

UNIFORM COMMERCIAL CODE (EXCERPT)
Act 174 of 1962

PART 5
PERFORMANCE

440.2501 Special property and insurable interest in goods; identification of goods.

Sec. 2501. (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 nonconforming 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 becoming growing crops or the young are conceived if the contract is for the sale of unborn young to be born within 12 months after contracting or for the sale of crops to be harvested within 12 months or the next normal harvest season 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.

History: 1962, Act 174, Eff. Jan. 1, 1964.

440.2502 Special property and insurable interest in goods.

Sec. 2502. (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 or she 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 1 of the following occurs:

(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.

(b) In all cases, the seller becomes insolvent within 10 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 or her special property has been made by the buyer he or she acquires the right to recover the goods only if they conform to the contract for sale.

History: 1962, Act 174, Eff. Jan. 1, 1964;—Am. 2000, Act 348, Eff. July 1, 2001.

440.2503 Tender of delivery by seller; shipment; destination; goods in possession of bailee; documents.

Sec. 2503. (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 the buyer to take delivery. The manner, time, and place for tender are determined by the agreement and this article, and in particular all of the following apply:

(a) Tender must be at a reasonable hour, and if it is a tender of goods, the goods must be kept available for the period reasonably necessary to enable the buyer to take possession.

(b) Unless otherwise agreed, the buyer must furnish facilities reasonably suited to the receipt of the goods.

(2) If section 2504 applies to a shipment, tender requires that the seller comply with that section.

(3) If a seller is required to deliver at a particular destination, tender requires that the seller comply with subsection (1) and also, if appropriate, tender documents as described in subsections (4) and (5).

(4) If goods are in the possession of a bailee and are to be delivered without being moved, both of the following apply:

(a) Except as provided in subdivision (b), tender requires that the seller either tender a negotiable document of title covering the goods or procure acknowledgment by the bailee of the buyer's right to possession of the goods.

(b) Tender to the buyer of a nonnegotiable document of title or of a record directing the bailee to deliver is sufficient tender unless the buyer seasonally 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.

However, risk of loss of the goods and of any failure by the bailee to honor the nonnegotiable 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) Both of the following apply if the contract requires the seller to deliver documents:

(a) The seller must tender all the documents in correct form, except as provided in section 2323(2) with respect to bills of lading in a set.

(b) Tender through customary banking channels is sufficient and dishonor of a draft accompanying or associated with the documents constitutes nonacceptance or rejection.

History: 1962, Act 174, Eff. Jan. 1, 1964;—Am. 2012, Act 87, Eff. July 1, 2013.

440.2504 Delivery by shipment; contract with carrier, documents, notice.

Sec. 2504. 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.

History: 1962, Act 174, Eff. Jan. 1, 1964.

440.2505 Shipment with and without reservation by seller.

Sec. 2505. (1) Both of the following apply if a seller has identified goods to a contract by or before shipment:

(a) The seller's procurement of a negotiable bill of lading to the seller's own order or otherwise reserves in the seller a security interest in the goods. The seller's 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 nonnegotiable bill of lading to the seller or the seller's nominee reserves possession of the goods as security. However, except in a case of conditional delivery under section 2507(2), a nonnegotiable bill of lading naming the buyer as consignee does not reserve a security interest even if the seller retains possession or control of the bill of lading.

(2) If a shipment by a seller with reservation of a security interest is in violation of the contract for sale, it constitutes an improper contract for transportation within section 2504 but it does not impair the rights given to the buyer by shipment and identification of the goods to the contract or impair the seller's powers as a holder of a negotiable document of title.

History: 1962, Act 174, Eff. Jan. 1, 1964;—Am. 2012, Act 87, Eff. July 1, 2013.

440.2506 Financing agency; rights; reimbursement.

Sec. 2506. (1) A financing agency by paying or purchasing for value a draft that 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 that 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.

History: 1962, Act 174, Eff. Jan. 1, 1964;—Am. 2012, Act 87, Eff. July 1, 2013.

440.2507 Tender of delivery; conditions, payment.

Sec. 2507. (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.

History: 1962, Act 174, Eff. Jan. 1, 1964.

440.2508 Improper delivery; cure, replacement.

Sec. 2508. (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.

History: 1962, Act 174, Eff. Jan. 1, 1964.

440.2509 Risk of loss; absence of breach.

Sec. 2509. (1) The following apply if a contract requires or authorizes the seller to ship goods by carrier:

(a) If the contract does not require the seller to deliver the goods at a particular destination, the risk of loss passes to the buyer when the goods are duly delivered to the carrier even if the shipment is under reservation under section 2505.

(b) If the contract does require the seller to deliver the goods at a particular destination and the goods are tendered to the buyer at that destination while in the possession of the carrier, the risk of loss passes to the buyer when the goods are tendered at that destination in a manner that enables the buyer to take delivery.

(2) If goods are held by a bailee to be delivered without being moved, the risk of loss passes to the buyer when 1 of the following occurs:

(a) The buyer receives possession or control of a negotiable document of title covering the goods.

(b) The bailee provides acknowledgment of the buyer's right to possession of the goods.

(c) The buyer receives possession or control of a nonnegotiable document of title or other direction to deliver in a record, as provided in section 2503(4)(b).

(3) If subsection (1) or (2) does not apply, the risk of loss passes to the buyer on the buyer's receipt of the goods if the seller is a merchant. Otherwise, the risk of loss 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 section 2327 on sale on approval and section 2510 on effect of breach on risk of loss.

History: 1962, Act 174, Eff. Jan. 1, 1964;—Am. 2012, Act 87, Eff. July 1, 2013.

440.2510 Risk of loss; effect of breach.

Sec. 2510. (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.

History: 1962, Act 174, Eff. Jan. 1, 1964.

440.2511 Payment by buyer; tender, check.

Sec. 2511. (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 3802), payment by check is conditional and is defeated as between the parties by dishonor of the check on due presentment.

History: 1962, Act 174, Eff. Jan. 1, 1964.

440.2512 Payment by buyer; inspection, nonconforming goods.

Sec. 2512. (1) If the contract requires payment before inspection nonconformity of the goods does not excuse the buyer from so making payment unless

(a) the nonconformity appears without inspection; or

(b) despite tender of the required documents the circumstances would justify injunction against honor under this act (section 5109(b)).

(2) Payment pursuant to subsection (1) does not constitute an acceptance of goods or impair the buyers

right to inspect or any of his or her remedies.

History: 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1998, Act 488, Imd. Eff. Jan. 4, 1999.

440.2513 Inspection by buyer; time, expenses, place, method.

Sec. 2513. (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 2321), 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.

History: 1962, Act 174, Eff. Jan. 1, 1964.

440.2514 Documents; delivery to drawee on acceptance or payment.

Sec. 2514. 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 3 days after presentment; otherwise, only on payment.

History: 1962, Act 174, Eff. Jan. 1, 1964.

440.2515 Adjustment of dispute; preservation of evidence, inspection.

Sec. 2515. 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.

History: 1962, Act 174, Eff. Jan. 1, 1964.