

U.C.C. - ARTICLE 2 - SALES

PART 1. SHORT TITLE, GENERAL CONSTRUCTION AND SUBJECT MATTER [\[Table of Contents\]](#)

§ 2-101. Short Title.

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

§ 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](#).

§ 2-103. Definitions and Index of Definitions.

(1) In this Article unless the context otherwise requires

(a) "Buyer" means a person that buys or [contracts](#) to buy [goods](#).

(b) "Conspicuous", with reference to a term, means so written, displayed, or presented that a reasonable person against which it is to operate ought to have noticed it. A term in an electronic record intended to evoke a response by an electronic agent is conspicuous if it is presented in a form that would enable a reasonably configured electronic agent to take it into account or react to it without review of the record by an individual. Whether a term is "conspicuous" or not is a decision for the court. Conspicuous terms include the following:

(i) for a person:

(A) a heading in capitals equal to or greater in size than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same or lesser size; and

(B) language in the body of a record or display in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from surrounding text of the same size by symbols or other marks that call attention to the language; and

(ii) for a person or an electronic agent, a term that is so placed in a record or display that the person or electronic agent may not proceed without taking action with respect to the particular term.

(c) "Consumer" means an individual who buys or contracts to buy goods that, at the time of contracting, are intended by the individual to be used primarily for personal, family, or household purposes.

(d) "Consumer contract" means a contract between a merchant seller and a consumer.

(e) "Delivery" means the voluntary transfer of physical possession or control of goods.

(f) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(g) "Electronic agent" means a computer program or an electronic or other automated means used independently to initiate an action or respond to electronic records or performances in whole or in part, without review or action by an individual.

(h) "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.

(i) "Foreign exchange transaction" means a transaction in which one party agrees to deliver a quantity of a specified money or unit of account in consideration of the other party's agreement to deliver another quantity of a different money or unit of account either currently or at a future date, and in which delivery is to be through funds transfer, book entry accounting, or other form of payment order, or other agreed means to transfer a credit balance. The term includes a transaction of this type involving two or more moneys and spot, forward, option, or other products derived from underlying moneys and any combination of these transactions. The term does not include a transaction involving two or more moneys in which one or both of the parties is obligated to make physical delivery, at the time of contracting or in the future, of banknotes, coins, or other form of legal tender or specie.

[(j) Reserved]

[(j) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.]

Legislative Note: The definition of "good faith" should not be adopted if the jurisdiction has enacted this definition as part of Article 1.

(k) "Goods" means all things that are movable at the time of identification to a contract for sale. The term includes future goods,

pecially manufactured goods, the unborn young of animals, growing crops, and other identified things attached to realty as described in Section 2-107. The term does not include information, the money in which the price is to be paid, investment securities under Article 8, the subject matter of foreign exchange transactions, or choses in action.

(l) "Receipt of [goods](#)" means taking physical possession of goods.

(m) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

Legislative Note: The definition of "record" should not be adopted if the jurisdiction has enacted revised Article 1.

(n) "Remedial promise" means a promise by the seller to repair or replace goods or to refund all or part of the price of goods upon the happening of a specified event.

(o) "Seller" means a person that sells or [contracts](#) to sell [goods](#).

(p) "Sign" means, with present intent to authenticate or adopt a record:

(i) to execute or adopt a tangible symbol; or

(ii) to attach to or logically associate with the record an electronic sound, symbol, or process.

(2) Other definitions applying to this Article or to specified Parts thereof, and the sections in which they appear are:

"Acceptance". Section [2-606](#).

"Between merchants". Section [2-104](#).

"Cancellation". Section [2-106\(4\)](#).

"Commercial unit". Section [2-105](#).

"Conforming to contract". Section [2-106](#).

"Contract for sale". Section [2-106](#).

"Cover". Section [2-712](#).

"Entrusting". Section [2-403](#).

"Financing agency". Section [2-104](#).

"Future Goods". Section [2-105](#).

"Goods". Section [2-103](#).

"Identification". Section [2-501](#).

"Installment contract". Section [2-612](#).

"Lot". Section [2-105](#).

"Merchant". Section [2-104](#).

"Person in position of Seller". Section [2-707](#).

"Present sale". Section [2-106](#).

"Sale". Section [2-106](#).

"Sale on approval". Section [2-326](#).

"Sale or return". Section [2-326](#).

"Termination". Section [2-106](#).

(3) "Control" as provided in Section [7-106](#) and the following definitions in other Articles apply to this Article:

"Check". Section [3-104\(f\)](#).

"Consignee". Section [7-102\(3\)](#).

"Consignor". Section [7-102\(4\)](#).

"Consumer Goods". Section [9-102\(a\)\(23\)](#).

"Dishonor". Section [3-502](#).

"Draft". Section [3-104\(e\)](#).

"Honor". Section [5-102\(a\)\(8\)](#).

"Injunction against honor". Section [5-109\(b\)](#).

"Letter of credit". Section [5-102\(a\)\(10\)](#).

(4) In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

§ 2-104. Definitions: "Merchant"; "Between Merchants"; "Financing Agency".

(1) "Merchant" means a person that deals in [goods](#) of the kind or otherwise holds itself out by occupation as having knowledge or skill peculiar to the practices or goods involved in the transaction or to which the knowledge or skill may be attributed by the person's employment of an agent or broker or other intermediary that holds itself out by occupation as having the knowledge or skill.

(2) "Financing agency" means a bank, finance company or other person that in the ordinary course of business makes advances against [goods](#) or documents of title or that 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 or are associated with the draft. The term includes also a bank or other person that similarly intervenes between persons that are in the position of seller and buyer in respect to the goods (Section [2-707](#)).

(3) "Between Merchants" means in any transaction with respect to which both parties are chargeable with the knowledge or skill of [merchants](#).

§ 2-105. Definitions: Transferability; "Future" Goods; "Lot"; "Commercial Unit".

(1) [Goods](#) must be both existing and identified before any interest in them may pass. Goods that 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.

(2) There may be a sale of a part interest in existing identified goods.

(3) 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 the 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](#) that then becomes an owner in common.

(4) "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](#).

(5) "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.

§ 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" 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 (Section [2-401](#)). A "present sale" means a sale which is accomplished by the making of the contract.

(2) [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.

(3) "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.

(4) "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 cancelling party also retains any remedy for breach of the whole contract or any unperformed balance.

§ 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.

§ 2-108. Transactions Subject to Other Law

(1) A transaction subject to this article is also subject to any applicable:

(a) [list any certificate of title statutes of this State covering automobiles, trailers, mobile homes, boats, farm tractors, or the like], except with respect to the rights of a buyer in ordinary course of business under Section 2-403(2) which arise before a certificate of title covering the goods is effective in the name of any other buyer;

(b) rule of law that establishes a different rule for consumers; or

(c) statute of this state applicable to the transaction, such as a statute dealing with:

(i) the sale or lease of agricultural products;

(ii) the transfer of human blood, blood products, tissues, or parts;

(iii) the consignment or transfer by artists of works of art or fine prints;

(iv) distribution agreements, franchises, and other relationships through which goods are sold;

(v) the misbranding or adulteration of food products or drugs; and

(vi) dealers in particular products, such as automobiles, motorized wheelchairs, agricultural equipment, and hearing aids.

(2) Except for the rights of a buyer in ordinary course of business under subsection (1)(a), in the event of a conflict between this article and a law referred to in subsection (1), that law governs.

(3) For purposes of this article, failure to comply with a law referred to in subsection (1) has only the effect specified in that law.

(4) This article modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, [15 U.S.C. Section 7001 et seq.](#), except that nothing in this article modifies, limits, or supersedes [Section 7001\(c\)](#) of that Act or authorizes electronic delivery of any of the notices described in [Section 7003\(b\)](#) of that Act.

PART 2. FORM, FORMATION AND READJUSTMENT OF CONTRACT [\[Table of Contents\]](#)

§ 2-201. Formal Requirements; Statute of Frauds.

(1) A [contract](#) for the [sale](#) of [goods](#) for the price of \$5,000 or more is not enforceable by way of action or defense unless there is some record sufficient to indicate that a [contract for sale](#) has been made between the parties and signed by the party against which enforcement is sought or by the party's authorized agent or broker. A record is not insufficient because it omits or incorrectly states a term agreed upon but the contract is not enforceable under this subsection beyond the quantity of [goods](#) shown in the record.

(2) [Between merchants](#) if within a reasonable time a record 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 the recipient unless notice of objection to its contents is given in a record within 10 days after it is received.

(3) A [contract](#) that 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 that reasonably indicate that the goods are for the buyer, has made either a substantial beginning of their manufacture or commitments for their procurement;

(b) if the party against which enforcement is sought admits in the party's pleading, or in the party's testimony or otherwise under oath that a [contract for sale](#) was made, but the [contract](#) is not enforceable under this paragraph beyond the quantity of [goods](#) admitted; or

(c) with respect to [goods](#) for which payment has been made and accepted or which have been received and accepted (Sec. [2-606](#)).

(4) A contract that is enforceable under this section is not unenforceable merely because it is not capable of being performed within one year or any other period after its making.

§ 2-202. Final Expression in a Record: Parol or Extrinsic Evidence.

(1) Terms with respect to which the confirmatory records of the parties agree or which are otherwise set forth in a record 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 supplemented by evidence of:

(a) course of performance, course of dealing, or usage of trade (Section [1-303](#)); and

(b) consistent additional terms unless the court finds the record to have been intended also as a complete and exclusive statement of the terms of the [agreement](#) .

(2) Terms in a record may be explained by evidence of course of performance, course of dealing, or usage of trade without a preliminary determination by the court that the language used is ambiguous.

§ 2-203. Seals Inoperative.

The affixing of a seal to a record evidencing a [contract for sale](#) or an offer to buy or sell [goods](#) does not constitute the record a sealed instrument. The law with respect to sealed instruments does not apply to such a [contract](#) or offer.

§ 2-204. Formation in General.

(1) A [contract for sale](#) of [goods](#) may be made in any manner sufficient to show [agreement](#), including offer and acceptance, conduct by both parties which recognizes the existence of a [contract](#), the interaction of electronic agents, and the interaction of an electronic agent and an individual.

(2) An [agreement](#) sufficient to constitute a [contract for sale](#) may be found even if the moment of its making is undetermined.

(3) Even if one 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.

(4) Except as otherwise provided in Sections 2-211 through 2-213, the following rules apply:

(a) A contract may be formed by the interaction of electronic agents of the parties, even if no individual was aware of or reviewed the electronic agents' actions or the resulting terms and agreements.

(b) A contract may be formed by the interaction of an electronic agent and an individual acting on the individual's own behalf or for another person. A contract is formed if the individual takes actions that the individual is free to refuse to take or makes a statement, and the individual has reason to know that the actions or statement will:

(i) cause the electronic agent to complete the transaction or performance; or

(ii) indicate acceptance of an offer, regardless of other expressions or actions by the individual to which the electronic agent cannot react.

§ 2-205. Firm Offers.

An offer by a [merchant](#) to buy or sell [goods](#) in a signed record that 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 months; but in no event may the period of irrevocability exceed three months. Any such term of assurance in a form supplied by the offeree must be separately signed by the offeror.

§ 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 shipment of [conforming](#) or nonconforming goods, but the shipment of nonconforming goods is not an acceptance if the [seller](#) seasonably notifies the [buyer](#) that the shipment is offered only as an accommodation to the buyer.

(2) If the beginning of a requested performance is a reasonable mode of acceptance, an offeror that is not notified of acceptance within a reasonable time may treat the offer as having lapsed before acceptance.

(3) A definite and seasonable expression of acceptance in a record operates as an acceptance even if it contains terms additional to or different from the offer.

§ 2-207. Terms of Contract; Effect of Confirmation.

Subject to Section 2-202, if (i) conduct by both parties recognizes the existence of a contract although their records do not otherwise establish a contract, (ii) a contract is formed by an offer and acceptance, or (iii) a contract formed in any manner is confirmed by a record that contains terms additional to or different from those in the contract being confirmed, the terms of the contract are:

(a) terms that appear in the records of both parties;

(b) terms, whether in a record or not, to which both parties agree; and

(c) terms supplied or incorporated under any provision of this Act.

[§ 2-208. Reserved]

§ 2-209. Modification, Rescission and Waiver.

- (1) An [agreement](#) modifying a [contract](#) within this Article needs no consideration to be binding.
- (2) An [agreement](#) in a signed record which excludes modification or rescission except by a signed record may not be otherwise modified or rescinded, but except as [between merchants](#) such a requirement in a form supplied by the [merchant](#) must be separately signed by the other party.
- (3) The requirements of Section [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 may operate as a waiver.
- (5) A party that has made a waiver affecting an executory portion of a [contract](#) may retract 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.

§ 2-210. Delegation of Performance; Assignment of Rights.

- (1) If the seller or buyer assigns rights under a [contract](#), the following rules apply:
 - (a) Subject to paragraph (b) and except as otherwise provided in Section 9-406 or as otherwise agreed, all rights of the seller or the buyer may be assigned unless the assignment would materially change the duty of the other party, increase materially the burden or risk imposed on that party by the contract, or impair materially that party's 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 its entire obligation may be assigned despite an agreement otherwise.
 - (b) The creation, attachment, perfection, or enforcement of a security interest in the seller's interest under a contract is not an assignment that materially changes the duty of or materially increases the burden or risk imposed on the buyer or materially impairs the buyer's chance of obtaining return performance under paragraph (a) unless, and only to the extent that, enforcement of the security interest results in a delegation of a material performance of the seller. Even in that event, the creation, attachment, perfection, and enforcement of the security interest remain effective. However, 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 a court may grant other appropriate relief, including cancellation of the contract or an injunction against enforcement of the security interest or consummation of the enforcement.

(2) If the seller or buyer delegates performance of its duties under a contract, the following rules apply:

(a) A party may perform its duties through a delegate unless otherwise agreed or unless the other party has a substantial interest in having the original promisor perform or control the acts required by the contract. Delegation of performance does not relieve the delegating party of any duty to perform or liability for breach.

(b) Acceptance of a delegation of duties by the assignee constitutes a promise to perform those duties. The promise is enforceable by either the assignor or the other party to the original contract.

(c) The other party may treat any delegation of duties as creating reasonable grounds for insecurity and may without prejudice to its rights against the assignor demand assurances from the assignee under Section 2--609.

(d) A contractual term prohibiting the delegation of duties otherwise delegable under paragraph (a) is enforceable, and an attempted delegation is not effective.

(3) 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 also a delegation of performance of the duties of the assignor.

(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.

§ 2-211. Legal Recognition of Electronic Contracts, Records, and Signatures

(1) A record or signature may not be denied legal effect or enforceability solely because it is in electronic form.

(2) A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation.

(3) This article does not require a record or signature to be created, generated, sent, communicated, received, stored, or otherwise processed by electronic means or in electronic form.

(4) A contract formed by the interaction of an individual and an electronic agent under Section 2-204(4)(b) does not include terms provided by the individual if the individual had reason to know that the agent could not react to the terms as provided.

§ 2-212. ATTRIBUTION

An electronic record or electronic signature is attributable to a person if it was the act of the person or the person's electronic agent or the person is otherwise legally bound by the act.

§ 2-213. ELECTRONIC COMMUNICATION

(1) If the receipt of an electronic communication has a legal effect, it has that effect even if no individual is aware of its receipt.

(2) Receipt of an electronic acknowledgment of an electronic communication establishes that the communication was received but, in itself, does not establish that the content sent corresponds to the content received.

PART 3. GENERAL OBLIGATION AND CONSTRUCTION OF CONTRACT [\[Table of Contents\]](#)

§ 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](#).

§ 2-302. Unconscionable contract or Term.

(1) If the court as a matter of law finds the [contract](#) or any term 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 term, or it may so limit the application of any unconscionable term as to avoid any unconscionable result.

(2) If it is claimed or appears to the court that the [contract](#) or any term 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.

§ 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.

§ 2-304. Price Payable in Money, Goods, Realty, or Otherwise.

(1) The price may 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](#) that the party is to transfer.

(2) Even if all or part of the price is payable in an interest in real property 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 real property or the transferor's obligations in connection therewith.

§ 2-305. Open Price Term.

(1) The parties if they so intend may conclude a [contract for sale](#) even if the price is not settled. In such a case the price is a reasonable price at the time for delivery if:

(a) nothing is said as to price;

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

(c) the price is to be fixed in terms of some agreed market or other standard as set or 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 to be fixed in [good faith](#).

(3) If 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 the party's option treat the [contract](#) as cancelled or the party may fix a reasonable price.

(4) If, however, the parties intend not to be bound unless the price is 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 to do so must pay their reasonable value at the time of delivery and the [seller](#) must return any portion of the price paid on account.

§ 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](#).

§ 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.

§ 2-308. Absence of Specified Place for Delivery.

Unless otherwise agreed

- (a) the place for delivery of [goods](#) is the [seller's](#) place of business or if none, the seller's residence; but
- (b) 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
- (c) documents of title may be delivered through customary banking channels.

§ 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) If 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. A term specifying standards for the nature and timing of notice is enforceable if the standards are not manifestly unreasonable.

§ 2-310. Open Time for Payment or Running of Credit; Authority to Ship Under Reservation.

Unless otherwise agreed

- (a) 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;
- (b) if the [seller](#) is required or authorized to send the [goods](#), the seller 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 the inspection is inconsistent with the terms of the [contract](#) (Section [2-513](#));

(c) if tender of delivery is agreed to be made by way of documents of title otherwise than by paragraph (b), then payment is due regardless of where the goods are to be received (i) at the time and place at which the [buyer](#) is to receive delivery of the tangible documents, or (ii) at the time the buyer is to receive delivery of the electronic documents and at the seller's place of business or if none, the seller's residence; and

(d) if 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.

§ 2-311. Options and Cooperation Respecting Performance.

(1) An [agreement](#) for [sale](#) which is otherwise sufficiently definite (Section [2-204\(3\)](#)) to be a [contract](#) is not made invalid by the fact that it leaves particulars of performance to be specified by one 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 specifications or arrangements relating to shipment are at the [seller's](#) option.

(3) If the specification would materially affect the other party's performance but is not seasonably made or if 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 that party's performance; and

(b) may also either proceed to perform in any reasonable manner or after the time for a material part of that party's performance treat the failure to specify or to cooperate as a breach by failure to deliver or accept the [goods](#).

§ 2-312. Warranty of Title and Against Infringement; Buyer's Obligation Against Infringement.

(1) Subject to subsection (3), 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 shall not unreasonably expose the buyer to litigation because of any colorable claim to or interest in the goods; 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) Unless otherwise agreed, a [seller](#) that 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](#) that furnishes specifications to the seller must hold the seller harmless against any such claim that arises out of compliance with the specifications.

(3) A warranty under this section may be disclaimed or modified only by specific language or by circumstances that give the [buyer](#) reason to know that the [seller](#) does not claim title, that the seller is purporting to sell only the right or title as the seller or a third person may have, or that the seller is selling subject to any claims of infringement or the like.

§ 2-313. Express Warranties by Affirmation, Promise, Description, Sample.

(1) In this section, "immediate buyer" means a buyer that enters into a contract with the seller.

(2) Express warranties by the [seller](#) to the immediate buyer are created as follows:

(a) Any affirmation of fact or promise made by the [seller](#) 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 that 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.

(3) It is not necessary to the creation of an express warranty that the [seller](#) use formal words such as "warrant" or "guarantee" or that the seller 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.

(4) Any remedial promise made by the seller to the immediate buyer creates an obligation that the promise will be performed upon the happening of the specified event.

§ 2-313A Obligation to Remote Purchaser Created by Record Packaged With or Accompanying Goods

(1) In this section:

(a) "Immediate buyer" means a buyer that enters into a contract with the seller.

(b) "Remote purchaser" means a person that buys or leases goods from an immediate buyer or other person in the normal chain of distribution.

(2) This section applies only to new goods and goods sold or leased as new goods in a transaction of purchase in the normal chain of distribution.

(3) If in a record packaged with or accompanying the goods the seller makes an affirmation of fact or promise that relates to the goods, provides a description that relates to the goods, or makes a remedial promise, and the seller reasonably expects the record to be, and the record is, furnished to the remote purchaser, the seller has an obligation to the remote purchaser that:

(a) the goods will conform to the affirmation of fact, promise, or description unless a reasonable person in the position of the remote purchaser would not believe that the affirmation of fact, promise, or description created an obligation; and

(b) the seller will perform the remedial promise.

(4) It is not necessary to the creation of an obligation under this section that the seller use formal words such as "warrant" or "guarantee" or that the seller have a specific intention to undertake an obligation, 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 an obligation.

(5) The following rules apply to the remedies for breach of an obligation created under this section:

(a) The seller may modify or limit the remedies available to the remote purchaser if the modification or limitation is furnished to the remote purchaser no later than the time of purchase or if the modification or limitation is contained in the record that contains the affirmation of fact, promise, or description.

(b) Subject to a modification or limitation of remedy, a seller in breach is liable for incidental or consequential damages under Section 2-715, but not for lost profits.

(c) The remote purchaser may recover as damages for breach of a seller's obligation arising under subsection (3) the loss resulting in the ordinary course of events as determined in any reasonable manner.

(6) An obligation that is not a remedial promise is breached if the goods did not conform to the affirmation of fact, promise, or description creating the obligation when the goods left the seller's control.

§ 2-313B Obligation to Remote Purchaser Created by Communication to the Public

(1) In this section:

(a) "Immediate buyer" means a buyer that enters into a contract with the seller.

(b) "Remote purchaser" means a person that buys or leases goods from an immediate buyer or other person in the normal chain of distribution.

(2) This section applies only to new goods and goods sold or leased as new goods in a transaction of purchase in the normal chain of distribution.

(3) If in an advertisement or a similar communication to the public a seller makes an affirmation of fact or promise that relates to the goods, provides a description that relates to the goods, or makes a remedial promise, and the remote purchaser enters into a transaction of purchase with knowledge of and with the expectation that the goods will conform to the affirmation of fact, promise, or description, or that the seller will perform the remedial promise, the seller has an obligation to the remote purchaser that:

(a) the goods will conform to the affirmation of fact, promise, or description unless a reasonable person in the position of the remote purchaser would not believe that the affirmation of fact, promise, or description created an obligation; and

(b) the seller will perform the remedial promise.

(4) It is not necessary to the creation of an obligation under this section that the seller use formal words such as "warrant" or "guarantee" or that the seller have a specific intention to undertake an obligation, 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 an obligation.

(5) The following rules apply to the remedies for breach of an obligation created under this section:

(a) The seller may modify or limit the remedies available to the remote purchaser if the modification or limitation is furnished to the remote purchaser no later than the time of purchase. The modification or limitation may be furnished as part of the communication that contains the affirmation of fact, promise, or description.

(b) Subject to a modification or limitation of remedy, a seller in breach is liable for incidental or consequential damages under Section 2-715, but not for lost profits.

(c) The remote purchaser may recover as damages for breach of a seller's obligation arising under subsection (3) the loss resulting in the ordinary course of events as determined in any reasonable manner.

(6) An obligation that is not a remedial promise is breached if the goods did not conform to the affirmation of fact, promise, or description creating the obligation when the goods left the seller's control.

§ 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;

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

(c) are fit for the ordinary purposes for which [goods](#) of that description are used;

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

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

(f) conform to the promise 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.

§ 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 the next section an implied warranty that the goods shall be fit for such purpose.

§ 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 Section [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 in a consumer contract the language must be in a record, be conspicuous, and state "The seller undertakes no responsibility for the quality of the goods except as otherwise provided in this contract," and in any other contract the language must mention merchantability and in case of a record must be conspicuous. Subject to subsection (3), to exclude or modify the implied warranty of fitness, the exclusion must be in a record and be conspicuous. Language to exclude all implied warranties of fitness in a consumer contract must state "The seller assumes no responsibility that the goods will be fit for any particular purpose for which you may be buying these goods, except as otherwise provided in the contract," and in any other contract the language is sufficient if it states, for example, that "There are no warranties that extend beyond the description on the face hereof." Language that satisfies the requirements of this subsection for the exclusion or modification of a warranty in a consumer contract also satisfies the requirements for any other contract.

(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 that in common understanding calls the [buyer](#)'s attention to the exclusion of warranties, makes plain that there is no implied warranty, and, in a consumer contract evidenced by a record, is set forth conspicuously in the record;

(b) if the [buyer](#) before entering into the [contract](#) has examined the [goods](#) or the sample or model as fully as desired or has refused to examine the goods after a demand by the seller there is no implied warranty with regard to defects that an examination in the circumstances should have revealed to the buyer; and

(c) an implied warranty may also be excluded or modified by course of dealing or course of performance or usage of trade.

(4) Remedies for breach of warranty may be limited in accordance with Sections [2-718](#) and [2-719](#).

§ 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:

(a) Exact or technical specifications displace an inconsistent sample or model or general language of description.

(b) A sample from an existing bulk displaces inconsistent general language of description.

(c) Express warranties displace inconsistent implied warranties other than an implied warranty of fitness for a particular purpose.

§ 2-318. Third Party Beneficiaries of Warranties Express or Implied.

(1) In this section:

(a) "Immediate buyer" means a buyer that enters into a contract with the seller.

(b) "Remote purchaser" means a person that buys or leases goods from an immediate buyer or other person in the normal chain of distribution.

Alternative A to subsection (2)

A [seller's](#) warranty to an [immediate buyer](#), whether express or implied, a seller's remedial promise to an immediate buyer, or a seller's obligation to a [remote purchaser](#) under Section [2-313A](#) or [2-313B](#) extends to any individual who is in the family or household of the immediate buyer or the remote purchaser or who is a guest in the home of either if it is reasonable to expect that the person may use, consume, or be affected by the [goods](#) and who is injured in person by breach of the warranty, remedial promise, or obligation. A seller may not exclude or limit the operation of this section.

Alternative B to subsection (2)

A seller's warranty to an [immediate buyer](#), whether express or implied, a seller's remedial promise to an immediate buyer, or a seller's obligation to a [remote purchaser](#) under Section [2-313A](#) or [2-313B](#) extends to any individual who may reasonably be expected to use, consume, or be affected by the [goods](#) and who is injured in person by breach of the warranty, remedial promise, or obligation. A seller may not exclude or limit the operation of this section.

Alternative C to subsection (2)

A seller's warranty to an [immediate buyer](#), whether express or implied, a seller's remedial promise to an immediate buyer, or a seller's obligation to a [remote purchaser](#) under Section [2-313A](#) or [2-313B](#) extends to any person that may reasonably be expected to use, consume, or be affected by the goods and that is injured by breach of the warranty, remedial promise, or obligation. A seller may not exclude or limit the operation of this section with respect to injury to the person of an individual to whom the warranty, remedial promise, or obligation extends.

[§ 2-319. Reserved]

[§ 2-320. Reserved]

[§ 2-321. Reserved]

[§ 2-322. Reserved]

[§ 2-323. Reserved]

[§ 2-324. Reserved]

§ 2-325. "Letter of Credit" Term; "Confirmed Credit".

If the parties agree that the primary method of payment will be by letter of credit, the following rules apply:

(a) The buyer's obligation to pay is suspended by seasonable delivery to the seller of a letter of credit issued or confirmed by a [financing agency](#) of good repute in which the issuer and any confirmer undertake to pay against presentation of documents that evidence delivery of the goods.

(b) Failure of a party seasonably to furnish a letter of credit as agreed is a breach of the [contract for sale](#).

(c) If the letter of credit is dishonored or repudiated, the seller, on seasonable notification, may require payment directly from the buyer.

§ 2-326. Sale on Approval and Sale or Return; Consignment Sales and Rights of Creditors.

(1) Unless otherwise agreed, if delivered [goods](#) may be returned by the [buyer](#) even if they conform to the [contract](#), the transaction is:

(a) a "sale on approval" if the [goods](#) are delivered primarily for use; and

(b) a "sale or return" if the [goods](#) are delivered primarily for resale.

(2) [Goods](#) held on approval are not subject to the claims of the [buyer's](#) creditors until acceptance; goods held on [sale](#) or return are subject to such claims while in the buyer's possession.

(3) Any "or return" term of a [contract for sale](#) is to be treated as a separate contract for sale under Section [2-201](#) and as contradicting the [sale](#) aspect of the [contract](#) under Section [2-202](#).

§ 2-327. Special Incidents of Sale on Approval and Sale or Return.

(1) Under a [sale](#) on approval unless otherwise agreed

(a) although the [goods](#) are identified to the [contract](#) the risk of loss and the title do not pass to the [buyer](#) until acceptance; and

(b) use of the [goods](#) consistent with the purpose of trial is not acceptance but failure seasonably to notify the [seller](#) of election to return the goods is acceptance, and if the goods conform to the [contract](#) acceptance of any part is acceptance of the whole; and

(c) after due notification of election to return, the return is at the [seller's](#) risk and expense but a [merchant buyer](#) must follow any reasonable instructions.

(2) Under a [sale](#) or return unless otherwise agreed

(a) the option to return extends to the whole or any [commercial unit](#) of the [goods](#) while in substantially their original condition, but must be exercised seasonably; and

(b) the return is at the [buyer's](#) risk and expense.

§ 2-328. Sale by Auction.

(1) In a [sale](#) by auction, if [goods](#) are put up in [lots](#) each lot is the subject of a separate sale.

(2) A [sale](#) by auction is complete when the auctioneer so announces by the fall of the hammer or in other customary manner. If a bid is made during the process of completing the sale but before a prior bid is accepted, the auctioneer has discretion to reopen the bidding or to declare the [goods](#) sold under the prior bid.

(3) A [sale](#) by auction is subject to the seller's right to withdraw the [goods](#) unless at the time the goods are put up or during the course of the auction it is announced in express terms that the right to withdraw the goods is not reserved. In an auction in which the right to withdraw the goods is reserved, the auctioneer may withdraw the goods at any time until completion of the sale is announced by the auctioneer. In an auction in which the right to withdraw the goods is not reserved, after the auctioneer calls for bids on an article or [lot](#), the article or lot may not be withdrawn unless no bid is made within a reasonable time. In either case a bidder may retract a bid until the auctioneer's announcement of completion of the sale, but a bidder's retraction does not revive any previous bid.

(4) If the auctioneer knowingly receives a bid on the [seller's](#) behalf or the seller makes or procures such a bid, and notice has not been given that liberty for such bidding is reserved, the [buyer](#) may at the buyer's option avoid the [sale](#) or take the [goods](#) at the price of the last [good faith](#) bid prior to the completion of the sale. This subsection shall not apply to any bid at an auction required by law.

PART 4. TITLE, CREDITORS AND GOOD FAITH PURCHASERS [\[Table of Contents\]](#)

§ 2-401. Passing of Title; Reservation for Security; Limited Application of This Section.

Each provision of this Article with regard to the rights, obligations and remedies of the [seller](#), the [buyer](#), purchasers or other third parties applies irrespective of title to the [goods](#) except where the provision refers to such title. Insofar as situations are not covered by the other provisions of this Article and matters concerning title become material the following rules apply:

(1) Title to [goods](#) cannot pass under a [contract for sale](#) prior to their identification to the [contract](#) (Section [2-501](#)), and unless otherwise explicitly agreed the [buyer](#) acquires by their identification a special property as limited by this Act. Any retention or reservation by the [seller](#) of the title (property) in goods shipped or delivered to the buyer is limited in effect to a reservation of a security interest. Subject to these provisions and to the provisions of Article 9, title to goods passes from the seller to the buyer in any manner and on any conditions explicitly agreed on by the parties.

(2) Unless otherwise explicitly agreed title passes to the [buyer](#) at the time and place at which the [seller](#) completes performance with reference to the physical delivery of the [goods](#), despite any reservation of a security interest and even though a document of title is to be delivered at a different time or place; and in particular and despite any reservation of a security interest by the bill of lading

(a) if the [contract](#) requires or authorizes the [seller](#) to send the [goods](#) to the [buyer](#) but does not require the seller to deliver them at destination, title passes to the buyer at the time and place of shipment; but

(b) if the [contract](#) requires delivery at destination, title passes on tender there.

(3) Unless otherwise explicitly agreed where delivery is to be made without moving the [goods](#),

(a) if the [seller](#) is to deliver a tangible document of title, title passes at the time when and the place where he delivers such documents and if the seller is to deliver an electronic document of title, title passes when the seller delivers the document; or

(b) if the [goods](#) are at the time of contracting already identified and no documents of title are to be delivered, title passes at the time and place of contracting.

(4) A rejection or other refusal by the [buyer](#) to receive or retain the [goods](#), whether or not justified, or a justified revocation of acceptance reverts title to the goods in the [seller](#). Such reversioning occurs by operation of law and is not a "sale".

§ 2-402. Rights of Seller's Creditors Against Sold Goods.

(1) Except as provided in subsections (2) and (3), rights of unsecured creditors of the [seller](#) with respect to [goods](#) which have been identified to a [contract for sale](#) are subject to the [buyer's](#) rights to recover the goods under this Article (Sections [2-502](#) and [2-716](#)).

(2) A creditor of the [seller](#) may treat a [sale](#) or an identification of [goods](#) to a [contract for sale](#) as void if as against him a retention of possession by the seller is fraudulent under any rule of law of the state where the [goods](#) are situated, except that retention of possession in [good faith](#) and current course of trade by a [merchant](#)-seller for a commercially reasonable time after a sale or identification is not fraudulent.

(3) Nothing in this Article shall be deemed to impair the rights of creditors of the [seller](#)

(a) under the provisions of the Article on Secured Transactions (Article 9); or

(b) where identification to the [contract](#) or delivery is made not in current course of trade but in satisfaction of or as security for a pre-existing claim for money, security or the like and is made under circumstances which under any rule of law of the state where the [goods](#) are situated would apart from this Article constitute the transaction a fraudulent transfer or voidable preference.

§ 2-403. Power to Transfer; Good Faith Purchase of Goods; "Entrusting".

(1) A purchaser of [goods](#) acquires all title which his transferor had or had power to transfer except that a purchaser of a limited interest acquires rights only to the extent of the interest purchased. A person with voidable title has power to transfer a good title to a [good faith](#) purchaser for value. When goods have been delivered under a transaction of purchase the purchaser has such power even though

(a) the transferor was deceived as to the identity of the purchaser, or

(b) the delivery was in exchange for a check which is later dishonored, or

(c) it was agreed that the transaction was to be a "cash sale", or

(d) the delivery was procured through fraud punishable as larcenous under the criminal law.

(2) Any entrusting of possession of [goods](#) to a [merchant](#) that deals in [goods](#) of that kind gives him power to transfer all rights of the entruster to a [buyer](#) in ordinary course of business.

(3) "Entrusting" includes any delivery and any acquiescence in retention of possession regardless of any condition expressed between the parties to the delivery or acquiescence and regardless of whether the procurement of the entrusting or the possessor's disposition of the [goods](#) have been such as to be larcenous under the criminal law.

[*Note: If a state adopts the repealer of Article 6-Bulk Transfers (Alternative A), subsec. (4) should read as follows:*]

(4) The rights of other purchasers of [goods](#) and of lien creditors are governed by the Articles on Secured Transactions (Article 9) and Documents of Title (Article 7).

[*Note: If a state adopts Revised Article 6-Bulk Sales (Alternative B), subsec. (4) should read as follows:*]

(4) The rights of other purchasers of [goods](#) and of lien creditors are governed by the Articles on Secured Transactions (Article 9), Bulk Sales (Article 6) and Documents of Title (Article 7).

PART 5. PERFORMANCE [\[Table of Contents\]](#)

§ 2-501. Insurable Interest in Goods; Manner of Identification of Goods.

(1) The [buyer](#) obtains a special property and an insurable interest in [goods](#) by identification of existing goods as goods to which the [contract](#) refers even though the goods so identified are non-conforming and he has an option to return or reject them. Such identification can be made at any time and in any manner explicitly agreed to by the parties. In the absence of explicit [agreement](#) identification occurs

(a) when the [contract](#) is made if it is for the [sale](#) of [goods](#) already existing and identified;

(b) if the [contract](#) is for the [sale](#) of future [goods](#) other than those described in paragraph (c), when goods are shipped, marked or otherwise designated by the [seller](#) as goods to which the [contract](#) refers;

(c) when the crops are planted or otherwise become growing crops or the young are conceived if the [contract](#) is for the [sale](#) of unborn young to be born within twelve months after contracting or for the sale of crops to be harvested within twelve months or the next normal harvest reason after contracting whichever is longer.

(2) The [seller](#) retains an insurable interest in [goods](#) so long as title to or any security interest in the goods remains in him and where the identification is by the seller alone he may until default or insolvency or notification to the [buyer](#) that the identification is final substitute other goods for those identified.

(3) Nothing in this section impairs any insurable interest recognized under any other statute or rule of law.

§ 2-502. Buyer's Right to Goods on Seller's Repudiation, Failure to Deliver or Insolvency.

(1) Subject to subsections (2) and (3) and even though the [goods](#) have not been shipped a [buyer](#) who has paid a part or all of the price of goods in which he has a special property under the provisions of the immediately preceding section may on making and keeping good a tender of any unpaid portion of their price recover them from the [seller](#) if:

(a) in the case of goods bought for personal, family, or household purposes, the seller repudiates or fails to deliver as required by the contract; or

(b) in other cases, the seller becomes insolvent within ten days after [receipt](#) of the first installment on their price.

(2) The buyer's right to recover the goods under subsection (1)(a) vests upon acquisition of a special property, even if the seller had not then repudiated or failed to deliver.

(3) If the identification creating his special property has been made by the [buyer](#) he acquires the right to recover the [goods](#) only if they conform to the [contract for sale](#).

§ 2-503. Manner of Seller's Tender of Delivery.

(1) Tender of delivery requires that the [seller](#) put and hold [conforming goods](#) at the [buyer's](#) disposition and give the buyer any notification reasonably necessary to enable him to take delivery. The manner, time and place for tender are determined by the [agreement](#) and this Article, and in particular

(a) tender must be at a reasonable hour, and if it is of [goods](#) they must be kept available for the period reasonably necessary to enable the [buyer](#) to take possession; but

(b) unless otherwise agreed the [buyer](#) must furnish facilities reasonably suited to the [receipt](#) of the [goods](#).

(2) Where the case is within the next section respecting shipment tender requires that the [seller](#) comply with its provisions.

(3) Where the [seller](#) is required to deliver at a particular destination tender requires that he comply with subsection (1) and also in any appropriate case tender documents as described in subsections (4) and (5) of this section.

(4) Where [goods](#) are in the possession of a bailee and are to be delivered without being moved

(a) tender requires that the [seller](#) either tender a negotiable document of title covering such [goods](#) or procure acknowledgment by the bailee of the [buyer's](#) right to possession of the goods; but

(b) tender to the [buyer](#) of a non-negotiable document of title or of a record directing the bailee to deliver is sufficient tender unless the buyer seasonably objects, and except as otherwise provided in Article 9 [receipt](#) by the bailee of notification of the buyer's rights fixes those rights as against the bailee and all third persons; but risk of loss of the [goods](#) and of any failure by the bailee to honor the non-negotiable document of title or to obey the direction remains on the [seller](#) until the buyer has had a reasonable time to present the document or direction, and a refusal by the bailee to honor the document or to obey the direction defeats the tender.

(5) Where the [contract](#) requires the [seller](#) to deliver documents

(a) he must tender all such documents in correct form, except as provided in this Article with respect to bills of lading in a set (subsection (2) of Section [2-323](#)); and

(b) tender through customary banking channels is sufficient and dishonor of a draft accompanying or associated with the documents constitutes non-acceptance or rejection.

§ 2-504. Shipment by Seller.

Where the [seller](#) is required or authorized to send the [goods](#) to the [buyer](#) and the [contract](#) does not require him to deliver them at a particular destination, then unless otherwise agreed he must

(a) put the [goods](#) in the possession of such a carrier and make such a [contract](#) for their transportation as may be reasonable having regard to the nature of the goods and other circumstances of the case; and

(b) obtain and promptly deliver or tender in due form any document necessary to enable the [buyer](#) to obtain possession of the [goods](#) or otherwise required by the [agreement](#) or by usage of trade; and

(c) promptly notify the [buyer](#) of the shipment.

Failure to notify the [buyer](#) under paragraph (c) or to make a proper [contract](#) under paragraph (a) is a ground for rejection only if material delay or loss ensues.

§ 2-505. Seller's Shipment Under Reservation.

(1) Where the [seller](#) has identified [goods](#) to the [contract](#) by or before shipment:

(a) his procurement of a negotiable bill of lading to his own order or otherwise reserves in him a security interest in the [goods](#). His procurement of the bill to the order of a [financing agency](#) or of the [buyer](#) indicates in addition only the [seller's](#) expectation of transferring that interest to the person named.

(b) a non-negotiable bill of lading to himself or his nominee reserves possession of the [goods](#) as security but except in a case of conditional delivery (subsection (2) of Section [2-507](#)) a non-negotiable bill of lading naming the [buyer](#) as consignee reserves no security interest even though the [seller](#) retains possession or control of the bill of lading.

(2) When shipment by the [seller](#) with reservation of a security interest is in violation of the [contract for sale](#) it constitutes an improper [contract](#) for transportation within the preceding section but impairs neither the rights given to the [buyer](#) by shipment and identification of the [goods](#) to the contract nor the seller's powers as a holder of a negotiable document of title.

§ 2-506. Rights of Financing agency.

(1) A [financing agency](#) by paying or purchasing for value a draft which relates to a shipment of [goods](#) acquires to the extent of the payment or purchase and in addition to its own rights under the draft and any document of title securing it any rights of the shipper in the goods including the right to stop delivery and the shipper's right to have the draft honored by the [buyer](#).

(2) The right to reimbursement of a [financing agency](#) which has in [good faith](#) honored or purchased the draft under commitment to or authority from the [buyer](#) is not impaired by subsequent discovery of defects with reference to any relevant document which was apparently regular.

§ 2-507. Effect of Seller's Tender; Delivery on Condition.

(1) Tender of delivery is a condition to the [buyer's](#) duty to accept the [goods](#) and, unless otherwise agreed, to his duty to pay for them. Tender entitles the [seller](#) to acceptance of the goods and to payment according to the [contract](#).

(2) Where payment is due and demanded on the delivery to the [buyer](#) of [goods](#) or documents of title, his right as against the [seller](#) to retain or dispose of them is conditional upon his making the payment due.

[[Permanent Editorial Board Commentary](#)]

§ 2-508. Cure by Seller of Improper Tender or Delivery; Replacement.

(1) Where any tender or delivery by the [seller](#) is rejected because non-conforming and the time for performance has not yet expired, the seller may seasonably notify the [buyer](#) of his intention to cure and may then within the [contract](#) time make a [conforming](#) delivery.

(2) Where the [buyer](#) rejects a non-conforming tender which the [seller](#) had reasonable grounds to believe would be acceptable with or without money allowance the seller may if he seasonably notifies the buyer have a further reasonable time to substitute a [conforming](#) tender.

§ 2-509. Risk of Loss in the Absence of Breach.

(1) Where the [contract](#) requires or authorizes the [seller](#) to ship the [goods](#) by carrier

(a) if it does not require him to deliver them at a particular destination, the risk of loss passes to the [buyer](#) when the [goods](#) are duly delivered to the carrier even though the shipment is under reservation (Section [2-505](#)); but

(b) if it does require him to deliver them at a particular destination and the [goods](#) are there duly tendered while in the possession of the carrier, the risk of loss passes to the [buyer](#) when the goods are there duly so tendered as to enable the buyer to take delivery.

(2) Where the [goods](#) are held by a bailee to be delivered without being moved, the risk of loss passes to the [buyer](#)

(a) on his [receipt](#) of possession or control of a negotiable document of title covering the [goods](#); or

(b) on acknowledgment by the bailee of the [buyer's](#) right to possession of the [goods](#); or

(c) after his [receipt](#) of possession or control of a non-negotiable document of title or other direction to deliver in a record, as provided in subsection (4)(b) of Section [2-503](#).

(3) In any case not within subsection (1) or (2), the risk of loss passes to the [buyer](#) on his [receipt](#) of the [goods](#) if the [seller](#) is a [merchant](#); otherwise the risk passes to the buyer on tender of delivery.

(4) The provisions of this section are subject to contrary [agreement](#) of the parties and to the provisions of this Article on [sale](#) on approval (Section [2-327](#)) and on effect of breach on risk of loss (Section [2-510](#)).

§ 2-510. Effect of Breach on Risk of Loss.

(1) Where a tender or delivery of [goods](#) so fails to conform to the [contract](#) as to give a right of rejection the risk of their loss remains on the [seller](#) until cure or acceptance.

(2) Where the [buyer](#) rightfully revokes acceptance he may to the extent of any deficiency in his effective insurance coverage treat the risk of loss as having rested on the [seller](#) from the beginning.

(3) Where the [buyer](#) as to [conforming goods](#) already identified to the [contract for sale](#) repudiates or is otherwise in breach before risk of their loss has passed to him, the [seller](#) may to the extent of any deficiency in his effective insurance coverage treat the risk of loss as resting on the buyer for a commercially reasonable time.

§ 2-511. Tender of Payment by Buyer; Payment by Check.

(1) Unless otherwise agreed tender of payment is a condition to the [seller's](#) duty to tender and complete any delivery.

(2) Tender of payment is sufficient when made by any means or in any manner current in the ordinary course of business unless the [seller](#) demands payment in legal tender and gives any extension of time reasonably necessary to procure it.

(3) Subject to the provisions of this Act on the effect of an instrument on an obligation (Section [3-802](#)), payment by check is conditional and is defeated as between the parties by dishonor of the check on due presentment.

§ 2-512. Payment by Buyer Before Inspection.

(1) Where the [contract](#) requires payment before inspection non-conformity of the [goods](#) does not excuse the [buyer](#) from so making payment unless

(a) the non-conformity appears without inspection; or

(b) despite tender of the required documents the circumstances would justify injunction against honor under this Act (Section [5-109\(b\)](#)).

(2) Payment pursuant to subsection (1) does not constitute an acceptance of [goods](#) or impair the [buyer's](#) right to inspect or any of his remedies.

§ 2-513. Buyer's Right to Inspection of Goods.

(1) Unless otherwise agreed and subject to subsection (3), where goods are tendered or delivered or identified to the contract for sale, the buyer has a right before payment or acceptance to inspect them at any reasonable place and time and in any reasonable manner. When the seller is required or authorized to send the goods to the buyer, the inspection may be after their arrival.

(2) Expenses of inspection must be borne by the buyer but may be recovered from the seller if the goods do not conform and are rejected.

(3) Unless otherwise agreed and subject to the provisions of this Article on C.I.F. contracts (subsection (3) of Section 2-321), the buyer is not entitled to inspect the goods before payment of the price when the contract provides

(a) for delivery "C.O.D." or on other like terms; or

(b) for payment against documents of title, except where such payment is due only after the goods are to become available for inspection.

(4) A place or method of inspection fixed by the parties is presumed to be exclusive but unless otherwise expressly agreed it does not postpone identification or shift the place for delivery or for passing the risk of loss. If compliance becomes impossible, inspection shall be as provided in this section unless the place or method fixed was clearly intended as an indispensable condition failure of which avoids the contract.

§ 2-514. When Documents Deliverable on Acceptance; When on Payment.

Unless otherwise agreed documents against which a draft is drawn are to be delivered to the drawee on acceptance of the draft if it is payable more than three days after presentment; otherwise, only on payment.

§ 2-515. Preserving Evidence of Goods in Dispute.

In furtherance of the adjustment of any claim or dispute

(a) either party on reasonable notification to the other and for the purpose of ascertaining the facts and preserving evidence has the right to inspect, test and sample the goods including such of them as may be in the possession or control of the other; and

(b) the parties may agree to a third party inspection or survey to determine the conformity or condition of the goods and may agree that the findings shall be binding upon them in any subsequent litigation or adjustment.

PART 6. BREACH, REPUDIATION AND EXCUSE [[Table of Contents](#)]

§ 2-601. Buyer's Rights on Improper Delivery.

Subject to the provisions of this Article on breach in installment contracts (Section [2-612](#)) and unless otherwise agreed under the sections on contractual limitations of remedy (Sections [2-718](#) and [2-719](#)), if the [goods](#) or the tender of delivery fail in any respect to conform to the [contract](#), the [buyer](#) may

- (a) reject the whole; or
- (b) accept the whole; or
- (c) accept any [commercial unit](#) or units and reject the rest.

§ 2-602. Manner and Effect of Rightful Rejection.

(1) Rejection of [goods](#) must be within a reasonable time after their delivery or tender. It is ineffective unless the [buyer](#) seasonably notifies the [seller](#).

(2) Subject to the provisions of the two following sections on rejected [goods](#) (Sections [2-603](#) and [2-604](#)),

(a) after rejection any exercise of ownership by the [buyer](#) with respect to any [commercial unit](#) is wrongful as against the [seller](#); and

(b) if the [buyer](#) has before rejection taken physical possession of [goods](#) in which he does not have a security interest under the provisions of this Article (subsection (3) of Section [2-711](#)), he is under a duty after rejection to hold them with reasonable care at the [seller's](#) disposition for a time sufficient to permit the seller to remove them; but

(c) the [buyer](#) has no further obligations with regard to [goods](#) rightfully rejected.

(3) The [seller's](#) rights with respect to [goods](#) wrongfully rejected are governed by the provisions of this Article on seller's remedies in general (Section [2-703](#)).

§ 2-603. Merchant Buyer's Duties as to Rightfully Rejected Goods.

(1) Subject to any security interest in the [buyer](#) (subsection (3) of Section [2-711](#)), when the [seller](#) has no agent or place of business at the market of rejection a [merchant buyer](#) is under a duty after rejection of [goods](#) in his possession or control to follow any reasonable instructions received from the seller with respect to the goods and in the absence of

such instructions to make reasonable efforts to sell them for the seller's account if they are perishable or threaten to decline in value speedily. Instructions are not reasonable if on demand indemnity for expenses is not forthcoming.

(2) When the [buyer](#) sells [goods](#) under subsection (1), he is entitled to reimbursement from the [seller](#) or out of the proceeds for reasonable expenses of caring for and selling them, and if the expenses include no selling commission then to such commission as is usual in the trade or if there is none to a reasonable sum not exceeding ten per cent on the gross proceeds.

(3) In complying with this section the [buyer](#) is held only to [good faith](#) and good faith conduct hereunder is neither acceptance nor conversion nor the basis of an action for damages.

§ 2-604. Buyer's Options as to Salvage of Rightfully Rejected Goods.

Subject to the provisions of the immediately preceding section on perishables if the [seller](#) gives no instructions within a reasonable time after notification of rejection the [buyer](#) may store the rejected [goods](#) for the seller's account or reship them to him or resell them for the seller's account with reimbursement as provided in the preceding section. Such action is not acceptance or conversion.

§ 2-605. Waiver of Buyer's Objections by Failure to Particularize.

(1) The [buyer's](#) failure to state in connection with rejection a particular defect which is ascertainable by reasonable inspection precludes him from relying on the unstated defect to justify rejection or to establish breach

(a) where the [seller](#) could have cured it if stated seasonably; or

(b) [between merchants](#) when the [seller](#) has after rejection made a request in writing for a full and final written statement of all defects on which the [buyer](#) proposes to rely.

(2) Payment against documents made without reservation of rights precludes recovery of the payment for defects apparent in the documents.

§ 2-606. What Constitutes Acceptance of Goods.

(1) Acceptance of [goods](#) occurs when the [buyer](#)

(a) after a reasonable opportunity to inspect the [goods](#) signifies to the [seller](#) that the goods are [conforming](#) or that he will take or retain them in spite of their non-conformity; or

(b) fails to make an effective rejection (subsection (1) of Section [2-602](#)), but such acceptance does not occur until the [buyer](#) has had a reasonable opportunity to inspect them; or

(c) does any act inconsistent with the [seller's](#) ownership; but if such act is wrongful as against the seller it is an acceptance only if ratified by him.

(2) Acceptance of a part of any [commercial unit](#) is acceptance of that entire unit.

§ 2-607. Effect of Acceptance; Notice of Breach; Burden of Establishing Breach After Acceptance; Notice of Claim or Litigation to Person Answerable Over.

(1) The [buyer](#) must pay at the [contract](#) rate for any [goods](#) accepted.

(2) Acceptance of [goods](#) by the [buyer](#) precludes rejection of the goods accepted and if made with knowledge of a non-conformity cannot be revoked because of it unless the acceptance was on the reasonable assumption that the non-conformity would be seasonably cured but acceptance does not of itself impair any other remedy provided by this Article for non-conformity.

(3) Where a tender has been accepted

(a) the [buyer](#) must within a reasonable time after he discovers or should have discovered any breach notify the [seller](#) of breach or be barred from any remedy; and

(b) if the claim is one for infringement or the like (subsection (3) of Section [2-312](#)) and the [buyer](#) is sued as a result of such a breach he must so notify the [seller](#) within a reasonable time after he receives notice of the litigation or be barred from any remedy over for liability established by the litigation.

(4) The burden is on the [buyer](#) to establish any breach with respect to the [goods](#) accepted.

(5) Where the [buyer](#) is sued for breach of a warranty or other obligation for which his [seller](#) is answerable over

(a) he may give his [seller](#) written notice of the litigation. If the notice states that the seller may come in and defend and that if the seller does not do so he will be bound in any action against him by his [buyer](#) by any determination of fact common to the two litigations, then unless the seller after seasonable [receipt](#) of the notice does come in and defend he is so bound.

(b) if the claim is one for infringement or the like (subsection (3) of Section [2-312](#)) the original [seller](#) may demand in writing that his [buyer](#)

turn over to him control of the litigation including settlement or else be barred from any remedy over and if he also agrees to bear all expense and to satisfy any adverse judgment, then unless the buyer after reasonable [receipt](#) of the demand does turn over control the buyer is so barred.

(6) The provisions of subsections (3), (4) and (5) apply to any obligation of a [buyer](#) to hold the [seller](#) harmless against infringement or the like (subsection (3) of Section [2-312](#)).

§ 2-608. Revocation of Acceptance in Whole or in Part.

(1) The [buyer](#) may revoke his acceptance of a [lot](#) or [commercial unit](#) whose non-conformity substantially impairs its value to him if he has accepted it

(a) on the reasonable assumption that its non-conformity would be cured and it has not been seasonably cured; or

(b) without discovery of such non-conformity if his acceptance was reasonably induced either by the difficulty of discovery before acceptance or by the [seller's](#) assurances.

(2) Revocation of acceptance must occur within a reasonable time after the [buyer](#) discovers or should have discovered the ground for it and before any substantial change in condition of the [goods](#) which is not caused by their own defects. It is not effective until the buyer notifies the [seller](#) of it.

(3) A [buyer](#) who so revokes has the same rights and duties with regard to the [goods](#) involved as if he had rejected them.

(4) If a buyer uses the goods after a rightful rejection or justifiable revocation of acceptance, the following rules apply:

(a) Any use by the buyer that is unreasonable under the circumstances is wrongful as against the seller and is an acceptance only if ratified by the seller.

(b) Any use of the goods that is reasonable under the circumstances is not wrongful as against the seller and is not an acceptance, but in an appropriate case the buyer is obligated to the seller for the value of the use to the buyer.

§ 2-609. Right to Adequate Assurance of Performance.

(1) A [contract for sale](#) imposes an obligation on each party that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the

performance of either party the other may in writing demand adequate assurance of due performance and until he receives such assurance may if commercially reasonable suspend any performance for which he has not already received the agreed return.

(2) [Between merchants](#) the reasonableness of grounds for insecurity and the adequacy of any assurance offered shall be determined according to commercial standards.

(3) Acceptance of any improper delivery or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance.

(4) After [receipt](#) of a justified demand failure to provide within a reasonable time not exceeding thirty days such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of the [contract](#).

§ 2-610. Anticipatory Repudiation.

When either party repudiates the [contract](#) with respect to a performance not yet due the loss of which will substantially impair the value of the contract to the other, the aggrieved party may

(a) for a commercially reasonable time await performance by the repudiating party; or

(b) resort to any remedy for breach (Section [2-703](#) or Section [2-711](#)), even though he has notified the repudiating party that he would await the latter's performance and has urged retraction; and

(c) in either case suspend his own performance or proceed in accordance with the provisions of this Article on the [seller's](#) right to identify [goods](#) to the [contract](#) notwithstanding breach or to salvage unfinished goods (Section [2-704](#)).

§ 2-611. Retraction of Anticipatory Repudiation.

(1) Until the repudiating party's next performance is due he can retract his repudiation unless the aggrieved party has since the repudiation cancelled or materially changed his position or otherwise indicated that he considers the repudiation final.

(2) Retraction may be by any method which clearly indicates to the aggrieved party that the repudiating party intends to perform, but must include any assurance justifiably demanded under the provisions of this Article (Section [2-609](#)).

(3) Retraction reinstates the repudiating party's rights under the [contract](#) with due excuse and allowance to the aggrieved party for any delay occasioned by the repudiation.

§ 2-612. "Installment contract"; Breach.

(1) An "installment contract" is one which requires or authorizes the delivery of [goods](#) in separate [lots](#) to be separately accepted, even though the [contract](#) contains a clause "each delivery is a separate contract" or its equivalent.

(2) The [buyer](#) may reject any installment which is non-conforming if the non-conformity substantially impairs the value of that installment and cannot be cured or if the non-conformity is a defect in the required documents; but if the non-conformity does not fall within subsection (3) and the [seller](#) gives adequate assurance of its cure the buyer must accept that installment.

(3) Whenever non-conformity or default with respect to one or more installments substantially impairs the value of the whole [contract](#) there is a breach of the whole. But the aggrieved party reinstates the contract if he accepts a non-conforming installment without seasonably notifying of [cancellation](#) or if he brings an action with respect only to past installments or demands performance as to future installments.

§ 2-613. Casualty to Identified Goods.

Where the [contract](#) requires for its performance [goods](#) identified when the contract is made, and the goods suffer casualty without fault of either party before the risk of loss passes to the [buyer](#), or in a proper case under a "no arrival, no [sale](#)" term (Section [2-324](#)) then

(a) if the loss is total the [contract](#) is avoided; and

(b) if the loss is partial or the [goods](#) have so deteriorated as no longer to conform to the [contract](#) the [buyer](#) may nevertheless demand inspection and at his option either treat the contract as avoided or accept the goods with due allowance from the contract price for the deterioration or the deficiency in quantity but without further right against the [seller](#).

§ 2-614. Substituted Performance.

(1) Where without fault of either party the agreed berthing, loading, or unloading facilities fail or an agreed type of carrier becomes unavailable or the agreed manner of delivery otherwise becomes commercially impracticable but a commercially reasonable substitute is available, such substitute performance must be tendered and accepted.

(2) If the agreed means or manner of payment fails because of domestic or foreign governmental regulation, the [seller](#) may withhold or stop delivery unless the [buyer](#) provides a means or manner of payment which is commercially a substantial equivalent. If delivery has already been taken, payment by the means or in the manner provided by the regulation

discharges the buyer's obligation unless the regulation is discriminatory, oppressive or predatory.

§ 2-615. Excuse by Failure of Presupposed Conditions.

Except so far as a [seller](#) may have assumed a greater obligation and subject to the preceding section on substituted performance:

(a) Delay in delivery or non-delivery in whole or in part by a [seller](#) that complies with paragraphs (b) and (c) is not a breach of his duty under a [contract for sale](#) if performance as agreed has been made impracticable by the occurrence of a contingency the non-occurrence of which was a basic assumption on which the [contract](#) was made or by compliance in [good faith](#) with any applicable foreign or domestic governmental regulation or order whether or not it later proves to be invalid.

(b) Where the causes mentioned in paragraph (a) affect only a part of the [seller's](#) capacity to perform, he must allocate production and deliveries among his customers but may at his option include regular customers not then under [contract](#) as well as his own requirements for further manufacture. He may so allocate in any manner which is fair and reasonable.

(c) The [seller](#) must notify the [buyer](#) seasonably that there will be delay or non-delivery and, when allocation is required under paragraph (b), of the estimated quota thus made available for the buyer.

§ 2-616. Procedure on Notice Claiming Excuse.

(1) Where the [buyer](#) receives notification of a material or indefinite delay or an allocation justified under the preceding section he may by written notification to the [seller](#) as to any delivery concerned, and where the prospective deficiency substantially impairs the value of the whole [contract](#) under the provisions of this Article relating to breach of installment contracts (Section [2-612](#)), then also as to the whole,

(a) terminate and thereby discharge any unexecuted portion of the [contract](#); or

(b) modify the [contract](#) by agreeing to take his available quota in substitution.

(2) If after [receipt](#) of such notification from the [seller](#) the [buyer](#) fails so to modify the [contract](#) within a reasonable time not exceeding thirty days the contract lapses with respect to any deliveries affected.

(3) The provisions of this section may not be negated by [agreement](#) except in so far as the [seller](#) has assumed a greater obligation under the preceding section.s

PART 7. REMEDIES [\[Table of Contents\]](#)

§ 2-701. Remedies for Breach of Collateral contracts Not Impaired.

Remedies for breach of any obligation or promise collateral or ancillary to a [contract for sale](#) are not impaired by the provisions of this Article.

§ 2-702. Seller's Remedies on Discovery of Buyer's Insolvency.

(1) Where the [seller](#) discovers the [buyer](#) to be insolvent he may refuse delivery except for cash including payment for all [goods](#) theretofore delivered under the [contract](#), and stop delivery under this Article (Section [2-705](#)).

(2) Where the [seller](#) discovers that the [buyer](#) has received [goods](#) on credit while insolvent, the seller may reclaim the goods upon demand made within a reasonable time after the buyer's receipt of the goods. Except as provided in this subsection, the seller may not base a right to reclaim goods on the buyer's fraudulent or innocent misrepresentation of solvency or of intent to pay.

(3) The [seller's](#) right to reclaim under subsection (2) is subject to the rights of a buyer in ordinary course of business or other good -faith purchaser for value under Section [2-403](#). Successful reclamation of goods excludes all other remedies with respect to them.

§ 2-703. Seller's Remedies in General.

(1) A breach of contract by the buyer includes the buyer's wrongful rejection or wrongful attempt to revoke acceptance of goods, wrongful failure to perform a contractual obligation, failure to make a payment when due, and repudiation.

(2) If the buyer is in breach of contract the seller, to the extent provided for by this Act or other law, may:

- (a) withhold delivery of such [goods](#);
- (b) stop delivery of the goods under Section [2-705](#);
- (c) proceed under Section [2-704](#) with respect to goods unidentified to the contract or unfinished;
- (d) reclaim the goods under Section [2-507\(2\)](#) or [2-702\(2\)](#);
- (e) require payment directly from the buyer under Section 2-325(c);
- (f) cancel;
- (g) resell and recover damages under Section [2-706](#);

(h) recover damages for non-acceptance or repudiation under (Section [2-708\(1\)](#)) or in a proper case the price (Section [2-709](#));

(j) recover the price under Section [2-709](#);

(k) obtain specific performance under Section [2-716](#);

(l) recover liquidated damages under Section [2-718](#);

(m) in other cases, recover damages in any manner that is reasonable under the circumstances.

(3) If the buyer becomes insolvent, the seller may:

(a) withhold delivery under Section [2-702\(1\)](#);

(b) stop delivery of the goods under Section [2-705](#);

(c) reclaim the goods under Section [2-702\(2\)](#).

§ 2-704. Seller's Right to Identify Goods to the Contract Notwithstanding Breach or to Salvage Unfinished Goods.

(1) An aggrieved [seller](#) under the preceding section may

(a) identify to the [contract conforming goods](#) not already identified if at the time he learned of the breach they are in his possession or control;

(b) treat as the subject of resale [goods](#) which have demonstrably been intended for the particular [contract](#) even though those goods are unfinished.

(2) Where the [goods](#) are unfinished an aggrieved [seller](#) may in the exercise of reasonable commercial judgment for the purposes of avoiding loss and of effective realization either complete the manufacture and wholly identify the goods to the [contract](#) or cease manufacture and resell for scrap or salvage value or proceed in any other reasonable manner.

§ 2-705. Seller's Stoppage of Delivery in Transit or Otherwise.

(1) The [seller](#) may stop delivery of [goods](#) in the possession of a carrier or other bailee when he discovers the [buyer](#) to be insolvent (Section [2-702](#)) or if the buyer repudiates or fails to make a payment due before delivery or if for any other reason the seller has a right to withhold or reclaim the goods.

(2) As against such [buyer](#) the [seller](#) may stop delivery until

(a) [receipt](#) of the [goods](#) by the [buyer](#); or

(b) acknowledgment to the [buyer](#) by any bailee of the [goods](#) except a carrier that the bailee holds the goods for the buyer; or

(c) such acknowledgment to the [buyer](#) by a carrier by reshipment or as a warehouse; or

(d) negotiation to the [buyer](#) of any negotiable document of title covering the [goods](#).

(3)(a) To stop delivery the [seller](#) must so notify as to enable the bailee by reasonable diligence to prevent delivery of the [goods](#).

(b) After such notification the bailee must hold and deliver the [goods](#) according to the directions of the [seller](#) but the seller is liable to the bailee for any ensuing charges or damages.

(c) If a negotiable document of title has been issued for [goods](#) the bailee is not obliged to obey a notification to stop until surrender of possession or control of the document.

(d) A carrier that has issued a non-negotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor.

§ 2-706. Seller's Resale Including Contract for Resale.

(1) Under the conditions stated in Section [2-703](#) on [seller's](#) remedies, the seller may resell the [goods](#) concerned or the undelivered balance thereof. Where the resale is made in [good faith](#) and in a commercially reasonable manner the seller may recover the difference between the resale price and the [contract](#) price together with any incidental damages allowed under the provisions of this Article (Section [2-710](#)), but less expenses saved in consequence of the [buyer's](#) breach.

(2) Except as otherwise provided in subsection (3) or unless otherwise agreed resale may be at public or private [sale](#) including sale by way of one or more [contracts](#) to sell or of identification to an existing contract of the [seller](#). Sale may be as a unit or in parcels and at any time and place and on any terms but every aspect of the sale including the method, manner, time, place and terms must be commercially reasonable. The resale must be reasonably identified as referring to the broken contract, but it is not necessary that the [goods](#) be in existence or that any or all of them have been identified to the contract before the breach.

(3) Where the resale is at private [sale](#) the [seller](#) must give the [buyer](#) reasonable notification of his intention to resell.

(4) Where the resale is at public [sale](#)

(a) only identified [goods](#) can be sold except where there is a recognized market for a public [sale](#) of futures in [goods](#) of the kind; and

(b) it must be made at a usual place or market for public [sale](#) if one is reasonably available and except in the case of [goods](#) which are perishable or threaten to decline in value speedily the [seller](#) must give the [buyer](#) reasonable notice of the time and place of the resale; and

(c) if the [goods](#) are not to be within the view of those attending the [sale](#) the notification of sale must state the place where the [goods](#) are located and provide for their reasonable inspection by prospective bidders; and

(d) the [seller](#) may buy.

(5) A purchaser that buys in [good faith](#) at a resale takes the [goods](#) free of any rights of the original [buyer](#) even though the [seller](#) fails to comply with one or more of the requirements of this section.

(6) The [seller](#) is not accountable to the [buyer](#) for any profit made on any resale. A person in the position of a seller (Section [2-707](#)) or a buyer that has rightfully rejected or justifiably revoked acceptance must account for any excess over the amount of his security interest, as hereinafter defined (subsection (3) of Section [2-711](#)).

§ 2-707. "Person in the Position of a Seller".

(1) A "person in the position of a seller" includes as against a principal an agent that has paid or become responsible for the price of [goods](#) on behalf of his principal or anyone that otherwise holds a security interest or other right in goods similar to that of a [seller](#).

(2) A person in the position of a seller has the same remedies as a seller under this Article.

§ 2-708. Seller's Damages for Non-acceptance or Repudiation.

(1) Subject to subsection (2) and to Section [2-723](#):

(a) the measure of damages for nonacceptance by the buyer is the difference between the contract price and the market price at the time and place for tender together with any incidental or consequential damages provided in Section [2-710](#), but less expenses saved in consequence of the buyer's breach; and

(b) the measure of damages for repudiation by the buyer is the difference between the contract price and the market price at the place for tender at the expiration of a commercially reasonable time after the seller learned of the repudiation, but no later than the time stated in paragraph (a), together with any incidental or consequential damages provided in Section [2-710](#), less expenses saved in consequence of the buyer's breach.

(2) If the measure of damages provided in subsection (1) is inadequate to put the [seller](#) in as good a position as performance would have done then the measure of damages is the profit (including reasonable overhead) which the seller would have made from full performance by the [buyer](#), together with any incidental damages provided in this Article (Section [2-710](#)), due allowance for costs reasonably incurred and due credit for payments or proceeds of resale.

§ 2-709. Action for the Price.

(1) When the [buyer](#) fails to pay the price as it becomes due the [seller](#) may recover, together with any incidental damages under the next section, the price

(a) of [goods](#) accepted or of [conforming goods](#) lost or damaged within a commercially reasonable time after risk of their loss has passed to the [buyer](#); and

(b) of [goods](#) identified to the [contract](#) if the [seller](#) is unable after reasonable effort to resell them at a reasonable price or the circumstances reasonably indicate that such effort will be unavailing.

(2) Where the [seller](#) sues for the price he must hold for the [buyer](#) any [goods](#) which have been identified to the [contract](#) and are still in his control except that if resale becomes possible he may resell them at any time prior to the collection of the judgment. The net proceeds of any such resale must be credited to the buyer and payment of the judgment entitles him to any goods not resold.

(3) After the [buyer](#) has wrongfully rejected or revoked acceptance of the [goods](#) or has failed to make a payment due or has repudiated (Section [2-610](#)), a [seller](#) that is held not entitled to the price under this section shall nevertheless be awarded damages for non-acceptance under the preceding section.

§ 2-710. Seller's Incidental Damages.

(1) Incidental damages to an aggrieved [seller](#) include any commercially reasonable charges, expenses or commissions incurred in stopping delivery, in the transportation, care and custody of [goods](#) after the [buyer's](#) breach, in connection with return or resale of the goods or otherwise resulting from the breach.

(2) Consequential damages resulting from the buyer's breach include any loss resulting from general or particular requirements and needs of which the buyer at the time of contracting had reason to know and which could not reasonably be prevented by resale or otherwise.

(3) In a consumer contract, a seller may not recover consequential damages from a consumer.

§ 2-711. Buyer's Remedies in General; Buyer's Security Interest in Rejected Goods.

(1) A breach of contract by the seller includes the seller's wrongful failure to deliver or to perform a contractual obligation, making of a nonconforming tender of delivery or performance, and repudiation.

(2) If the seller is in breach of contract under subsection (1), the buyer, to the extent provided for by this Act or other law, may:

(a) in the case of rightful cancellation, rightful rejection, or justifiable revocation of acceptance, recover so much of the price as has been paid;

(b) deduct damages from any part of the price still due under Section [2-717](#);

(c) cancel;

(d) cover and have damages under Section [2-712](#) as to all goods affected whether or not they have been identified to the contract;

(e) recover damages for nondelivery or repudiation under Section [2-713](#);

(f) recover damages for breach with regard to accepted goods or breach with regard to a remedial promise under Section [2-714](#);

(g) recover identified goods under Section [2-502](#);

(h) obtain specific performance or obtain the goods by replevin or similar remedy under Section [2-716](#);

(i) recover liquidated damages under Section [2-718](#);

(j) in other cases, recover damages in any manner that is reasonable under the circumstances.

(3) On rightful rejection or justifiable revocation of acceptance a [buyer](#) has a security interest in [goods](#) in his possession or control for any payments made on their price and any expenses reasonably incurred in their inspection, [receipt](#), transportation, care and custody and may hold such goods and resell them in like manner as an aggrieved [seller](#) (Section [2-706](#)).

§ 2-712. "Cover"; Buyer's Procurement of Substitute Goods.

(1) If the seller wrongfully fails to deliver or repudiates or the buyer rightfully rejects or justifiably revokes acceptance, the [buyer](#) may "cover" by making in [good faith](#) and without unreasonable delay any reasonable purchase of or [contract](#) to purchase [goods](#) in substitution for those due from the [seller](#).

(2) The [buyer](#) may recover from the [seller](#) as damages the difference between the cost of cover and the [contract](#) price together with any incidental or consequential damages as hereinafter defined (Section [2-715](#)), but less expenses saved in consequence of the seller's breach.

(3) Failure of the [buyer](#) to effect cover within this section does not bar him from any other remedy.

§ 2-713. Buyer's Damages for Non-delivery or Repudiation.

(1) Subject to Section [2-723](#), if the seller wrongfully fails to deliver or repudiates or the buyer rightfully rejects or justifiably revokes acceptance:

(a) the measure of damages in the case of wrongful failure to deliver by the seller or rightful rejection or justifiable revocation of acceptance by the buyer is the difference between the market price at the time for tender under the contract and the contract price together with any incidental or consequential damages under Section 2-715, but less expenses saved in consequence of the seller's breach; and

(b) the measure of damages for repudiation by the seller is the difference between the market price at the expiration of a commercially reasonable time after the buyer learned of the repudiation, but no later than the time stated in paragraph (a), and the contract price together with any incidental or consequential damages provided in this Article (Section 2--715), less expenses saved in consequence of the seller's breach.

(2) Market price is to be determined as of the place for tender or, in cases of rejection after arrival or revocation of acceptance, as of the place of arrival.

§ 2-714. Buyer's Damages for Breach in Regard to Accepted Goods.

(1) Where the [buyer](#) has accepted [goods](#) and given notification (subsection (3) of Section [2-607](#)) he may recover as damages for any non-conformity of tender the loss resulting in the ordinary course of events from the [seller's](#) breach as determined in any manner which is reasonable.

(2) The measure of damages for breach of warranty is the difference at the time and place of acceptance between the value of the [goods](#) accepted and the value they would have had if they had been as

warranted, unless special circumstances show proximate damages of a different amount.

(3) In a proper case any incidental and consequential damages under the next section may also be recovered.

§ 2-715. Buyer's Incidental and Consequential Damages.

(1) Incidental damages resulting from the [seller's](#) breach include expenses reasonably incurred in inspection, [receipt](#), transportation and care and custody of [goods](#) rightfully rejected, any commercially reasonable charges, expenses or commissions in connection with effecting cover and any other reasonable expense incident to the delay or other breach.

(2) Consequential damages resulting from the [seller's](#) breach include

(a) any loss resulting from general or particular requirements and needs of which the [seller](#) at the time of contracting had reason to know and which could not reasonably be prevented by cover or otherwise; and

(b) injury to person or property proximately resulting from any breach of warranty.

§ 2-716. Buyer's Right to Specific Performance or Replevin.

(1) Specific performance may be decreed if the [goods](#) are unique or in other proper circumstances. In a contract other than a consumer contract, specific performance may be decreed if the parties have agreed to that remedy. However, even if the parties agree to specific performance, specific performance may not be decreed if the breaching party's sole remaining contractual obligation is the payment of money.

(2) The decree for specific performance may include such terms and conditions as to payment of the price, damages, or other relief as the court may deem just.

(3) The [buyer](#) has a right of replevin or similar remedy for [goods](#) identified to the [contract](#) if after reasonable effort the buyer is unable to effect cover for such goods or the circumstances reasonably indicate that such effort will be unavailing or if the goods have been shipped under reservation and satisfaction of the security interest in them has been made or tendered.

(4) The buyer's right under subsection (3) vests upon acquisition of a special property, even if the seller had not then repudiated or failed to deliver.

§ 2-717. Deduction of Damages From the Price.

The [buyer](#) on notifying the [seller](#) of his intention to do so may deduct all or any part of the damages resulting from any breach of the [contract](#) from any part of the price still due under the same contract.

§ 2-718. Liquidation or Limitation of Damages; Deposits.

(1) Damages for breach by either party may be liquidated in the [agreement](#) but only at an amount which is reasonable in the light of the anticipated or actual harm caused by the breach, the difficulties of proof of loss, and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy. Section [2-719](#) determines the enforceability of a term that limits but does not liquidate damages.

(2) If the [seller](#) justifiably withholds delivery of goods or stops performance because of the buyer's breach or insolvency, the buyer is entitled to restitution of any amount by which the sum of the buyer's payments exceeds the amount to which the seller is entitled by virtue of terms liquidating the seller's damages in accordance with subsection (1)

(a) the amount to which the [seller](#) is entitled by virtue of terms liquidating the seller's damages in accordance with subsection (1), or

(b) in the absence of such terms, twenty per cent of the value of the total performance for which the [buyer](#) is obligated under the [contract](#) or \$500, whichever is smaller.

(3) The [buyer's](#) right to restitution under subsection (2) is subject to offset to the extent that the [seller](#) establishes:

(a) a right to recover damages under the provisions of this Article other than subsection (1), and

(b) the amount or value of any benefits received by the [buyer](#) directly or indirectly by reason of the [contract](#).

(4) Where a [seller](#) has received payment in [goods](#) their reasonable value or the proceeds of their resale shall be treated as payments for the purposes of subsection (2); but if the seller has notice of the [buyer's](#) breach before reselling goods received in part performance, his resale is subject to the conditions laid down in this Article on resale by an aggrieved seller (Section [2-706](#)).

§ 2-719. Contractual Modification or Limitation of Remedy.

(1) Subject to the provisions of subsections (2) and (3) of this section and of the preceding section on liquidation and limitation of damages,

(a) the [agreement](#) may provide for remedies in addition to or in substitution for those provided in this Article and may limit or alter the measure of damages recoverable under this Article, as by limiting the

[buyer's](#) remedies to return of the [goods](#) and repayment of the price or to repair and replacement of non-conforming goods or parts; and

(b) resort to a remedy as provided is optional unless the remedy is expressly agreed to be exclusive, in which case it is the sole remedy.

(2) Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this Act.

(3) Consequential damages may be limited or excluded unless the limitation or exclusion is unconscionable. Limitation of consequential damages for injury to the person in the case of consumer [goods](#) is prima facie unconscionable but limitation of damages where the loss is commercial is not.

§ 2-720. Effect of "Cancellation" or "Rescission" on Claims for Antecedent Breach.

Unless the contrary intention clearly appears, expressions of "cancellation" or "rescission" of the [contract](#) or the like shall not be construed as a renunciation or discharge of any claim in damages for an antecedent breach.

§ 2-721. Remedies for Fraud.

Remedies for material misrepresentation or fraud include all remedies available under this Article for non-fraudulent breach. Neither rescission or a claim for rescission of the [contract for sale](#) nor rejection or return of the [goods](#) shall bar or be deemed inconsistent with a claim for damages or other remedy.

§ 2-722. Who Can Sue Third Parties for Injury to Goods.

Where a third party so deals with [goods](#) which have been identified to a [contract for sale](#) as to cause actionable injury to a party to that [contract](#)

(a) a right of action against the third party is in either party to the [contract for sale](#) that has title to or a security interest or a special property or an insurable interest in the [goods](#); and if the goods have been destroyed or converted a right of action is also in the party that either bore the risk of loss under the [contract for sale](#) or has since the injury assumed that risk as against the other;

(b) if at the time of the injury the party plaintiff did not bear the risk of loss as against the other party to the [contract for sale](#) and there is no arrangement between them for disposition of the recovery, his suit or settlement is, subject to his own interest, as a fiduciary for the other party to the [contract](#);

(c) either party may with the consent of the other sue for the benefit of which it may concern.

§ 2-723. Proof of Market Price: Time and Place.

(1) If evidence of a price prevailing at the times or places described in this Article is not readily available the price prevailing within any reasonable time before or after the time described or at any other place which in commercial judgment or under usage of trade would serve as a reasonable substitute for the one described may be used, making any proper allowance for the cost of transporting the goods to or from such other place.

(2) Evidence of a relevant price prevailing at a time or place other than the one described in this Article offered by one party is not admissible unless and until he has given the other party such notice as the court finds sufficient to prevent unfair surprise.

§ 2-724. Admissibility of Market Quotations.

Whenever the prevailing price or value of any goods regularly bought and sold in any established commodity market is in issue, reports in official publications or trade journals or in newspapers or periodicals of general circulation published as the reports of such market shall be admissible in evidence. The circumstances of the preparation of such a report may be shown to affect its weight but not its admissibility.

§ 2-725. Statute of Limitations in Contracts for Sale.

(1) Except as otherwise provided in this section, an action for breach of any contract for sale must be commenced within the later of four years after the right of action has accrued under subsection (2) or (3) or one year after the breach was or should have been discovered, but no longer than five years after the right of action accrued. By the original agreement the parties may reduce the period of limitation to not less than one year but may not extend it. However, in a consumer contract, the period of limitation may not be reduced.

(2) Except as otherwise provided in subsection (3), the following rules apply:

(a) Except as otherwise provided in this subsection, a right of action for breach of a contract accrues when the breach occurs, even if the aggrieved party did not have knowledge of the breach.

(b) For breach of a contract by repudiation, a right of action accrues at the earlier of when the aggrieved party elects to treat the repudiation as a breach or when a commercially reasonable time for awaiting performance has expired.

(c) For breach of a remedial promise, a right of action accrues when the remedial promise is not performed when performance is due.

(d) In an action by a buyer against a person that is answerable over to the buyer for a claim asserted against the buyer, the buyer's right of action against the person answerable over accrues at the time the claim was originally asserted against the buyer.

(3) If a breach of a warranty arising under Section [2-312](#), [2-313\(2\)](#), [2-314](#), or [2-315](#), or a breach of an obligation, other than a remedial promise, arising under Section [2-313A](#) or [2-313B](#), is claimed, the following rules apply:

(a) Except as otherwise provided in paragraph (c), a right of action for breach of a warranty arising under Section [2-313\(2\)](#), [2-314](#), or [2-315](#) accrues when the seller has tendered delivery to the immediate buyer, as defined in Section [2-313](#), and has completed performance of any agreed installation or assembly of the goods.

(b) Except as otherwise provided in paragraph (c), a right of action for breach of an obligation, other than a remedial promise, arising under Section [2-313A](#) or [2-313B](#) accrues when the remote purchaser, as defined in Section [2-313A](#) or [2-313B](#), receives the goods.

(c) If a warranty arising under Section [2-313\(2\)](#) or an obligation, other than a remedial promise, arising under Section [2-313A](#) or [2-313B](#) explicitly extends to future performance of the goods and discovery of the breach must await the time for performance, the right of action accrues when the immediate buyer as defined in Section 2-313 or the remote purchaser as defined in Section [2-313A](#) or [2-313B](#) discovers or should have discovered the breach.

(d) A right of action for breach of warranty arising under Section 2-312 accrues when the aggrieved party discovers or should have discovered the breach. However, an action for breach of the warranty of noninfringement may not be commenced more than six years after tender of delivery of the goods to the aggrieved party.

(4) Where an action commenced within the time limited by subsection (1) is so terminated as to leave available a remedy by another action for the same breach such other action may be commenced after the expiration of the time limited and within six months after the [termination](#) of the first action unless the termination resulted from voluntary discontinuance or from dismissal for failure or neglect to prosecute.

(5) This section does not alter the law on tolling of the statute of limitations nor does it apply to causes of action which have accrued before this Act becomes effective.