



# LAW ADVOCATE GROUP, LLP

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## Doron F. Eghbali Contracts Law

### Contract Formation in Sale of Goods in California

The Uniform Commercial Code ("UCC") governs contracts for sale of goods in California. In this article, we explore in some depth formation of such contracts and remedies available to buyers and sellers in case of breach under UCC.

#### 1. FORMATION

UCC takes a rather practical and liberal approach to contract formation. Under UCC, a contract for sale of goods may be formed in *any* manner sufficient to show agreement, including through conduct of the parties, of course subject to statute of frauds. For instance, even if the parties' correspondence cannot determine the timing of the formation of a contract, a contract for sale of goods exists when the parties' conduct indicates a contract has been formed.

Under UCC, "**Goods**" means ALL [emphasis added] things that are movable at the time of identification.

#### 1.1 OFFER

At common law, offers could be revoked unless supported by consideration. Under (Cal. U. Com. Code Section 2205(a)) provides that a merchant's offer to buy or sell goods is not revocable for lack of consideration during the time stated, or if no time is stated, for a reasonable time. However, in no event the period of irrevocability may exceed three months.

Under UCC, "**Merchant**" means a person who deals in goods of the kind or who otherwise by occupation holds himself or herself out as having knowledge or skill peculiar to the practices or goods involved in the transaction, or to whom that knowledge or skill may be attributed by his or her employment of an agent or broker or other intermediary who by occupation holds himself or herself out as having that knowledge or skill. (Com. Code Section 2104 (1)).

A transaction is "between merchants" if both parties are chargeable with the knowledge or skill of merchants. (Com. Code Section 2104 (3)).



## 1.2. ACCEPTANCE

Unless otherwise restricted, offers may be accepted in any reasonable manner and by any reasonable medium, by either a return promise or performance. (Com. Code Section 2206).

Problems frequently arise when the terms of the acceptance are different from the terms of offer. The question, then arises as to whether contract for sale of goods has been formed even when one of the parties claims the terms of the acceptance were different or include terms that were not in the offers exchanged between the parties. In such event, the following applies (Com. Code Section 2207):

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

(2) The additional terms are to be construed as proposals for addition to the contract. Between merchants such terms become part of the contract unless:

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

(b) They materially alter it; or

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

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

## 1.3. PAROL EVIDENCE

Parol Evidence rule under UCC is a way to ensure, to the extent possible, a finding that the written agreement between the parties was intended as a complete and exclusive statement of the parties.

Parol Evidence is "[t]he principle that a writing intended by the parties to be a final embodiment of their agreement cannot be modified by evidence that adds to, varies or contradicts the writing." (Black's Law Dictionary, Second Pocket Edition, 2001)

It is recommended to add a "Merger Clause" or "Integration Clause" to a contract. An express statement of integration is referred to as "Integration Clause". An integrated agreement is one adopted by parties to be their final, complete, and exclusive statement of the terms of their agreement. (Restatement Second of Contracts)

## 1.4. STATUTE OF FRAUDS

Statute of Frauds is a principle that certain contracts are not legally enforceable (but, not void) if they are not reduced to writing and signed by the party to be charged.

In general, a contract for the sale of goods for the price of \$500 or more is not enforceable until there is some kind of sufficient writing to indicate that a contract for sale of goods has been made AND signed by the party against whom



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enforcement is sought. "Signed" as defined in UCC, includes "any symbol executed or adopted by a party with present intention to authenticate a writing." (Cal. U. Com. Code, Section 1201, (subd. 38)).

In *Donovan v. RRL Corp.* (2001) 26 Cal. 4th 261, 277-278, 109 Cal. Rptr. 2d. 807, 27 P.3d 702, the court found car dealership's printed name appearing in newspaper advertisement constituted signature satisfying statute of frauds.

## 2. OBLIGATIONS

Under UCC, parties are charged with obligations.

The seller is obligated to transfer title to the goods and to deliver the goods to the buyer in accordance with the sales contract. The buyer is obligated to accept those goods AND pay for them in accordance with the terms of the sales contract. (Com. Code Section 2301).

Now, to ascertain what is "in accordance with the contract", the following should be seriously studied and considered: (Com. Code Section 2301 Comment)

- Course of Performance
- Course of Dealing
- Usage of Trade
- Meaning of the Words Used to Define the Scope of the Conditions and Duties
- General Background of Circumstances

Uniform Com. Code Section 1303 defines Course of Performance, course of dealing, and usage of trade as follows:

(a) A "Course of Performance" is a sequence of conduct between the parties to a particular transaction that exists if:

(1) The agreement of the parties with respect to the transaction involves repeated occasions for performance by a party; AND

(2) The other party, with knowledge of the nature of the performance and opportunity for objection to it, accepts the performance or acquiesces in it without objection.

(b) A "course of dealing" is a sequence of conduct concerning previous transactions between the parties to a particular transaction that is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.

(c) A "usage of trade" is any practice or method of dealing having such regularity of observance in a place, vocation, or trade as to justify an expectation that it will be observed with respect to the transaction in question. The existence and scope of such usage must be proved as facts. If it is established that such a usage is embodied in a trade code or similar record, the interpretation of the record is a question of law.

## 3. REMEDIES

Remedies for breach of a contract for sale of goods is governed by uniform commercial code sections 2701-2725.



### 3.1 SELLER'S REMEDIES

If Buyer:

- Wrongfully rejects the goods; or
- Revokes acceptance of the goods; or
- Fails to make a payment on or before delivery; or
- Repudiates the whole or part of the sale contract

Then, the aggrieved Seller with respect to the whole undelivered balance may do any of the following:

1. Withhold delivery of the goods;
2. Stop delivery by bailee;
3. Identify goods under the contract or resell them under Com. Code Section 2704;
4. Resell the goods and recover the difference between the resale price and the contract price as provided under Com. Code Section 2706.
5. Recover damages for nonacceptance, as provided under Com. Code Section 2706;
6. Recover damages for the price of goods, as provided under Com. Code Section 2706;
7. Cancel the contract.

### 3.2. BUYER'S REMEDIES

IF the Seller repudiates the contract or fails to make a delivery, OR the Buyer rightfully rejects or justifiably revokes acceptance, THEN as to the goods involved and as to the whole contract if the breach goes to the whole contract, the Buyer may cancel the contract.

Whether or not the Buyer cancels, the Buyer may also do any of the following:

1. Cover. Cover means to make a good faith reasonable purchase or contract to purchase substitute goods and seek the damages allowed after cover (Com. Code Section 2712(a)). Damages allowed to covering Buyer after Seller's breach include the difference between cost of cover and contract price plus any incidental or consequential damages, minus expenses.
2. Recover damages for non-delivery as provided in Com. Code Section 2711(b).

#### **SALIENT NOTE**

*This article NEITHER supplants NOR supplements the breadth or depth of such rarefied topic. In fact, this article ONLY provides a rudimentary synopsis of such esoteric subject matter.*

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