

Kentucky Auctioneer Laws III

355.2-101 Short title.

This article shall be known and may be cited as Uniform Commercial Code -- Sales.

355.2-102 Scope -- Certain security and other transactions excluded from this article.

Unless the context otherwise requires, this article applies to transactions in goods; it does not apply to any transaction which although in the form of an unconditional contract to sell or present sale is intended to operate only as a security transaction nor does this article impair or repeal any statute regulating sales to consumers, farmers or other specified classes of buyers.

355.2-103 Definitions and index of definitions.

In this article unless the context otherwise requires:

- (a) "Buyer" means a person who buys or contracts to buy goods;
- (b) (Reserved)
- (c) "Receipt" of goods means taking physical possession of them; and
- (d) "Seller" means a person who sells or contracts to sell goods.

(1) Other definitions applying to this article or to specified parts thereof, and the sections in

which they appear are:

- (a) "Acceptance." KRS 355.2-606;
- (b) "Banker's credit." KRS 355.2-325;
- (c) "Between merchants." KRS 355.2-104;
- (d) "Cancellation." KRS 355.2-106 (4);
- (e) "Commercial unit." KRS 355.2-105;
- (f) "Confirmed credit." KRS 355.2-325;
- (g) "Conforming to contract." KRS 355.2-106;

- (h) "Contract for sale." KRS 355.2-106;
 - (i) "Cover." KRS 355.2-712;
 - (j) "Entrusting." KRS 355.2-403;
 - (k) "Financing agency." KRS 355.2-104;
 - (l) "Future goods." KRS 355.2-105;
 - (m) "Goods." KRS 355.2-105;
 - (n) "Identification." KRS 355.2-501;
 - (o) "Installment contract." KRS 355.2-612;
 - (p) "Letter of credit." KRS 355.2-325;
 - (q) "Lot." KRS 355.2-105;
 - (r) "Merchant." KRS 355.2-104;
 - (s) "Overseas." KRS 355.2-323;
 - (t) "Person in position of seller." KRS 355.2-707;
 - (u) "Present sale." KRS 355.2-106;
 - (v) "Sale." KRS 355.2-106;
 - (w) "Sale on approval." KRS 355.2-326;
 - (x) "Sale or return." KRS 355.2-326; and
 - (y) "Termination." KRS 355.2-106.
- (2) The following definitions in other articles apply to this article:
- (a) "Check." KRS 355.3-104;
 - (b) "Consignee." KRS 355.7-102;
 - (c) "Consignor." KRS 355.7-102;
 - (d) "Consumer goods." KRS 355.9-102;
 - (e) "Dishonor." KRS 355.3-502; and
 - (f) "Draft." KRS 355.3-104.
- (3) In addition, Article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

Legislative Research Commission Note (7/12/2006). Under the authority of KRS 7.136(1), the Reviser of Statutes has added paragraph headings [(a), (b),

etc.] before terms referenced in subsections (2) and (3) of this statute that are defined in other statutes. The words in the text were not changed.

355.2-104 Definitions: "merchant" -- "Between merchants" -- "Financing agency."

- (1) "Merchant" means a person who deals in goods of the kind or otherwise by his occupation holds himself out as having knowledge or skill peculiar to the practices or goods involved in the transaction or to whom such knowledge or skill may be attributed by his employment of an agent or broker or other intermediary who by his occupation holds himself out as having such knowledge or skill.
- (2) "Financing agency" means a bank, finance company or other person who in the ordinary course of business makes advances against goods or documents of title or who by arrangement with either the seller or the buyer intervenes in ordinary course to make or collect payment due or claimed under the contract for sale, as by purchasing or paying the seller's draft or making advances against it or by merely taking it for collection whether or not documents of title accompany the draft. "Financing agency" includes also a bank or other person who similarly intervenes between persons who are in the position of seller and buyer in respect to the goods (KRS 355.2-707).
- (3) "Between merchants" means in any transaction with respect to which both parties are chargeable with the knowledge or skill of merchants.

355.2-105 Definitions: transferability -- "Goods" -- "Future" goods -- "Lot" -- "Commercial unit."

- (1) "Goods" means all things (including specially manufactured goods) which are movable at the time of identification to the contract for sale other than the money in which the price is to be paid, investment securities (Article 8) and things in action. "Goods" also includes the unborn young of animals and growing crops and other identified things attached to realty as described in the section on goods to be severed from realty (KRS 355.2-107).

- (2) Goods must both exist and identified before any interest in them can pass. Goods which are not both existing and identified are "future" goods. A purported present sale of future goods or of any interest therein operates as a contract to sell.
- (3) There may be a sale of a part interest in existing identified goods.
- (4) An undivided share in an identified bulk of fungible goods is sufficiently identified to be sold although the quantity of the bulk is not determined. Any agreed proportion of such a bulk or any quantity thereof agreed upon by number, weight or other measure may to the extent of the seller's interest in the bulk be sold to the buyer who then becomes an owner in common.
- (5) "Lot" means a parcel or a single article which is the subject matter of a separate sale or delivery, whether or not it is sufficient to perform the contract.
"Commercial unit" means such a unit of goods as by commercial usage is a single whole for purposes of sale and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article (as a machine) or a set of articles (as a suite of furniture or an assortment of sizes) or a quantity (as a bale, gross, or carload) or any other unit treated in use or in the relevant market as a single whole.

355.2-106 Definitions: "contract" -- "Agreement" -- "Contract for sale" -- "Sale" -- "Present sale" -- "Conforming" to contract -- "Termination"--"Cancellation."

- (1) In this article unless the context otherwise requires "contract" and "agreement" are limited to those relating to the present or future sale of goods. "Contract for sale"
- (2) includes both a present sale of goods and a contract to sell goods at a future time.
A "sale" consists in the passing of title from the seller to the buyer for a price (KRS 355.2-401). A "present sale" means a sale which is accomplished by the making of the contract.

- (3) Goods or conduct including any part of a performance are "conforming" or conform to the contract when they are in accordance with the obligations under the contract.
- (4) "Termination" occurs when either party pursuant to a power created by agreement or law puts an end to the contract otherwise than for its breach. On "termination" all obligations which are still executory on both sides are discharged but any right based on prior breach or performance survives.
- (5) "Cancellation" occurs when either party puts an end to the contract for breach by the other and its effect is the same as that of "termination" except that the canceling party also retains any remedy for breach of the whole contract or any unperformed balance.

355.2-107 Goods to be severed from realty -- Recording.

- (1) A contract for the sale of minerals or the like (including oil and gas) or a structure or its materials to be removed from realty is a contract for the sale of goods within this article if they are to be severed by the seller, but until severance a purported present sale thereof which is not effective as a transfer of an interest in land is effective only as a contract to sell.
- (2) A contract for the sale apart from the land of growing crops or other things attached to realty and capable of severance without material harm thereto but not described in subsection (1) or of timber to be cut is a contract for the sale of goods within this article whether the subject matter is to be severed by the buyer or by the seller even though it forms part of the realty at the time of contracting, and the parties can by identification effect a present sale before severance.
- (3) The provisions of this section are subject to any third party rights provided by the law relating to realty records, and the contract for sale may be executed and recorded as a document transferring an interest in land and shall then constitute notice to third parties of the buyer's rights under the contract for sale.

355.2-201 Formal requirements -- Statute of frauds.

- (1) Except as otherwise provided in this section a contract for the sale of goods for the price of \$500 or more is not enforceable by way of action or defense unless there is some writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by his authorized agent or broker. A writing is not insufficient because it omits or incorrectly states a term agreed upon but the contract is not enforceable under this paragraph beyond the quantity of goods shown in such writing.
- (2) Between merchants if within a reasonable time a writing in confirmation of the contract and sufficient against the sender is received and the party receiving it has reason to know its contents, it satisfies the requirements of subsection (1) against such party unless written notice of objection to its contents is given within ten (10) days after it is received.
- (3) A contract which does not satisfy the requirements of subsection (1) but which is valid in other respects is enforceable
 - (a) if the goods are to be specially manufactured for the buyer and are not suitable for sale to others in the ordinary course of the seller's business and the seller, before notice of repudiation is received and under circumstances which reasonably indicate that the goods are for the buyer, has made either a substantial beginning of their manufacture or commitments for their procurement; or
 - (b) if the party against whom enforcement is sought admits in his pleading, testimony or otherwise in court that a contract for sale was made, but the contract is not enforceable under this provision beyond the quantity of goods admitted; or with respect to goods for which payment has been made and accepted or which have been received and accepted (KRS 355.2-606).

355.2-202 Final written expression -- Parol or extrinsic evidence.

Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented:

- (1) By course of performance, course of dealing, or usage of trade (KRS 355.1-303);
and
- (2) By evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement.

Legislative Research Commission Note (7/12/2006). Under the authority of KRS 7.136(1), the Reviser for Statutes has changed the internal numbering system in this statute by inserting subsection numbers [(1) and (2)] in place of paragraph designations [(a) and (b)]. The words in the text were not changed.

355.2-203 Seals inoperative.

The affixing of a seal to a writing evidencing a contract for sale or an offer to buy or sell goods does not constitute the writing a sealed instrument and the law with respect to sealed instruments does not apply to such a contract or offer.

355.2-204 Formation in general.

- (1) A contract for sale of goods may be made in any manner sufficient to show agreement, including conduct by both parties which recognizes the existence of such a contract.
- (2) An agreement sufficient to constitute a contract for sale may be found even though the moment of its making is undetermined.

(3) Even though one (1) or more terms are left open a contract for sale does not fail for indefiniteness if the parties have intended to make a contract and there is a reasonably certain basis for giving an appropriate remedy.

355.2-205 Firm offers.

An offer by a merchant to buy or sell goods in a signed writing which by its terms gives assurance that it will be held open is not revocable, for lack of consideration, during the time stated or if no time is stated for a reasonable time, but in no event may such period of irrevocability exceed three (3) months; but any such term of assurance on a form supplied by the offeree must be separately signed by the offeror.

355.2-206 Offer and acceptance in formation of contract.

- (1) Unless otherwise unambiguously indicated by the language or circumstances
- (a) an offer to make a contract shall be construed as inviting acceptance in any manner and by any medium reasonable in the circumstances;
 - (b) an order or other offer to buy goods for prompt or current shipment shall be construed as inviting acceptance either by a prompt promise to ship or by the prompt or current
 - (c) shipment of conforming or nonconforming goods, but such a shipment of
 - (d) nonconforming goods does not constitute an acceptance if the seller seasonably notifies the buyer that the shipment is offered only as an accommodation to the buyer.
- (2) Where the beginning of a requested performance is a reasonable mode of acceptance an
- (3) Offer or who is not notified of acceptance within a reasonable time may treat the offer having lapsed before acceptance.

355.2-207 Additional terms in acceptance or confirmation.

(1) A definite and seasonable expression of acceptance or a written confirmation which is sent within a reasonable time operates as an acceptance even though it states terms additional to or different from those offered or agreed upon, unless acceptance is expressly made conditional on assent to the additional or different terms.

(2) The additional terms are to be construed as proposals for addition to the contract.

(3) Between merchants such terms become part of the contract unless:

(a) The offer expressly limits acceptance to the terms of the offer;

(b) They materially alter it; or

(c) Notification of objection to them has already been given or is given within a reasonable time after notice of them is received.

(4) Conduct by both parties which recognizes the existence of a contract is sufficient to establish a contract for sale although the writings of the parties do not otherwise establish a contract. In such case the terms of the particular contract consist of those terms on which the writings of the parties agree, together with any supplementary terms incorporated under any other provisions of this chapter.

355.2-208 Repealed, 2006.

Catchline at repeal: Course of performance or practical construction.

355.2-209 Modification, rescission and waiver.

(1) An agreement modifying a contract within this article needs no consideration to be binding.

(2) A signed agreement which excludes modification or rescission except by a signed writing cannot be otherwise modified or rescinded, but except as between merchants such a requirement on a form supplied by the merchant must be separately signed by the other party

(3) The requirements of the statute of frauds section of this article (KRS 355.2-201) must be satisfied if the contract as modified is within its provisions.

- (4) Although an attempt at modification or rescission does not satisfy the requirements of subsection (2) or (3) it can operate as a waiver.
- (5) A party who has made a waiver affecting an executory portion of the contract may retrace the waiver by reasonable notification received by the other party that strict performance will be required of any term waived, unless the retraction would be unjust in view of a material change of position in reliance on the waiver.

355.2-210 Delegation of performance -- Assignment of rights

- (1) A party may perform his duty through a delegate unless otherwise agreed or unless the other party has a substantial interest in having his original promisor perform or control the acts required by the contract. No delegation of performance relieves the party delegating of any duty to perform or any liability for breach.
- (2) Except as otherwise provided in KRS 355.9-406, unless otherwise agreed, all rights of either seller or buyer can be assigned except where the assignment would material change the duty of the other party, or increase materially the burden or risk imposed on him by his contract, or impair materially his chance of obtaining return performance. A right to damages for breach of the whole contract or a right arising out of the assignor's due performance of his entire obligation can be assigned despite agreement otherwise.
- (3) The creation, attachment, perfection, or enforcement of a security interest in the seller's interest under a contract is not a transfer that materially changes the duty of or increases materially the burden or risk imposed on the buyer or impairs materially the buyer's chance of obtaining return performance within the purview of subsection (2) of this section unless, and then only to the extent that, enforcement actually results in a delegation of material performance of the seller. Even in that event, the creation, attachment, perfection, and enforcement of the security interest remain effective, but

- (a) The seller is liable to the buyer for damages caused by the delegation to the extent that the damages could not reasonably be prevented by the buyer; and
 - (b) A court having jurisdiction may grant other appropriate relief, including cancellation of the contract for sale or an injunction against enforcement of the security interest or consummation of the enforcement.
- (4) Unless the circumstances indicate the contrary a prohibition of assignment of "the contract" is to be construed as barring only the delegation to the assignee of the assignor's performance.
- (5) An assignment of "the contract" or of "all my rights under the contract" or an assignment in similar general terms is an assignment of rights and unless the language or the circumstances (as in an assignment for security) indicate the contrary, it is a delegation of performance of the duties of the assignor and its acceptance by the assignee constitutes a promise by him to perform those duties. This promise is enforceable by either the assignor or the other party to the original contract.
- (6) The other party may treat any assignment which delegates performance as creating reasonable grounds for insecurity and may without prejudice to his rights against the assignor demand assurances from the assignee (KRS 355.2-609).

355.2-301 General obligations of parties.

The obligation of the seller is to transfer and deliver and that of the buyer is to accept and pay in accordance with the contract.

355.2-302 Unconscionable contract or clause.

(1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the

unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.

(2) When it is claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.

355.2-303 Allocation or division of risks.

Where this article allocates a risk or a burden as between the parties "unless otherwise agreed," the agreement may not only shift the allocation but may also divide the risk or burden.

355.2-304 Price payable in money, goods, realty, or otherwise.

(1) The price can be made payable in money or otherwise. If it is payable in whole or in part in goods each party is a seller of the goods which he is to transfer.

(2) Even though all or part of the price is payable in an interest in realty the transfer of the goods and the seller's obligations with reference to them are subject to this article, but not the transfer of the interest in realty or the transferor's obligations in connection therewith.

355.2-305 Open price term.

(1) The parties if they so intend can conclude a contract for sale even though the price is not settled. In such a case the price is a reasonable price at the time for delivery if nothing is said as to price; or

(a) the price is left to be agreed by the parties and they fail to agree; or

(b) the price is to be fixed in terms of some agreed market or other standard as set recorded by a third person or agency and it is not so set or recorded

(2) A price to be fixed by the seller or by the buyer means a price for him to fix in good faith.

(3) When a price left to be fixed otherwise than by agreement of the parties fails to be fixed through fault of one party the other may at his option treat the contract as canceled or himself fix a reasonable price.

(4) Where, however, the parties intend not to be bound unless the price be fixed or agreed and it is not fixed or agreed there is no contract. In such a case the buyer must return any goods already received or if unable so to do must pay their reasonable value at the time of delivery and the seller must return any portion of the price paid on account.

355.2-306 Output, requirements and exclusive dealings.

(1) A term which measures the quantity by the output of the seller or the requirements of the buyer means such actual output or requirements as may occur in good faith, except that no quantity unreasonably disproportionate to any stated estimate or in the absence of a stated estimate to any normal or otherwise comparable prior output or requirements may be tendered or demanded.

(2) A lawful agreement by either the seller or the buyer for exclusive dealing in the kind of goods concerned imposes unless otherwise agreed an obligation by the seller to use best efforts to supply the goods and by the buyer to use best efforts to promote their sale.

355.2-307 Delivery in single lot or several lots.

Unless otherwise agreed all goods called for by a contract for sale must be tendered in a single delivery and payment is due only on such tender but where the circumstances give either party the right to make or demand delivery in lots the price if it can be apportioned may be demanded for each lot.

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355.2-308 Absence of specified place for delivery.

Unless otherwise agreed

(1) the place for delivery of goods is the seller's place of business or if he has none his residence;

but

(2) in a contract for sale of identified goods which to the knowledge of the parties at the time of contracting are in some other place, that place is the place for their delivery; and

(3) documents of title may be delivered through customary banking channels.

355.2-309 Absence of specific time provisions -- Notice of termination.

(1) The time for shipment or delivery or any other action under a contract if not provided in this article or agreed upon shall be a reasonable time.

(2) Where the contract provides for successive performances but is indefinite in duration it is valid for a reasonable time but unless otherwise agreed may be terminated at any time by either party.

(3) Termination of a contract by one party except on the happening of an agreed event requires that reasonable notification be received by the other party and an agreement dispensing with notification is invalid if its operation would be unconscionable.

355.2-310 Open time for payment or running of credit -- Authority to ship under reservation.

Unless otherwise agreed

(1) payment is due at the time and place at which the buyer is to receive the goods even though the place of shipment is the place of delivery; and

(2) if the seller is authorized to send the goods he may ship them under reservation, and may tender the documents of title, but the buyer may inspect the

goods after their arrival before payment is due unless such inspection is inconsistent with the terms of the contract (KRS 355.2-513); and

(3) if delivery is authorized and made by way of documents of title otherwise than by subsection

(4) then payment is due at the time and place at which the buyer is to receive the documents regardless of where the goods are to be received; and

(5) where the seller is required or authorized to ship the goods on credit the credit period runs from the time of shipment but postdating the invoice or delaying its dispatch will correspondingly delay the starting of the credit period.

355.2-311 Options and cooperation respecting performance.

(1) An agreement for sale which is otherwise sufficiently definite (subsection (3) of KRS 355.2-204) to be a contract is not made invalid by the fact that it leaves particulars of performance to be specified by one (1) of the parties. Any such specification must be made in good faith and within limits set by commercial reasonableness.

(2) Unless otherwise agreed specifications relating to assortment of the goods are at the buyer's option and except as otherwise provided in subsections (1)(c) and (3) of KRS 355.2-319 specifications or arrangements relating to shipment are at the seller's option.

(4) Where such specification would materially affect the other party's performance but is not seasonably made or where one party's cooperation is necessary to the agreed performance of the other but is not seasonably forthcoming, the other party in addition to all other remedies

(a) is excused for any resulting delay in his own performance; and

(b) may also either proceed to perform in any reasonable manner or after the time for a material part of his own performance treat the failure to specify or to cooperate as a breach by failure to deliver or accept the goods.

355.2-312 Warranty of title and against infringement -- Buyer's obligation against infringement.

(1) Subject to subsection (2) there is in a contract for sale a warranty by the seller that

(a) the title conveyed shall be good, and its transfer rightful; and

(b) the goods shall be delivered free from any security interest or other lien or encumbrance of which the buyer at the time of contracting has no knowledge.

(2) A warranty under subsection (1) will be excluded or modified only by specific language or by circumstances which give the buyer reason to know that the person selling does not claim title in himself or that he is purporting to sell only such right or title as he or a third person may have.

(3) Unless otherwise agreed a seller who is a merchant regularly dealing in goods of the kind warrants that the goods shall be delivered free of the rightful claim of any third person by way of infringement or the like but a buyer who furnishes specifications to the seller must hold the seller harmless against any such claim which arises out of compliance with the specifications.

355.2-313 Express warranties by affirmation, promise, description, sample.

(1) Express warranties by the seller are created as follows:

(a) Any affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise.

(b) Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods shall conform to the description.

(c) Any sample or model which is made part of the basis of the bargain creates an express warranty that the whole of the goods shall conform to the sample or model.

(2) It is not necessary to the creation of an express warranty that the seller use formal words such as "warrant" or "guarantee" or that he have a specific intention to make a warranty, but an affirmation merely of the value of the goods or a statement purporting to be merely the seller's opinion or commendation of the goods does not create a warranty.

355.2-314 Implied warranty: merchantability -- Usage of trade.

(1) Unless excluded or modified (KRS 355.2-316), a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale.

(2) Goods to be merchantable must be at least such as

(a) pass without objection in the trade under the contract description; and

(b) in the case of fungible goods, are of fair average quality within the description; and

(c) are fit for the ordinary purposes for which such goods are used; and

(d) run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all units involved; and

(e) are adequately contained, packaged, and labeled as the agreement may require; and

(f) conform to the promises or affirmations of fact made on the container or label if any.

(3) Unless excluded or modified (KRS 355.2-316) other implied warranties may arise from course of dealing or usage of trade.

355.2-315 Implied warranty: fitness for particular purpose.

Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is unless excluded or modified under KRS 355.2-316 an implied warranty that the goods shall be fit for such purpose.

355.2-316 Exclusion or modification of warranties.

- (1) Words or conduct relevant to the creation of an express warranty and words or conduct tending to negate or limit warranty shall be construed wherever reasonable as consistent with each other; but subject to the provisions of this article on parol or extrinsic evidence (KRS 355.2-202) negation or limitation is inoperative to the extent that such construction is unreasonable.
- (2) Subject to subsection (3), to exclude or modify the implied warranty of merchantability or any part of it the language must mention merchantability and in case of a writing must be conspicuous, and to exclude or modify any implied warranty of fitness the exclusion must be by a writing and conspicuous. Language to exclude all implied warranties of fitness is sufficient if it states, for example, that "There are no warranties which extend beyond the description on the face hereof."
- (3) Notwithstanding subsection (2)
 - (a) unless the circumstances indicate otherwise, all implied warranties are excluded by expressions like "as is," "with all faults" or other language which in common understanding calls the buyer's attention to the exclusion of warranties and makes plain that there is no implied warranty; and
 - (b) when the buyer before entering into the contract has examined the goods or the sample or model as fully as he desired or has refused to examine the goods there is no implied warranty with regard to defects which an examination ought in the circumstances to have revealed to him; and

(c) an implied warranty can also be excluded or modified by course of dealing or course of performance or usage of trade; and

(d) with respect to the sale of bovine, porcine, ovine, and equine animals, or poultry there shall be no implied warranty that the animals are free from disease or sickness. This exemption shall not apply when the seller knowingly sells animals which are diseased or sick.

(4) Remedies for breach of warranty can be limited in accordance with the provisions of this article on liquidation or limitation of damages and on contractual modification of remedy (KRS 355.2-718 and 355.2-719).

355.2-317 Cumulation and conflict of warranties express or implied.

Warranties whether express or implied shall be construed as consistent with each other and as cumulative, but if such construction is unreasonable the intention of the parties shall determine which warranty is dominant. In ascertaining that intention the following rules apply:

- (1) Exact or technical specifications displace an inconsistent sample or model or general
- (2) language of description.
- (3) A sample from an existing bulk displaces inconsistent general language of description.
- (4) Express warranties displace inconsistent implied warranties other than an implied warranty of fitness for a particular purpose.

355.2-318 Third party beneficiaries of warranties express or implied.

A seller's warranty whether express or implied extends to any natural person who is in the family or household of his buyer or who is a guest in his home if it is reasonable to expect that such person may use, consume or be affected by the

goods and who is injured in person by breach of the warranty. A seller may not exclude or limit the operation of this section.