A buyer entered into a written contract to purchase from a seller 1,000 sets of specially manufactured ball bearings of a nonstandard dimension for a price of $10 per set. The seller correctly calculated that it would cost $8 to manufacture each set. Delivery was scheduled for 60 days later.

Fifty-five days later, after the seller had completed production of the 1,000 sets, the buyer abandoned the project that required the specially manufactured ball bearings and repudiated the contract with the seller. After notifying the buyer of his intention to resell, the seller sold the 1,000 sets of ball bearings to a salvage company for $2 per set. The seller then sued the buyer for damages.

What damages should the court award to the seller?

A. $2 per set, representing the difference between the cost of manufacture and the price the buyer agreed to pay.

B. $6 per set, representing the difference between the cost of manufacture and the salvage price.

C. $8 per set, representing the lost profits plus the unrecovered cost of manufacture.

D. Nominal damages, because the seller failed to resell the goods by public auction.

Explanation:

Under the **UCC**, the seller can recover damages when the buyer breaches by repudiating the contract or wrongfully refusing to accept the goods. The court will use a measure of damages that puts the seller in the same position as if the contract had been performed, most often based on the market-price differential. But when this measure of damages is inadequate—eg, the contract is for **specially manufactured goods** of a **nonstandard dimension** (like the ball bearings here)—the **seller's damages** are equal to:

the **profit** the seller would have made (eg, $10 per set contract price − $8 per set cost of manufacture = $2 per set) ***plus***

an allowance for **costs reasonably incurred** (eg, $8 per set cost of manufacture) ***minus***

payments received for the **resale of the goods** (eg, $2 per set salvage price).

Therefore, the court should award the seller $8 per set ($2 + $8 − $2), representing the seller's lost profits plus his unrecovered cost of manufacture.

(Choice A) $2 would be a correct measure of damages only if the seller had not yet begun manufacturing the ball bearings. In that case, there would have been no manufacturing costs or need to resell the goods.

(Choice B) The difference between the seller's cost to manufacture the ball bearings and the salvage price (ie, $6) fails to compensate him for lost profits. Therefore, this would not be a proper damages award.

(Choice D) There is no provision in the UCC requiring these goods to be resold by public auction.

Educational objective:

When a buyer breaches by repudiating the contract or wrongfully refusing to accept goods, the seller is entitled to damages that place it in the same position as if the contract had been performed. For specially manufactured goods, this includes expected profits *plus* costs reasonably incurred *minus* any proceeds from reselling the goods.

References

U.C.C. § 2-708 (Am. Law Inst. & Unif. Law Comm'n 2020) (seller's damages for non-acceptance/repudiation).

Seller's damages if market-price differential is inadequate

= Expected profit + Costs reasonably incurred − Proceeds from resale/mitigation