

**Contracts I**  
**Professor Keith A. Rowley**  
**William S. Boyd School of Law**  
**University of Nevada Las Vegas**  
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**Sample Exam Question #10**

**CAVEATS: This question is an example only. It does not cover enough material to constitute an entire exam. The questions on the real exam are of varying degrees of difficulty, and the number of points assigned to each question varies correspondingly.**

On September 1, 2003, Mercury Rising (“Mercury”) mailed a purchase order to the Glass Manufacture (“GM”) for precision glass tubing to be used in the manufacture of indoor and outdoor thermometers. Mercury ordered 5,000 1-foot lengths of glass tubing, at a price of \$5.00 per foot. Mercury’s purchase order also indicated that GM should deliver the glass tubing at GM’s expense no later than October 1, 2003. After receiving Mercury’s purchase order, GM mailed a written acknowledgment, agreeing to all of Mercury’s terms. GM’s acknowledgment also contained a disclaimer of all implied warranties and a provision that limited Mercury’s remedies to replacement of any tubing that was broken or otherwise lost in transit. GM delivered the tubing and Mercury accepted it and paid for it. Later, Mercury determined that a significant portion of the shipment was of inferior quality and unfit for the use for which Mercury bought it. Assume that, in the absence of an effective waiver or disclaimer of implied warranties, the inferior tubing would violate one or more Article 2 implied warranties.

- A. Did Mercury and GM have an enforceable contract? Please explain.
- B. Assuming, for purposes of subparts B-D, that Mercury and GM had a contract, would Mercury’s contract with GM permit Mercury to sue GM for breach of one or more Article 2 implied warranties? Please explain.
- C. Suppose that Mercury’s purchase order specifically stated: “All warranties set forth in Article 2 of the Uniform Commercial Code apply to this transaction.” Would Mercury’s contract with GM permit Mercury to sue GM for breach of one or more implied warranties? Please explain.
- D. Suppose, instead, that GM’s acknowledgment clearly stated that it would accept Mercury’s purchase order only on the condition that Mercury agree to all terms set forth in GM’s acknowledgment. Would Mercury’s contract with GM permit Mercury to sue GM for breach of one or more implied warranties? Please explain.