

MEMO



TO: DMI Risk Manager Representatives
FROM: Steven Stoeger-Moore
DATE: 24 November 2010
RE: Product Warranty Disclaimer

At the October Risk Manager Quarterly Meeting, a discussion was held regarding a potential “Product Liability” stemming from a class “project” built by students which then is provided to a customer/buyer. It is imperative to put the customer/buyer on notice that the project (product) is being provided with no warranty, including no implied warranty.

In Wisconsin, a seller disclaiming any warranty for a sale is governed by the Wisconsin statute 402.16 “Exclusion or modification of warranties”. To affect a “no warranty” position the statute requires the language achieving this objective to be **explicit, in writing, and conspicuous**. The language MUST be included as part of a bill of sale.

The following language* should be used for those circumstances involving the College selling/providing a product to a member of the general public. This language should appear in a font size slightly larger than other language in the bill of sale, including the bold and capital format shown below:

I, THE UNDERSIGNED BUYER, ACKNOWLEDGE RECEIPT OF THIS BILL OF SALE AND UNDERSTAND THERE IS NO WARRANTY, EXPRESSED OR IMPLIED, WITH RESPECT TO THE (PRODUCT DESCRIPTION) I AM BUYING. I UNDERSTAND THE (PRODUCT DESCRIPTION) IS BEING SOLD TO ME “AS IS”. _____ (Buyers Initial)

I, THE UNDERSIGNED BUYER, ALSO ACKNOWLEDGE AND UNDERSTAND THIS (PRODUCT DESCRIPTION) IS BEING SOLD WITH NO IMPLIED WARRANTIES RELATING TO THE MERCHANTABILITY OF THE PRODUCT OR THE PRODUCT’S FITNESS FOR A PARTICULAR PURPOSE. _____ (Buyers Initial)

The Technical College faculty, staff, or students “selling” products to the public should be cautioned to not make any comments which may serve to establish an expressed warranty about the fitness or merchantability of the product being sold.

As with other contractual language which attempts to decrease or eliminate one of the contracting party’s rights, this language may only serve as a deterrent against future product liability claims and should not be expected to absolve a Technical College from the possibility of a potential product liability claim. It is further recommended that College counsel review the above suggested language before implementation occurs.

If you have any questions please be in touch with the DMI office.

Insuring Risk - Sharing Rewards

*Special thanks to Gander Consulting for their contributions to the Product Liability Disclaimer.