

1 **13-1429. Creation of implied warranty of merchantability.**

2 [Unless excluded], a supplier who regularly deals in [goods] [products] of the kind that
3 ~~[[he]-[she]]~~ the supplier is selling or holds ~~[[himself]-[herself]]~~ themselves out as having special
4 knowledge or skill concerning the [goods] [products], warrants that the [goods] [products] shall
5 be merchantable. The warranty of merchantability is implied by law and exists independent of any
6 statement made by the seller to the buyer.

7 [The warranty of merchantability is included in any sale or service of food or drink.]

8 USE NOTES

9 Unless the warranty has been excluded as a matter of law, applying the rules of NMSA
10 1978, Section 55-2-316 (1961)~~[NMSA-1978]~~, the first paragraph of this instruction shall be used
11 in every case where the plaintiff states a cause of action for breach of the implied warranty of
12 merchantability. The bracketed second paragraph is to be given in a case involving the sale or
13 service of food products or beverages.

14 [As amended, effective November 1, 1991; as amended by Supreme Court Order No. S-1-RCR-
15 2025-00126, effective for all cases pending or filed on or after December 31, 2025.]

16 **Committee commentary.** — The implied warranty of merchantability is given by sellers who are
17 merchants. "Merchant" is defined in NMSA 1978, Section 55-2-104 (1961)~~[NMSA-1978]~~. UJI
18 13-1429 incorporates the definition of merchant in a statement of the creation of the implied
19 warranty of merchantability. In contrast with the implied warranty of fitness for particular purpose,
20 the implied warranty of merchantability does not require proof by the buyer of reliance on the
21 particular skills or judgment of the seller. It arises from the nature of the holding out by the seller
22 that ~~[he]~~ seller is a person who deals in goods of the kind being sold. *Vitro Corp. of Am. v. Texas*
23 *Vitrified Supply Co.*, 1962-NMSC-151, ¶ 33, 71 N.M. 95,~~[106,]~~ 376 P.2d 41~~[(1962)]~~.

1 [As amended by Supreme Court Order No. S-1-RCR-2025-00126.]