

A fruit vendor ordered from an orchard 500 bushels of No. 1 Royal Fuzz peaches, at a specified price, "for prompt shipment." The orchard promptly shipped 500 bushels but by mistake shipped No. 2 Royal Fuzz peaches instead of No. 1. The error in shipment was caused by the negligence of the orchard's shipping clerk.

Which of the following best states the fruit vendor's rights and duties upon delivery of the peaches?

- A. Although a contract was formed when the orchard shipped the peaches, the fruit vendor does not have to accept them.
- B. The fruit vendor must accept the peaches because a contract was formed when the orchard shipped them.
- C. The orchard's shipment of the peaches was a counteroffer and the fruit vendor can refuse to accept them.
- D. The orchard's shipment of the peaches was a counteroffer but, since peaches are perishable, the fruit vendor, if it does not want to accept them, must reship the peaches to the orchard in order to mitigate its losses.

Explanation:

Contracts for the **sale of goods** (e.g., peaches) are governed by Article 2 of the UCC. Under the UCC, an **offer to buy goods for prompt shipment** can be **accepted by:**

promising to ship the goods

shipping goods that conform to the order *or*

shipping nonconforming goods *without* notice that they are being offered only as an accommodation.*

Any of these methods of acceptance create a contract. However, the shipment of nonconforming goods without a notice of accommodation also constitutes an **immediate breach** of the contract. In that case, the buyer may (1) **accept or reject the goods** and (2) sue the seller for breach.

Here, the fruit vendor ordered 500 bushels of No. 1 Royal Fuzz peaches for prompt shipment, but the orchard shipped nonconforming No. 2 Royal Fuzz peaches with no notice of accommodation. Although this shipment created a contract, it also constituted a breach of that contract (**Choice B**). Therefore, the vendor does *not* have to accept the peaches.

*Conversely, the shipment of nonconforming goods with notice that they are being offered only as an accommodation (i.e., notice of accommodation) constitutes a rejection of the offer and a counteroffer that the buyer can accept or reject.

(Choices C & D) The orchard's shipment of nonconforming peaches was not a counteroffer because there was no notice of accommodation. In addition, a merchant who rightfully rejects perishable goods (e.g., peaches) must mitigate losses by making reasonable efforts to sell the goods on the market—not reship them to the original seller.

Educational objective:

Under the UCC, an offer to buy goods for prompt shipment can be accepted by (1) promising to ship the goods, (2) shipping conforming goods, or (3) shipping nonconforming goods without a notice of accommodation. However, the shipment of nonconforming goods without a notice of accommodation is also a breach of the resulting contract.

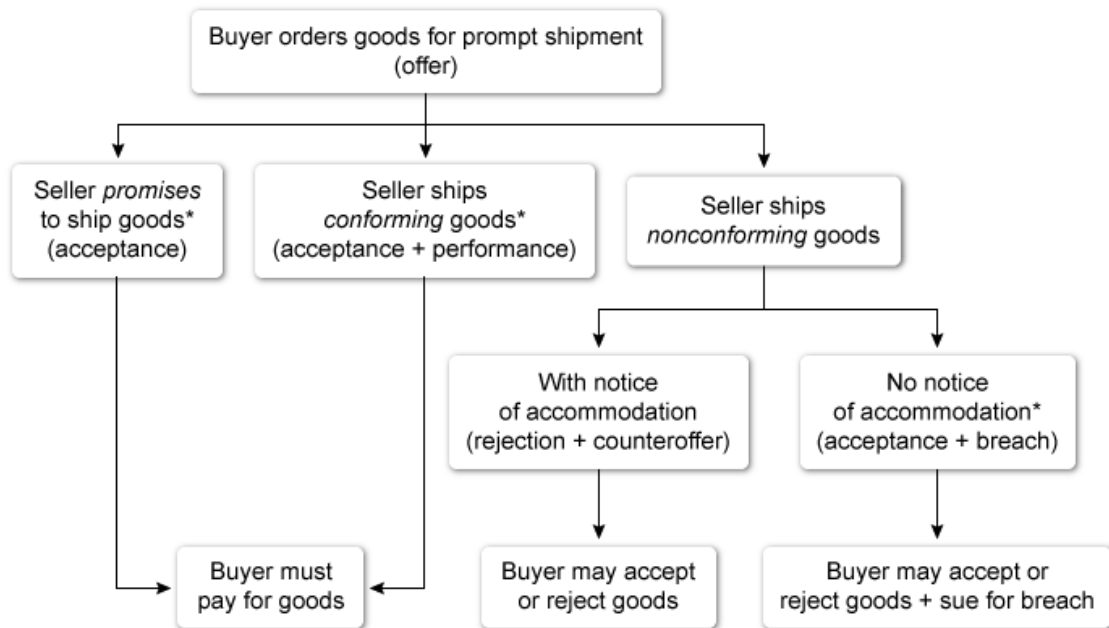
References

U.C.C. § 2-206 (explaining that a shipment of nonconforming goods without a notice of accommodation constitutes an acceptance and breach).

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Seller's response to buyer's offer (UCC 2-206)



*Contract formed
UCC = Uniform Commercial Code