

## Performance

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## Performance

- Seller's
- Buyers

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## Seller's Obligation I

- Delivery
  - Tender of delivery: goods that conform to contract must be put at buyer's disposal
- Time of Delivery
  - Set by contract or reasonable time
  - Goods must be kept available to buyer; all goods at one time

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## Seller's Obligation II

- Place of Delivery
  - No Specification
    - Seller's place of business or residence
    - Both aware of other location of goods
  - Shipment Contract
    - Delivery to Carrier
  - Destination Contract
    - Delivery to specified destination

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## Seller's Obligation III

- Condition of Goods
  - Perfect Tender Rule: Must Conform exactly to contract
  - If not:
    - Buyer may reject
    - Buyer may accept whole
    - Buyer may accept any unit

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## Seller's Obligation IV

- Buyer's Right to Reject under Perfect Tender Rule
  - May be amended by agreement
  - Must give seller opportunity to cure
    - Time has not expired
    - Seller reasonably thought nonconforming goods would be acceptable
    - Seller must notify buyer of intent to cure
  - Installment Contract-impairs whole contract?

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## Performance by the Buyer

- The Buyer has right of inspection
  - Inspection takes place at destination of goods
  - Inspection may include testing samples
  - Standard of reasonableness
    - Can be conducted at any reasonable place and time in any reasonable manner
- Payment

## Rejection by Buyer

- Hold for a reasonable period of time
- Seller should give instructions on what to do with goods
- If no instructions, buyer has three options:
  - Store the goods at seller's expense
  - Ship goods back at seller's expense
  - Resell for the seller (best course if perishable goods is to sell, cover expenses and commission, and forward rest of money to seller)

## Acceptance

- Acceptance
  - Express, by notification to seller
  - Implied, by buyer's actions, such as use of goods
  - Effect of Acceptance
  - Buyer must pay, but can still recover for damages caused by nonconformity

## Revocation of Acceptance: Four Requirements

- Problem must substantially impair value
- Lack of knowledge, or belief that problem would be cured
- Revocation in a reasonable time
- No major change other than those resulting from defect

## Obligation of Payment

- Agreement of Parties
- Absence agreement, payment due at time and place buyer is to receive goods

## Assurance, Repudiation, and Excuse

- Assurance
  - Request must be in writing
  - Other party has reasonable time, but not longer than 30 days, in which to respond
  - Waiver of one instance of performance does not constitute a waiver as to future performance
  - Assurance may consist of a promise to perform, partial payment, or partial delivery

## Anticipatory Repudiation

- Repudiation before the time to perform
- Express communication
- Action
- Failure to give assurance
- Suspend performance and resort to any remedy

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## Commercial Impracticality

- Unforeseen
- Notice to the nonbreaching party
- Performance is not excused because of changes in market prices, market supplies, and demands

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