MERCHANT CONTRACTS
FOR SMALL BUSINESS
What Every Small Business Should Know
Follow-Up Survey
Merchant Contracts for Small Business

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1. How did you receive a copy of the Merchant Contracts for Small Business guidebook?
   - Community Agency
   - Advertisement
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   - Business Incubator
   - Friend
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   - Tradeshow/Event
   - Chamber of Commerce
   - College
   - Trade Association
   - State Agency
   - Other

2. Did you find this guide helpful for your business?  
   - Yes  
   - No

3. How would you rate this guide's readability?  
   - Excellent  
   - Average  
   - Below Average  
   - Poor

4. What suggestions (if any) do you have for improving the manual?
   

5. Would you like to receive additional information about any of the following?
   - Financing your business
   - Workers' Compensation
   - Legal Issues Guide
   - How to reduce your energy costs
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6. Would you like additional copies of this Merchant Contract for Small Business guidebook mailed to you at the above address?  
   - Yes  
   - No
   

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   - Yes  
   - No
   

8. What other guides would be helpful to you to meet your business objectives?
   

9. Additional Activities: We'd like to follow-up with additional activities that would be helpful to your business efforts. Which of the following might interest you?  
   - Marketing Seminar  
   - Access to Financing  
   - Business Assistance
   

Date

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We hope that you will find the information in this guide helpful and informative.

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CHAPTER GUIDE

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Overview and Background

Uniform Commercial Code

The Uniform Commercial Code (the "UCC") is a set of model laws prepared by the National Conference of Commissioners on Uniform State Laws to provide consistent and uniform laws for conducting business. A version of the UCC has been adopted in all States, except Louisiana. However, the UCC is not "the law" and while it is intended to be "uniform" across all States, each State's version of the UCC is slightly different. The version of Article 2 of the UCC adopted in California can be found in the California Commercial Code.

General Practice Tip: If the Buyer and Seller are in different States, consult with legal counsel to understand the differences in the specific laws in each State's version of the UCC.

UCC Article 2: Sale of Goods

Article 2 of the UCC applies to transactions involving the sale of goods (e.g., computers, cell phones, staplers and coffee mugs). Article 2 does not apply to services (e.g., consulting services, marketing services or plumbing services).

This Guide summarizes certain provisions of Article 2. It is not a comprehensive overview of Article 2. For your reference, Annex A at the end of this Guide contains the text of the sections of UCC Article 2 that are mentioned in this Guide, in the versions that have been adopted by the State of California in the California Commercial Code as of the date stated in the Annex.

This Guide looks at provisions of Article 2 from the Buyer’s and the Seller’s perspective. It also provides certain “Buyer/Seller Practice Tips”. If the Buyer and the Seller are in different States, you should consult with legal counsel to determine whether these Practice Tips apply in both States.

Merchants

As a general rule, under Article 2 of the UCC “merchants” are held to a higher standard of knowledge and skill with respect to the goods involved in the sales transaction. Generally, a Seller of goods is considered a merchant in connection with a sales transaction if the Seller is one who deals in goods of the kind involved in the transaction or otherwise holds itself out as having special knowledge or skill relating to the goods involved in the transaction. (See §2-104).
In a transaction involving the purchase and sale of goods, the obligation of the Seller is to transfer and deliver the goods to the Buyer and the obligation of the Buyer is to accept and pay for the goods, all in a manner consistent with the terms of the contract between the Buyer and the Seller. (See §2-301). The “business” objectives of the Seller and the Buyer are very different. The Seller’s primary objectives are to make the sale and to collect and retain the price paid by the Buyer for the goods sold. In connection with these objectives, the Seller also wants to ensure that the Seller does not assume unnecessary risks regarding the quality or performance of the goods sold in light of the price received from the Buyer. Alternatively, the Buyer’s primary objective is to ensure that the Buyer is receiving fair value for the goods purchased (i.e., the price paid for the goods is consistent with the value/quality of the goods). This guide does not provide guidance as to the “right” or “fair” price for particular goods. Rather, it focuses on key risk management and risk allocation issues in connection with the purchase and sale of goods. Specifically, this guide focuses on the risks related to (i) the Seller’s obligation to deliver quality goods and the Buyer’s right to receive quality goods, (ii) the Seller’s potential liability for goods sold to the Buyer and (iii) the way the Seller will attempt to minimize or reduce such potential liability.

Generally, a contract for the sale of goods for the price of $500 or more must be in writing. (See §2-201). However, contracts governing the purchase and sale of goods may be made in any manner sufficient to show agreement, including conduct by the Buyer and the Seller that recognizes the existence of such an agreement. (See §2-204). Generally, contracts for the sale of goods come in one of three forms. First, there might be a written agreement that is signed by the Buyer and the Seller setting forth the specific goods to be purchased, including the quantity of such goods, the price to be paid for the goods and other rights and obligations of the Buyer and the Seller. Second, the Buyer might issue a purchase order to the Seller that includes the Buyer’s proposed contract terms and/or the Seller might issue an order acknowledgement and/or an invoice that includes the Seller’s proposed contract terms. Finally, the Seller and the Buyer may reach an oral agreement (or exchange purchase orders/invoices with no contractual terms) and if the Seller ships the goods to the Buyer and the Buyer pays the Seller for the goods, then there is a contract for the sale of goods between the Buyer and the Seller.
Gap Filling Terms

If there is no written contract between the Buyer and the Seller, and the Buyer and the Seller complete a sale of goods (i.e., the Seller delivers the goods and the Buyer pays the price for the goods), then the terms in Article 2 are intended to describe the rights and obligations of the Buyer and Seller with respect to the goods sold.

Similarly, when the Buyer and Seller do not set forth their full agreement in writing or if such agreement is incomplete, there will be “gaps” as to the rights and obligations of the Buyer and the Seller. The terms in Article 2 essentially provide default terms that “fill-the-gaps” left by the incomplete written agreement.

Article 2’s “gap-filling” terms, such as those relating to warranties, remedies and damages, are generally considered to be more favorable to the Buyer.

Buyer Practice Tip: Buyers should be more willing to rely on the “gap-filling” terms of Article 2.

Seller Practice Tip: On the other hand, Sellers should take care when relying on the “gap filling” terms of Article 2, in light of the implied warranties granted to the Buyer and the remedies available to the Buyer if the Seller is not able to perform its obligations under the agreement or if there are defects in the goods sold to the Buyer. Instead, Sellers should attempt to describe completely the rights, obligations, remedies and limits on warranties, damages and liability in any contract for the sale of goods.
Delivery

Unless otherwise agreed upon by the Buyer and the Seller, the place of delivery of goods is the Seller's place of business. The time for shipment or delivery of goods to the Buyer is a reasonable time unless otherwise agreed upon by the Buyer and the Seller. (§§2-308; 2-309).

Where the contract with the Buyer requires or authorizes the Seller to ship the goods to the Buyer by carrier, if the contract does not require the Seller to deliver the goods at a particular destination (i.e., the destination specified by the Buyer), the risk of loss and damage to the goods during transit passes to the Buyer when the goods are delivered by the Seller to the carrier. However, if the contract with the Seller does require the Seller to deliver the goods at a specified place, then the risk of loss passes to the Buyer only when the goods are tendered to the Buyer at the specified place of delivery. (§2-509).

Practice Tip: If the Buyer is relying on receipt of the goods at a specified place and on a specified date, then the Buyer should ensure that the contract with the Seller is clear as to (i) the date and place of delivery, (ii) which party is paying for the shipping costs and (iii) which party has the risk of loss if the goods are lost or damaged during shipment to the Buyer.

Inspection; Acceptance and Rejection

Inspection

Unless otherwise agreed upon by the Seller and the Buyer, generally the Buyer has the right to reasonably inspect the goods before payment or acceptance of the goods. (§2-513). The purpose of the Buyer's inspection is to confirm that the goods conform with the contract between the Buyer and the Seller. That is, the Buyer may inspect the goods to verify that (i) the goods shipped by the Seller were the goods actually ordered by the Buyer, (ii) the quantity of goods delivered by the Seller was the quantity ordered by the Buyer, (iii) the quality of the goods is consistent with the Seller's claims and warranties regarding quality and (iv) to the extent that the Seller had the risk of loss or damage to the goods during shipment to the Buyer, that the goods were not damaged during shipment to the Buyer.

Buyer Practice Tip: Upon receipt of the goods from the Seller, the Buyer should exercise its right to inspect the goods and should not delay contacting the Seller if the goods do not conform with the contract with the Seller.
Acceptance

Acceptance of goods by the Buyer occurs when the Buyer (i) after a reasonable opportunity to inspect the goods signifies to the Seller that the goods are conforming or that the Buyer will take the goods in spite of any nonconformity, (ii) fails to make an effective rejection of the goods, or (iii) when the Buyer does any act inconsistent with the Seller’s ownership. (§2-606).

Generally, “acceptance” means that the Buyer has agreed to become the owner of the goods.

The following are examples of where courts have found that the activities of the Buyer were inconsistent with the Seller’s ownership of the goods: (a) the Buyer attempted to sell the goods, (b) the Buyer painted, repaired and paid taxes on the goods and (c) the Buyer used the goods as if the Buyer was the owner of the goods.

Once goods are accepted by the Buyer, the Buyer must pay for goods. (§2-607).

Rejection

If the goods delivered to the Buyer fail to conform to the agreement between the Buyer and the Seller, then the Buyer may reject the goods, accept the goods or accept any commercial unit or units and reject the rest. (§2-601). Unless a specific period is included in the agreement between the Buyer and the Seller, any rejection of goods by the Buyer must be within a reasonable time after delivery and the Buyer must promptly notify the Seller of such rejection. (§2-602). If the Buyer does not notify the Seller of the Buyer’s rejection of the goods within the applicable time period (i.e., the time period specified the agreement with the Seller or if no time period is specified in the agreement with the Seller, then a reasonable time after delivery of the goods to the Buyer), then, as noted above, the Buyer will be deemed to have accepted the goods. Therefore, the Buyer’s rejection of goods will only be effective if (a) the Buyer properly rejects the goods and (b) the Buyer actually notifies the Seller of such rejection.

Revocation of Acceptance

After the Buyer’s acceptance, the Buyer may not later reject the goods. (§2-607). However, the Buyer may “revoke” acceptance if, after accepting the goods, the Buyer finds a non-conformity that “substantially impairs the value of the goods to the Buyer”. Note that this is a higher standard than is required for the Buyer to reject the goods before an acceptance as described above (i.e., the Buyer may reject goods if “the goods delivered fail to conform to the agreement”). Courts have been reluctant to specifically define the term “substantially impairs”. However, the term “impair” generally means a decrease in the value of the goods. Therefore, the term “substantially impairs” likely means that the goods must be substantially less valuable than the goods the Seller was required to deliver to the Buyer. A minor defect or minor decrease in value would not constitute a “substantial impairment” entitling the Buyer to revoke acceptance.

At least one court has stated that “Each case must be carefully examined on its own merits to determine what is a ‘substantial impairment of value.’ We are aware that what may cause one person great inconvenience or financial loss, may not another.” In addition, courts have evaluated the issue of “substantial impairment” by considering (a) the Buyer’s subjective reaction to the
defect in the goods in light of the Buyer's needs and circumstances and (b) the objective reasonableness of the Buyer's reaction and the Seller's willingness to correct the defect. The phrase "Buyer's subjective reaction" means that the court will look at the value of the goods to the particular Buyer and not the value of the goods to an "average Buyer" or group of Buyers. However, this does not mean that the Buyer may revoke acceptance whenever the Buyer is dissatisfied with the goods for any reason. Rather, the "Buyer's subjective reaction" is intended to enable the Buyer to show the Buyer's own special needs and the unique use of the goods by the Buyer and that the value of goods is substantially impaired in light of those needs and such use.

Another way to analyze the phrase "substantial impairment" is to look at the cost of repairing the goods. The greater the cost, the greater the probability that there is a "substantial impairment". The following are two example of what courts have found to be "substantial impairment" entitling the Buyer to revoke acceptance of the goods: (a) the failure to include a spare tire with a new automobile constituted substantial impairment in the value of the automobile, especially since the Buyer had ordered special tires and (b) weakness in the floors of a mobile home that caused the Buyer to be fearful that the floors would collapse.

Revocation by the Buyer must occur within a reasonable time after the Buyer discovers or should have discovered the nonconformity and before any substantial change in the condition of goods. In the case of a proper revocation, the Buyer has the same rights and remedies available as if the Buyer had rejected the goods, including no obligation to pay the purchase price or a refund of the purchase price if the Buyer had already paid for the goods. (§2-608).

Remedies Upon Rejection and Revocation

If the Buyer rightfully rejects the goods delivered by the Seller or properly revokes acceptance of the goods, then the Buyer may cancel the agreement, recover the price paid and may recover other damages including the additional cost incurred in purchasing substitute goods. (§§2-711, 2-712). In addition, the Buyer might be entitled to recover additional damages for the Seller's failure to deliver conforming goods to the Buyer in accordance with the agreement between the Buyer and the Seller.

Seller's Practice Tip – Deemed Acceptance: As noted above, the Buyer has a reasonable period of time to inspect the goods delivered by the Seller and to reject such goods if the goods do not conform with the agreement. The Seller should include in agreements with the Buyer specific periods of time during which the Buyer may inspect goods delivered and during which the Buyer must exercise the right to reject the goods by written notice to the Seller. If the Buyer does not reject goods within such specified period, then the agreement should state that the Buyer will be deemed to have accepted the goods.

Seller's Practice Tip – Sole Remedies: As noted above, if the Buyer rejects the goods, the Buyer is entitled to a number of potential remedies. In order to limit the potential liability of the Seller, the Seller should include in the agreement with the Buyer a statement of the limited remedies available to the Buyer if the Buyer rejects the goods. The remedies should be limited to (i) repairing the goods, (ii) replacing the goods or (iii) refunding the price paid for the goods. It should also be stated in the agreement that the remedy that is provided to the Buyer will be the Buyer’s “sole and exclusive remedy”.
Warranties and Warranty Disclaimers

Generally

As noted above, the Buyer’s primary business goal is to ensure that the Buyer is receiving a fair value in connection with the Buyer’s purchase of the goods (i.e., the price paid for the goods is consistent with the value/quality of the goods). One way the Buyer does this is to obtain “warranties” from the Seller as to the quality or performance of the goods. A warranty is a promise by the Seller to the Buyer that the product will perform in a certain way. For example, the Seller might warrant to the Buyer that a printer will print so many pages per minute. This might be particularly important to the Buyer if the Buyer has large printing jobs that need to be printed on a strict time schedule.

On the other hand, the Seller wants to make sure that the warranties being granted to the Buyer are consistent with the actual quality and performance of the goods so that the Seller does not expose itself to uncertain risks and damages if the product does not conform with the warranty.

Express Warranties

Under Article 2, in certain circumstances a Seller will be deemed to have made express warranties to a Buyer. Generally, an “express warranty” is an affirmative statement made by the Seller to the Buyer that the product will perform in a specified manner. Express warranties might arise in connection (i) any product performance or quality claim or statement made by the Seller to the Buyer relating to the goods, (ii) any description of the goods by the Seller that are relied upon by the Buyer, or (iii) samples or models provided by the Seller that are relied upon by the Buyer. Significantly, it is not necessary to the creation of an express warranty that the Seller use the term “warranty” or “guarantee”, or that the Seller have an intention to make a warranty. However, a claim or statement by the Seller regarding the value of the goods or a statement merely claiming to be the Seller’s opinion of the goods does not create a warranty. (See § 2-313).

Buyer’s Practice Tip: If the Buyer is relying on statements made by the Seller, or the Seller’s description of the goods or samples of the goods, then the Buyer should include in the contract for the sale of the goods express warranties as to such statements, descriptions and samples.

Seller’s Practice Tip: While talking with the Buyer, the Seller should be careful when (i) making statements about or otherwise describing the goods and (ii) when showing samples or models of the goods. In addition, the Seller should include appropriate disclaimers of warranties in the contract for the sale of the goods.

Implied Warranties

An “implied warranty” is not an express warranty as described above. Rather, an implied warranty is a warranty that the law imposes on the Seller where the Seller is treated as if the Seller had made an express warranty, even though the Seller made no such express warranty to the Buyer.
Merchantability

If the Seller is a merchant of the goods of the kind sold to the Buyer, then there is an “implied warranty” that the goods will be merchantable, unless the contract with the Buyer provides otherwise.

Merchantable goods are goods that, among other things (i) “pass without objection in the trade” under the contract description and (ii) in the case of fungible goods (units of goods that are identical to every other unit, such as in the case of grain, oil, or flour), are of fair average quality within the description of the goods. ($ 2-314). Generally, merchantable goods are fair or of average quality, not the worst or least quality, but average.

Merchantable goods are also goods that are fit for the ordinary purpose for which such goods are used. (§ 2-314).

Fitness for Particular Purpose

Where the Seller at the time of contracting with the Buyer has reason to know of any particular purpose for which the goods are required by the Buyer and that the Buyer is relying on the Seller’s skill or judgment to select or furnish suitable goods, there is unless excluded or modified in the contract with the Buyer, an “implied warranty” that the goods shall be fit for such purpose. (§ 2-315).

Warranty of Title and Non-Infringement

Unless a contract for the sale of goods provides otherwise or unless the Buyer has unique knowledge to the contrary, Article 2 implies a warranty by the Seller to the Buyer that good title is being conveyed to the Buyer and the goods are free of security interests, liens or other encumbrances (e.g., a claim or right held by a third party on title to the goods, such that the third party might have the right to take the goods from the Buyer). (See § 2-312(1)). This “implied warranty” is intended to give the Buyer comfort that if a third party seeks to take the goods from the Buyer, the Buyer will have a breach of contract claim against the Seller. For example, if the Seller sells a computer to the Buyer and the Seller did not have good title to the computer (i.e., did not own the computer) or if the Seller’s bank had a lien on the computer, then person with title or the bank might seek to reclaim the computer from the Buyer. If the third party or the bank has a valid claim to the computer, then the Buyer may bring a legal action against the Seller for the damages suffered by the Buyer as a result of the Buyer having to give the computer to either the third party with title or the bank.

In addition, if the Seller is a merchant, then Article 2 implies a warranty by the Seller that the goods will not infringe or violate a third party’s intellectual property rights (for example, trademarks, copyrights and patents). (See § 2-312(3)). However, if the Buyer furnishes specifications to the Seller and the goods are made in compliance with such specifications, then the Buyer must “hold the Seller harmless” from any third party infringement arising out of compliance with such specifications. (See § 2-312(3)). While the
phrase “hold harmless” is not well defined in the law, it is generally interpreted to mean that the Buyer is responsible for compensating the Seller for any loss or damage suffered by the Seller as a result of complying with the Buyer’s specifications.

Excluding Implied Warranties

The Seller may exclude the “implied warranties” in the contract with the Buyer. However, to exclude the implied warranty of merchantability the exclusion must mention the word “merchantability” and in the case of a written contract, the exclusion must be “conspicuous”.

To exclude the implied warranty of fitness for a particular purpose the exclusion must be in writing and must be “conspicuous". In addition, all implied warranties may be excluded by expressions like the goods are being sold "as is" and "with all faults". (See § 2-316).

While the UCC does not define the term “conspicuous”, legal practitioners generally interpret this requirement to require that the exclusion be in ALL CAPS to set it apart from the balance of the agreement between the Buyer and the Seller. For example, the agreement between the Buyer and the Seller might say something like the following: “THE SELLER HEREBY DISCLAIMS ALL THE IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.”

Seller’s Practice Tip: Include terms in agreements with the Buyer that disclaim all implied warranties, including without limitation the implied warranties of merchantability and fitness for a particular purpose.

Buyer’s Practice Tip: If the Buyer is relying on statements made by the Seller that the goods will be of a certain quality or will perform in a certain way, then such warranties should be included in the agreement with the Seller.

Warranties Outside the UCC. In addition to the warranties described in Article 2 of the UCC, certain consumer warranty laws apply to the sale of consumer goods. For example, the Magnuson Moss Warranty Act (15 U.S.C. §2301) imposes certain obligations on a Seller of consumer products (i.e., products normally used for personal, family or household purposes). In addition, some States have passed legislation intended to provide additional warranty protection to consumers. For example, California has passed the Song-Beverly Consumer Warranty Act (California Civil Code §1790) to provide additional warranty protection for consumer goods (i.e., new products used for personal, family or household purposes, except clothing and consumables (e.g., products which are intended for consumption by individuals or used by individuals for personal care (e.g., shampoo))).

Seller’s Practice Tip: If the Seller is selling consumer goods, then the Seller should be familiar with the consumer warranty protection laws, including Magnuson Moss Warranty Act and the consumer protection laws in the States in which the Seller sells consumer products.
Consequential and Other Damages

Where the Buyer has accepted the goods, the Buyer may recover as damages for any nonconformity the loss resulting from the Seller's breach of the agreement with the Buyer, and such loss will be determined in any manner that is reasonable. A breach of the agreement by the Seller is any act or omission by the Seller that does not comply with the terms in the agreement with the Buyer. For example, if the Seller warrants that a copier will make copies at a rate of 100 copies per minute, and the copies only makes copies at a rate of 85 copies per minute, then the Seller is in breach of the agreement with the Buyer. In the proper case any incidental and consequential damages may also be recovered. (See §2-714).

Incidental Damages

Incidental damages resulting from the Seller's breach include expenses reasonably incurred in inspecting, receipt, transportation and care and custody of goods rightfully rejected, any commercially reasonable charges, expenses or commissions in connection with purchasing substitute goods and any other reasonable expense incident to the breach by the Seller. (See §2-714(1)).

Consequential Damages

Consequential damages resulting from the Seller’s breach include 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 the Buyer's purchase of substitute goods or otherwise and any injury to person or property proximately resulting from any breach of warranty. (See §2-715(2)). Two examples of consequential damages are (i) damages for the loss of a crop of fruit resulting from the use of insecticide which caused bees to avoid the plants thereby reducing pollination and (ii) profits the Buyer would have earned if the Seller had not breached the agreement.

The agreement between the Buyer and the Seller may provide for limited remedies and limitations on the damages recoverable by the Buyer. The agreement may limit the Buyer's remedies to return of the goods and a refund of the price paid or to repair or replacement of the goods. In addition, consequential damages may be limited or excluded unless the limitation or exclusion is “unconscionable.” Limitation of consequential damages for injury to person in the case of consumer goods is not valid unless it is proved by the Seller that that limitation is conscionable (See §2-719). Generally, the term “conscionable” means that something is not oppressive, overreaching or shocking to the conscience. So, the term unconscionable means that something is oppressive, overreaching or shocking to the conscience. For example, if the Seller sells a toaster to the Buyer and
the agreement between the Seller and the Buyer states that the Buyer’s remedy for a defective toaster is limited to the price of the toaster and that the Seller will not be liable for any consequential damages, and the Buyer is electrocuted as a result of the toaster being defective, a court will likely find the disclaimer of consequential damages to be unconscionable.

**Seller’s Practice Tip:** To the extent allowed under applicable law, the Seller should, in the agreement with the Buyer, limit the Buyer’s remedies to repair or replacement of defective goods or a refund of the purchase price paid by the Buyer. These remedies should be identified as the Buyer’s sole and exclusive remedies.

**Seller’s Practice Tip:** In addition, the Seller should state in the contract with the Buyer that the Seller has no obligation to pay incidental or consequential damages suffered by the Buyer.

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**Buyer’s Practice Tip:** If the Seller includes in the agreement with the Buyer that the Seller has no obligation to pay incidental or consequential damages suffered by the Buyer, then the Buyer should consider what type of incidental or consequential damages the Buyer might suffer if the Seller breaches the agreement or the goods do not perform as warranted by the Seller. If there are consequential or incidental damages that the Buyer will suffer, then the Buyer should attempt to limit the Seller’s disclaimer of the obligation to pay such damages to the Buyer.

**Seller’s Practice Tip:** Finally, the Seller should seek to include in the agreement with the Buyer a cap on the Seller’s liability under the agreement (e.g., the price paid by the Buyer for the goods).
ANNEX A

The following are portions of the Uniform Commercial Code (UCC) that are referred to in this guide, in the version adopted in California's Commercial Code as of November 2006. Any differences, if any, between the California laws shown in this Annex and the official model laws contained in the UCC (as adopted in 1962) are also noted below. Please note that, as of November 2006, California has not adopted the language found in the most recent official revision of the model UCC (2003). This Annex is provided for informational purposes only, to help provide context for readers of this Guide. This information will not be updated, and should not be relied upon to provide accurate up-to-date statutory language.

§ 2-104(1). Definitions: “merchant”

“Merchant” means a person who deals in goods of the kind or otherwise by his occupation holds himself out as having knowledge or skill peculiar to the practices or goods involved in the transaction or to whom such knowledge or skill may be attributed by his employment of an agent or broker or other intermediary who by his occupation holds himself out as having such knowledge or skill.

§ 2-201(l). Formal requirements; statute of frauds

Except as otherwise provided in this section a contract for the sale of goods for the price of five hundred dollars ($500) or more is not enforceable by way of action or defense unless there is some writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by his or her authorized agent or broker. A writing is not insufficient because it omits or incorrectly states a term agreed upon but the contract is not enforceable under this paragraph beyond the quantity of goods shown in the writing.

§ 2-204. Formation in general

(1) A contract for sale of goods may be made in any manner sufficient to show agreement, including conduct by both parties which recognizes the existence of such a contract.

(2) An agreement sufficient to constitute a contract for sale may be found even though the moment of its making is undetermined.

(3) Even though one or more terms are left open a contract for sale does not fail for indefiniteness if the parties have intended to make a contract and there is a reasonably certain basis for giving an appropriate remedy.

§ 2-301. General obligations of parties

The obligation of the seller is to transfer and deliver and that of the buyer is to accept and pay in accordance with the contract.

§ 2-308. Absence of specified place for delivery

Unless otherwise agreed

(a) The place for delivery of goods is the seller’s place of business or if he has none his residence [...].

§ 2-309(a). Absence of specific time provisions

(1) The time for shipment or delivery or any other action under a contract if not provided in this division or agreed upon shall be a reasonable time.
§ 2-312. Warranty of title and against infringement; buyer’s obligation against infringement

(1) Subject to subdivision (2) there is in a contract for sale a warranty by the seller that

(a) The title conveyed shall be good, and its transfer rightful; and

(b) The goods shall be delivered free from any security interest or other lien or encumbrance of which the buyer at the time of contracting has no knowledge.

(2) A warranty under subdivision (1) will be excluded or modified only by specific language or by circumstances which give the buyer reason to know that the person selling does not claim title in himself or that he is purporting to sell only such right or title as he or a third person may have.

(3) Unless otherwise agreed a seller who is a merchant regularly dealing in goods of the kind warrants that the goods shall be delivered free of the rightful claim of any third person by way of infringement or the like but a buyer who furnishes specifications to the seller must hold the seller harmless against any such claim which arises out of compliance with the specifications.

§ 2-313. Express warranties by affirmation, promise, description, sample

(1) Express warranties by the seller are created as follows:

(a) Any affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise.

(b) Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods shall conform to the description.

(c) Any sample or model which is made part of the basis of the bargain creates an express warranty that the whole of the goods shall conform to the sample or model.

(2) It is not necessary to the creation of an express warranty that the seller use formal words such as “warrant” or “guarantee” or that he have a specific intention to make a warranty, but an affirmation merely of the value of the goods or a statement purporting to be merely the seller’s opinion or commendation of the goods does not create a warranty.

§ 2-314. Implied warranty; merchantability; usage of trade

(1) Unless excluded or modified (Section 2316), a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale.

(2) Goods to be merchantable must be at least such as

(a) Pass without objection in the trade under the contract description; and

(b) In the case of fungible goods, are of fair average quality within the description; and

(c) Are fit for the ordinary purposes for which such goods are used; and

(d) Run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit and

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among all units involved; and

e) Are adequately contained, packaged, and labeled as the agreement may require; and

f) Conform to the promises or affirmations of fact made on the container or label if any.

(3) Unless excluded or modified (Section 2316) other implied warranties may arise from course of dealing or usage of trade.

§ 2-315. Implied warranty: fitness for particular purpose

Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is unless excluded or modified under the next section an implied warranty that the goods shall be fit for such purpose.

§ 2-316. Exclusion or modification of warranties

(1) Words or conduct relevant to the creation of an express warranty and words or conduct tending to negate or limit warranty shall be construed wherever reasonable as consistent with each other; but subject to the provisions of this division on parol or extrinsic evidence (Section 2202) negation or limitation is inoperative to the extent that such construction is unreasonable.

(2) Subject to subdivision (3), to exclude or modify the implied warranty of merchantability or any part of it the language must mention merchantability and in case of a writing must be conspicuous, and to exclude or modify any implied warranty of fitness the exclusion must be by a writing and conspicuous. Language to exclude all implied warranties of fitness is sufficient if it states, for example, that "There are no warranties which extend beyond the description on the face hereof."

(3) Notwithstanding subdivision (2)

(a) Unless the circumstances indicate otherwise, all implied warranties are excluded by expressions like "as is," "with all faults" or other language which in common understanding calls the buyer's attention to the exclusion of warranties and makes plain that there is no implied warranty;

§ 2-509(1). Risk of loss in the absence of breach

Where the contract requires or authorizes the seller to ship the goods by carrier

(a) If it does not require him to deliver them at a particular destination, the risk of loss passes to the buyer when the goods are duly delivered to the carrier even though the shipment is under reservation (Section 2505); but

(b) If it does require him to deliver them at a particular destination and the goods are there duly tendered while in the possession of the carrier, the risk of loss passes to the buyer when the goods are there duly so tendered as to enable the buyer to take delivery.

§ 2-513(1). Buyer's right to inspection of goods

Unless otherwise agreed and subject to subdivision (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.

§ 2-601. Buyer's rights on improper delivery

Subject to the provisions of this division on breach in
installation contracts (Section 2612) and unless otherwise
agreed under the sections on contractual limitations of
remedy (Sections 2718 and 2719), if the goods or the
tender of delivery fail in any respect to conform to the
contract, the buyer may

(a) Reject the whole; or

(b) Accept the whole; or

(c) Accept any commercial unit or units and reject the
rest.

§ 2-602(1). Manner of rightful rejection

Rejection of goods must be within a reasonable time after
their delivery or tender. It is ineffective unless the buyer
reasonably notifies the seller.

§ 2-606(1). What constitutes acceptance of goods

Acceptance of goods occurs when the buyer

(a) After a reasonable opportunity to inspect the goods
signifies to the seller that the goods are conforming or that
he will take or retain them in spite of their nonconformity;
or

(b) Fails to make an effective rejection (subdivision (1) of
Section 2602), but such acceptance does not occur until
the buyer has had a reasonable opportunity to inspect
them; or

(c) Does any act inconsistent with the seller's ownership;
but if such act is wrongful as against the seller it is an
acceptance only if ratified by him.

§ 2-607. Effect of acceptance

(1) The buyer must pay at the contract rate for any goods
accepted.

(2) Acceptance of goods by the buyer precludes rejection
of the goods accepted and, if made with knowledge of
a nonconformity, cannot be revoked because of it unless
the acceptance was on the reasonable assumption that the
nonconformity would be seasonably cured. Acceptance
does not of itself impair any other remedy provided by
this division for nonconformity.

[...]

§ 2-608. Revocation of acceptance in whole or in part

(1) The buyer may revoke his acceptance of a lot or
commercial unit whose nonconformity substantially
impairs its value to him if he has accepted it

(a) On the reasonable assumption that its nonconformity
would be cured and it has not been seasonably cured; or

(b) Without discovery of such nonconformity if his
acceptance was reasonably induced either by the
difficulty of discovery before acceptance or by the seller's
assurances.

(2) Revocation of acceptance must occur within a
reasonable time after the buyer discovers or should have
discovered the ground for it and before any substantial
change in condition of the goods which is not caused by
their own defects. It is not effective until the buyer notifies the seller of it.

(3) A buyer who so revokes has the same rights and duties with regard to the goods involved as if he had rejected them.

§ 2-711. Buyer’s remedies in general; buyer’s security interest in rejected goods

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 (Section 2612), the buyer may cancel and whether or not he 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 division (Section 2713).

§ 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 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 (Section 2715), 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 him from any other remedy.

§ 2-714. Buyer’s damages for breach in regard to accepted goods

(1) Where the buyer has accepted goods and given notification (subdivision (3) of Section 2607) 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 that 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 Section 2715 also may 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.

§ 2-719. Contractual modification or limitation of remedy

(1) Subject to the provisions of subdivisions (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 division and may limit or alter the measure of damages recoverable under this division, 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 invalid unless it is proved that the limitation is not unconscionable. Limitation of consequential damages where the loss is commercial is valid unless it is proved that the limitation is unconscionable.
If you have any questions regarding this guide, or if you would like additional copies, please contact one of the project managers:

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