
Buyer's Remedies For Breach Of Contract Under The Uniform Commercial Code

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In the last edition of this newsletter, we examined a seller's remedies for breach of contract. As promised, this article addresses a buyer's remedies for breach of contract.

If a seller fails to deliver goods or if the delivered goods are defective, the buyer is entitled to damages. However, the mere fact that a seller has breached the contract does not entitle the buyer to recoup anything more than its actual loss.

A buyer who never received the goods, rightfully rejected non-conforming goods, or justifiably revoked acceptance of the goods may:

- Cancel the contract. Whether or not the buyer cancels, it may recover what it has paid.
- Buy substitute goods ("cover"), and collect the difference between the contract price and the cost of the substitute goods. The buyer may also collect any incidental and consequential damages. The buyer's damages are reduced by any expenses saved by buyer as a result of the seller's breach
 - Incidental damages include expenses reasonably incurred in inspection, receipt, transportation and care and custody of goods rightfully rejected; any commercially reasonable charges, expenses or commissions in connection with purchasing substitute goods; and any other reasonable expense incident to the delay or other breach.
 - Consequential damages include any profits which the buyer could have made by reselling the contracted-for goods had they been delivered in the proper condition. However, these damages must be proved with reasonable certainty, and must be shown to have been reasonably foreseeable at the time of the contract.
- If the buyer chooses not to "cover", it may collect the difference between the contract price and the market price at the time the buyer learned of the breach. Any incidental and consequential damages may be added to this amount, less expenses saved by buyer as a result of seller's breach. If the contracted goods are considered "unique", the buyer may be entitled to a court order requiring the seller to produce and deliver the goods.

If a buyer accepts defective goods and does not properly revoke the acceptance, the buyer is still entitled to damages. In that case, the buyer must give the seller prompt notice of the defect. Upon doing so, the buyer is entitled to damages for breach of express or implied warranty. These damages are the difference between the value of the goods as warranted and their value as received, and may include incidental and consequential damages.

It is also important to note that if the buyer properly refuses the goods, the seller must return the purchase price. If the seller refuses to do so, the buyer has a security interest in any goods in the buyer's possession at the time of seller's breach, and the buyer has the right to resell such goods in order to realize on that security interest.

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