

*livered 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.*

*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.*

*2—314. Implied Warranty; Merchantability; Usage of Trade.*

*(1) Unless excluded or modified (Section 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 (Section 2—316) other implied warranties may arise from course of dealing or usage of trade.*