

Acceptance of Goods

by Practical Law Commercial Transactions

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This Practice Note discusses a buyer's rights under the Uniform Commercial Code (UCC) to accept, reject and revoke its acceptance of a seller's delivery or tender of goods.

Article 2 of the **Uniform Commercial Code** (UCC) outlines a buyer's rights and obligations for accepting, rejecting, and revoking acceptance of goods. Failure to comply with these rules can cause:

- Liability for breach of the purchase contract.
- Unintended acceptance of nonconforming goods.

Both buyers and sellers should be familiar with these provisions to understand their options and protect their interests in these transactions. This Note covers:

- When and how a buyer may reject goods.
- A buyer's rights and duties on rejection.
- How a buyer may accept goods, and the effect of acceptance.
- The circumstances under which a buyer may revoke its acceptance.

Buyer's Rights under the UCC

In a contract for the sale of goods governed by the UCC, the seller must tender goods:

- In the manner, time and place specified in the purchase contract ([UCC § 2-503\(1\)](#)).
- That conform to the purchase contract, including:
 - express product warranties (see [Practice Note, UCC Article 2 Express Warranties](#));
 - implied product warranties (see [Practice Note, UCC Article 2 Implied Warranties](#));
 - course of performance (see [Practice Note, UCC Article 2 Implied Warranties: Course of Performance](#)); and
 - course of dealing (see [Practice Note, UCC Article 2 Implied Warranties: Course of Dealing](#)); and
 - usage of trade (see [Practice Note, UCC Article 2 Implied Warranties: Usage of Trade](#)).

(See [Conforming Versus Nonconforming Tender](#).)

If the seller makes a tender that conforms to the contract, the buyer must accept the goods. If the buyer rejects conforming goods, it breaches the purchase contract ([UCC § 2-602](#), official cmt. 3).

However, if the seller makes a tender that does not conform to the contract, under [UCC Section 2-601](#), the buyer may:

- Reject all of the goods (see [Manner and Effect of Buyer's Rightful Rejection](#)).
- Accept:
 - all of the goods; or
 - any commercial unit or units of the goods (and reject the rest), provided the buyer uses good faith and commercial reasonableness to avoid undue impairment of the value of the rejected portion ([UCC § 2-601](#), official cmt. 1).

(See [What Constitutes Buyer's Acceptance of the Goods](#).)

- If the parties have entered into an installment contract under [UCC Section 2-612](#), reject any installment that is nonconforming if:
 - the nonconformity substantially impairs the value of that installment;
 - the nonconformity cannot be cured; and
 - the seller does not give adequate assurance of its cure (see [Standard Documents, Letter from Buyer Demanding Adequate Assurances from Seller](#) and [Letter from Seller Responding to Buyer's Demand for Adequate Assurances](#)).
- Seek the exclusive or additional remedies that the parties are free to negotiate under [UCC Sections 2-718](#) and [2-719](#), for example:
 - replacement of the goods; or
 - refund of the purchase price.

For a sample acceptance of goods provision, see [Standard Clauses, General Contract Clauses: Acceptance of Goods](#).

If the buyer knowingly or unknowingly accepts nonconforming goods, it may have the right, subject to conditions specified in the UCC, to:

- Revoke its acceptance (see [Buyer's Revocation of Acceptance](#)).
- Exercise any other rights available to the buyer arising from the seller's breach under Part 7 (Remedies) of UCC Article 2 ([UCC §§ 2-701 to 2-725](#)).

For more information on acceptance provisions in sale of goods agreements, see Standard Documents:

- [General Purchase Order Terms and Conditions \(Pro-Buyer\): Drafting Note: Inspection and Rejection of Nonconforming Goods](#).
- [General Terms and Conditions for the Sale of Goods \(Pro-Seller\): Section 8](#).
- [Sale of Goods Agreement \(Pro-Seller\): Section 6.05](#).
- [Product Reseller Agreement \(Pro-Supplier\): Section 9.04](#).

Conforming versus Nonconforming Tender

The seller must deliver goods:

- That conform to the specifications of the contract.
- In the quantities ordered by the buyer.
- According to the specified delivery schedule at the specified location.

A tender that does not conform to the contract includes tendering goods that are:

- Different than the goods ordered, for example, goods that:
 - are the wrong make or model;
 - are the wrong color;

- are the wrong size; or
- have the wrong specifications.
- Not compliant with the express or implied product warranties provided in the agreement or by law. This can be based on visual inspection. For more information about express and implied warranties in the sale of goods, see [Practice Notes, UCC Article 2 Express Warranties](#) and [UCC Article 2 Implied Warranties](#).

The buyer that rejects goods need not show that the nonconformity substantially impairs the value of the goods. Therefore, the buyer can reject the goods if they:

- Have minor discrepancies (subject to the buyer's obligation not to reject the goods in bad faith).
- Are wholly nonconforming.

Manner and Effect of Buyer's Rightful Rejection

A buyer with the right to reject the goods is deemed to have accepted the goods if it keeps them for an unreasonable amount of time without rejecting them ([UCC § 2-602\(1\)](#)). Specifically, a rejecting buyer must:

- Affirmatively reject the goods within a reasonable time after delivery or tender (see [Buyer's Inspection Period](#)).
- Take affirmative action to reject the goods, which includes giving the seller a notice of rejection that specifies the reason for rejection (see [Buyer Must Specify Reason for Rejection](#)).

Buyer's Inspection Period

The parties can negotiate an inspection period that they deem to be reasonable; however, it must give the buyer reasonable time to discover defects ([UCC § 2-602](#), official cmt. 1). The seller should negotiate to limit the buyer's inspection period. The buyer should negotiate to expand its inspection period. The parties should consider a variety of factors in determining the length of the inspection period, for example:

- The difficulty of discovering defects.
- Possible fluctuations in market prices.
- The perishability of the goods.

Buyer Must Specify Reason for Rejection

If the buyer rejects any goods, it should notify the seller of the reason for rejection. The UCC:

- Allows the buyer to give a quick and informal notice of defect without worrying about omissions.
- Protects the seller who has been reasonably misled by the buyer's failure to state curable defects.
- Allows the seller to request a final statement of objections on which it can rely.
- Assumes that the buyer who fails to state its reason for rejecting a defect that is curable may be acting in bad faith and seeking to cancel an unprofitable transaction.

([UCC § 2-605](#), official cmt. 1 and 2.)

The buyer cannot rely on an unstated defect to justify rejection or establish breach if:

- The buyer could have detected the defect on reasonable inspection.
- The seller could have cured the defect had the buyer reasonably stated the defect.

([UCC § 2-605](#).)

Buyer's Rights and Duties On Rightful Rejection

If the buyer rightfully rejects any goods, it:

- Must not take any action that demonstrates any ownership of the goods ([UCC § 2-602\(2\)](#)).
- Must, if it has possession of the goods, hold them with reasonable care until the seller can remove them ([UCC § 2-602\(2\)](#)).
- Must, if the buyer is a merchant, and subject to reimbursement of selling expenses from the seller, follow the seller's reasonable instructions regarding the disposition of the goods, for example, relating to:
 - reshipment;
 - storage; or
 - resale.

([UCC § 2-603](#) and [UCC § 2-603](#), official cmt. 1.)

- May, if the seller does not provide instructions, take action on behalf of the seller regarding the disposition of the goods whether or not the buyer is a merchant, and subject to reimbursement of selling expenses from the seller ([UCC § 2-604](#)).
- Must, if the buyer is a merchant, and the seller does not provide instructions, make reasonable efforts to sell, for the seller's account, goods that are perishable or threaten to rapidly decline in value ([UCC § 2-603\(1\)](#)).
- Has a security interest in any goods in its possession or control to secure reimbursement of any:
 - part of the purchase price of the goods already paid; and
 - expenses reasonably incurred in the inspection, receipt, transportation, care and custody of the goods.

([UCC § 2-711\(3\)](#).)

- May exercise any other rights available to the buyer arising from the seller's breach under Part 7 of UCC Article 2 ([UCC §§ 2-701 to 2-725](#)).

What Constitutes Buyer's Acceptance of the Goods

Under the UCC, the buyer accepts the goods if, after a reasonable opportunity to inspect the goods, it:

- Takes affirmative steps to accept the goods, for example, by notifying the seller that:
 - the goods are conforming; or
 - it will take or retain them despite their non-conformity.
- Fails to take affirmative steps to reject the goods (see [Manner and Effect of Buyer's Rightful Rejection](#)).
- Takes any action inconsistent with the seller's ownership, for example, using the goods after rejecting them.

([UCC § 2-606](#).)

Courts look at several factors when determining whether the buyer has accepted the goods, including whether the buyer:

- After tender, paid or partially paid for the goods.
- Signed the seller's sales confirmation or other documents.
- Conditionally accepted the goods, and whether the conditions were satisfied.

Effect of Buyer's Acceptance

If the buyer accepts the goods, it:

- Must pay for the goods at the price agreed to in the purchase contract.
- No longer has the right to reject the goods. For more information about rejection, see [Manner and Effect of Buyer's Rightful Rejection](#).
- Cannot revoke its acceptance if it accepted the goods with knowledge of the nonconformity, unless it reasonably assumed that the seller would cure the nonconformity. For more information about revocation, see [Buyer's Revocation of Acceptance](#).

- Can seek remedies against the seller only if it notifies the seller within a reasonable time after it:
 - receives notice of any lawsuit against the buyer for intellectual property infringement; or
 - discovers or should have discovered another type of breach.
- Has the burden of proof to establish any breach regarding accepted goods.
- Has certain rights and obligations regarding the defense and settlement of any third-party claim.

(UCC § 2-607.)

Buyer's Revocation of Acceptance

A buyer that fails to reject the goods has the opportunity to revoke its acceptance under [UCC Section 2-608](#) if:

- The nonconformity substantially impairs the value of the goods to the buyer, even if the seller has no advance knowledge of the buyer's particular circumstances ([UCC § 2-608](#), official cmt. 2).
- It knew of the nonconformity, but accepted the goods based on the reasonable assumption that the seller would cure the nonconformity.
- It did not know of the nonconformity when it accepted the goods, but was reasonably induced to accept the goods by:
 - the difficulty of discovery, for example, if the nonconformity is obscured by product packaging or can be detected only by using the goods; or
 - the seller's assurances.

A buyer that justifiably revokes its acceptance:

- Must notify the seller within a reasonable time after the buyer discovers or should have discovered the nonconformity ([UCC § 2-608\(2\)](#)).
- Must notify the seller before the condition of the goods substantially changes if the changes are not caused by the nonconformity ([UCC § 2-608\(2\)](#)).
- Has a security interest in any goods in its possession or control to secure reimbursement of any:
 - part of the purchase price of the goods already paid; and
 - expenses reasonably incurred in the inspection, receipt, transportation, care and custody of the goods.

(UCC § 2-711(3).)

For example, a buyer with the right to revoke its acceptance of goods with a shelf life must revoke its acceptance before the shelf life expires.

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