

Below are Chapters 21, 22 and 23 of the Pennsylvania version of the Uniform Commercial Code (U.C.C.), 13. Pa.C.S. (Pennsylvania Consolidated Statutes) §§2101-2328. The section numbers correspond to the sections of the U.C.C. as follows. Section 2101 corresponds to paragraph 2-101, that is Article 2, Section 101 of the proposed Uniform Act.

PENNSYLVANIA UNIFORM COMMERCIAL CODE  
TITLE 13, PA CONSOLDATED STATUTES (PA.C.S.) CHAPTERS 21-23

DIVISION 2  
SALES

**Chapter**

21. Short Title, General Construction and Subject Matter
22. Form, Formation and Readjustment of Contract
23. General Obligation and Construction of Contract
24. Title, Creditors and Good Faith Purchasers
25. Performance
26. Breach, Repudiation and Excuse
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**Enactment.** Division 2 was added November 1, 1979, P.L.255, No.86, effective January 1, 1980.

**CHAPTER 21**  
SHORT TITLE, GENERAL CONSTRUCTION  
AND SUBJECT MATTER

**Sec.**

2101. Short title of division.
2102. Scope; certain security and other transactions excluded from division.
2103. Definitions and index of definitions.
2104. Definitions: "merchant"; "between merchants"; "financing agency."
2105. Definitions: transferability; "goods"; "future" goods; "lot"; "commercial unit."
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2107. Goods to be severed from realty: recording.

**Enactment.** Chapter 21 was added November 1, 1979, P.L.255, No.86, effective January 1, 1980.

**2101. Short title of division.**

This division shall be known and may be cited as the Uniform Commercial Code, Article 2, Sales.

(July 9, 1992, P.L.507, No.97, eff. one year)

**2102. Scope; certain security and other transactions excluded from division.**

Unless the context otherwise requires, this division applies to transactions in goods; it does not apply to any transaction which although in the form of an unconditional contract to sell or present sale is intended to operate only as a security transaction, nor does this division impair or repeal any statute regulating sales to consumers, farmers or other specified classes of buyers.

**2103. Definitions and index of definitions.**

**(a) Definitions.--**The following words and phrases when used in this division shall have, unless the context clearly indicates otherwise, the meanings given to them in this subsection:

**"Buyer."** A person who buys or contracts to buy goods.

**"Good faith."** (Deleted by amendment).

**"Receipt."** Receipt of goods means taking physical possession of them.

**"Seller."** A person who sells or contracts to sell goods.

**(b) Index of other definitions in division.--**Other definitions applying to this division or to specified chapters thereof, and the sections in which they appear are:

**"Acceptance."** Section 2606.

**"Banker's credit."** Section 2325.

**"Between merchants."** Section 2104.

**"Cancellation."** Section 2106(d).

**"Commercial unit."** Section 2105.

**"Confirmed credit."** Section 2325.

**"Conforming to contract."** Section 2106.

**"Contract for sale."** Section 2106.

**"Cover."** Section 2712.

**"Entrusting."** Section 2403.

**"Financing agency."** Section 2104.

**"Future goods."** Section 2105.

**"Goods."** Section 2105.

**"Identification."** Section 2501.

**"Installment contract."** Section 2612.

**"Letter of credit."** Section 2325.

**"Lot."** Section 2105.

**"Merchant."** Section 2104.

**"Overseas."** Section 2323.

**"Person in position of seller."** Section 2707.

**"Present sale."** Section 2106.

**"Sale."** Section 2106.

"Sale on approval." Section 2326.

"Sale or return." Section 2326.

"Termination." Section 2106.

(c) **Index of definitions in other divisions.**--The following definitions in other divisions apply to this division:

"Check." Section 3104.

"Consignee." Section 7102.

"Consignor." Section 7102.

"Consumer goods." Section 9102.

"Control." Section 7106.

"Dishonor." Section 3502.

"Draft." Section 3104.

(d) **Applicability of general definitions and principles.**--In addition, Division 1 (relating to general provisions) contains general definitions and principles of construction and interpretation applicable throughout this division.

(July 9, 1992, P.L.507, No.97, eff. one year; June 8, 2001, P.L.123, No.18, eff. July 1, 2001; Apr. 16, 2008, P.L.57, No.13, eff. 60 days)

**2008 Amendment.** Act 13 deleted the def. of "good faith" in subsec. (a) and added the def. of "control" in subsec. (c).

**2001 Amendment.** Act 18 amended subsec. (c).

**Cross References.** Section 2103 is referred to in sections 2A103, 7102 of this title.

**2104. Definitions: "merchant"; "between merchants"; "financing agency."**

The following words and phrases when used in this division shall have the meanings given to them in this section:

**"Between merchants."** Between merchants means in any transaction with respect to which both parties are chargeable with the knowledge or skill of merchants.

**"Financing agency."** Any bank, finance company, or other person who in the ordinary course of business makes advances against goods or documents of title or who by arrangement with either the seller or the buyer intervenes in ordinary course to make or collect payment due or claimed under the contract for sale, as by purchasing or paying the draft of the seller or making advances against it or by merely taking it for collection whether or not documents of title accompany or are associated with the draft. The term includes also a bank or other person who similarly intervenes between persons who are in the position of seller and buyer in respect to the goods (see section 2707).

**"Merchant."** A person who:

- (1) deals in goods of the kind; or
- (2) otherwise by his occupation holds himself out as having knowledge or skill peculiar to the practices or goods involved in the transaction or to whom such knowledge or skill may be

attributed by his employment of an agent or broker or other intermediary who by his occupation holds himself out as having such knowledge or skill.

(June 8, 2001, P.L.123, No.18, eff. July 1, 2001; Apr. 16, 2008, P.L.57, No.13, eff. 60 days)

**2008 Amendment.** Act 13 amended the def. of "financing agency."

**Cross References.** Section 2104 is referred to in sections 2103, 2A103, 9102 of this title.

**2105. Definitions: transferability; "goods"; "future" goods; "lot"; "commercial unit."**

**(a) "Goods".**--"Goods" means all things (including specially manufactured goods) which are movable at the time of identification to the contract for sale other than the money in which the price is to be paid, investment securities (Division 8) and things in action. "Goods" also includes the unborn young of animals and growing crops and other identified things attached to realty as described in section 2107 (relating to goods to be severed from realty; recording).

**(b) Transferability; "future" goods.**--Goods must be both existing and identified before any interest in them can pass. Goods which are not both existing and identified are "future" goods. A purported present sale of future goods or of any interest therein operates as a contract to sell.

**(c) Sale of part interest in goods.**--There may be a sale of a part interest in existing identified goods.

**(d) Fungible goods.**--An undivided share in an identified bulk of fungible goods is sufficiently identified to be sold although the quantity of the bulk is not determined. Any agreed proportion of such a bulk or any quantity thereof agreed upon by number, weight or other measure may to the extent of the interest of the seller in the bulk be sold to the buyer who then becomes an owner in common.

**(e) "Lot".**--"Lot" means a parcel or a single article which is the subject matter of a separate sale or delivery, whether or not it is sufficient to perform the contract.

**(f) "Commercial unit".**--"Commercial unit" means such a unit of goods as by commercial usage is a single whole for purposes of sale and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article (as a machine) or a set of articles (as a suite of furniture or an assortment of sizes) or a quantity (as a bale, gross, or carload) or any other unit treated in use or in the relevant market as a single whole.

**Cross References.** Section 2105 is referred to in section 2103 of this title.

**2106. Definitions: "contract"; "agreement"; "contract for sale"; "sale"; "present sale"; "conforming to contract"; "termination"; "cancellation."**

(a) **"Contract", "agreement", "sale".**--In this division unless the context otherwise requires "contract" and "agreement" are limited to those relating to the present or future sale of goods. "Contract for sale" includes both a present sale of goods and a contract to sell goods at a future time. A "sale" consists in the passing of title from the seller to the buyer for a price (section 2401). A "present sale" means a sale which is accomplished by the making of the contract.

(b) **"Conforming to contract."**--Goods or conduct including any part of a performance are "conforming" or conform to the contract when they are in accordance with the obligations under the contract.

(c) **"Termination".**--"Termination" occurs when either party pursuant to a power created by agreement or law puts an end to the contract otherwise than for its breach. On "termination" all obligations which are still executory on both sides are discharged but any right based on prior breach or performance survives.

(d) **"Cancellation".**--"Cancellation" occurs when either party puts an end to the contract for breach by the other and its effect is the same as that of "termination" except that the cancelling party also retains any remedy for breach of the whole contract or any unperformed balance.

**Cross References.** Section 2106 is referred to in sections 2103, 2A103, 7102, 9102 of this title.

**2107. Goods to be severed from realty: recording.**

(a) **Minerals and structures.**--A contract for the sale of minerals or the like (including oil and gas) or a structure or its materials to be removed from realty is a contract for the sale of goods within this division if they are to be severed by the seller but until severance a purported present sale thereof which is not effective as a transfer of an interest in land is effective only as a contract to sell.

(b) **Other property severable without material harm.**--A contract for the sale apart from the land of growing crops or other things attached to realty and capable of severance without material harm thereto but not described in subsection (a) or of timber to be cut is a contract for the sale of goods within this division whether the subject matter is to be severed by the buyer or by the seller even though it forms part of the realty

at the time of contracting, and the parties can by identification effect a present sale before severance.

**(c) Recording.**--The provisions of this section are subject to any third party rights provided by the law relating to realty records, and the contract for sale may be executed and recorded as a document transferring an interest in land and shall then constitute notice to third parties of the rights of the buyer under the contract for sale.

(Nov. 26, 1982, P.L.696, No.201, eff. 180 days)

**Cross References.** Section 2107 is referred to in section 2105 of this title.

## CHAPTER 22

### FORM, FORMATION AND READJUSTMENT OF CONTRACT

#### Sec.

- 2201. Formal requirements; statute of frauds.
- 2202. Final written expression: parol or extrinsic evidence.
- 2203. Seals inoperative.
- 2204. Formation in general.
- 2205. Firm offers.
- 2206. Offer and acceptance in formation of contract.
- 2207. Additional terms in acceptance or confirmation.
- 2208. Course of performance or practical construction (Deleted by amendment).
- 2209. Modification, rescission and waiver.
- 2210. Delegation of performance; assignment of rights.

**Enactment.** Chapter 22 was added November 1, 1979, P.L.255, No.86, effective January 1, 1980.

#### 2201. Formal requirements; statute of frauds.

**(a) General rule.**--Except as otherwise provided in this section a contract for the sale of goods for the price of \$500 or more is not enforceable by way of action or defense unless there is some writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by his authorized agent or broker. A writing is not insufficient because it omits or incorrectly states a term agreed upon but the contract is not enforceable under this subsection beyond the quantity of goods shown in such writing.

**(b) Writing confirming contract between merchants.**--Between merchants if within a reasonable time a writing in confirmation of the contract and sufficient against the sender is received and the party receiving it has reason to know its contents, it satisfies the requirements of subsection (a) against such party

unless written notice of objection to its contents is given within ten days after it is received.

**(c) Enforceability of contracts not satisfying general requirements.**--A contract which does not satisfy the requirements of subsection (a) but which is valid in other respects is enforceable:

(1) if the goods are to be specially manufactured for the buyer and are not suitable for sale to others in the ordinary course of the business of the seller and the seller, before notice of repudiation is received and under circumstances which reasonably indicate that the goods are for the buyer, has made either a substantial beginning of their manufacture or commitments for their procurement;

(2) if the party against whom enforcement is sought admits in his pleading, testimony or otherwise in court that a contract for sale was made, but the contract is not enforceable under this provision beyond the quantity of goods admitted; or

(3) with respect to goods for which payment has been made and accepted or which have been received and accepted (section 2606).

**(d) Qualified financial contracts.**--Subsection (a) does not apply to a qualified financial contract, as defined in section 1206(c)(1) (relating to statute of frauds for kinds of personal property not otherwise covered), if either:

(1) there is, as provided in section 1206(c)(3), sufficient evidence to indicate that a contract has been made; or

(2) the parties, by means of a prior or subsequent written contract, have agreed to be bound by the terms of the qualified financial contract from the time they reach agreement (by telephone, by exchange of electronic messages or otherwise) on those terms.

(May 22, 1996, P.L.248, No.44, eff. imd.)

**1996 Amendment.** Act 44 added subsec. (d). See section 14(c) of Act 44 in the appendix to this title for special provisions relating to applicability to qualified financial contracts.

**References in Text.** Section 1206, referred to in this section, was repealed and added by the act of April 16, 2008 (P.L.57, No.13). Present section 1206 relates to presumptions.

**Cross References.** Section 2201 is referred to in sections 2209, 2326 of this title.

**2202. Final written expression: parol or extrinsic evidence.**

Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a

contemporaneous oral agreement but may be explained or supplemented:

(1) by course of performance, course of dealing or usage of trade (section 1303); and

(2) by evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement.

(Apr. 16, 2008, P.L.57, No.13, eff. 60 days)

**Cross References.** Section 2202 is referred to in sections 2316, 2326 of this title.

**2203. Seals inoperative.**

The affixing of a seal to a writing evidencing a contract for sale or an offer to buy or sell goods does not constitute the writing a sealed instrument and the law with respect to sealed instruments does not apply to such a contract or offer.

**2204. Formation in general.**

**(a) General rule.**--A contract for sale of goods may be made in any manner sufficient to show agreement, including conduct by both parties which recognizes the existence of such a contract.

**(b) Effect of undetermined time of making agreement.**--An agreement sufficient to constitute a contract for sale may be found even though the moment of its making is undetermined.

**(c) Effect of open terms.**--Even though one or more terms are left open a contract for sale does not fail for indefiniteness if the parties have intended to make a contract and there is a reasonably certain basis for giving an appropriate remedy.

**Cross References.** Section 2204 is referred to in section 2311 of this title.

**2205. Firm offers.**

An offer by a merchant to buy or sell goods in a signed writing which by its terms gives assurance that it will be held open is not revocable, for lack of consideration, during the time stated or if no time is stated for a reasonable time, but in no event may such period of irrevocability exceed three months; but any such term of assurance on a form supplied by the offeree must be separately signed by the offeror.

**2206. Offer and acceptance in formation of contract.**

**(a) General rule.**--Unless otherwise unambiguously indicated by the language or circumstances:

(1) an offer to make a contract shall be construed as inviting acceptance in any manner and by any medium reasonable in the circumstances; and

(2) an order or other offer to buy goods for prompt or current shipment shall be construed as inviting acceptance either by a prompt promise to ship or by the prompt or current



shipment of conforming or nonconforming goods, but such a shipment of nonconforming goods does not constitute an acceptance if the seller seasonably notifies the buyer that the shipment is offered only as an accommodation to the buyer.

**(b) Beginning requested performance without notice.**--Where the beginning of a requested performance is a reasonable mode of acceptance an offeror who is not notified of acceptance within a reasonable time may treat the offer as having lapsed before acceptance.

**2207. Additional terms in acceptance or confirmation.**

**(a) General rule.**--A definite and seasonable expression of acceptance or a written confirmation which is sent within a reasonable time operates as an acceptance even though it states terms additional to or different from those offered or agreed upon, unless acceptance is expressly made conditional on assent to the additional or different terms.

**(b) Effect on contract.**--The additional terms are to be construed as proposals for addition to the contract. Between merchants such terms become part of the contract unless:

- (1) the offer expressly limits acceptance to the terms of the offer;
- (2) they materially alter it; or
- (3) notification of objection to them has already been given or is given within a reasonable time after notice of them is received.

**(c) Conduct establishing contract.**--Conduct by both parties which recognizes the existence of a contract is sufficient to establish a contract for sale although the writings of the parties do not otherwise establish a contract. In such case the terms of the particular contract consist of those terms on which the writings of the parties agree, together with any supplementary terms incorporated under any other provisions of this title.

**2208. Course of performance or practical construction (Deleted by amendment).**

**2008 Amendment.** Section 2208 was deleted by amendment April 16, 2008, P.L.57, No.13, effective in 60 days.

**2209. Modification, rescission and waiver.**

**(a) Consideration unnecessary for modification.**--An agreement modifying a contract within this division needs no consideration to be binding.

**(b) Writing excluding modification or rescission.**--A signed agreement which excludes modification or rescission except by a signed writing cannot be otherwise modified or rescinded, but except as between merchants such a requirement on a form

supplied by the merchant must be separately signed by the other party.

**(c) Compliance of modified contract with statute of frauds.**-The requirements of section 2201 (relating to formal requirements; statute of frauds) must be satisfied if the contract as modified is within its provisions.

**(d) Ineffective modification or rescission as waiver.**--Although an attempt at modification or rescission does not satisfy the requirements of subsection (b) or (c) it can operate as a waiver.

**(e) Retraction of waiver.**--A party who has made a waiver affecting an executory portion of the contract may retract the waiver by reasonable notification received by the other party that strict performance will be required of any term waived, unless the retraction would be unjust in view of a material change of position in reliance on the waiver.

**Cross References.** Section 2209 is referred to in section 1303 of this title.

**2210. Delegation of performance; assignment of rights.**

**(a) Delegation of performance.**--A party may perform his duty through a delegate unless otherwise agreed or unless the other party has a substantial interest in having his original promisor perform or control the acts required by the contract. No delegation of performance relieves the party delegating of any duty to perform or any liability for breach.

**(b) Assignment of rights.**--Except as otherwise provided in section 9406 (relating to discharge of account debtor; notification of assignment; identification and proof of assignment; restrictions on assignment of accounts, chattel paper, payment intangibles and promissory notes ineffective), unless otherwise agreed, all rights of either seller or buyer can be assigned except where the assignment would materially change the duty of the other party, increase materially the burden or risk imposed on him by his contract, or impair materially his chance of obtaining return performance. A right to damages for breach of the whole contract or a right arising out of due performance by the assignor of his entire obligation can be assigned despite agreement otherwise.

**(c) Effect of security interest.**--The creation, attachment, perfection or enforcement of a security interest in the seller's interest under a contract is not a transfer that materially changes the duty of or increases materially the burden or risk imposed on the buyer or impairs materially the buyer's chance of obtaining return performance within the purview of subsection (b) unless, and then only to the extent that, enforcement actually results in a delegation of material performance of the

seller. Even in that event, the creation, attachment, perfection and enforcement of the security interest remain effective, but:

(1) the seller is liable to the buyer for damages caused by the delegation to the extent that the damages could not reasonably be prevented by the buyer; and

(2) a court having jurisdiction may grant other appropriate relief, including cancellation of the contract for sale or an injunction against enforcement of the security interest or consummation of the enforcement.

**(d) Assignment prohibition limited to performance.**--Unless the circumstances indicate the contrary, a prohibition of assignment of "the contract" is to be construed as barring only the delegation to the assignee of the performance of the assignor.

**(e) Effect and enforceability of general assignment.**--An assignment of "the contract" or of "all my rights under the contract" or an assignment in similar general terms is an assignment of rights and unless the language or the circumstances (as in an assignment for security) indicate the contrary, it is a delegation of performance of the duties of the assignor and its acceptance by the assignee constitutes a promise by him to perform those duties. This promise is enforceable by either the assignor or the other party to the original contract.

**(f) Security for assignment delegating performance.**--The other party may treat any assignment which delegates performance as creating reasonable grounds for insecurity and may without prejudice to his rights against the assignor demand assurances from the assignee (section 2609).

(June 8, 2001, P.L.123, No.18, eff. July 1, 2001)

**2001 Amendment.** Act 18 amended subsec. (b), relettered subsec. (c) to subsec. (d), subsec. (d) to subsec. (e) and subsec. (e) to subsec. (f) and added a new subsec. (c).

## CHAPTER 23

### GENERAL OBLIGATION AND CONSTRUCTION OF CONTRACT

#### **Sec.**

- 2301. General obligations of parties.
- 2302. Unconscionable contract or clause.
- 2303. Allocation or division of risks.
- 2304. Price payable in money, goods, realty or otherwise.
- 2305. Open price term.
- 2306. Output, requirements and exclusive dealings.
- 2307. Delivery in single lot or several lots.
- 2308. Absence of specified place for delivery.
- 2309. Absence of specific time provisions; notice of termination.
- 2310. Open time for payment or running of credit; authority to ship under reservation.
- 2311. Options and cooperation respecting performance.
- 2312. Warranty of title and against infringement; obligation of buyer against infringement.
- 2313. Express warranties by affirmation, promise, description or sample.
- 2314. Implied warranty: merchantability; usage of trade.
- 2315. Implied warranty: fitness for particular purpose.
- 2316. Exclusion or modification of warranties.
- 2317. Cumulation and conflict of warranties express or implied.
- 2318. Third party beneficiaries of warranties express or implied.
- 2319. F.O.B. and F.A.S. terms.
- 2320. C.I.F. and C. & F. terms.
- 2321. C.I.F. or C. & F.: "net landed weights"; "payment on arrival"; warranty of condition on arrival.
- 2322. Delivery "ex-ship."
- 2323. Form of bill of lading required in overseas shipment; "overseas."
- 2324. "No arrival, no sale" term.
- 2325. "Letter of credit" term; "confirmed credit."
- 2326. Sale on approval and sale or return; rights of creditors.
- 2327. Special incidents of sale on approval and sale or return.
- 2328. Sale by auction.

**Enactment.** Chapter 23 was added November 1, 1979, P.L.255, No.86, effective January 1, 1980.

**§ 2301. General obligations of parties.**

The obligation of the seller is to transfer and deliver and that of the buyer is to accept and pay in accordance with the contract.

**§ 2302. Unconscionable contract or clause.**

**(a) Finding and authority of court.**--If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made, the court may:

- (1) refuse to enforce the contract;
- (2) enforce the remainder of the contract without the unconscionable clause; or
- (3) so limit the application of any unconscionable clause as to avoid any unconscionable result.

**(b) Evidence by parties.**--When it is claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.

**§ 2303. Allocation or division of risks.**

Where this division allocates a risk or a burden as between the parties "unless otherwise agreed," the agreement may not only shift the allocation but may also divide the risk or burden.

**§ 2304. Price payable in money, goods, realty or otherwise.**

**(a) General rule.**--The price can be made payable in money or otherwise. If it is payable in whole or in part in goods each party is a seller of the goods which he is to transfer.

**(b) Realty.**--Even though all or part of the price is payable in an interest in realty the transfer of the goods and the obligations of the seller with reference to them are subject to this division, but not the transfer of the interest in realty or the obligations of the transferor in connection therewith.

**§ 2305. Open price term.**

**(a) General rule.**--The parties if they so intend can conclude a contract for sale even though the price is not settled. In such a case the price is a reasonable price at the time for delivery if:

- (1) nothing is said as to price;
- (2) the price is left to be agreed by the parties and they fail to agree; or
- (3) the price is to be fixed in terms of some agreed market or other standard as set or recorded by a third person or agency and it is not so set or recorded.

**(b) Price to be fixed by party.**--A price to be fixed by the seller or by the buyer means a price for him to fix in good faith.

**(c) Price not fixed through fault of party.--**When a price left to be fixed otherwise than by agreement of the parties fails to be fixed through fault of one party the other may at his option treat the contract as cancelled or himself fix a reasonable price.

**(d) Intent not to be bound without established price.--**Where, however, the parties intend not to be bound unless the price be fixed or agreed and it is not fixed or agreed there is no contract. In such a case the buyer must return any goods already received or if unable so to do must pay their reasonable value at the time of delivery and the seller must return any portion of the price paid on account.

**§ 2306. Output, requirements and exclusive dealings.**

**(a) Quantity measured by output or requirements.--**A term which measures the quantity by the output of the seller or the requirements of the buyer means such actual output or requirements as may occur in good faith, except that no quantity unreasonably disproportionate to any stated estimate or in the absence of a stated estimate to any normal or otherwise comparable prior output or requirements may be tendered or demanded.

**(b) Obligation of parties in exclusive dealings.--**A lawful agreement by either the seller or the buyer for exclusive dealing in the kind of goods concerned imposes unless otherwise agreed an obligation by the seller to use best efforts to supply the goods and by the buyer to use best efforts to promote their sale.

**§ 2307. Delivery in single lot or several lots.**

Unless otherwise agreed all goods called for by a contract for sale must be tendered in a single delivery and payment is due only on such tender but where the circumstances give either party the right to make or demand delivery in lots the price if it can be apportioned may be demanded for each lot.

**§ 2308. Absence of specified place for delivery.**

Unless otherwise agreed:

(1) the place for delivery of goods is the place of business of the seller or if he has none his residence; but

(2) in a contract for sale of identified goods which to the knowledge of the parties at the time of contracting are in some other place, that place is the place for their delivery; and

(3) documents of title may be delivered through customary banking channels.

**§ 2309. Absence of specific time provisions; notice of termination.**

**(a) Shipment, delivery or other action.--**The time for shipment or delivery or any other action under a contract if not

provided in this division or agreed upon shall be a reasonable time.

**(b) Duration of provision for successive performances.--** Where the contract provides for successive performances but is indefinite in duration it is valid for a reasonable time but unless otherwise agreed may be terminated at any time by either party.

**(c) Notice of termination.--** Termination of a contract by one party except on the happening of an agreed event requires that reasonable notification be received by the other party and an agreement dispensing with notification is invalid if its operation would be unconscionable.

**§ 2310. Open time for payment or running of credit; authority to ship under reservation.**

Unless otherwise agreed:

(1) Payment is due at the time and place at which the buyer is to receive the goods even though the place of shipment is the place of delivery.

(2) If the seller is authorized to send the goods he may ship them under reservation, and may tender the documents of title, but the buyer may inspect the goods after their arrival before payment is due unless such inspection is inconsistent with the terms of the contract (section 2513).

(3) If delivery is authorized and made by way of documents of title otherwise than by paragraph (2), then payment is due, regardless of where the goods are to be received:

(i) at the time and place at which the buyer is to receive delivery of the tangible documents; or

(ii) at the time the buyer is to receive delivery of the electronic documents and at the seller's place of business or, if none, at the seller's residence.

(4) Where the seller is required or authorized to ship the goods on credit the credit period runs from the time of shipment but post-dating the invoice or delaying its dispatch will correspondingly delay the starting of the credit period.

(Apr. 16, 2008, P.L.57, No.13, eff. 60 days)

**2008 Amendment.** Act 13 amended par. (3).

**§ 2311. Options and cooperation respecting performance.**

**(a) Specifying particulars of performance.--** An agreement for sale which is otherwise sufficiently definite (section 2204(c)) to be a contract is not made invalid by the fact that it leaves particulars of performance to be specified by one of the parties. Any such specification must be made in good faith and within limits set by commercial reasonableness.

**(b) Specifying assortment of goods and shipping arrangements.--** Unless otherwise agreed specifications relating

to assortment of the goods are at the option of the buyer and except as otherwise provided in section 2319(a)(3) and (c) (relating to F.O.B. and F.A.S. terms) specifications or arrangements relating to shipment are at the option of the seller.

**(c) Remedies for failure to specify or cooperate.**--Where such specification would materially affect the performance of the other party but is not seasonably made or where the cooperation of one party is necessary to the agreed performance of the other but is not seasonably forthcoming, the other party in addition to all other remedies:

(1) is excused for any resulting delay in his own performance; and

(2) may also either proceed to perform in any reasonable manner or after the time for a material part of his own performance treat the failure to specify or to cooperate as a breach by failure to deliver or accept the goods.

**Cross References.** Section 2311 is referred to in section 2319 of this title.

**§ 2312. Warranty of title and against infringement; obligation of buyer against infringement.**

**(a) General rule.**--Subject to subsection (b) there is in a contract for sale a warranty by the seller that:

(1) the title conveyed shall be good, and its transfer rightful; and

(2) the goods shall be delivered free from any security interest or other lien or encumbrance of which the buyer at the time of contracting has no knowledge.

**(b) Exclusion or modification of warranty.**--A warranty under subsection (a) will be excluded or modified only by specific language or by circumstances which give the buyer reason to know that the person selling does not claim title in himself or that he is purporting to sell only such right or title as he or a third person may have.

**(c) Warranty of merchant regularly dealing in goods.**--Unless otherwise agreed a seller who is a merchant regularly dealing in goods of the kind warrants that the goods shall be delivered free of the rightful claim of any third person by way of infringement or the like but a buyer who furnishes specifications to the seller must hold the seller harmless against any such claim which arises out of compliance with the specifications.

**Cross References.** Section 2312 is referred to in section 2607 of this title.



**§ 2313. Express warranties by affirmation, promise, description or sample.**

**(a) General rule.**--Express warranties by the seller are created as follows:

(1) Any affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise.

(2) Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods shall conform to the description.

(3) Any sample or model which is made part of the basis of the bargain creates an express warranty that the whole of the goods shall conform to the sample or model.

**(b) Formal words or specific intent unnecessary.**--It is not necessary to the creation of an express warranty that the seller use formal words such as "warranty" or "guarantee" or that he have a specific intention to make a warranty, but an affirmation merely of the value of the goods or a statement purporting to be merely the opinion of the seller or commendation of the goods does not create a warranty.

**§ 2314. Implied warranty: merchantability; usage of trade.**

**(a) Sale by merchant.**--Unless excluded or modified (section 2316), a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale.

**(b) Merchantability standards for goods.**--Goods to be merchantable must be at least such as:

(1) pass without objection in the trade under the contract description;

(2) in the case of fungible goods, are of fair average quality within the description;

(3) are fit for the ordinary purposes for which such goods are used;

(4) run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all units involved;

(5) are adequately contained, packaged, and labeled as the agreement may require; and

(6) conform to the promises or affirmations of fact made on the container or label if any.

**(c) Course of dealing or usage of trade.**--Unless excluded or modified (section 2316) other implied warranties may arise from course of dealing or usage of trade.

**§ 2315. Implied warranty: fitness for particular purpose.**

Where the seller at the time of contracting has reason to know:

(1) any particular purpose for which the goods are required; and

(2) that the buyer is relying on the skill or judgment of the seller to select or furnish suitable goods;

there is unless excluded or modified under section 2316 (relating to exclusion or modification of warranties) an implied warranty that the goods shall be fit for such purpose.

**§ 2316. Exclusion or modification of warranties.**

**(a) Construction of words or conduct limiting warranties.--** Words or conduct relevant to the creation of an express warranty and words or conduct tending to negate or limit warranty shall be construed wherever reasonable as consistent with each other; but subject to the provisions of this division on parol or extrinsic evidence (section 2202) negation or limitation is inoperative to the extent that such construction is unreasonable.

**(b) Implied warranties of merchantability and fitness.--** Subject to subsection (c), to exclude or modify the implied warranty of merchantability or any part of it the language must mention merchantability and in case of a writing must be conspicuous, and to exclude or modify any implied warranty of fitness the exclusion must be by a writing and conspicuous. Language to exclude all implied warranties of fitness is sufficient if it states, for example, that "There are no warranties which extend beyond the description on the face hereof."

**(c) Implied warranties in general.--**Notwithstanding subsection (b):

(1) Unless the circumstances indicate otherwise, all implied warranties are excluded by expressions like "as is," "with all faults" or other language which in common understanding calls the attention of the buyer to the exclusion of warranties and makes plain that there is no implied warranty.

(2) When the buyer before entering into the contract has examined the goods or the sample or model as fully as he desired or has refused to examine the goods there is no implied warranty with regard to defects which an examination ought in the circumstances to have revealed to him.

(3) An implied warranty can also be excluded or modified by course of dealing or course of performance or usage of trade.

**(d) Limitation of remedies for breach of warranty.--** Remedies for breach of warranty can be limited in accordance with the provisions of this division on liquidation or limitation of damages (section 2718) and on contractual modification of remedy (section 2719).

**Cross References.** Section 2316 is referred to in sections 2314, 2315 of this title.

**§ 2317. Cumulation and conflict of warranties express or implied.**

Warranties whether express or implied shall be construed as consistent with each other and as cumulative, but if such construction is unreasonable the intention of the parties shall determine which warranty is dominant. In ascertaining that intention the following rules apply:

(1) Exact or technical specifications displace an inconsistent sample or model or general language of description.

(2) A sample from an existing bulk displaces inconsistent general language of description.

(3) Express warranties displace inconsistent implied warranties other than an implied warranty of fitness for a particular purpose.

**§ 2318. Third party beneficiaries of warranties express or implied.**

The warranty of a seller whether express or implied extends to any natural person who is in the family or household of his buyer or who is a guest in his home if it is reasonable to expect that such person may use, consume or be affected by the goods and who is injured in person by breach of the warranty. A seller may not exclude or limit the operation of this section.

**§ 2319. F.O.B. and F.A.S. terms.**

**(a) Definition of F.O.B.--**Unless otherwise agreed the term F.O.B. (which means "free on board") at a named place, even though used only in connection with the stated price, is a delivery term under which:

(1) When the term is F.O.B. the place of shipment, the seller must at that place ship the goods in the manner provided in this division (section 2504 (relating to shipment by seller)) and bear the expense and risk of putting them into the possession of the carrier.

(2) When the term is F.O.B. the place of destination, the seller must at his own expense and risk transport the goods to that place and there tender delivery of them in the manner provided in this division (section 2503 (relating to manner of tender of delivery by seller)).

(3) When under either paragraph (1) or (2) the term is also F.O.B. vessel, car or other vehicle, the seller must in addition at his own expense and risk load the goods on board. If the term is F.O.B. vessel the buyer must name the vessel and in an appropriate case the seller must comply with the provisions of this division on the form of bill of lading (section 2323).

**(b) Definition of F.A.S.--**Unless otherwise agreed the term F.A.S. vessel (which means "free alongside") at a named port, even though used only in connection with the stated price, is a delivery term under which the seller must:

(1) at his own expense and risk deliver the goods alongside the vessel in the manner usual in that port or on a dock designated and provided by the buyer; and

(2) obtain and tender a receipt for the goods in exchange for which the carrier is under a duty to issue a bill of lading.

**(c) Duty of buyer to give instructions.--**Unless otherwise agreed in any case falling within subsection (a)(1) or (3) or subsection (b) the buyer must seasonably give any needed instructions for making delivery, including when the term is F.A.S. or F.O.B. the loading berth of the vessel and in an appropriate case its name and sailing date. The seller may treat the failure of needed instructions as a failure of cooperation under this division (section 2311 (relating to options and cooperation respecting performance)). He may also at his option move the goods in any reasonable manner preparatory to delivery or shipment.

**(d) Tender of documents and payment.--**Under the term F.O.B. vessel or F.A.S. unless otherwise agreed the buyer must make payment against tender of the required documents and the seller may not tender nor the buyer demand delivery of the goods in substitution for the documents.

**Cross References.** Section 2319 is referred to in section 2311 of this title.

**§ 2320. C.I.F. and C. & F. terms.**

**(a) Definitions.--**The term C.I.F. means that the price includes in a lump sum the cost of the goods and the insurance and freight to the named destination. The term C. & F. or C.F. means that the price so includes cost and freight to the named destination.

**(b) Effect of C.I.F. destination term.--**Unless otherwise agreed and even though used only in connection with the stated price and destination, the term C.I.F. destination or its equivalent requires the seller at his own expense and risk to do the following:

(1) Put the goods into the possession of a carrier at the port for shipment and obtain a negotiable bill or bills of lading covering the entire transportation to the named destination.

(2) Load the goods and obtain a receipt from the carrier (which may be contained in the bill of lading) showing that the freight has been paid or provided for.

(3) Obtain a policy or certificate of insurance, including any war risk insurance, of a kind and on terms then current at the port of shipment in the usual amount, in the currency of the contract, shown to cover the same goods covered by the bill of lading and providing for payment of loss to the order of the buyer or for the account of whom it may concern; but the seller may add to the price the amount of the premium for any such war risk insurance.

(4) Prepare an invoice of the goods and procure any other documents required to effect shipment or to comply with the contract.

(5) Forward and tender with commercial promptness all the documents in due form and with any indorsement necessary to perfect the rights of the buyer.

**(c) Effect of C. & F. term.**--Unless otherwise agreed the term C. & F. or its equivalent has the same effect and imposes upon the seller the same obligations and risks as a C.I.F. term except the obligation as to insurance.

**(d) Tender of documents and payment.**--Under the term C.I.F. or C. & F. unless otherwise agreed the buyer must make payment against tender of the required documents and the seller may not tender nor the buyer demand delivery of the goods in substitution for the documents.

**§ 2321. C.I.F. or C. & F.: "net landed weights"; "payment on arrival"; warranty of condition on arrival.**

Under a contract containing a term C.I.F. or C. & F.:

(1) Where the price is based on or is to be adjusted according to "net landed weights," "delivered weights," "out turn" quantity or quality or the like, unless otherwise agreed the seller must reasonably estimate the price. The payment due on tender of the documents called for by the contract is the amount so estimated, but after final adjustment of the price a settlement must be made with commercial promptness.

(2) An agreement described in paragraph (1) or any warranty of quality or condition of the goods on arrival places upon the seller the risk of ordinary deterioration, shrinkage and the like in transportation but has no effect on the place or time of identification to the contract for sale or delivery or on the passing of the risk of loss.

(3) Unless otherwise agreed where the contract provides for payment on or after arrival of the goods the seller must before payment allow such preliminary inspection as is feasible; but if the goods are lost delivery of the documents and payment are due when the goods should have arrived.

**Cross References.** Section 2321 is referred to in section 2513 of this title.

**§ 2322. Delivery "ex-ship."**

**(a) Definition.**--Unless otherwise agreed a term for delivery of goods "ex-ship" (which means from the carrying vessel) or in equivalent language is not restricted to a particular ship and requires delivery from a ship which has reached a place at the named port of destination where goods of the kind are usually discharged.

**(b) Effect.**--Under such a term unless otherwise agreed:

(1) the seller must discharge all liens arising out of the carriage and furnish the buyer with a direction which puts the carrier under a duty to deliver the goods; and

(2) the risk of loss does not pass to the buyer until the goods leave the tackle of the ship or are otherwise properly unloaded.

**§ 2323. Form of bill of lading required in overseas shipment; "overseas."**

**(a) General rule.**--Where the contract contemplates overseas shipment and contains a term C.I.F., C. & F. or F.O.B. vessel, the seller unless otherwise agreed must obtain a negotiable bill of lading stating that the goods have been loaded on board or, in the case of a term C.I.F. or C. & F., received for shipment.

**(b) Bill in set of parts.**--Where in a case within subsection (a) a tangible bill of lading has been issued in a set of parts, unless otherwise agreed if the documents are not to be sent from abroad the buyer may demand tender of the full set; otherwise only one part of the bill of lading need be tendered. Even if the agreement expressly requires a full set:

(1) due tender of a single part is acceptable within the provisions of this division on cure of improper delivery (section 2508(a)); and

(2) even though the full set is demanded, if the documents are sent from abroad the person tendering an incomplete set may nevertheless require payment upon furnishing an indemnity which the buyer in good faith deems adequate.

**(c) Definition of "overseas."**--A shipment by water or by air or a contract contemplating such shipment is "overseas" insofar as by usage of trade or agreement it is subject to the commercial, financing or shipping practices characteristic of international deep water commerce.

(Apr. 16, 2008, P.L.57, No.13, eff. 60 days)

**2008 Amendment.** Act 13 amended subsec. (b).

**Cross References.** Section 2323 is referred to in sections 2103, 2319, 2503 of this title.

**§ 2324. "No arrival, no sale" term.**

Under a term "no arrival, no sale" or terms of like meaning, unless otherwise agreed:

(1) the seller must properly ship conforming goods and if they arrive by any means he must tender them on arrival but assumes no obligation that the goods will arrive unless he has caused the non-arrival; and

(2) where without fault of the seller the goods are in part lost or have so deteriorated as no longer to conform to the contract or arrive after the contract time, the buyer may proceed as if there had been casualty to identified goods (section 2613).

**Cross References.** Section 2324 is referred to in section 2613 of this title.

**§ 2325. "Letter of credit" term; "confirmed credit."**

**(a) Failure to furnish letter.--**Failure of the buyer seasonably to furnish an agreed letter of credit is a breach of the contract for sale.

**(b) Effect of delivering letter.--**The delivery to seller of a proper letter of credit suspends the obligation of the buyer to pay. If the letter of credit is dishonored, the seller may on reasonable notification to the buyer require payment directly from him.

**(c) Definitions.--**Unless otherwise agreed the term "letter of credit" or "banker's credit" in a contract for sale means an irrevocable credit issued by a financing agency of good repute and, where the shipment is overseas, of good international repute. The term "confirmed credit" means that the credit must also carry the direct obligation of such an agency which does business in the financial market of the seller.

**Cross References.** Section 2325 is referred to in section 2103 of this title.

**§ 2326. Sale on approval and sale or return; rights of creditors.**

**(a) Definitions.--**Unless otherwise agreed, if delivered goods may be returned by the buyer even though they conform to the contract, the transaction is:

(1) a "sale on approval" if the goods are delivered primarily for use; and

(2) a "sale or return" if the goods are delivered primarily for resale.

**(b) Rights of creditors of buyer generally.--**Goods held on approval are not subject to the claims of the creditors of the buyer until acceptance; goods held on sale or return are subject to such claims while in the possession of the buyer.

**(c) Treatment of "or return" term.--**Any "or return" term of a contract for sale is to be treated as a separate contract for sale within the statute of frauds section of this division

(section 2201) and as contradicting the sale aspect of the contract within the provisions of this division on parol or extrinsic evidence (section 2202).

(June 8, 2001, P.L.123, No.18, eff. July 1, 2001)

**2001 Amendment.** Act 18 amended the section heading and subsec. (b), deleted subsec. (c) and relettered subsec. (d) to subsec. (c).

**Cross References.** Section 2326 is referred to in sections 2103, 2A103 of this title.

**§ 2327. Special incidents of sale on approval and sale or return.**

**(a) Sale on approval.--**Under a sale on approval unless otherwise agreed:

(1) Although the goods are identified to the contract the risk of loss and the title do not pass to the buyer until acceptance.

(2) Use of the goods consistent with the purpose of trial is not acceptance but failure seasonably to notify the seller of election to return the goods is acceptance, and if the goods conform to the contract acceptance of any part is acceptance of the whole.

(3) After due notification of election to return, the return is at the risk and expense of the seller but a merchant buyer must follow any reasonable instructions.

**(b) Sale or return.--**Under a sale or return unless otherwise agreed:

(1) The option to return extends to the whole or any commercial unit of the goods while in substantially their original condition, but must be exercised seasonably.

(2) The return is at the risk and expense of the buyer.

**Cross References.** Section 2327 is referred to in section 2509 of this title.

**§ 2328. Sale by auction.**

**(a) Sale in lots.--**In a sale by auction if goods are put up in lots each lot is the subject of a separate sale.

**(b) When sale complete.--**A sale by auction is complete when the auctioneer so announces by the fall of the hammer or in other customary manner. Where a bid is made while the hammer is falling in acceptance of a prior bid the auctioneer may in his discretion reopen the bidding or declare the goods sold under the bid on which the hammer was falling.

**(c) With or without reserve.--**Such a sale is with reserve unless the goods are in explicit terms put up without reserve. In an auction with reserve the auctioneer may withdraw the goods at any time until he announces completion of the sale. In an



auction without reserve, after the auctioneer calls for bids on an article or lot, that article or lot cannot be withdrawn unless no bid is made within a reasonable time. In either case a bidder may retract his bid until the announcement by the auctioneer of completion of the sale, but the retraction by a bidder does not revive any previous bid.

**(d) Bidding by or for seller.**--If the auctioneer knowingly receives a bid on the behalf of the seller or the seller makes or procures such a bid, and notice has not been given that liberty for such bidding is reserved, the buyer may at his option avoid the sale or take the goods at the price of the last good faith bid prior to the completion of the sale. This subsection shall not apply to any bid at a forced sale.