers. The UCC identifies that modifications and waivers may be an integral part of the bargaining process; and, therefore, does not prohibit modifications, but seeks to prevent unfair and dishonest dealings.

In order for a disclaimer to be valid, the language must be clear and specific. Modifications or disclaimers, which are unclear, are strictly construed against the person making the disclaimer.

Express Warranty

A court will examine all statements and conduct of the parties when determining whether an express warranty has been created or negated. When the language and acts are consistent and reasonable, then a disclaimer will be given effect. However, when a disclaimer is deemed unreasonable under the circumstances, it will not be given effect.

Implied Warranty

Disclaimers for implied warranties, for a particular purpose, must be in writing. So, if a warranty is not going to apply for a HVAC unit to be used as a cooling device in a particular setting, the warranty must state so in writing. Any written disclaimer of implied warranties must be “conspicuous.” “Conspicuous” is defined by the UCC as language “so written that a reasonable person against whom it is to operate ought to have noticed it.” An example of an appropriate disclaimer would be one that is placed under a heading, in capital letters or larger type, in a different color, or highlighted.

Limitation of Liability Sections

Most warranties will contain a section entitled “Limitation of Liability,” which limits the warranty to replacement of the product and parts and excludes any consequential damages. An example of consequential damages would be damage to the structure or area surrounding the HVAC unit. The UCC permits clauses, which exclude liability for consequential damages, and a number of cases have upheld these clauses. However, some cases have held these clauses unconscionable when the parties do not have equal bargaining power. For an in–depth discussion of limitation of liability clauses, see [*Contracts Bulletin* #67](#).

Keeping a Close Eye on Warranty Time Limits

It is important to be aware that warranties expire after specified periods of time. Most contracts specify that the warranty begins on the date of substantial completion. However, manufacturer warranties either begin when the item is shipped from the manufacturer or when the warranty card is completed and returned to the manufacturer upon installation of the product.

It is important to note that construction warranties often extend for a longer duration than product warranties. Therefore, it is possible for a construction warranty to remain in effect, even when a product

warranty has expired.

What can a subcontractor do when presented with this situation? One option is to obtain an extended warranty from the product manufacturer. However, this involves an additional expense, which will need to be evaluated based on a cost–benefit ratio. Since product warranties most often contain provisions that exclude damages if the product is not installed according to manufacturer’s specifications, it may be helpful on extensive projects to obtain an inspection by the manufacturer prior to the start of the warranty period in order to place a duty on the manufacturer to identify any installation defects. Documentation of the inspection by the manufacturer can provide evidence that the manufacturer was aware, or should have been aware, of the installation error prior to issuance of the warranty.

Residential Contractors and The Magnuson Moss Warranty Act

The Magnuson Moss Warranty Act, also known as the Federal Trade Commission Improvement Act of 1975, was established by Congress in order to prevent the misuse of express warranties and disclaimers. Federal law does not require a written warranty to be included; but if included, it must conform to specific requirements.

The Act does not apply to oral warranties or to warranties on services. However, if the warranty covers both the parts provided for a repair and the workmanship, then the Act applies.

The Act only applies to consumer products and not products sold for resale or commercial purposes. Therefore, the Magnuson Moss Warranty Act will most likely only apply to contractors installing HVAC systems in residential properties. This section will only outline the basic requirements and prohibitions of the Act. For further details of the federal law, please consult legal counsel.

Three Basic Requirements of the Magnuson–Moss Act:

1. A written warranty for products costing over \$10 must be designated as either “full” or “limited.”
 - ◆ In order for a warranty to be titled “full,” it must meet all the requirements outlined under the Act, including no limit on the duration of implied warranties, and warranty service must be provided free of charge.
 - ◆ If the requirements are not met, then the warranty must be titled “limited.”
2. Certain specified information about the warranty must be included in a single, clear, easy–to–read document for all consumer products that cost more than \$15. Examples of the information that must be included are the period of coverage, details of what is covered and not covered, and who to contact to obtain warranty service.
3. Warranties must be made available for consumers to read before buying.

There are other considerations to keep in mind when working with a residential warranty. If the warranty contains a provision, which restricts the duration of implied warranties, the Act requires you to include a statement that state law may override the restriction. Since state laws vary, the FTC has provided boilerplate language, which may be used to fulfill this requirement: “Some states do not allow limitations on how long an implied warranty lasts, so the above limitation may not apply to you.”

Furthermore, if the warranty contains a provision that restricts or eliminates potential liability for consequential or incidental damages, the Act requires a statement that state law may override the restriction. Since state laws vary, the FTC provided sample language: “Some states do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation or exclusion may not apply to you.”

Three Prohibitions under the Magnuson–Moss Act:

1. The Act prohibits disclaiming or modifying implied warranties.

- ◆ However, if you offer a “limited” written warranty, the law allows you to include a provision, which would restrict the time frame of the implied warranty to the duration of the limited warranty.

2. Tie–in sales’ provisions are prohibited, which require a consumer to purchase another product in order to receive a remedy under the warranty.

- ◆ However, if you can demonstrate to the FTC that your product will not work properly without a specified item or service, a tie–in provision may be acceptable.

3. Warranties may not contain deceptive or misleading terms.

- ◆ A warranty covering only electronic components in an item with no electronics would be unlawful.

Most state laws also impose some implied warranties for residential construction and repair. For example, Minn. Stat. § 327A in Minnesota includes a two–year warranty on mechanical systems like HVAC for both construction and repair. You should consult with your attorney to find out what warranties, if any, are imposed in your state.

What to Do with All That Paperwork

When you receive an HVAC unit from the manufacturer, it normally contains six items of paperwork:

1. Warranty card to be mailed back to the manufacturer;
2. Certificate of warranty;
3. Installation instructions;
4. Maintenance instructions;
5. Trouble shooting guide; and
6. List of parts.

These items are typically located in the electrical section of the HVAC unit.

The natural reaction of most people when they come across paperwork is to either organize it in a file or throw it away. However, neither of these options may be the best choice when dealing with warranty and instruction paperwork.

First of all, the warranty card should be completed and mailed to the manufacturer when installing the unit. If the warranty card is not turned in, then the warranty time frame begins on the date when the HVAC manufacturer shipped the unit from the factory. It is possible that a warranty could expire between the time it was shipped from the factory and the time it is installed. Filling out and mailing the warranty card can provide additional warranty protection time.

The remainder of the paperwork should remain in the electrical section of the HVAC unit. Therefore, when issues arise with the HVAC unit, you will not be searching through the files in your office to locate the trouble shooting guide or maintenance instructions. It may also be helpful to make copies of pertinent documents, such as the warranty certificate, place them in a file and return the originals to the unit. See Maury Tiernan, "HVAC Warranty, Installation and Maintenance Paperwork," *The Comfort Zone*, June 2002.

Conclusion

Although warranty documents may seem overwhelming and full of legal jargon at first, with the basic knowledge under your belt, you will be able to take a closer look at the terms and identify areas of concern. Remember to keep in mind when the warranty comes into effect and when it expires. Also, keep in mind that state laws may also vary with respect to enforcement and terms of warranties, so be sure to seek legal counsel if you have any questions concerning the warranty documents.

Sheet Metal and Air Conditioning Contractors' National Association
4201 Lafayette Center Drive Chantilly, Virginia 20151-1209
Tel (703) 803-2980 Fax (703) 803-3732 info@smacna.org



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