**24.07 IMPLIED WARRANTY — CONSTRUCTION**

Construction contracts always include two implied terms. Implied terms are part of the contract, even if the written contract does not include these terms, and even if the parties did not discuss these terms.

The implied terms in a construction contract are:

1. The contractor agrees to perform the work according to the standards of the profession or trade; and
2. The contractor agrees that the finished product will be reasonably fit for its intended use.

In this case, [plaintiff] claims that [contractor/defendant] did not perform as required by these implied terms of the contract. If you decide that it is more likely true than not true that [contractor] did not perform as required by one of these implied contract terms, you must [return a verdict for [plaintiff] and decide the amount of [plaintiff’s] damages] [decide whether the law excuses [contractor] from failing to keep these promises]. If you decide otherwise, then you must return a verdict for [contractor].

# **Use Note**

This instruction isused when a buyer (plaintiff) asserts breach of implied warranty by a contractor (defendant). The instruction assumesthat the contractor will not deny that it held itself out to be qualified to perform the disputed services. When such an issue arises, e.g., where the contractor claims to have said “this isn't my normal line of work but I'll try it anyway,” the jury must first be instructed to decide whether it is more likely true than not true that the contractor expressly or implicitly represented the contractor's qualifications.

**Comment**

In *Lewis v. Anchorage Asphalt Paving Co.*, 535 P.2d 1188 (Alaska 1975), the Alaska Supreme Court found that the appellee-contractor had made both express and implied warranties. The express warranty, which was part of a contract, stated that “All material is guaranteed to be as specified. All work is to be completed in a workmanlike manner according to standard practices.” *Id*. at 1195‑96. The implied warranty was described by the court:

[I]n building or construction contracts whenever someone holds himself out to be specially qualified to do a particular typeof work, there is an implied warranty that the work will be done in a workmanlike manner, and that the resulting building, product, etc. will be reasonably fit for its intended use. Thus, there was also an implied warranty to perform the contract in a workmanlike manner which was virtually coextensive with the express warranty cited above.

*Id*. 535 P.2d at 1196.

The court similarly described this implied warranty in *Davis v. McCall*, 568 P.2d 956 (Alaska 1977). In *Davis*, the court affirmed the trial court’s award of $14,000 to plaintiff‑homeowners where the defendant-contractor had defectively performed. Citing *Lewis*, the court held that the defendant had not been held to too severe a standard since there was evidence that “a cabinetmaker, a building inspector, and an appraiser considered Davis’ work to be well below the ordinary standards of the trade.” 568 P.2d at 959.