



# **The Uniform Commercial Code**

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## **Sale of Goods**

James D. Fullerton  
Fullerton & Knowles, P.C.  
12642 Chapel Road  
Clifton, VA 20124  
703-818-2600 Ext. #205

[JFullerton@FullertonLaw.Com](mailto:JFullerton@FullertonLaw.Com)  
[www.FullertonLaw.Com](http://www.FullertonLaw.Com)

# Construction Law Survival Manual

By James D. Fullerton

# Construction Law Survival Manual

- Credit Management
  - Fair Credit Reporting Act
  - Equal Credit Opportunity Act
- Contracts and Preserving Rights
  - Drafting Credit Applications, Quotes, Guarantees, Joint Check Agreements
  - Reviewing and Revising Contracts
- UCC Sale of Goods
- UCC Security Agreements
- Default & Termination

- Mechanic's Lien General Principles
- Mechanic's Liens in Virginia, Maryland, Pennsylvania and District of Columbia
- Payment Bonds
- Trust Fund Laws and Agreements
- Enforcement of Judgments
- Bankruptcy Primer for Creditors
  - What to do when your debtor files bankruptcy
  - Defending preference claims

Construction Law Survival Manual is  
available

in NACM Bookstore

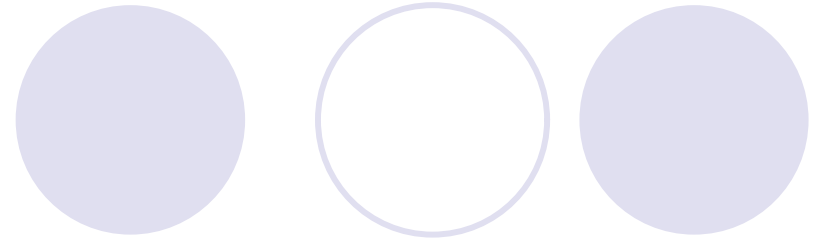
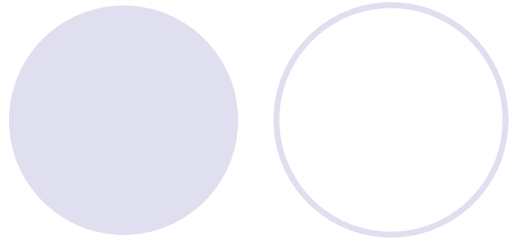
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# **Uniform Commercial Code**



**Sale of Goods**



- ◆ The UCC does not apply to:
  - The sale of real estate
  - Security interests or liens in real estate
  - Service agreements or employment contracts
  - Contracts involving significant labor
  - Marriage settlements or other domestic relations law



- Flexible

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- Holds deals together

- Terms can be missing

## ■ Delivery

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- At seller's place of business
- Delivery never assumed if not in contract
- Within a reasonable time

# Time for Performance

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- Goods must be delivered within a “reasonable time”
  - If the parties have not agreed on any other schedule



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- All materials in one delivery
    - Unless otherwise agreed



- Time for payment

- At delivery

- Credit never assumed

- ▶ All sales COD unless there is an agreement to lend
- ▶ Have right to require cash
- ▶ Credit Application is not an agreement to lend
- ▶ Do not put terms on invoice

# Termination of Open Account Sales

- Either party can terminate purchase arrangements at any time, unless otherwise agreed



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- Express warranty
  - Brochures
  - Salesmen



# Implied Warranty of Merchantability

- This means that the goods:
  - Would pass without objection in the trade under the contract description
  - Are of fair, average quality within the description
  - Are fit for the ordinary purposes for which such goods are used
  - Are of even kind, quality and quantity within each unit or lot and among all units or lots involved
  - Are adequately packaged and labeled
  - Conform to the promises or affirmations of fact made on the container or label

# Implied Warranty of Fitness for a Particular Purpose

- If the seller has reason to know the purpose for which the materials will be used and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods



# **Exclusion of Express and Implied Warranties**

THE FOREGOING WARRANTY IS EXCLUSIVE AND IS IN LIEU OF ALL OTHER WARRANTIES, WHETHER WRITTEN, ORAL, EXPRESS OR IMPLIED, INCLUDING THE WARRANTY OF TITLE, AGAINST LIENS, INFRINGEMENT, THE WARRANTY OF MERCHANTABILITY AND THE WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE.

# Limitation of Liability

UCC Section 2-719.

Contractual modification or limitation of remedy.

- (a) the agreement may provide for remedies in addition to or in substitution for those provided in this title, and may limit or alter the measure of damages recoverable under this title, as by *limiting the buyer's remedies to return of the goods and repayment of the price or to repair and replacement of nonconforming goods or parts*; and
- (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 Liability



Supplier agrees to replace or, at Supplier's option, repair any defective labor or materials within a reasonable time.

Contractor's remedies for any delay or any defect in any materials are subject to and limited by any limitations contained in the manufacturer's terms and conditions to Supplier. Further, Contractor's sole and exclusive remedy and Supplier's limit of liability for any and all loss or damage resulting from defective labor or materials shall be for the purchase price of the particular delivery of labor and materials with respect to which loss or damage is claimed. In no event shall Supplier be liable for any damage due to delay of any type, nor consequential, special or punitive damages. THE FOREGOING WARRANTY IS EXCLUSIVE AND IS IN LIEU OF ALL OTHER WARRANTIES, WHETHER WRITTEN, ORAL, EXPRESS OR IMPLIED, INCLUDING THE WARRANTY OF TITLE, AGAINST LIENS, INFRINGEMENT, THE WARRANTY OF MERCHANTABILITY AND THE WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE.

# Seller's Right to Cure

- If the buyer has rejected goods *and* the time for delivery has not passed, the seller may give the buyer notice of seller's intent to cure
- The buyer must allow the seller to cure by making another delivery of goods that do conform to the contract

## Seller's Right to Reclaim Goods

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- *If* the seller discovers that the buyer has received goods on credit while insolvent
- If a check does not clear
  - The seller has the right to reclaim the goods if the seller makes demand within 10 days after delivery of the goods
  - Remedy is Exclusive



# Right to Adequate Assurance of Performance

- ◆ When reasonable grounds for “insecurity” arise,
  - Seller may demand an “adequate assurance of due performance”



# Notice of Breach to Seller


UCC Section 2-607(3)

When a buyer has accepted goods, the buyer must notify the seller within a reasonable time after the buyer discovers or should have discovered any breach – or be barred from any remedy.

# “Battle of the Forms”

- Proposals
- Quotes
- Confirmations
- Purchase orders

**You or your customer can control contract terms, even if the form is never signed.**



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