Chapter 20: Performance

PERFORMANCE BY THE SELLER

Tender of Delivery the seller makes available to the buyer goods conforming to the contract and so notifies the buyer
- Buyer is obligated to accept conforming goods
- Seller is entitled to receive payment of the contract price

Time of Tender tender must be made at a reasonable time and kept open for a reasonable period of time
Place of Tender if none is specified, place for delivery is the seller’s place of business or, if he has no such place, his residence
- **Shipment Contracts** seller is required to tender delivery of the goods to a carrier for delivery to buyer; shipment terms include F.O.B. place of shipment, F.A.S. port of shipment, C.I.F., and C. & F.
- **Destination Contracts** seller is required to tender delivery of the goods at a named destination; destination terms include F.O.B. place of destination, exship, and no arrival, no sale
- **Goods Held by Bailee** seller must either tender to the buyer a document of title or obtain an acknowledgment from the bailee

Perfect Tender Rule the seller’s tender of performance must conform exactly to the contract, subject to the following qualifications:
- **Agreement between the Parties** the parties may contractually limit the operation of the perfect tender rule
- **Cure by the Seller** when the time for performance under the contract has not expired or when the seller has shipped nonconforming goods in the belief that the nonconforming tender would be acceptable, a seller may cure or correct his nonconforming tender
- **Installment Contracts** when the contract calls for delivery of goods in separate lots, the buyer may reject a nonconforming installment if it substantially impairs the value of that installment and cannot be cured; but if nonconformity or default of one or more of the installments substantially impairs the value of the whole contract, the buyer can treat the breach as a breach of the whole contract

PERFORMANCE BY THE BUYER

Inspection unless otherwise agreed, the buyer has a reasonable time in which to inspect the goods before payment or acceptance to determine whether they conform
Rejection buyer’s manifestation of unwillingness to become the owner of the goods; must be made within a reasonable time after the goods have been tendered or delivered and gives the buyer the right to (1) reject all of the goods, (2) accept all of the goods, or (3) accept any commercial unit(s) and reject the rest
Acceptance buyer’s express or implied manifestation of a willingness to become the owner of the goods
Revocation of Acceptance rescission of buyer’s acceptance of the goods if nonconformity of the goods substantially impairs their value, provided that the acceptance was (1) premised on the assumption that the nonconformity would be cured by the seller and it was not, or (2) the nonconformity was an undiscovered hidden defect
Obligation of Payment in the absence of an agreement, payment is due at the time and place the buyer is to receive the goods

OBLIGATIONS OF BOTH PARTIES

Casualty to Identified Goods if the contract is for goods that were identified when the contract was made and those goods are totally lost or damaged without fault of either party and before the risk of loss has passed to the buyer, the contract is avoided
Nonhappening of Presupposed Condition the seller is excused from the duty of performance on the nonoccurrence of presupposed conditions that were a basic assumption of the contract, unless the seller has expressly assumed the risk
Substituted Performance when neither party is at fault and the agreed manner of delivery of goods becomes commercially impracticable, a substituted manner of performance must be tendered and accepted
Right to Adequate Assurance of Performance when reasonable grounds for insecurity arise regarding either party's performance, the other party may demand written assurance and suspend his own performance until he receives that assurance
Right to Cooperation if one party’s required cooperation is untimely, the other party is excused from any resulting delay in her own performance
Anticipatory Repudiation if either party clearly indicates an unwillingness or inability to perform before the performance is due, the other party may await performance for a reasonable time or resort to any remedy for
breach