

Scope of UCC

2-102	What's governed under UCC?	<ul style="list-style-type: none"> • Transactions in goods. • Goods: all things which are movable, identifiable at the time of the contract. • Predominant factor test. Divisible K test. • Merchants: a person who regularly deals in goods of the kind, or otherwise skilled in a particular knowledge of skill in the area of trade.
1-103	What if not covered by UCC?	<ul style="list-style-type: none"> • Unless provided by UCC, common law controls.
1-201	Definition. 3, 10, 12, 20.	<p>3) "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this Act. Whether an agreement has legal consequences is determined by the provisions of this Act, if applicable; otherwise by the law of contracts.</p> <p>10) "Conspicuous": A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. A printed heading in capitals is conspicuous. Language in the body of a form is "conspicuous" if it is in larger or other contrasting type or color. But in a telegram any stated term is "conspicuous". Whether a term or clause is "conspicuous" or not is for decision by the court.</p> <p>12) "Creditor" includes a general creditor, a secured creditor, a lien creditor and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity and an executor or administrator of an insolvent debtor's or assignor's estate.</p> <p>20) "Holder," with respect to a negotiable instrument, means the person in possession if the instrument is payable to bearer or, in the case of an instrument payable to an identified person, if the identified person is in possession. "Holder" with respect to a document of title means the person in possession if the goods are deliverable to bearer or to the order of the person in possession.</p>
1-302	Variation by Agreement	<p>a) Provisions of UCC may be varied by agreement, except:</p> <p>b) Obligations of good faith, diligence, reasonableness and care prescribed by UCC.</p>
1-303	Course of performance, course of dealing, and usage of trade.	<p>a) A "course of performance" is a sequence of conduct between the parties to a particular transaction that exists if:</p> <ol style="list-style-type: none"> 1) the agreement of the parties involves repeated occasions for performance and 2) the other party, with knowledge of the nature of the performance and opportunity for objection to it, accepts the performance or acquiesces in it without objection. <p>b) A "course of dealing" is a sequence of conduct concerning previous transactions between the parties fairly to be regarded as establishing a common basis.</p> <p>c) A "usage of trade" is any practice or method of dealing having such regularity of observance in a place, vocation, or trade as to justify an expectation that it will be observed with respect to the transaction in question.</p> <p>d) A course of performance or course of dealing between the parties or usage of trade is relevant in ascertaining the meaning of the parties' agreement.</p> <p>e) Except as otherwise provided in subsection (f), the express terms of an agreement and any applicable course of performance, course of dealing, or usage of trade must be construed whenever reasonable as consistent with each other. If such a construction is unreasonable: Express term > course of performance > course of dealing > usage of trade.</p> <p>f) Subject to Section 2-209, a course of performance is relevant to show a waiver or modification of any term inconsistent with the course of performance.</p> <p>g) Evidence of a relevant usage of trade offered by one party is not admissible unless that party has given the other party notice that the court finds sufficient to prevent unfair surprise to the other party.</p>

1-308	Reservation of Rights	<p>a) A party with explicit reservation of rights performs / promises performance / assents to performance in a manner demanded or offered by the other party does not thereby prejudice the rights reserved. Such words as <u>“without prejudice,” “under protest,”</u> or the like are sufficient.</p> <p>b) Subsection (a) does not apply to an accord and satisfaction.</p>
2-105	Goods	<p>1) “Goods” means all things (including specially manufactured goods) which are movable at the time of identification to the contract for sale other than the money in which the price is to be paid, investment securities (Article 8) and things in action.</p> <p>“Goods” also includes the unborn young of animals and growing crops and other identified things attached to realty as described in the section on goods to be severed from realty.</p>
1-304	Obligation of good faith. Compared to customs.	<ul style="list-style-type: none"> • Every contract or duty within this act imposes an obligation of good faith in its performance or enforcement. “Important and can be sanctioned.”

Formation		
2-204	Formation in general.	<p>1) Showing of agreement is enough, by conduct of both parties recognizing K.</p> <p>2) Time of formation unknown is ok.</p> <p>3) Missing terms is ok, but need reasonably certain basis for giving proper remedy.</p>
2-206	Offer and acceptance.	<p>1)(a) Any manner of acceptance is ok if reasonable in the circumstances.</p> <p>1)(b) Shipment is acceptance for offer to buy promptly no matter conforming or non-conforming except seller seasonably notifies buyer it’s accommodation.</p> <p>2) When performance is acceptance, offeror not notified within reasonable time may treat offer as lapsed..</p>
2-201 X CL	Statute of Frauds	<p>1) K over \$500 price requires writing; Missing terms ok but not enforceable beyond the quantity specified; Signed by the party against whom enforcement is sought.</p> <p>2) Merchants: writing in confirmation of K is received and receiving party had reason to know the content then K against receiving party! unless objected given within 10 days.</p> <p>3) Exceptions:</p> <p>3)(a) if goods specially for buyer, and if not suitable for resale, and if before notice of repudiation is received, and if under circumstances reasonably indicating the goods are for the buyer, and if seller has made either a substantial beginning of manufacture or commitments for the procurement.</p> <p>3)(b) admitted goods is enforced if the against whom party admits in his pleading, testimony or otherwise in court that a K for sale was made.</p> <p>3)(c) <u>goods for which payment has been made and accepted or which have been received and accepted.</u></p>
2-202	Parol evidence rule	<p>K intended as a final expression may not be contradicted by parol evidence. K terms may be explained or supplemented by:</p> <p>a) Course of performance; Course of dealing; Usage of trade.</p> <p>b) By evidence of consistent additional terms unless K found to be complete and exclusive. (A finding of fact).</p>
2-205 X CL	Firm offers	<ul style="list-style-type: none"> • “In writing.” • Gives assurance that offer will be held open. • Not revocable for lack of consideration. • Be separately signed by the offeror. • Duration: as specified, or reasonable time if not stated (3 months max).

2-207 X CL	<p>Battle of forms</p> <p>Is it additional or different?</p> <p>Materially alters K?</p>	<p>1) K formed even with “additional” or “different” terms if:</p> <ul style="list-style-type: none"> • “Definite and seasonable expression of acceptance.” • K formation not expressly made conditional on assent to the additional or different terms. <p>2) Additional terms:</p> <ul style="list-style-type: none"> • <u>Not between two merchants</u>: additional terms void. • <u>Between two merchants</u>, additional terms incorporated unless: (then excluded) <ul style="list-style-type: none"> a) Offer expressly limits acceptance to its terms. or b) Additional term materially alters K. or c) Offeror objected before or promptly upon receiving. <p>3) Conduct by both parties which recognizes the existence of a contract is sufficient to establish a contract for sale. Different terms: (no merchant distinction)</p> <ul style="list-style-type: none"> • Different/conflicting terms knock each other out, filled with gap fillers.
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Terms of the K		
2-302	Unconscionability	<p>1) Judge decides whether unconscionable; At the time of K formation; Can be entire K or specific clause; Remedy: refuse to enforce; knock out unconscionable clause; limit the unconscionable clause.</p> <p>2) shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination</p>
2-209 X CL	<p>Modification, rescission and waiver.</p> <p>NOM.</p> <p>Restricted by <u>good faith</u> 1-304, and CL duress.</p>	<p>1) Agreement modifying a K needs no consideration to be binding</p> <p>2) Signed agreement excluding oral modification afterwards is binding but requires (if between merchants:</p> <ul style="list-style-type: none"> • A form supplied by a <u>merchant</u> must be separately signed by the other <u>merchant</u>. <p>3) Contract as modified must satisfy SoF.</p> <p>4) Attempt at modification or rescission can operate as a waiver.</p> <p>5) waivers of terms in executor portion of the K can be <u>retracted</u> by reasonable notification <u>received</u> by the other party that strict performance will be required of any term waived unless:</p> <ul style="list-style-type: none"> • Retraction is <u>unjust</u> because of change of position in reliance on the waiver.
2-305	Open price term.	<p>1) The parties if they so intend a K with price not settled. Then price is a reasonable price at the time for <u>delivery</u> if</p> <p>a) nothing is said as to price; <u>or</u></p> <p>b) the price is left to be agreed by the parties and they fail to agree; <u>or</u></p> <p>c) the price is to be fixed in terms of some agreed market or other standard as set or recorded by a third person or agency and it is not so set or recorded.</p> <p>2) A price to be fixed by either party implies good faith.</p> <p>3) if 1) to be fixed other than agreement of the parties, and 2) fails to be fixed due to fault of one party, then the other may: 1) treat the contract as cancelled or 2) himself fix a reasonable price.</p> <p>(4) Where, however, the parties intend not to be bound unless the price be fixed or agreed and it is not fixed or agreed there is no contract. In such a case the buyer must return any goods already received or if unable must pay their <u>reasonable</u> value at the time of delivery and the seller must return any portion of the price paid on account.</p>
2-306	Output, requirements and exclusive dealings.	<p>1) A term that measures the quantity by the output of the seller or the requirements of the buyer requires good faith and excludes quantity unreasonably disproportionate to any stated estimate, or any normal or comparable prior output or requirements.</p> <p>2) exclusive dealing requires (unless otherwise agreed):</p> <ul style="list-style-type: none"> • Seller to use best efforts to supply the goods. • Buyer to use best efforts to promote their sale.

Anticipatory repudiation

2-609 Rest.251	Right to adequate assurance of performance.	<p>1) If there is <u>reasonable grounds</u> for insecurity regarding performance; May <u>in writing</u> demand assurance of performance; May suspend performance until assured, if <u>commercially reasonable</u>.</p> <p>2) Between <u>merchants</u> the reasonableness of grounds for insecurity and the adequacy of any assurance offered shall be determined <u>according to commercial standards</u>.</p> <p>3) <u>Acceptance</u> of any improper delivery or payment <u>does not prejudice</u> the aggrieved party's right to demand adequate assurance of future performance.</p> <p>4) <u>Repudiation</u> if no response within a reasonable time or 30 days max, as is adequate under the circumstances of the particular case.</p>
2-610	Anticipatory repudiation.	<p>If K repudiated with respect to <u>a performance not yet due</u> the loss of which will <u>substantially impair</u> the value of the K to the other, the aggrieved party may:</p> <p>a) for a commercially reasonable time await performance by the repudiating party; or</p> <p>b) resort to any remedy for breach (2-703 or 2-711), even though he has notified the repudiating party that he would await the latter's performance and has urged retraction; and</p> <p>c) in either case suspend his own performance or proceed on the seller's right to identify goods to the contract notwithstanding breach or to salvage unfinished goods (2-704).</p>
2-611	Retraction of anticipatory repudiation.	<p>1) Requirement for retraction:</p> <ul style="list-style-type: none"> • Before the next performance is due. • Aggrieved party has not cancelled, or materially changed position, or indicated that repudiation is final. <p>2) Retraction can be in any form, indicating intention to perform, giving assurance.</p> <p>3) Excuse and allowance to the aggrieved party for delay caused by repudiation.</p>

Breaching installment K

2-307	Delivery in single lot or several lots	<ul style="list-style-type: none"> • Unless otherwise stated in K, delivery is in one lot, so is payment. • Where the circumstances give either party the right to make or demand delivery in lots, then apportioned (if possible) payment may be demanded for each lot.
2-309	Notice of Termination	<p>1) The time for shipment or delivery or any other action under a contract if not provided in this Article or agreed upon shall be a reasonable time.</p> <p>2) Where the contract provides for successive performances but is indefinite in duration it is valid for a reasonable time but unless otherwise agreed may be terminated at any time by either party.</p> <p>3) Termination of a contract by one party requires reasonable notification received by the other party,</p> <ul style="list-style-type: none"> • Unless terminated on the happening of an agreed event • An agreement dispensing with notification is invalid if its operation would be unconscionable.
2-612	"Installment contract"; Breach.	<p>1) Requires or authorizes installments of goods in separate lots to be separately accepted, even though K says "each delivery is a separate K."</p> <p>2) May reject if 1) substantially impairing the value of that installment and cannot be cured; or 2) if the non-conformity is a defect in the required documents, unless:</p> <ul style="list-style-type: none"> • The seller gives adequate assurance of its cure, then must accept installment. <p>3) Breach of one or more installments is <u>a breach of the whole</u> if substantially impairing the <u>value of the whole</u> contract, unless if he:</p> <ul style="list-style-type: none"> • demands performance as to future installments, or • brings an action with respect only to past installments, or • accepts a non-conforming installment without seasonably notifying of cancellation

Perfect tender, acceptance, revocation, breach, cure, damage		
2-601 X CL	Buyer's rights on improper delivery Perfect Tender Rule.	<ul style="list-style-type: none"> If the goods or the tender of delivery fail <u>in any respect to conform to the K</u>, buyer: <ul style="list-style-type: none"> reject the whole; or accept the whole; or accept any <u>commercial unit</u> or unites and reject the rest with <u>good faith</u>. <u>Cmt 1</u>: unless the partial acceptance produces so materially adverse an effect on the remainder as to constitute <u>bad faith</u>.
2-601 Limited by: 1) 612 installment K; 2) 2-719; 3) 601 commercial unit; 4) 2-602 timely and notify; 5) 2-605 particularize; 6) 2-508 cure is a right of seller.		
2-602	Manner and effect of rightful rejection.	1) Rejection of goods must be within a reasonable time after their delivery or tender, and with seasonably notification to the seller. 2) Subject to 2-603 and 2-604, 2)(a) exercise of ownership after rejection is wrongful. 2)(b) if the buyer has before rejection taken physical possession of goods, buyer has only a duty after rejection to hold them with reasonable care at the seller's disposition for a time sufficient to permit the seller to remove them 3) The seller's rights with respect to goods wrongfully rejected are governed by Seller's remedies in general (2-703).
2-605(1)a Waiver of objection by failure to particularize.		1)(a) Failure to state a particular defect with rejection precludes using such defect to justify rejection if the seller could cure if informed.
2-606	What constitutes acceptance of goods	1) Acceptance of goods occurs when the buyer: <ul style="list-style-type: none"> 1)(a) After a reasonable opportunity to inspect, <u>signifies</u> satisfaction / he will take or retain them in spite of their non-conformity. 1)(b) had a reasonable opportunity to inspect and <u>fail 2-602 to make a rejection</u>. or 1)(c) does any act inconsistent with the seller's ownership unless seller agrees. 2) Acceptance of a part of any commercial unit is acceptance of that entire unit.
2-607 (1-4)	Burden of establishing breach after 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. 2) Acceptance of goods cannot be revoked because of a non-conformity known at acceptance, unless, acceptance was on the reasonable assumption that the non-conformity would be seasonably cured. 3) Where a tender has been accepted <ul style="list-style-type: none"> 3)(a) buyer is barred from any remedy unless, the buyer <u>notifies</u> the seller of the breach within a reasonable time after he discovers or should have discovered. 3)(b) buyer is barred from any remedy over for liability established by infringement litigations or alike, unless, the buyer <u>notify</u> the seller within a reasonable time after he receives notice. 4) The burden is on the buyer to establish any breach with respect to the goods accepted.
2-608 Y CL	Revocation of acceptance in whole or in part.	1) The buyer may revoke his acceptance of a lot or commercial unit IF <ul style="list-style-type: none"> 1) the non-conformity <u>substantially impairs</u> its value to him, and 1)(a) he accepted it on the reasonable assumption that its non-conformity would be cured, and 1)(a) it has not been <u>seasonably</u> cured. 1) The buyer may also revoke his acceptance of a lot or commercial unit IF <ul style="list-style-type: none"> 1) the non-conformity <u>substantially impairs its value to him</u>, and 1)(b) he did not discover such non-conformity, and 1)(b) 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 <u>before any substantial change in condition of the goods which is not caused by their own defects</u> . It is not effective until the buyer notifies the seller of it.

2-508	Cure by seller of improper tender or delivery; replacement	<p>1) Where any tender or delivery by the seller is rejected because non-conforming and the time for performance has not yet expired, the seller may seasonably notify the buyer of his intention to cure and may then within the contract time make a conforming delivery.</p> <p>2) Where the buyer rejects a non-conforming tender which the seller <u>had reasonable grounds to believe would be acceptable with or without money allowance</u>, the seller <u>may</u> have a further reasonable time to substitute a conforming tender if he seasonably notifies the buyer</p> <ul style="list-style-type: none"> • Application of 508 on 607 is not clear but many courts do so.
2-613	Casualty to Identified Goods	<ul style="list-style-type: none"> • Where K requires for its performance goods identified at K formation, and the goods suffer casualty without fault of either party <u>before the risk of loss passes to the buyer</u>, or in a proper case under a “no arrival, no sale” term, then <p>a) if the loss is total the contract is avoided; and</p> <p>b) if the loss is partial or the goods have so deteriorated as no longer to conform to the contract the buyer may nevertheless demand inspection and at his option either treat the contract as avoided or accept the goods with due allowance from the contract price for the deterioration or the deficiency in quantity but without further right against the seller.</p>
2-615(a)	Excuse by Failure of Presupposed Conditions	<p>a) Delay in delivery or non-delivery in whole or in part by a seller is not a breach of his duty if:</p> <ul style="list-style-type: none"> • performance as agreed has been made impracticable by the occurrence of a contingency the non-occurrence of which was a basic assumption on which the contract was made, or • by compliance in good faith with any applicable foreign or domestic governmental regulation or order whether or not it later proves to be invalid.
2-723(1)	Proof of MP. [Missouri Furnace]	2-723 (1) If an action based on anticipatory repudiation comes to trial before the time for performance with respect to some or all of the goods, any damages based on market price (2-708 or 2-713) shall be determined according to the price of such goods prevailing at the time when the aggrieved party learned of the repudiation.
CL	Frustration of purpose.	UCC does not have frustration of purpose but can be supplied with CL under 1-103. Krell v. Henry , and Taylor .

Warranty		
2-313	Express warranties by affirmation, promise, description, sample. Weisz : painting.	<p>1) Express warranties by the seller are created as follows:</p> <p>1)(a) Goods shall conform to the affirmation or promise: any <u>affirmation of fact or promise</u> made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain.</p> <p>1)(b) Goods shall conform to the description: <u>any description</u> of the goods which is made part of the basis of the bargain.</p> <p>1)(c) The whole of the goods shall conform to the sample or model: <u>any sample or model</u> which is made part of the basis of the bargain.</p> <p>2) Formal words such as “warrant” or “guarantee” are not necessary.</p> <p>2) Whether seller has a specific intention to make a warranty is not necessary.</p> <p>2) An affirmation merely of the value of the goods or a statement <u>purporting to be</u> merely the seller's opinion or commendation of the goods does not create a warranty.</p>

2-314	Implied warranty: merchantability; usage of trade.	<p>1) Unless excluded or modified (2-316), a warranty that the goods shall be merchantable is implied in a contract for their sale <u>if the seller is a merchant with respect to goods of that kind</u>. Under this section the <u>serving for value of food or drink</u> to be consumed either on the premises or elsewhere is a sale.</p> <p>2) Goods to be merchantable must be at least such as</p> <p>2)(a) pass without objection in the trade under the contract description; and</p> <p>2)(b) in the case of fungible goods, are of fair average quality within the description; and</p> <p>2)(c) are <u>fit for the ordinary purposes</u> for which such goods are used; and</p> <p>2)(d) run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all units involved; and</p> <p>2)(e) are adequately contained, packaged, and labeled as the agreement may require; and</p> <p>2)(f) conform to the promises or affirmations of fact made on the container or label if any.</p> <p>3) Unless excluded or modified (2-316) other implied warranties may arise <u>from course of dealing or usage of trade</u>.</p>
2-315	Implied Warranty: fitness for particular purpose.	<ul style="list-style-type: none"> • Goods shall fit purpose of buyer if: <ul style="list-style-type: none"> • Seller has reason to know any particular purpose for which the goods are required at K formation. and • Buyer is relying on the seller's skill or judgment to select or furnish suitable goods. • Can be excluded by 2-316.
2-316	Exclusion or modification of warranties.	<p>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.</p> <p>1) Negation or limitation is inoperative to the extent that such construction is unreasonable subject to the parol or extrinsic evidence provision (2-202).</p> <p>2) To exclude or modify the <u>implied warranty of merchantability</u> or any part of it: the language must mention merchantability and <u>in case of a writing</u> must be conspicuous,</p> <p>2) To exclude or modify any <u>implied warranty of fitness</u> the exclusion must be <u>by a writing</u> and conspicuous. Language to exclude <u>all implied warranties of fitness</u> is sufficient if it states, for example, that "There are no warranties which extend beyond the description on the face hereof."</p> <p>3)(a) all implied warranties are excluded by expressions like "<u>as is</u>", "<u>with all faults</u>" 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, unless the circumstances indicate otherwise.</p> <p>3)(b) no implied warranty with regard to defects which an examination ought in the circumstances to have revealed to him, if the buyer <u>before K formation</u> has examined the goods or the sample or model <u>as fully as he desired</u> or has refused to examine the goods.</p> <p>3)(c) an implied warranty can also be excluded or modified by course of dealing or course of performance or usage of trade.</p> <p>(4) Remedies for breach of warranty can be limited in accordance with liquidation or limitation of damages provision and contractual modification of remedy provision (2-718 and 2-719).</p>
2-714(2)	Remedy for breach of warranty if accepted.	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.

Buyer's Remedies after repudiation or failure to deliver	
1. Withhold/suspend payment to seller	<ul style="list-style-type: none"> • 2-609(1) demand assurance of performance. <ul style="list-style-type: none"> • (1) may suspend performance if reasonably unsecured. • (4) <u>repudiation</u> after 30 days or a reasonable time. • 2-610(c). if repudiated a performance the loss of which substantially impair K. <ul style="list-style-type: none"> • (a) can wait; (b) or <u>treat as breach</u>. • (c) can suspend performance.
2. Cancel K & cease performance	<ul style="list-style-type: none"> • 2-610(b). treat repudiation as breach. • 2-711. Buyer's remedies in general. <ul style="list-style-type: none"> • (1) If the seller fails to make delivery or repudiates or the buyer rightfully rejects or revokes acceptance, with respect to any goods involved or the whole (if breach goes to the whole), <u>buyer may cancel and recover</u> (can recover without cancel): <ul style="list-style-type: none"> • So much of the price already paid. • (a) "cover" and get damage according to 2-712. • (b) recover damages of non-delivery according to 2-713. (no cover) • (2)(b) Where the seller fails to deliver or repudiates the buyer may also obtain specific performance if proper according to 2-716.
3. Await delivery/retraction of repudiation	<ul style="list-style-type: none"> • 2-610(a). can wait after repudiation.
4. reject goods delivered by seller	<ul style="list-style-type: none"> • 2-601. Perfect tender rule.
5. revoke accep. of goods delivered	<ul style="list-style-type: none"> • 2-608. Revocation after acceptance.
6. recover payments made to seller	<ul style="list-style-type: none"> • 2-711(1). So much of the price already paid
7. Deduct damages from the price	<ul style="list-style-type: none"> • 2-717. The buyer <u>on notifying the seller</u> of his intention to do so may <u>deduct all or any part of the damages</u> resulting from <u>any breach of the contract from any part of the price</u> still due under the same contract.
8. Recover damages from seller for goods not accepted.	<ul style="list-style-type: none"> • 2-610(b). treat repudiation as breach • 2-711(1). buyer may cancel and recover.
8.1 cover difference.	<ul style="list-style-type: none"> • 2-712. "cover"; buyer's procurement of substitute goods. • (1) after breach, may cover by making reasonable purchase or K to purchase in substitution, subject to "in good faith", and "without unreasonable delay." • (2) may recover <ul style="list-style-type: none"> • difference between cost of cover and KP, • together with incidental or consequential damages (defined 2-715) • Less expenses saved because of breach. • (3) Failure to cover does not bar other remedy.
8.2 market difference.	<ul style="list-style-type: none"> • 2-713. buyer's damages for non-delivery or repudiation. (no cover) • (1) damage for non-delivery or repudiation by seller is the difference between MP at the time when the buyer learned of the breach and the K price. <ul style="list-style-type: none"> • and incidental and consequential damages (2-715). • less expenses saved. • (2) MP is as of the place for tender or, in cases of rejection after arrival or revocation of acceptance, as of the place of arrival.
8.3 Specific performance	<ul style="list-style-type: none"> • 2-716. Buyer's right to specific performance or replevin. • (1) goods are unique or in other proper circumstances. • (2) specific performance may include terms and conditions as to payment of price, damages, or other relief <u>as the court deems just</u>. • (3) replevin.

9. Recover damages from seller for goods accepted	
9.1 non-conformity. 9.2 breach of warranty.	<ul style="list-style-type: none"> • 2-714. Buyer's damages for breach in regard to accepted goods. • (1) If accepted and gave notification (2-607(3)), recover as damages for any non-conformity of tender, <u>the loss resulting in the ordinary course of events from the breach</u>, determined in any manner reasonable. • (2) damages for breach of warranty is the difference between the value of the goods accepted and the value they would have had if they had been as warranted, • (2) at the time and place of acceptance, • (2) unless special circumstances show proximate damages of a different amount. • (3) Incidental and consequential damages if proper (2-715).
9.3 Consequential and incidental	<ul style="list-style-type: none"> • 2-715. Buyer's incidental and consequential damages. • (1) <u>incidental</u>: expenses reasonably incurred in the inspection, receipt, transportation and care and custody of goods rightfully rejected, any commercially reasonable charges, expenses, or commissions in effecting cover, and any other reasonable expense incidental to the delay or breach • (2) <u>Consequential</u>: (a) of which the seller at the time of K formation <u>had reason to know</u>, and which buyer could not reasonably <u>prevent by cover</u> or otherwise. • (2)(b): injury to person or property proximately resulting from any breach of warranty.

Seller's Remedies after repudiation or failure to deliver	
1. Withhold/suspend delivery to buyer	<ul style="list-style-type: none"> • 2-609(1) (insecurity). • 2-610(c), 2-703(a). • 2-609(1) demand assurance of performance. <ul style="list-style-type: none"> • (1) may suspend performance if reasonably unsecured. • (4) <u>repudiation</u> after 30 days or a reasonable time. • 2-610(c). if repudiated a performance the loss of which substantially impair K. <ul style="list-style-type: none"> (a) can wait; (b) or <u>treat as breach</u>. (c) can suspend performance. • 2-703. Seller's remedies in general. Where the buyer wrongfully rejects or revokes acceptance of goods or fails to make a payment due on or before delivery, or repudiates with respect to a part or the whole, then with respect to any goods directly affected or the whole undelivered balance (if breach is of the whole K), seller may: <ul style="list-style-type: none"> • (a) withhold delivery of such goods • (b) stop delivery by any bailee as hereafter provided (2-705). • (c) proceed under 2-704 for goods unidentified to the K. • (d) resell and recover damages as hereafter provided (2-706). • (e) recover damages for non-acceptance (2-708) or in a proper case the price (2-709). • (f) cancel.
2. Cancel the K & cease performance	• 2-610(b) repudiation, 2-703(f) breach.
3. Await payment/retraction of repudiation	• 2-610(a) repudiation.
4. Stop delivery to buyer	• 2-703(b). breach.
5. Recover damages from buyer	• 2-610(b) repudiation, 2-703(d) breach, 2-703(e) breach.

5.1 Resale difference	<ul style="list-style-type: none"> • 2-706. Seller's resale including contract for resale. • (1) if made "in good faith" and in a "commercially reasonable manner", seller may recover <ul style="list-style-type: none"> • difference between resale price and K price • together with incidental and consequential damages (defined 2-710). • less expenses saved. • (2) resale can be at public or private, but must be commercially reasonable. Must be reasonably identified as referring to the broken K, but not necessarily identified before breach. • (3) if reselling at private sale, the seller must give buyer reasonable notice • (4) if reselling at public sale, (a) restricted to identifies goods (unless...), (b) at a usual place or market, and need to give buyer notice, (c) must provide for inspection by bidders, and (d) the seller may buy. • (5) purchaser buys in good faith at a resale takes the goods free of any rights of the original buyer even though the seller fails to comply with one or more of the requirements of this section. • (6) seller not accountable to the buyer for any profit made on resale.
5.2 Market difference 5.3 Lost profit	<ul style="list-style-type: none"> • 2-708. Seller's damages for non-acceptance or repudiation. • (1) damages for non-acceptance or repudiation by the buyer is: <ul style="list-style-type: none"> • Difference between the MP at the time and place for tender and the unpaid K price (subject to 2-723). • Together with any incidental damages (defined 2-710). • Less any expenses saved. • (2) If (1) inadequate to put the seller in as good a position as performance would have done then the damage is <ul style="list-style-type: none"> • the profit (including reasonable overhead). • together with any incidental damages (2-710). • due allowance for costs reasonably incurred and due credit for payments or proceeds of resale.
5.4 Price	<ul style="list-style-type: none"> • 2-709 Action for the Price. • (1) when the buyer fails to pay the price as it becomes due, seller recover: <ul style="list-style-type: none"> • incidental damages (2-710). and • (a) price of goods accepted, or of conforming goods lost or damaged within a commercially reasonable time after risk of their loss has passed to the buyer; and • (b) price of goods identifies to the K if seller is unable to resell at a reasonable price after reasonable effort or the circumstances reasonably indicate that such effort will be unavailing. • (2) Identified goods must be hold or sold for the buyer if seller sues for P. • (3) If not recoverable under this section, can still go 2-708.
5.5 Incidental damages	<ul style="list-style-type: none"> • 2-710. Seller's incidental damages. • any commercially reasonable charges, expenses, or commissions incurred in stopping delivery, in the transportation, care and custody of goods after the buyer's breach, in connection with return or resale of the goods or otherwise resulting from the breach.

Other damage clauses

- **2-718. liquidation or limitation of damages, deposits.**
- (1) Damages for breach by either party may be liquidated in the agreement but only at an amount only at an amount which is reasonable in light of the anticipated or actual harm caused by the breach, the difficulties of proof of loss, and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy. A term fixing unreasonably large liquidated damages is void as a penalty.
- (2) when the seller justifiably withholds delivery of goods because of buyer's breach, buyer is entitled to restitution of any amount by which the sum of his payments exceeds:
 - a) the liquidated seller's damages.
 - b) if no liquidated damage, 20% of the value of total performance, or \$500, whichever is smaller.
- (3) restitution subject to offset and value of benefits received by the buyer directly or indirectly by reason of the K.
- (4) proceeds from reselling goods count toward satisfying (2).
- **2-719. Contractual Modification or Limitation of Remedy.**
- (1) Subject to (2) and (3) and 2-718
- (1)(a) the agreement may provide for remedies in addition to or in substitution for those provided in UCC and may limit or alter the measure of damages recoverable under UCC, as by limiting the buyer's remedies to return of the goods and repayment of the price or to repair and replacement of non-conforming goods or parts; and
- (1)(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 Act.
- (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 prima facie unconscionable but limitation of damages where the loss is commercial is not.