

Performance

Performance

- Seller's
- Buyers

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

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

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

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?

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

Commercial Impracticality

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