

WARRANTIES IN SALES OF GOODS--ISSUE OF EXISTENCE OF IMPLIED  
WARRANTY CREATED BY COURSE OF DEALING OR USAGE OF TRADE.

The (*state number*) issue reads:

"Did the defendant by [course of dealing] [usage of trade] impliedly warrant to the plaintiff that the (*name good*) was (*state nature of contended warranty*)?"<sup>1</sup>

On this issue the burden of proof is on the plaintiff. This means that the plaintiff must prove, by the greater weight of the evidence, that when the defendant sold the (*name good*) to the plaintiff, the defendant by [course of dealing] [usage of trade] impliedly warranted to the plaintiff that the (*name good*) was (*state nature of contended warranty*).

A warranty that (*state nature of contended warranty*) may become part of the parties' contract of sale through a [course of dealing] [usage of trade].

[A course of dealing is 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

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<sup>1</sup>N.C.G.S. §25-2-314(3) (1995). The Official Comment to N.C.G.S. §25-2-314(3) states that usage of trade and course of dealing can create warranties and, when they do, the resulting warranties are considered implied rather than express. As a consequence, any such implied warranty is subject to exclusion or modification under N.C.G.S. §25-2-316. See N.C.P.I.--Civil 741.32. An example of this type of warranty is given in the Official Comment: "A typical instance would be the obligation to provide pedigree papers to evidence conformity of the animal to the contract in the case of a pedigreed dog or a blooded bull." *Id.*

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between them for interpreting their expression and other conduct.

Whether such course of dealing existed between the plaintiff and the defendant and, if so, whether it fairly created an understanding that the defendant warranted that (*state nature of contended warranty*) is for you to determine from the evidence.]<sup>2</sup>

[A usage of trade is any practice or method of dealing having such regularity of observation in a place, vocation or trade as to justify an expectation that it will be observed with respect to the transaction in question. Whether such usage of trade existed between the plaintiff and the defendant and, if so, whether it justified an expectation that the defendant warranted that (*state nature of contended warranty*) is for you to determine from the evidence.]<sup>3</sup>

Finally, as to this (*state number*) issue on which the plaintiff has the burden of proof, if you find by the greater weight of the evidence that the defendant by [course of dealing] [usage of trade] impliedly warranted to the plaintiff that the (*name good*) was (*state nature of contended warranty*), then it

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<sup>2</sup>N.C.G.S. §25-1-205(1) (1995).

<sup>3</sup>N.C.G.S. §25-1-205(2) (1995).

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would be your duty to answer this issue "Yes" in favor of the  
plaintiff.

If, on the other hand, you fail to so find, then it would be  
your duty to answer this issue "No" in favor of the defendant.

