

# Performance and breach of sales contract

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Running head: Performance and Breach of Sales Contract Performance and Breach of Sales Contract Quynh Nguyen Upper Iowa University BA 302: Business Law Instructor: Paul Croushore Jun 3, 2009 Sales Contract: A sale occurs when there is an exchange of goods or other property from the seller to the buyer for money. In order to create in each party a duty to do or not to do something and a right to performance of the other's duty or a remedy for the breach of the other's duty, we need to set up a contract. Obligations of the parties: The obligations of the parties, as assigned in the terms of the contract, are governed by the general law of contracts. The obligation of the seller is to furnish the goods, as agreed upon, the buyer to pay therefore. Thus, when the seller offers to turn the goods over to the buyer and when the buyer offers to pay for them, tender of performance occurs.

The seller must make tender of delivery and the buyer must make tender of payment. ? Tender of delivery by Seller: To be in a position to bring suit on a sales contract, the seller of goods must make tender of delivery, that is, offer to turn the goods over to the buyer. Failure to make this offer is an excuse for buyers not to perform their part of the bargain. The seller must put and hold the goods at the buyer's disposition and notify the buyer that the goods are being tendered during reasonable hours and for a reasonable period of time. In a shipment contract, the seller must put the goods in the possession of a carrier and contract with that carrier for their transportation. Any necessary documents must be sent to the buyer, who must be promptly notified of the shipment. If the seller does not make a reasonable contract for delivery or notify the buyer and a material delay or loss results, the buyer has the right to reject the shipment.

Suppose the goods are perishable, such as fresh produce, and the seller does not ship them in a refrigerated truck or railroad car. If the produce deteriorates in transit, the buyer can reject the produce on the ground that the seller did not make a reasonable contract for shipping it. Sometimes the goods are in the possession of a warehouse and are to be turned over to the buyer without being moved. When this situation occurs, tender requires that the seller either tender a document of title covering the goods or obtain an acknowledgement by the warehouse of the buyer's right to their possession. The risk of loss as to the goods remains with the seller until the warehouse agrees to hold them for the buyer. ? Tender of payment by Buyer: Tender of payment by buyer means offering to turn the money over to the seller. Normally, the buyer has the right to inspect the goods before accepting or paying for them.

However, when a contract requires payment before inspection, as when the goods are shipped c. . d. (cash on delivery), the buyer must pay for them first, even if they turn out to be defective when they are inspected. Of course, if the defect is obvious, the buyer would not have to accept or to pay for the goods. Payment by the buyer before inspecting the goods does not constitute an acceptance of them. Unless the seller demands cash, the buyer may pay for the goods by personal check or by any other method used in the ordinary course of business.

If the seller demands cash, the seller must give the buyer a reasonable amount of time to obtain it. Payment by check is conditional on the check's being honored by the bank when it is presented for payment. If the check

clears, the debt is discharged. If the check is dishonored, the debt is revived. In that case, the buyer does not have the right to retain the goods and must give them back to the seller. Buyer's rights and duties upon delivery of improper goods: Except when a contract requires payment before inspection, as when the goods are shipped c. o.

d. as mentioned above, the buyer has the right to inspect the goods before accepting them or paying for them. When defective goods or goods not of the kind specified in the contract are delivered, the buyer may elect to reject them all, accept them all, or accept any commercial unit or units and reject the rest. ? Acceptance: Acceptance of goods occurs when a buyer, after having a reasonable opportunity to inspect them, either indicates that he will take them or fails to reject them. When the buyer accept goods and later discovers something wrong with them, the buyer must notify the seller within the reasonable time after the discovery. The failure to give proper notice will prevent the buyer from having recourse against the seller. The buyer is obligated to goods that are accepted.

If the buyer accept all the goods sold, she is, of course, responsible for the full purchase price. If the buyer accepts only part of the goods, she must pay for that part at the contract rate. ? Rejection: A rejection occurs when a buyer refuses to accept delivery of goods tendered. A rejection must be done within a reasonable time after delivery or tender to the buyer. In addition, the buyer must notify the seller of the particular defect in the goods so as to give the seller an opportunity to correct the defect. If the seller gives no instructions within a reasonable time after being notified of the rejection, the

buyer may store the goods for the seller, reship them to the seller, or resell them for the seller. In all case, the buyer is entitled to be reimbursed for expenses.

? Revocation of acceptance: If a buyer has accepted the goods on the assumption that their nonconformity would be corrected by the seller and the seller does not do so, the buyer may revoke the acceptance. This revocation must be made within a reasonable time after the buyer discovers the nonconformity. A revocation of an acceptance is not effective until the buyer notifies the seller of it. Buyers who revoke an acceptance have the same rights and duties with regards to the goods involved as if they had rejected them. Seller's right to cure improper tender: If the seller has some reason to believe that the buyer would accept non conforming goods, then the seller can take a reasonable time to reship the conforming goods. The seller has this opportunity even if the original time for delivery has expired. In all cases, sellers must notify buyers that they are going to cure the improper tender or delivery.

The seller does not have the right to cure improper tender when a buyer accepts nonconforming goods, even though the buyer may later sue the seller for breach of contract. The seller has the right only when the buyer either rejects the goods tendered or revokes an acceptance of the goods.

Breach of Contract: Breach of contract occurs when one of the parties fails to do what was agreed upon in the contract. An anticipatory breach must be made by an act which indicates the party will not complete the work. When breaches happen, the ther party to the contract has specific remedies

available under the UCC. ? Seller's remedies: The buyer may breach the contract in a number of ways. The most common are: by wrongfully refusing to accept goods, by wrongfully returning goods, by failing to pay for goods when payment is due, and by indicating an unwillingness to go ahead with the contract.

When a buyer breaches a sales contract, the seller may select from a number of remedies: ? Cancellation and withholding of delivery: If the goods have not been delivered. The seller has the right to keep them upon learning of the buyer's breach. If the seller is in the process of manufacturing the goods, she has two choices. She may complete manufacture of the goods, or she may stop manufacturing and sell the uncompleted goods for their scrap or salvage value. In choose between these alternatives, the seller should select the alternative that will minimize the loss. ? Stop delivery of the goods: if after shipping the goods, the seller discover that the buyer is insolvent (unable to pay debts), the seller may have the delivery stop by before the goods reach their destination. However, if the insolvency information is incorrect, both the seller and the carrier could be sued for damages suffered by the carrier for not completing the shipment.

? Resell the goods: the seller may resell the goods or the undelivered balance of them. After the sale, the injured party may sue the other for the difference between what the property brought on resale and the price the buyer had agreed to pay in the contract. A purchaser who buys in good faith at a resale takes the goods free of any rights of the original buyer. Recover damages: the seller may retain the merchandise and sue the buyer for either

the difference between the contract price and the market price at the time the buyer breached the agreement or the profit that the seller would have made had the contract been performed. ? Buyer's remedies: A seller may breach a contract in a number of ways: failing to make an agreed delivery, delivery goods that do not conform to the contract, and indicating that he does not intend to fulfill the obligations under the contract. The buyer then may select from a number of remedies: ? Cover the sale: If the seller fails or refuse to deliver the goods called for in the contract, the buyer can similar goods from someone else. Then he can recover as damages from the seller the difference between the contract price and the cost of the substitute goods.

? Keep goods and seek adjustment: when improper goods are delivered, the buyer may keep them and ask the seller for an adjustment. If no adjustment is made, the buyer may sue the seller for either breach of contract or breach of warranty, which ever applies. Sue for specific performance: when the goods are unique or rare, the buyer may ask the court to order the seller to do what he or she agreed to do under the contract terms. This request is known as an action for specific performance of the contract. Reference Mallor, J. P. , Barnes, A.

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