

REMEDIES

2-703 Seller's remedies in general.—Where the buyer wrongfully rejects or revokes acceptance of goods or fails to make a payment due on or before delivery or repudiates with respect to a part or the whole, then with respect to any goods directly affected and, if the breach is of the whole contract, then also with respect to the whole undelivered balance, the aggrieved seller may:

- (1) Withhold delivery of such goods;
- (2) Stop delivery by any bailee as hereafter provided;
- (3) Proceed under the next section respecting goods still unidentified to the contract;
- (4) Resell and recover damages as hereafter provided;
- (5) Recover damages for nonacceptance or in a proper case the price;
- (6) Cancel.

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 the seller learned of the breach they are in her or 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.

2-706 Seller's resale including contract for resale.—

- (1) Under the conditions stated in s. 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 chapter (s. 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 her or 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 who 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 or a buyer who has rightfully rejected or justifiably revoked acceptance must account for any excess over the amount of her or his security interest, as hereinafter defined

2-708 Seller's damages for nonacceptance or repudiation.—

- (1) Subject to subsection (2) and to the provisions of this chapter with respect to proof of market price (s. 2-723), the measure of damages for nonacceptance or repudiation by the buyer is **the difference between the market price at the time and place for tender and the unpaid contract price together with any incidental damages** provided in this chapter (s. 2-710), but **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 chapter (s. 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 she or he must hold for the buyer any goods which have been identified to the contract and are still in her or his control except that if resale becomes possible the seller 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 her or 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, a seller who is held not entitled to the price under this section shall nevertheless be awarded damages for nonacceptance under the preceding section.

2-710 Seller's incidental damages.—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.

2-711 Buyer's remedies in general; buyer's security interest in rejected goods.—

(1) Where the seller fails to make delivery or repudiates or the buyer rightfully rejects or justifiably revokes acceptance then with respect to any goods involved, and with respect to the whole if the breach goes to the whole contract, the buyer may cancel and whether or not he or she has done so may in addition to recovering so much of the price as has been paid:

(a) "Cover" and have damages under the next section as to all the goods affected whether or not they have been identified to the contract; or

(b) Recover damages for nondelivery as provided in this chapter (s. 2-713).

(2) Where the seller fails to deliver or repudiates the buyer may also:

(a) If the goods have been identified recover them as provided in this chapter (s. 2-502); or

(b) In a proper case obtain specific performance or replevy the goods as provided in this chapter (s. 2-716).

(3) On rightful rejection or justifiable revocation of acceptance a buyer has a security interest in goods in his or her 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 (s. 2-706).

2-712 "Cover"; buyer's procurement of substitute goods.—

(1) After a breach within the preceding section 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 (s. 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 her or him from any other remedy.

2-713 Buyer's damages for nondelivery or repudiation.—

(1) Subject to the provisions of this chapter with respect to proof of market price (s. 2-723), the measure of damages for nondelivery or repudiation by the seller is the difference between the market price at the time when the buyer learned of the breach and the contract price together with any incidental and consequential damages provided in this chapter (s. 2-715), but 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 (s. 2-607(3)) he or she may recover as damages for any nonconformity 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 where the goods are unique or in other proper circumstances.

(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 for goods identified to the contract if after reasonable effort she or he 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. In the case of goods bought for personal, family, or household purposes, the buyer's right of replevin 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 her or 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. A term fixing unreasonably large liquidated damages is void as a penalty.

(2) Where the seller justifiably withholds delivery of goods because of the buyer's breach, the buyer is entitled to restitution of any amount by which the sum of his or her payments exceeds:

(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, 20 percent 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 chapter 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 or her resale is subject to the conditions laid down in this chapter on resale by an aggrieved seller (s. 672.706).

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 chapter and may limit or alter the measure of damages recoverable under this chapter, as by limiting the buyer's remedies to return of the goods and repayment of the price or to repair and replacement of nonconforming 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 code.

(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.

2-723 Proof of market price; time and place.—

(1) If an action based on anticipatory repudiation comes to trial before the time for performance with respect to some or all of the goods, any damages based on market price (s. 2-708 or s. 2-713) shall be determined according to the price of such goods prevailing at the time when the aggrieved party learned of the repudiation.

(2) If evidence of a price prevailing at the times or places described in this chapter 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.

(3) Evidence of a relevant price prevailing at a time or place other than the one described in this chapter offered by one party is not admissible unless and until he or she 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.