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

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From time to time, the best decision to make for your business is one that requires breaching a contract. Breaching a contract may mean the difference between closing your doors or living to fight another day. If the contract involves the sale of goods, and both parties to the contract are "merchants", then the impact of the breach is governed by the Uniform Commercial Code.

The UCC states that remedies for a breach of contract are to be "administered to the end that the aggrieved party may be put in as good a position as if the other party had fully performed." The aggrieved party is not entitled to a financial windfall.

If a buyer doesn't accept goods when it is supposed to, or otherwise repudiates a contract, then the seller may:

- withhold delivery of the goods;
- stop delivery in transit;
- resell the goods and recover damages;
- recover damages equal to the difference between the market price of the goods and the contract price; or
- cancel the contract.

If the seller chooses to resell the goods, the resale must be made in good faith and in a commercially reasonable manner. Upon such a sale, the seller may recover the difference between the resale price and the contract price, together with any incidental damages, but less expenses saved as a result of the buyer's breach. If the seller chooses to resell the goods via a private sale, the seller must give the buyer reasonable notice of the intended sale. Failure to give reasonable notice may prevent the seller from recovering under this remedy.

If the seller does not resell the goods, it can collect the difference between the contract price and the market price under the contract. If the contract price/market price differential will not adequately compensate seller, the seller can instead collect its lost profits. This might occur if the goods are sold at a fixed price, and the original buyer's default causes the seller to lose out on an additional sale it could have made to another buyer. Finally, if the goods cannot be resold at a reasonable price, the seller can collect the entire contract price. However, this remedy is generally available only where the goods were custom-made for the buyer, or where the market for goods has disappeared.

Of course, a seller may sometimes be the breaching party. We will address a buyer's remedies for seller's breach of contract in the next edition of this newsletter.

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This paper is not intended to be exhaustive on the subject matter nor to provide legal advice to the reader.