A buyer and a seller entered into a contract for the sale of 10,000 novelty bracelets. The seller had the bracelets in stock. The contract specified that the seller would ship the bracelets by a third-party carrier. However, the contract did not specify either who was to pay the costs of carriage or the place of tender for the bracelets.

On the above facts, when would the risk of loss of the bracelets pass to the buyer?

A. When the bracelets were delivered to a carrier and a proper contract for their carriage was made.

B. When the bracelets were identified to the contract by the seller, assuming that the goods conformed to the contract.

C. When the bracelets were unloaded on the buyer's premises by the carrier.

D. When the contract was made.

Explanation:

Risk of loss in the absence of breach

(UCC § 2-509)

General rule	If seller is merchant, risk of loss passes to buyer when buyer takes physical possession of goods If not, risk of loss passes to buyer when goods are delivered
Goods to be shipped by carrier	Shipment contract (presumed) – risk of loss passes to buyer when goods are given to carrier & proper contract for shipment is made Destination contract – risk of loss passes to buyer when goods are delivered at place specified in contract
Goods to be held by bailee	Risk of loss passes to buyer when: buyer receives negotiable document of title covering goods (eg, warehouse receipt) *or* bailee (eg, warehouseman) acknowledges buyer's right to possess goods

UCC = Uniform Commercial Code

Contracts for the sale of goods (eg, novelty bracelets—as seen here) are governed by Article 2 of the **Uniform Commercial Code** (UCC). Under the UCC, the risk of loss generally passes to the buyer when the buyer receives the goods. But if the contract requires the **seller to deliver** the goods through a **third-party carrier**, the **risk of loss passes to the buyer** at different times depending on whether the contract is a:

shipment contract* – a contract that does *not* require delivery at a particular location, in which case the risk of loss passes to the buyer **when goods are delivered to the carrier** and a proper contract for their shipment is made *or*

destination contract – a contract that *requires* delivery at a particular location, in which case the risk of loss passes to the buyer **when goods are delivered** at the **place specified in the contract**

Here, the contract between the buyer and the seller specified that the seller would ship the goods by a third-party carrier but did *not* specify the place of tender (ie, delivery) for the bracelets. As a result, it is a *shipment* contract, and the risk of loss would pass to the buyer when the bracelets were delivered to a third-party carrier and a proper contract for their carriage (ie, shipment) was made **(Choices B, C & D)**.

*The UCC presumes that a contract is a shipment contract unless it contains a "free on board" term or other term explicitly allocating the risk of loss. Merely indicating a shipping address does not make a contract a destination contract.

Educational objective:

A contract that requires the seller to deliver the goods by third-party carrier but does not specify a delivery location is a shipment contract. Under such a contract, the risk of loss shifts to the buyer when the seller delivers the goods to the carrier and makes a proper contract for their shipment.

References

U.C.C. § 2-509 (Am. Law Inst. & Unif. Law Comm'n 2020) (risk of loss in the absence of breach).