**UCC SALES SHORT OUTLINE**

Things to think about:

- Every contract or duty imposes an obligation of good faith in its performance
- Article 2 contains different rules for Merchants and Non-merchants
- Article 2 generally applies to goods such as tangible personal property - not real property
- Article 2 emphases finding agreement between parties
- Predominant purpose test: UCC applies if sale of goods is predominant purpose of contract
- Merchant: one who regularly engages in sale (Merchant Seller) and or purchase (Merchant Buyer) of a particular type of goods and has special knowledge of goods involved in transaction

**Formation of Contract**

- Offer: invitation to enter into a contract. Offer requires intent to contract and reasonable basis for remedy. A contract for the sale of goods may be made in any manner sufficient to show agreement, including conduct by the parties that recognizes the existence of a contract; an agreement may have open terms and be binding; only term that may not be interpreted by a court through a gap filler or statute is quantity
- Merchants firm offer: written offer held open by Merchant is irrevocable for time stated or reasonable time, but no longer than 3 months without consideration
- Acceptance: unless otherwise stated may be in reasonable manner in the circumstance. Acceptance may be by prompt promise to ship or by prompt shipment. Shipment of nonconforming goods demonstrates acceptance of contract but breach of contract. If nonconforming goods are shipped instead, but seller seasonably notifies Buyer that nonconforming goods shipped are an accommodation because conforming goods not available, shipment serves as counteroffer, not acceptance, and buyer may reject or accept.
- **Modification**: modification of contract does not need consideration to be binding. Must meet test of **good faith** (reasonable standard of fair dealing). Neither party can demand modification without legitimate commercial reason. **Statute of Frauds** must be satisfied if contract modified is subject to its provision.

**Battle of the Forms**

- Article 2 has abandoned the **Mirror Image** rule, providing instead that the proposal of additional or different terms by the offeree in a definite and timely acceptance does **NOT** constitute a rejection and counteroffer, but rather is effective as an acceptance, unless the acceptance is expressly made
conditional on assent to the additional or different terms. Whether the additional or different terms become part of the contract depends on whether or not both parties are merchants.

• **Additional Terms: Non-merchant**-terms of offer govern. If any party to the contract is not a merchant, the additional or different terms are considered to be mere proposals to modify the contract that do not become part of the contract. **Merchants**-additional terms usually included unless: they materially alter the original terms of the offer, the offer expressly limits acceptance to the terms of the offer or the offer has already objected to the particular terms or objects within a reasonable time after the notice of them is received.

**Mailbox Rule:** Acceptance by mail or similar means creates a contract at the moment of dispatch, provided that the mail is properly addressed and stamped, unless: the offer stipulates that acceptance is not effective until received or an option contract is involved (an acceptance under an option contract is effective only upon receipt). If the offeree sends a rejection and then sends an acceptance, whichever arrives first is effective. If the offeree sends an acceptance and then a rejection the acceptance is effective (i.e., the mailbox rule applies) unless the rejection arrives first and the offeror detrimentally relies on it.

**Parol Evidence:** If writing is final and complete i.e. Integrated contract any evidence of prior or contemporaneous understanding of the parties is inadmissible if offered to contradict or modify the terms of the written agreement. **Course of dealing** or **course of performance** may be used to explain the writing. **Parol Evidence** rule does not exclude evidence of fraud, duress, mistake, or evidence necessary to establish consequential damages, rescission, or reformation

**Defenses**

• **Statute of Frauds:** A writing must evidence a contract for sale of goods or risk being unenforceable against party to be charged with breach. Requirements: authenticated by party to be bound and specify quantity. **Exceptions to SOF:** confirmation of oral agreement, specially manufactured goods, part performance.

• Illusory K
• Unilateral or mutual mistake
• Unconscionable
• Impossibility/Impractability
• Fraud/Misrepresentation

**Warranties:** Warranty of Title, Warranty Against Infringement, Implied Warranty of Merchantability, Implied Warranty of Fitness for a Particular Purpose, Express Warranty.
**Assurances:** Either party is entitled to demand adequate assurance performance will occur. The insecure party may suspend any performance, must have reasonable grounds of insecurity with respect to other party’s performance, brink of insolvency is reasonable grounds. Demand for adequate assurance must be in writing. Upon receipt of demand, failure to provide reasonable assurance within a reasonable time not to exceed 30 days constitutes a repudiation of the contract.

**Repudiation of Contract** Non-repudiating party can await performance for a commercially reasonable time, resort to any remedy for breach, and suspend performance.

**Remedies**

- Specific performance
- Liquidating damages
- Market price
- Incidental damages
- Consequential damages
- BUYERS Remedies upon buyers acceptance of goods: e.g., value of conforming goods minus the value of nonconforming goods plus incidental and consequential damages
- BUYERS Remedies upon sellers failure to deliver goods, Cover Cost
- SELLERS Remedies: withhold delivery, stop delivery, resell goods, cancel contract, recover market damages, recover the price
- Lost Volume Seller. If damages are inadequate to put seller in as a good a position as performance, then damages measured by profit seller would have made.--- plus incidental and consequential damages.