

1 Article 2.

2 Sales.

3 PART 1.

4 SHORT TITLE, GENERAL CONSTRUCTION AND SUBJECT MATTER.

5 **§ 25-2-101. Short title.**

6 This article shall be known and may be cited as Uniform Commercial Code-Sales. (1965, c.
7 700, s. 1.)

8
9 **§ 25-2-102. Scope; certain security and other transactions excluded from this article.**

10 Unless the context otherwise requires, this article applies to transactions in goods; it does
11 not apply to any transaction which although in the form of an unconditional contract to sell or
12 present sale is intended to operate only as a security transaction nor does this article impair or
13 repeal any statute regulating sales to consumers, farmers or other specified classes of buyers.
14 (1965, c. 700, s. 1.)

15
16 **§ 25-2-103. Definitions and index of definitions.**

17 (1) In this article unless the context otherwise requires

18 (a) "Buyer" means a person who buys or contracts to buy goods.

19 (b) Repealed by Session Laws 2006-112, s. 2, effective October 1, 2006.

20 (c) "Receipt" of goods means taking physical possession of them.

21 (d) "Seller" means a person who sells or contracts to sell goods. Any
22 manufacturer of self-propelled motor vehicles, as defined in G.S. 20-4.01, is
23 also a "seller" with respect to buyers of its product to whom it makes an
24 express warranty, notwithstanding any lack of privity between them, for
25 purposes of all rights and remedies available to buyers under this Article.

26 (2) Other definitions applying to this article or to specified parts thereof, and the
27 sections in which they appear are:

28 "Acceptance."	G.S. 25-2-606.
29 "Banker's credit."	G.S. 25-2-325.
30 "Between merchants."	G.S. 25-2-104.
31 "Cancellation."	G.S. 25-2-106 (4).
32 "Commercial unit."	G.S. 25-2-105.
33 "Confirmed credit."	G.S. 25-2-325.
34 "Conforming to contract."	G.S. 25-2-106.
35 "Contract for sale."	G.S. 25-2-106.
36 "Cover."	G.S. 25-2-712.
37 "Entrusting."	G.S. 25-2-403.
38 "Financing agency."	G.S. 25-2-104.
39 "Future goods."	G.S. 25-2-105.
40 "Goods."	G.S. 25-2-105.
41 "Identification."	G.S. 25-2-501.
42 "Installment contract."	G.S. 25-2-612.
43 "Letter of credit."	G.S. 25-2-325.
44 "Lot."	G.S. 25-2-105.
45 "Merchant."	G.S. 25-2-104.
46 "Overseas."	G.S. 25-2-323.
47 "Person in position of seller."	G.S. 25-2-707.
48 "Present sale."	G.S. 25-2-106.
49 "Sale."	G.S. 25-2-106.
50 "Sale on approval."	G.S. 25-2-326.
51 "Sale or return."	G.S. 25-2-326.

- 1 "Termination." G.S. 25-2-106.
2 (3) "Control" as provided in G.S. 25-7-106 and the following definitions in other
3 Articles apply to this Article:
4 "Check" G.S. 25-3-104.
5 "Consignee" G.S. 25-7-102.
6 "Consignor" G.S. 25-7-102.
7 "Consumer Goods" G.S. 25-9-102.
8 "Dishonor" G.S. 25-3-502.
9 "Draft" G.S. 25-3-104.
10 (4) In addition article 1 contains general definitions and principles of construction and
11 interpretation applicable throughout this article. (1965, c. 700, s. 1; 1983, c. 598; 2000-169, s.
12 8; 2006-112, ss. 2, 27.)
13

14 **§ 25-2-104. Definitions: "Merchant"; "between merchants"; "financing agency."**

15 (1) "Merchant" means a person who deals in goods of the kind or otherwise by his
16 occupation holds himself out as having knowledge or skill peculiar to the practices or goods
17 involved in the transaction or to whom such knowledge or skill may be attributed by his
18 employment of an agent or broker or other intermediary who by his occupation holds himself
19 out as having such knowledge or skill.

20 (2) "Financing agency" means a bank, finance company or other person who in the
21 ordinary course of business makes advances against goods or documents of title or who by
22 arrangement with either the seller or the buyer intervenes in ordinary course to make or collect
23 payment due or claimed under the contract for sale, as by purchasing or paying the seller's draft
24 or making advances against it or by merely taking it for collection whether or not documents of
25 title accompany or are associated with the draft. "Financing agency" includes also a bank or
26 other person who similarly intervenes between persons who are in the position of seller and
27 buyer in respect to the goods (G.S. 25-2-707).

28 (3) "Between merchants" means in any transaction with respect to which both parties
29 are chargeable with the knowledge or skill of merchants. (1965, c. 700, s. 1; 2006-112, s. 28.)
30

31 **§ 25-2-105. Definitions: Transferability; "goods"; "future" goods; "lot"; "commercial**
32 **unit."**

33 (1) "Goods" means all things (including specially manufactured goods) which are
34 movable at the time of identification to the contract for sale other than the money in which the
35 price is to be paid, investment securities (article 8) and things in action. "Goods" also includes
36 the unborn young of animals and growing crops and other identified things attached to realty as
37 described in the section on goods to be severed from realty (G.S. 25-2-107).

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

41 (3) There may be a sale of a part interest in existing identified goods.

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

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

48 (6) "Commercial unit" means such a unit of goods as by commercial usage is a single
49 whole for purposes of sale and division of which materially impairs its character or value on the
50 market or in use. A commercial unit may be a single article (as a machine) or a set of articles

1 (as a suite of furniture or an assortment of sizes) or a quantity (as a bale, gross, or carload) or
2 any other unit treated in use or in the relevant market as a single whole. (1965, c. 700, s. 1.)
3

4 **§ 25-2-106. Definitions: "Contract"; "agreement"; "contract for sale"; "sale"; "present**
5 **sale"; "layaway contract"; "conforming" to contract; "termination";**
6 **"cancellation."**

7 (1) In this article unless the context otherwise requires "contract" and "agreement" are
8 limited to those relating to the present or future sale of goods, including layaway contracts.
9 "Contract for sale" includes both a present sale of goods and a contract to sell goods at a future
10 time. A "sale" consists in the passing of title from the seller to the buyer for a price (G.S.
11 25-2-401). A "present sale" means a sale which is accomplished by the making of the contract.
12 A "layaway contract" means any contract for the sale of goods in which the seller agrees with
13 the purchaser, in consideration for the purchaser's payment of a deposit, down payment, or
14 similar initial payment, to hold identified goods for future delivery upon the purchaser's
15 payment of a specified additional amount, whether in installments or otherwise.

16 (2) Goods or conduct including any part of a performance are "conforming" or conform
17 to the contract when they are in accordance with the obligations under the contract.

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

22 (4) "Cancellation" occurs when either party puts an end to the contract for breach by the
23 other and its effect is the same as that of "termination" except that the cancelling party also
24 retains any remedy for breach of the whole contract or any unperformed balance. (1965, c. 700,
25 s. 1; 1967, c. 24, s. 6; 1993, c. 340, s. 1.)
26

27 **§ 25-2-107. Goods to be severed from realty; recording.**

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

32 (2) A contract for the sale apart from the land of growing crops or other things attached
33 to realty and capable of severance without material harm thereto but not described in subsection
34 (1) or of timber to be cut is a contract for the sale of goods within this article whether the
35 subject matter is to be severed by the buyer or by the seller even though it forms part of the
36 realty at the time of contracting, and the parties can by identification effect a present sale before
37 severance.

38 (3) The provisions of this section are subject to any third-party rights provided by the
39 law relating to realty records, and the contract for sale may be executed and recorded as a
40 document transferring an interest in land and shall then constitute notice to third parties of the
41 buyer's rights under the contract for sale. (1965, c. 700, s. 1; 1975, c. 862, s. 4.)
42

43 **PART 2.**

44 **FORM, FORMATION AND READJUSTMENT OF CONTRACT.**

45 **§ 25-2-201. Formal requirements; statute of frauds.**

46 (1) Except as otherwise provided in this section a contract for the sale of goods for the
47 price of five hundred dollars (\$500.00) or more is not enforceable by way of action or defense
48 unless there is some writing sufficient to indicate that a contract for sale has been made
49 between the parties and signed by the party against whom enforcement is sought or by his
50 authorized agent or broker. A writing is not insufficient because it omits or incorrectly states a

1 term agreed upon but the contract is not enforceable under this paragraph beyond the quantity
2 of goods shown in such writing.

3 (2) Between merchants if within a reasonable time a writing in confirmation of the
4 contract and sufficient against the sender is received and the party receiving it has reason to
5 know its contents, it satisfies the requirements of subsection (1) against such party unless
6 written notice of objection to its contents is given within ten days after it is received.

7 (3) A contract which does not satisfy the requirements of subsection (1) but which is
8 valid in other respects is enforceable

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

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

19 (c) with respect to goods for which payment has been made and accepted or
20 which have been received and accepted (G.S. 25-2-606). (1965, c. 700, s. 1.)

21 22 PART 2.

23 FORM, FORMATION AND READJUSTMENT OF CONTRACT.

24 25 **§ 25-2-202. Final written expression; parol or extrinsic evidence.**

26 Terms with respect to which the confirmatory memoranda of the parties agree or which are
27 otherwise set forth in a writing intended by the parties as a final expression of their agreement
28 with respect to such terms as are included therein may not be contradicted by evidence of any
29 prior agreement or of a contemporaneous oral agreement but may be explained or
30 supplemented

31 (a) by course of dealing or usage of trade (G.S. 25-1-205) or by course of performance
32 (G.S. 25-2-208); and

33 (b) by evidence of consistent additional terms unless the court finds the writing to have
34 been intended also as a complete and exclusive statement of the terms of the agreement. (1965,
35 c. 700, s. 1.)

36 37 **§ 25-2-203. Seals inoperative.**

38 The affixing of a seal to a writing evidencing a contract for sale or an offer to buy or sell
39 goods does not constitute the writing a sealed instrument and the law with respect to sealed
40 instruments does not apply to such a contract or offer. (1965, c. 700, s. 1.)

41 42 **§ 25-2-204. Formation in general.**

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

45 (2) An agreement sufficient to constitute a contract for sale may be found even though
46 the moment of its making is undetermined.

47 (3) Even though one or more terms are left open a contract for sale does not fail for
48 indefiniteness if the parties have intended to make a contract and there is a reasonably certain
49 basis for giving an appropriate remedy. (1965, c. 700, s. 1.)

50 51 **§ 25-2-205. Firm offers.**

1 An offer by a merchant to buy or sell goods in a signed writing which by its terms gives
2 assurance that it will be held open is not revocable, for lack of consideration, during the time
3 stated or if no time is stated for a reasonable time, but in no event may such period of
4 irrevocability exceed three months; but any such term of assurance on a form supplied by the
5 offeree must be separately signed by the offeror. (1965, c. 700, s. 1.)
6

7 **§ 25-2-206. Offer and acceptance in formation of contract.**

8 (1) Unless otherwise unambiguously indicated by the language or circumstances

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

11 (b) an order or other offer to buy goods for prompt or current shipment shall be
12 construed as inviting acceptance either by a prompt promise to ship or by the
13 prompt or current shipment of conforming or nonconforming goods, but
14 such a shipment of nonconforming goods does not constitute an acceptance
15 if the seller seasonably notifies the buyer that the shipment is offered only as
16 an accommodation to the buyer.

17 (2) Where the beginning of a requested performance is a reasonable mode of
18 acceptance an offeror who is not notified of acceptance within a reasonable time may treat the
19 offer as having lapsed before acceptance. (1965, c. 700, s. 1.)
20

21 **§ 25-2-207. Additional terms in acceptance or confirmation.**

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

26 (2) The additional terms are to be construed as proposals for addition to the contract.
27 Between merchants such terms become part of the contract unless:

28 (a) the offer expressly limits acceptance to the terms of the offer;

29 (b) they materially alter it; or

30 (c) notification of objection to them has already been given or is given within a
31 reasonable time after notice of them is received.

32 (3) Conduct by both parties which recognizes the existence of a contract is sufficient to
33 establish a contract for sale although the writings of the parties do not otherwise establish a
34 contract. In such case the terms of the particular contract consist of those terms on which the
35 writings of the parties agree, together with any supplementary terms incorporated under any
36 other provisions of this chapter. (1965, c. 700, s. 1; 1967, c. 562, s. 1.)
37

38 **§ 25-2-208:** Repealed by Session Laws 2006-112, s. 4, effective October 1, 2006.
39

40 **§ 25-2-209. Modification, rescission and waiver.**

41 (1) An agreement modifying a contract within this article needs no consideration to be
42 binding.

43 (2) A signed agreement which excludes modification or rescission except by a signed
44 writing cannot be otherwise modified or rescinded, but except as between merchants such a
45 requirement on a form supplied by the merchant must be separately signed by the other party.

46 (3) The requirements of the statute of frauds section of this article (G.S. 25-2-201) must
47 be satisfied if the contract as modified is within its provisions.

48 (4) Although an attempt at modification or rescission does not satisfy the requirements
49 of subsection (2) or (3) it can operate as a waiver.

50 (5) A party who has made a waiver affecting an executory portion of the contract may
51 retract the waiver by reasonable notification received by the other party that strict performance

1 will be required of any term waived, unless the retraction would be unjust in view of a material
2 change of position in reliance on the waiver. (1965, c. 700, s. 1.)
3

4 **§ 25-2-210. Delegation of performance; assignment of rights.**

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

9 (2) Except as otherwise provided in G.S. 25-9-406, unless otherwise agreed, all rights
10 of either seller or buyer can be assigned except where the assignment would materially change
11 the duty of the other party, or increase materially the burden or risk imposed on him by his
12 contract, or impair materially his chance of obtaining return performance. A right to damages
13 for breach of the whole contract or a right arising out of the assignor's due performance of his
14 entire obligation can be assigned despite agreement otherwise.

15 (3) The creation, attachment, perfection, or enforcement of a security interest in the
16 seller's interest under a contract is not a transfer that materially changes the duty of or increases
17 materially the burden or risk imposed on the buyer or impairs materially the buyer's chance of
18 obtaining return performance within the purview of subsection (2) of this section unless, and
19 then only to the extent that, enforcement actually results in a delegation of material
20 performance of the seller. Even in that event, the creation, attachment, perfection, and
21 enforcement of the security interest remain effective, but (i) the seller is liable to the buyer for
22 damages caused by the delegation to the extent that the damages could not reasonably be
23 prevented by the buyer, and (ii) a court having jurisdiction may grant other appropriate relief,
24 including cancellation of the contract for sale or an injunction against enforcement of the
25 security interest or consummation of the enforcement.

26 (4) Unless the circumstances indicate the contrary, a prohibition of assignment of "the
27 contract" is to be construed as barring only the delegation to the assignee of the assignor's
28 performance.

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

35 (6) The other party may treat any assignment which delegates performance as creating
36 reasonable grounds for insecurity and may without prejudice to his rights against the assignor
37 demand assurances from the assignee. (1965, c. 700, s. 1; 2000-169, s. 9.)
38

39 **PART 3.**

40 **GENERAL OBLIGATION AND CONSTRUCTION OF CONTRACT.**

41
42 **§ 25-2-301. General obligations of parties.**

43 The obligation of the seller is to transfer and deliver and that of the buyer is to accept and
44 pay in accordance with the contract. (1965, c. 700, s. 1.)
45

46 **§ 25-2-302. Unconscionable contract or clause.**

47 (1) If the court as a matter of law finds the contract or any clause of the contract to have
48 been unconscionable at the time it was made the court may refuse to enforce the contract, or it
49 may enforce the remainder of the contract without the unconscionable clause, or it may so limit
50 the application of any unconscionable clause as to avoid any unconscionable result.

1 (2) When it is claimed or appears to the court that the contract or any clause thereof
2 may be unconscionable the parties shall be afforded a reasonable opportunity to present
3 evidence as to its commercial setting, purpose and effect to aid the court in making the
4 determination. (1971, c. 1055, s. 1.)
5

6 **§ 25-2-303. Allocation or division of risks.**

7 Where this article allocates a risk or a burden as between the parties "unless otherwise
8 agreed," the agreement may not only shift the allocation but may also divide the risk or burden.
9 (1965, c. 700, s. 1.)
10

11 **§ 25-2-304. Price payable in money, goods, realty, or otherwise.**

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

14 (2) Even though all or part of the price is payable in an interest in realty the transfer of
15 the goods and the seller's obligations with reference to them are subject to this article, but not
16 the transfer of the interest in realty or the transferor's obligations in connection therewith.
17 (1965, c. 700, s. 1.)
18

19 **§ 25-2-305. Open price term.**

20 (1) The parties if they so intend can conclude a contract for sale even though the price is
21 not settled. In such a case the price is a reasonable price at the time for delivery if

22 (a) nothing is said as to price; or

23 (b) the price is left to be agreed by the parties and they fail to agree; or

24 (c) the price is to be fixed in terms of some agreed market or other standard as
25 set or recorded by a third person or agency and it is not so set or recorded.

26 (2) A price to be fixed by the seller or by the buyer means a price for him to fix in good
27 faith.

28 (3) When a price left to be fixed otherwise than by agreement of the parties fails to be
29 fixed through fault of one party the other may at his option treat the contract as cancelled or
30 himself fix a reasonable price.

31 (4) Where, however, the parties intend not to be bound unless the price be fixed or
32 agreed and it is not fixed or agreed there is no contract. In such a case the buyer must return
33 any goods already received or if unable so to do must pay their reasonable value at the time of
34 delivery and the seller must return any portion of the price paid on account. (1965, c. 700, s. 1.)
35

36 **§ 25-2-306. Output, requirements and exclusive dealings.**

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

42 (2) A lawful agreement by either the seller or the buyer for exclusive dealing in the kind
43 of goods concerned imposes unless otherwise agreed an obligation by the seller to use best
44 efforts to supply the goods and by the buyer to use best efforts to promote their sale. (1965, c.
45 700, s. 1.)
46

47 **§ 25-2-307. Delivery in single lot or several lots.**

48 Unless otherwise agreed all goods called for by a contract for sale must be tendered in a
49 single delivery and payment is due only on such tender but where the circumstances give either
50 party the right to make or demand delivery in lots the price if it can be apportioned may be
51 demanded for each lot. (1965, c. 700, s. 1.)

1
2 **§ 25-2-308. Absence of specified place for delivery.**

3 Unless otherwise agreed

4 (a) the place for delivery of goods is the seller's place of business or if he has none, his
5 residence; but

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

8 (c) documents of title may be delivered through customary banking channels. (1965, c.
9 700, s. 1.)

10
11 **§ 25-2-309. Absence of specific time provisions; notice of termination.**

12 (1) The time for shipment or delivery or any other action under a contract if not
13 provided in this article or agreed upon shall be a reasonable time.

14 (2) Where the contract provides for successive performances but is indefinite in
15 duration it is valid for a reasonable time but unless otherwise agreed may be terminated at any
16 time by either party.

17 (3) Termination of a contract by one party except on the happening of an agreed event
18 requires that reasonable notification be received by the other party and an agreement dispensing
19 with notification is invalid if its operation would be unconscionable. (1965, c. 700, s. 1.)

20
21 **PART 3.**

22 **GENERAL OBLIGATION AND CONSTRUCTION OF CONTRACT.**

23 **§ 25-2-310. Open time for payment or running of credit; authority to ship under**
24 **reservation.**

25 Unless otherwise agreed

26 (a) payment is due at the time and place at which the buyer is to receive the goods even
27 though the place of shipment is the place of delivery; and

28 (b) if the seller is authorized to send the goods he may ship them under reservation, and
29 may tender the documents of title, but the buyer may inspect the goods after their arrival before
30 payment is due unless such inspection is inconsistent with the terms of the contract (G.S.
31 25-2-513); and

32 (c) if delivery is authorized and made by way of documents of title otherwise than by
33 subsection (b) then payment is due regardless of where the goods are to be received (i) at the
34 time and place at which the buyer is to receive delivery of the tangible documents or (ii) at the
35 time the buyer is to receive delivery of the electronic documents and at the seller's place of
36 business or if none, the seller's residence; and

37 (d) where the seller is required or authorized to ship the goods on credit the credit
38 period runs from the time of shipment but postdating the invoice or delaying its dispatch will
39 correspondingly delay the starting of the credit period. (1965, c. 700, s. 1; 2006-112, s. 29.)

40
41 **§ 25-2-311. Options and cooperation respecting performance.**

42 (1) An agreement for sale which is otherwise sufficiently definite (subsection (3) of
43 G.S. 25-2-204) to be a contract is not made invalid by the fact that it leaves particulars of
44 performance to be specified by one of the parties. Any such specification must be made in good
45 faith and within limits set by commercial reasonableness.

46 (2) Unless otherwise agreed specifications relating to assortment of the goods are at the
47 buyer's option and except as otherwise provided in subsections (1) (c) and (3) of G.S. 25-2-319
48 specifications or arrangements relating to shipment are at the seller's option.

49 (3) Where such specification would materially affect the other party's performance but
50 is not seasonably made or where one party's cooperation is necessary to the agreed performance
51 of the other but is not seasonably forthcoming, the other party in addition to all other remedies

- 1 (a) is excused for any resulting delay in his own performance; and
2 (b) may also either proceed to perform in any reasonable manner or after the
3 time for a material part of his own performance treat the failure to specify or
4 to cooperate as a breach by failure to deliver or accept the goods. (1965, c.
5 700, s. 1.)
6

7 **§ 25-2-312. Warranty of title and against infringement; buyer's obligation against**
8 **infringement.**

- 9 (1) Subject to subsection (2) there is in a contract for sale a warranty by the seller that
10 (a) the title conveyed shall be good, and its transfer rightful; and
11 (b) the goods shall be delivered free from any security interest or other lien or
12 encumbrance of which the buyer at the time of contracting has no
13 knowledge.

14 (2) A warranty under subsection (1) will be excluded or modified only by specific
15 language or by circumstances which give the buyer reason to know that the person selling does
16 not claim title in himself or that he is purporting to sell only such right or title as he or a third
17 person may have.

18 (3) Unless otherwise agreed a seller who is a merchant regularly dealing in goods of the
19 kind warrants that the goods shall be delivered free of the rightful claim of any third person by
20 way of infringement or the like but a buyer who furnishes specifications to the seller must hold
21 the seller harmless against any such claim which arises out of compliance with the
22 specifications. (1965, c. 700, s. 1.)
23

24 **§ 25-2-313. Express warranties by affirmation, promise, description, sample.**

- 25 (1) Express warranties by the seller are created as follows:
26 (a) Any affirmation of fact or promise made by the seller to the buyer which
27 relates to the goods and becomes part of the basis of the bargain creates an
28 express warranty that the goods shall conform to the affirmation or promise.
29 (b) Any description of the goods which is made part of the basis of the bargain
30 creates an express warranty that the goods shall conform to the description.
31 (c) Any sample or model which is made part of the basis of the bargain creates
32 an express warranty that the whole of the goods shall conform to the sample
33 or model.

34 (2) It is not necessary to the creation of an express warranty that the seller use formal
35 words such as "warrant" or "guarantee" or that he have a specific intention to make a warranty,
36 but an affirmation merely of the value of the goods or a statement purporting to be merely the
37 seller's opinion or commendation of the goods does not create a warranty. (1965, c. 700, s. 1.)
38

39 **§ 25-2-314. Implied warranty: Merchantability; usage of trade.**

40 (1) Unless excluded or modified (G.S. 25-2-316), a warranty that the goods shall be
41 merchantable is implied in a contract for their sale if the seller is a merchant with respect to
42 goods of that kind. Under this section the serving for value of food or drink to be consumed
43 either on the premises or elsewhere is a sale.

- 44 (2) Goods to be merchantable must be at least such as
45 (a) pass without objection in the trade under the contract description; and
46 (b) in the case of fungible goods, are of fair average quality within the
47 description; and
48 (c) are fit for the ordinary purposes for which such goods are used; and
49 (d) run, within the variations permitted by the agreement, of even kind, quality
50 and quantity within each unit and among all units involved; and

- 1 (e) are adequately contained, packaged, and labeled as the agreement may
2 require; and
3 (f) conform to the promises or affirmations of fact made on the container or
4 label if any.

5 (3) Unless excluded or modified (G.S. 25-2-316) other implied warranties may arise
6 from course of dealing or usage of trade. (1965, c. 700, s. 1.)
7

8 **§ 25-2-315. Implied warranty: Fitness for particular purpose.**

9 Where the seller at the time of contracting has reason to know any particular purpose for
10 which the goods are required and that the buyer is relying on the seller's skill or judgment to
11 select or furnish suitable goods, there is unless excluded or modified under the next section
12 [G.S. 25-2-316] an implied warranty that the goods shall be fit for such purpose. (1965, c. 700,
13 s. 1.)
14

15 **§ 25-2-316. Exclusion or modification of warranties.**

16 (1) Words or conduct relevant to the creation of an express warranty and words or
17 conduct tending to negate or limit warranty shall be construed wherever reasonable as
18 consistent with each other; but subject to the provisions of this article on parol or extrinsic
19 evidence (G.S. 25-2-202) negation or limitation is inoperative to the extent that such
20 construction is unreasonable.

21 (2) Subject to subsection (3), to exclude or modify the implied warranty of
22 merchantability or any part of it the language must mention merchantability and in case of a
23 writing must be conspicuous, and to exclude or modify any implied warranty of fitness the
24 exclusion must be by a writing and conspicuous. Language to exclude all implied warranties of
25 fitness is sufficient if it states, for example, that "There are no warranties which extend beyond
26 the description on the face hereof."

27 (3) Notwithstanding subsection (2)

- 28 (a) unless the circumstances indicate otherwise, all implied warranties are
29 excluded by expressions like "as is," "with all faults" or other language
30 which in common understanding calls the buyer's attention to the exclusion
31 of warranties and makes plain that there is no implied warranty; and
32 (b) when the buyer before entering into the contract has examined the goods or
33 the sample or model as fully as he desired or has refused to examine the
34 goods there is no implied warranty with regard to defects which an
35 examination ought in the circumstances to have revealed to him; and
36 (c) an implied warranty can also be excluded or modified by course of dealing
37 or course of performance or usage of trade.

38 (4) Remedies for breach of warranty can be limited in accordance with the provisions of
39 this article on liquidation or limitation of damages and on contractual modification of remedy
40 (G.S. 25-2-718 and 25-2-719). (1965, c. 700, s. 1.)
41

42 **§ 25-2-317. Cumulation and conflict of warranties express or implied.**

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

- 46 (a) Exact or technical specifications displace an inconsistent sample or model or
47 general language of description.
48 (b) A sample from an existing bulk displaces inconsistent general language of
49 description.
50 (c) Express warranties displace inconsistent implied warranties other than an
51 implied warranty of fitness for a particular purpose. (1965, c. 700, s. 1.)

1
2 **§ 25-2-318. Third party beneficiaries of warranties express or implied.**

3 A seller's warranty whether express or implied extends to any natural person who is in the
4 family or household of his buyer or who is a guest in his home if it is reasonable to expect that
5 such person may use, consume or be affected by the goods and who is injured in person by
6 breach of the warranty. A seller may not exclude or limit the operation of this section. (1965, c.
7 700, s. 1.)
8

9 **§ 25-2-319. F.O.B. and F.A.S. terms.**

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

12 (a) when the term is F.O.B. the place of shipment, the seller must at that place
13 ship the goods in the manner provided in this article (G.S. 25-2-504) and
14 bear the expense and risk of putting them into the possession of the carrier;
15 or

16 (b) when the term is F.O.B. the place of destination, the seller must at his own
17 expense and risk transport the goods to that place and there tender delivery
18 of them in the manner provided in this article (G.S. 25-2-503);

19 (c) when under either (a) or (b) the term is also F.O.B. vessel, car or other
20 vehicle, the seller must in addition at his own expense and risk load the
21 goods on board. If the term is F.O.B. vessel the buyer must name the vessel
22 and in an appropriate case the seller must comply with the provisions of this
23 article on the form of bill of lading (G.S. 25-2-323).

24 (2) Unless otherwise agreed the term F.A.S. vessel (which means "free alongside") at a
25 named port, even though used only in connection with the stated price, is a delivery term under
26 which the seller must

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

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

32 (3) Unless otherwise agreed in any case falling within subsection (1)(a) or (c) or
33 subsection (2) the buyer must seasonably give any needed instructions for making delivery,
34 including when the term is F.A.S. or F.O.B. the loading berth of the vessel and in an
35 appropriate case its name and sailing date. The seller may treat the failure of needed
36 instructions as a failure of cooperation under this article (G.S. 25-2-311). He may also at his
37 option move the goods in any reasonable manner preparatory to delivery or shipment.

38 (4) Under the term F.O.B. vessel or F.A.S. unless otherwise agreed the buyer must
39 make payment against tender of the required documents and the seller may not tender nor the
40 buyer demand delivery of the goods in substitution for the documents. (1965, c. 700, s. 1.)
41

42 **§ 25-2-320. C.I.F. and C. & F. terms.**

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

46 (2) Unless otherwise agreed and even though used only in connection with the stated
47 price and destination, the term C.I.F. destination or its equivalent requires the seller at his own
48 expense and risk to

49 (a) put the goods into the possession of a carrier at the port for shipment and
50 obtain a negotiable bill or bills of lading covering the entire transportation to
51 the named destination; and

- 1 (b) load the goods and obtain a receipt from the carrier (which may be contained
2 in the bill of lading) showing that the freight has been paid or provided for;
3 and
4 (c) obtain a policy or certificate of insurance, including any war risk insurance,
5 of a kind and on terms then current at the port of shipment in the usual
6 amount, in the currency of the contract, shown to cover the same goods
7 covered by the bill of lading and providing for payment of loss to the order
8 of the buyer or for the account of whom it may concern; but the seller may
9 add to the price the amount of the premium for any such war risk insurance;
10 and
11 (d) prepare an invoice of the goods and procure any other documents required to
12 effect shipment or to comply with the contract; and
13 (e) forward and tender with commercial promptness all the documents in due
14 form and with any indorsement necessary to perfect the buyer's rights.

15 (3) Unless otherwise agreed the term C. & F. or its equivalent has the same effect and
16 imposes upon the seller the same obligations and risks as a C.I.F. term except the obligation as
17 to insurance.

18 (4) Under the term C.I.F. or C. & F. unless otherwise agreed the buyer must make
19 payment against tender of the required documents and the seller may not tender nor the buyer
20 demand delivery of the goods in substitution for the documents. (1965, c. 700, s. 1.)
21

22 **§ 25-2-321. C.I.F. or C. & F.: "Net landed weights"; "payment on arrival"; warranty of**
23 **condition on arrival.**

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

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

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

34 (3) Unless otherwise agreed where the contract provides for payment on or after arrival
35 of the goods the seller must before payment allow such preliminary inspection as is feasible;
36 but if the goods are lost delivery of the documents and payment are due when the goods should
37 have arrived. (1965 c. 700, s. 1.)
38

39 **§ 25-2-322. Delivery "ex-ship."**

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

44 (2) Under such a term unless otherwise agreed

- 45 (a) the seller must discharge all liens arising out of the carriage and furnish the
46 buyer with a direction which puts the carrier under a duty to deliver the
47 goods; and
48 (b) the risk of loss does not pass to the buyer until the goods leave the ship's
49 tackle or are otherwise properly unloaded. (1965, c. 700, s. 1.)
50

51 **§ 25-2-323. Form of bill of lading required in overseas shipment; "overseas."**

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

5 (2) Where in a case within subsection (1) of this section a tangible bill of lading has
6 been issued in a set of parts, unless otherwise agreed if the documents are not to be sent from
7 abroad the buyer may demand tender of the full set; otherwise only one part of the bill of lading
8 need be tendered. Even if the agreement expressly requires a full set

9 (a) due tender of a single part is acceptable within the provisions of this Article
10 on cure of improper delivery (subsection (1) of G.S. 25-2-508); and

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

14 (3) A shipment by water or by air or a contract contemplating such shipment is
15 "overseas" insofar as by usage of trade or agreement it is subject to the commercial, financing
16 or shipping practices characteristic of international deep water commerce. (1965, c. 700, s. 1;
17 2006-112, s. 30.)
18

19 **§ 25-2-324. "No arrival, no sale" term.**

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

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

24 (b) where without fault of the seller the goods are in part lost or have so deteriorated as
25 no longer to conform to the contract or arrive after the contract time, the buyer may proceed as
26 if there had been casualty to identified goods (G.S. 25-2-613). (1965, c. 700, s. 1.)
27

28 **§ 25-2-325. "Letter of credit" term; "confirmed credit."**

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

31 (2) The delivery to seller of a proper letter of credit suspends the buyer's obligation to
32 pay. If the letter of credit is dishonored, the seller may on reasonable notification to the buyer
33 require payment directly from him.

34 (3) Unless otherwise agreed the term "letter of credit" or "banker's credit" in a contract
35 for sale means an irrevocable credit issued by a financing agency of good repute and, where the
36 shipment is overseas, of good international repute. The term "confirmed credit" means that the
37 credit must also carry the direct obligation of such an agency which does business in the seller's
38 financial market. (1965, c. 700, s. 1.)
39

40 **§ 25-2-326. Sale on approval and sale or return; rights of creditors.**

41 (1) Unless otherwise agreed, if delivered goods may be returned by the buyer even
42 though they conform to the contract, the transaction is:

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

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

45 (2) Goods held on approval are not subject to the claims of the buyer's creditors until
46 acceptance; goods held on sale or return are subject to such claims while in the buyer's
47 possession.

48 (3) Any "or return" term of a contract for sale is to be treated as a separate contract for
49 sale within the statute of frauds section of this article (G.S. 25-2-201) and as contradicting the
50 sale aspect of the contract within the provisions of this article on parol or extrinsic evidence
51 (G.S. 25-2-202). (1965, c. 700, s. 1; 2000-169, s. 10.)

1
2 **§ 25-2-327. Special incidents of sale on approval and sale or return.**

- 3 (1) Under a sale on approval unless otherwise agreed
4 (a) although the goods are identified to the contract the risk of loss and the title
5 do not pass to the buyer until acceptance; and
6 (b) use of the goods consistent with the purpose of trial is not acceptance but
7 failure seasonably to notify the seller of election to return the goods is
8 acceptance, and if the goods conform to the contract acceptance of any part
9 is acceptance of the whole; and
10 (c) after due notification of election to return, the return is at the seller's risk
11 and expense but a merchant buyer must follow any reasonable instructions.
12 (2) Under a sale or return unless otherwise agreed
13 (a) the option to return extends to the whole or any commercial unit of the
14 goods while in substantially their original condition, but must be exercised
15 seasonably; and
16 (b) the return is at the buyer's risk and expense. (1965, c. 700, s. 1.)
17

18 **§ 25-2-328. Sale by auction.**

- 19 (1) In a sale by auction if goods are put up in lots each lot is the subject of a separate
20 sale.
21 (2) A sale by auction is complete when the auctioneer so announces by the fall of the
22 hammer or in other customary manner. Where a bid is made while the hammer is falling in
23 acceptance of a prior bid the auctioneer may in his discretion reopen the bidding or declare the
24 goods sold under the bid on which the hammer was falling.
25 (3) Such a sale is with reserve unless the goods are in explicit terms put up without
26 reserve. In an auction with reserve the auctioneer may withdraw the goods at any time until he
27 announces completion of the sale. In an auction without reserve, after the auctioneer calls for
28 bids on an article or lot, that article or lot cannot be withdrawn unless no bid is made within a
29 reasonable time. In either case a bidder may retract his bid until the auctioneer's announcement
30 of completion of the sale, but a bidder's retraction does not revive any previous bid.
31 (4) If the auctioneer knowingly receives a bid on the seller's behalf or the seller makes
32 or procures such a bid, and notice has not been given that liberty for such bidding is reserved,
33 the buyer may at his option avoid the sale or take the goods at the price of the last good faith
34 bid prior to the completion of the sale. This subsection shall not apply to any bid at a forced
35 sale. (1965, c. 700, s. 1.)
36

37 **PART 4.**

38 **TITLE, CREDITORS AND GOOD FAITH PURCHASERS.**

39 **§ 25-2-401. Passing of title; reservation for security; limited application of this section.**

40 Each provision of this article with regard to the rights, obligations and remedies of the
41 seller, the buyer, purchasers or other third parties applies irrespective of title to the goods
42 except where the provision refers to such title. Insofar as situations are not covered by the other
43 provisions of this article and matters concerning title become material the following rules
44 apply:

- 45 (1) Title to goods cannot pass under a contract for sale prior to their
46 identification to the contract (G.S. 25-2-501), and unless otherwise explicitly
47 agreed the buyer acquires by their identification a special property as limited
48 by this chapter. Any retention or reservation by the seller of the title
49 (property) in goods shipped or delivered to the buyer is limited in effect to a
50 reservation of a security interest. Subject to these provisions and to the
51 provisions of the article on secured transactions (article 9), title to goods

1 passes from the seller to the buyer in any manner and on any conditions
2 explicitly agreed on by the parties.

- 3 (2) Unless otherwise explicitly agreed title passes to the buyer at the time and
4 place at which the seller completes his performance with reference to the
5 physical delivery of the goods, despite any reservation of a security interest
6 and even though a document of title is to be delivered at a different time or
7 place; and in particular and despite any reservation of a security interest by
8 the bill of lading
9 (a) if the contract requires or authorizes the seller to send the goods to
10 the buyer but does not require him to deliver them at destination, title
11 passes to the buyer at the time and place of shipment; but
12 (b) if the contract requires delivery at destination, title passes on tender
13 there.
14 (3) Unless otherwise explicitly agreed where delivery is to be made without
15 moving the goods,
16 (a) if the seller is to deliver a tangible document of title, title passes at
17 the time when and the place where he delivers such documents and if
18 the seller is to deliver an electronic document of title, title passes
19 when the seller delivers the document; or
20 (b) if the goods are at the time of contracting already identified and no
21 documents of title are to be delivered, title passes at the time and
22 place of contracting.
23 (4) A rejection or other refusal by the buyer to receive or retain the goods,
24 whether or not justified, or a justified revocation of acceptance reverts title
25 to the goods in the seller. Such reversion occurs by operation of law and is
26 not a "sale." (1965, c. 700, s. 1; 2006-112, s. 31.)
27

28 **§ 25-2-402. Rights of seller's creditors against sold goods.**

29 (1) Except as provided in subsections (2) and (3), rights of unsecured creditors of the
30 seller with respect to goods which have been identified to a contract for sale are subject to the
31 buyer's rights to recover the goods under this article (G.S. 25-2-502 and 25-2-716).

32 (2) A creditor of the seller may treat a sale or an identification of goods to a contract for
33 sale as void if as against him a retention of possession by the seller is fraudulent under any rule
34 of law of the state where the goods are situated, except that retention of possession in good
35 faith and current course of trade by a merchant-seller for a commercially reasonable time after a
36 sale or identification is not fraudulent.

- 37 (3) Nothing in this article shall be deemed to impair the rights of creditors of the seller
38 (a) under the provisions of the article on secured transactions (article 9); or
39 (b) where identification to the contract or delivery is made not in current course
40 of trade but in satisfaction of or as security for a pre-existing claim for
41 money, security or the like and is made under circumstances which under
42 any rule of law of the state where the goods are situated would apart from
43 this article constitute the transaction a fraudulent transfer or voidable
44 preference. (1965, c. 700, s. 1.)
45

46 **§ 25-2-403. Power to transfer; good faith purchase of goods; "entrusting."**

47 (1) A purchaser of goods acquires all title which his transferor had or had power to
48 transfer except that a purchaser of a limited interest acquires rights only to the extent of the
49 interest purchased. A person with voidable title has power to transfer a good title to a good faith
50 purchaser for value. When goods have been delivered under a transaction of purchase the
51 purchaser has such power even though

- 1 (a) the transferor was deceived as to the identity of the purchaser, or
2 (b) the delivery was in exchange for a check which is later dishonored, or
3 (c) it was agreed that the transaction was to be a "cash sale," or
4 (d) the delivery was procured through fraud punishable as larcenous under the
5 criminal law.

6 (2) Any entrusting of possession of goods to a merchant who deals in goods of that kind
7 gives him power to transfer all rights of the entruster to a buyer in ordinary course of business.

8 (3) "Entrusting" includes any delivery and any acquiescence in retention of possession
9 regardless of any condition expressed between the parties to the delivery or acquiescence and
10 regardless of whether the procurement of the entrusting or the possessor's disposition of the
11 goods have been such as to be larcenous under the criminal law.

12 (4) The rights of other purchasers of goods and of lien creditors are governed by the
13 articles on secured transactions (article 9) and documents of title (article 7). (1965, c. 700, s. 1;
14 2004-190, s. 3.)
15

16 PART 5.
17 PERFORMANCE.

18 **§ 25-2-501. Insurable interest in goods; manner of identification of goods.**

19 (1) The buyer obtains a special property and an insurable interest in goods by
20 identification of existing goods as goods to which the contract refers even though the goods so
21 identified are nonconforming and he has an option to return or reject them. Such identification
22 can be made at any time and in any manner explicitly agreed to by the parties. In the absence of
23 explicit agreement identification occurs

- 24 (a) when the contract is made if it is for the sale of goods already existing and
25 identified;
26 (b) if the contract is for the sale of future goods other than those described in
27 paragraph (c), when goods are shipped, marked or otherwise designated by
28 the seller as goods to which the contract refers;
29 (c) when the crops are planted or otherwise become growing crops or the young
30 are conceived if the contract is for the sale of unborn young to be born
31 within twelve months after contracting or for the sale of crops to be
32 harvested within twelve months or the next normal harvest season after
33 contracting whichever is longer.

34 (2) The seller retains an insurable interest in goods so long as title to or any security
35 interest in the goods remains in him and where the identification is by the seller alone he may
36 until default or insolvency or notification to the buyer that the identification is final substitute
37 other goods for those identified.

38 (3) Nothing in this section impairs any insurable interest recognized under any other
39 statute or rule of law. (1965, c. 700, s. 1; 1967, c. 24, s. 8.)
40

41 **§ 25-2-502. Buyer's right to goods on seller's repudiation, failure to deliver, or insolvency.**

42 (1) Subject to subsections (2) and (3) of this section and even though the goods have
43 not been shipped, a buyer who has paid a part or all of the price of goods in which he has a
44 special property under G.S. 25-2-501 may, on making and keeping good a tender of any unpaid
45 portion of their price, recover them from the seller if:

- 46 a. in the case of goods bought for personal, family, or household purposes, the
47 seller repudiates or fails to deliver as required by the contract; or
48 b. in all cases, the seller becomes insolvent within 10 days after receipt of the
49 first installment on their price.

1 (2) The buyer's right to recover the goods under subdivision (1)a. of this section vests
2 upon acquisition of a special property, even if the seller had not then repudiated or failed to
3 deliver.

4 (3) If the identification creating his special property has been made by the buyer, he
5 acquires the right to recover the goods only if they conform to the contract for sale. (1965, c.
6 700, s. 1; 2000-169, s. 11.)
7

8 PART 5.
9 PERFORMANCE.

10 **§ 25-2-503. Manner of seller's tender of delivery.**

11 (1) Tender of delivery requires that the seller put and hold conforming goods at the
12 buyer's disposition and give the buyer any notification reasonably necessary to enable him to
13 take delivery. The manner, time and place for tender are determined by the agreement and this
14 article, and in particular

15 (a) tender must be at a reasonable hour, and if it is of goods they must be kept
16 available for the period reasonably necessary to enable the buyer to take
17 possession; but

18 (b) unless otherwise agreed the buyer must furnish facilities reasonably suited to
19 the receipt of the goods.

20 (2) Where the case is within the next section [G.S. 25-2-504] respecting shipment
21 tender requires that the seller comply with its provisions.

22 (3) Where the seller is required to deliver at a particular destination tender requires that
23 he comply with subsection (1) and also in any appropriate case tender documents as described
24 in subsections (4) and (5) of this section.

25 (4) Where goods are in the possession of a bailee and are to be delivered without being
26 moved

27 (a) tender requires that the seller either tender a negotiable document of title
28 covering such goods or procure acknowledgment by the bailee of the buyer's
29 right to possession of the goods; but

30 (b) tender to the buyer of a non-negotiable document of title or of a record
31 directing the bailee to deliver is sufficient tender unless the buyer seasonably
32 objects, and, except as otherwise provided in Article 9 of this Chapter,
33 receipt by the bailee of notification of the buyer's rights fixes those rights as
34 against the bailee and all third persons; but risk of loss of the goods and of
35 any failure by the bailee to honor the nonnegotiable document of title or to
36 obey the direction remains on the seller until the buyer has had a reasonable
37 time to present the document or direction, and a refusal by the bailee to
38 honor the document or to obey the direction defeats the tender.

39 (5) Where the contract requires the seller to deliver documents

40 (a) he must tender all such documents in correct form, except as provided in this
41 article with respect to bills of lading in a set (subsection (2) of G.S.
42 25-2-323); and

43 (b) tender through customary banking channels is sufficient and dishonor of a
44 draft accompanying or associated with the documents constitutes
45 non-acceptance or rejection. (1965, c. 700, s. 1; 2006-112, s. 32.)
46

47 **§ 25-2-504. Shipment by seller.**

48 Where the seller is required or authorized to send the goods to the buyer and the contract
49 does not require him to deliver them at a particular destination, then unless otherwise agreed he
50 must

1 (a) put the goods in the possession of such a carrier and make such a contract for their
2 transportation as may be reasonable having regard to the nature of the goods and other
3 circumstances of the case; and

4 (b) obtain and promptly deliver or tender in due form any document necessary to
5 enable the buyer to obtain possession of the goods or otherwise required by the agreement or by
6 usage of trade; and

7 (c) promptly notify the buyer of the shipment.

8 Failure to notify the buyer under paragraph (c) or to make a proper contract under paragraph (a)
9 is a ground for rejection only if material delay or loss ensues. (1965, c. 700, s. 1.)

10
11 **§ 25-2-505. Seller's shipment under reservation.**

12 (1) Where the seller has identified goods to the contract by or before shipment:

13 (a) his procurement of a negotiable bill of lading to his own order or otherwise
14 reserves in him a security interest in the goods. His procurement of the bill
15 to the order of a financing agency or of the buyer indicates in addition only
16 the seller's expectation of transferring that interest to the person named.

17 (b) a nonnegotiable bill of lading to himself or his nominee reserves possession
18 of the goods as security but except in a case of conditional delivery
19 (subsection (2) of G.S. 25-2-507) a nonnegotiable bill of lading naming the
20 buyer as consignee reserves no security interest even though the seller
21 retains possession or control of the bill of lading.

22 (2) When shipment by the seller with reservation of a security interest is in violation of
23 the contract for sale it constitutes an improper contract for transportation within G.S. 25-2-504
24 but impairs neither the rights given to the buyer by shipment and identification of the goods to
25 the contract nor the seller's powers as a holder of a negotiable document of title. (1965, c. 700,
26 s. 1; 2006-112, s. 33.)

27
28 **§ 25-2-506. Rights of financing agency.**

29 (1) A financing agency by paying or purchasing for value a draft which relates to a
30 shipment of goods acquires to the extent of the payment or purchase and in addition to its own
31 rights under the draft and any document of title securing it any rights of the shipper in the
32 goods including the right to stop delivery and the shipper's right to have the draft honored by
33 the buyer.

34 (2) The right to reimbursement of a financing agency which has in good faith honored
35 or purchased the draft under commitment to or authority from the buyer is not impaired by
36 subsequent discovery of defects with reference to any relevant document which was apparently
37 regular. (1965, c. 700, s. 1; 2006-112, s. 34.)

38
39 **§ 25-2-507. Effect of seller's tender; delivery on condition.**

40 (1) Tender of delivery is a condition to the buyer's duty to accept the goods and, unless
41 otherwise agreed, to his duty to pay for them. Tender entitles the seller to acceptance of the
42 goods and to payment according to the contract.

43 (2) Where payment is due and demanded on the delivery to the buyer of goods or
44 documents of title, his right as against the seller to retain or dispose of them is conditional upon
45 his making the payment due. (1965, c. 700, s. 1.)

46
47 **§ 25-2-508. Cure by seller of improper tender or delivery; replacement.**

48 (1) Where any tender or delivery by the seller is rejected because nonconforming and
49 the time for performance has not yet expired, the seller may seasonably notify the buyer of his
50 intention to cure and may then within the contract time make a conforming delivery.

1 (2) Where the buyer rejects a nonconforming tender which the seller had reasonable
2 grounds to believe would be acceptable with or without money allowance the seller may if he
3 seasonably notifies the buyer have a further reasonable time to substitute a conforming tender.
4 (1965, c. 700, s. 1.)
5

6 **§ 25-2-509. Risk of loss in the absence of breach.**

- 7 (1) Where the contract requires or authorizes the seller to ship the goods by carrier
8 (a) if it does not require him to deliver them at a particular destination, the risk
9 of loss passes to the buyer when the goods are duly delivered to the carrier
10 even though the shipment is under reservation (G.S. 25-2-505); but
11 (b) if it does require him to deliver them at a particular destination and the goods
12 are there duly tendered while in the possession of the carrier, the risk of loss
13 passes to the buyer when the goods are there duly so tendered as to enable
14 the buyer to take delivery.

15 (2) Where the goods are held by a bailee to be delivered without being moved, the risk
16 of loss passes to the buyer

- 17 (a) on his receipt of possession or control of a negotiable document of title
18 covering the goods; or
19 (b) on acknowledgment by the bailee of the buyer's right to possession of the
20 goods; or
21 (c) after his receipt of possession or control of a nonnegotiable document of title
22 or other direction to deliver in a record, as provided in subsection (4)(b) of
23 G.S. 25-2-503.

24 (3) In any case not within subsection (1) or (2), the risk of loss passes to the buyer on
25 his receipt of the goods if the seller is a merchant; otherwise the risk passes to the buyer on
26 tender of delivery.

27 (4) The provisions of this section are subject to contrary agreement of the parties and to
28 the provisions of this article on sale on approval (G.S. 25-2-327) and on effect of breach on risk
29 of loss (G.S. 25-2-510). (1965, c. 700, s. 1; 2006-112, s. 35.)
30

31 **§ 25-2-510. Effect of breach on risk of loss.**

32 (1) Where a tender or delivery of goods so fails to conform to the contract as to give a
33 right of rejection the risk of their loss remains on the seller until cure or acceptance.

34 (2) Where the buyer rightfully revokes acceptance he may to the extent of any
35 deficiency in his effective insurance coverage treat the risk of loss as having rested on the seller
36 from the beginning.

37 (3) Where the buyer as to conforming goods already identified to the contract for sale
38 repudiates or is otherwise in breach before risk of their loss has passed to him, the seller may to
39 the extent of any deficiency in his effective insurance coverage treat the risk of loss as resting
40 on the buyer for a commercially reasonable time. (1965, c. 700, s. 1.)
41

42 **§ 25-2-511. Tender of payment by buyer; payment by check.**

43 (1) Unless otherwise agreed tender of payment is a condition to the seller's duty to
44 tender and complete any delivery.

45 (2) Tender of payment is sufficient when made by any means or in any manner current
46 in the ordinary course of business unless the seller demands payment in legal tender and gives
47 any extension of time reasonably necessary to procure it.

48 (3) Subject to the provisions of this chapter on the effect of an instrument on an
49 obligation (G.S. 25-3-310), payment by check is conditional and is defeated as between the
50 parties by dishonor of the check on due presentment. (1965, c. 700, s. 1; 1995, c. 232, s. 5.)
51

1 **§ 25-2-512. Payment by buyer before inspection.**

2 (1) Where the contract requires payment before inspection nonconformity of the goods
3 does not excuse the buyer from so making payment unless

4 (a) the nonconformity appears without inspection; or

5 (b) despite tender of the required documents the circumstances would justify
6 injunction against honor under this chapter (G.S. 25-5-109(b)).

7 (2) Payment pursuant to subsection (1) does not constitute an acceptance of goods or
8 impair the buyer's right to inspect or any of his remedies. (1965, c. 700, s. 1; 1999-73, s. 3.)
9

10 **§ 25-2-513. Buyer's right to inspection of goods.**

11 (1) Unless otherwise agreed and subject to subsection (3), where goods are tendered or
12 identified to the contract for sale, the buyer has a right before payment or acceptance to inspect
13 them at any reasonable place and time and in any reasonable manner. When the seller is
14 required or authorized to send the goods to the buyer, the inspection may be after their arrival.

15 (2) Expenses of inspection must be borne by the buyer but may be recovered from the
16 seller if the goods do not conform and are rejected.

17 (3) Unless otherwise agreed and subject to the provisions of this article on C.I.F.
18 contracts (subsection (3) of G.S. 25-2-321), the buyer is not entitled to inspect the goods before
19 payment of the price when the contract provides

20 (a) for delivery "C.O.D." or on other like terms; or

21 (b) for payment against documents of title, except where such payment is due
22 only after the goods are to become available for inspection.

23 (4) A place or method of inspection fixed by the parties is presumed to be exclusive but
24 unless otherwise expressly agreed it does not postpone identification or shift the place for
25 delivery or for passing the risk of loss. If compliance becomes impossible, inspection shall be
26 as provided in this section unless the place or method fixed was clearly intended as an
27 indispensable condition failure of which avoids the contract. (1965, c. 700, s. 1.)
28

29 **§ 25-2-514. When documents deliverable on acceptance; when on payment.**

30 Unless otherwise agreed documents against which a draft is drawn are to be delivered to the
31 drawee on acceptance of the draft if it is payable more than three days after presentment;
32 otherwise, only on payment. (1965, c. 700, s. 1.)
33

34 **§ 25-2-515. Preserving evidence of goods in dispute.**

35 In furtherance of the adjustment of any claim or dispute

36 (a) either party on reasonable notification to the other and for the purpose of
37 ascertaining the facts and preserving evidence has the right to inspect, test and sample the
38 goods including such of them as may be in the possession or control of the other; and

39 (b) the parties may agree to a third party inspection or survey to determine the
40 conformity or condition of the goods and may agree that the findings shall be binding upon
41 them in any subsequent litigation or adjustment. (1965, c. 700, s. 1.)
42

43 **PART 6.**

44 **BREACH, REPUDIATION AND EXCUSE.**

45 **§ 25-2-601. Buyer's rights on improper delivery.**

46 Subject to the provisions of this article on breach in installment contracts (G.S. 25-2-612)
47 and unless otherwise agreed under the sections on contractual limitations of remedy (G.S.
48 25-2-718 and 25-2-719), if the goods or the tender of delivery fail in any respect to conform to
49 the contract, the buyer may

50 (a) reject the whole; or

51 (b) accept the whole; or

1 (c) accept any commercial unit or units and reject the rest. (1965, c. 700, s. 1.)

2
3 **§ 25-2-602. Manner and effect of rightful rejection.**

4 (1) Rejection of goods must be within a reasonable time after their delivery or tender. It
5 is ineffective unless the buyer seasonably notifies the seller.

6 (2) Subject to the provisions of the two following sections on rejected goods (G.S.
7 25-2-603 and 25-2-604),

8 (a) after rejection any exercise of ownership by the buyer with respect to any
9 commercial unit is wrongful as against the seller; and

10 (b) if the buyer has before rejection taken physical possession of goods in
11 which he does not have a security interest under the provisions of this article
12 (subsection (3) of G.S. 25-2-711), he is under a duty after rejection to hold
13 them with reasonable care at the seller's disposition for a time sufficient to
14 permit the seller to remove them; but

15 (c) the buyer has no further obligations with regard to goods rightfully rejected.

16 (3) The seller's rights with respect to goods wrongfully rejected are governed by the
17 provisions of this article on seller's remedies in general (G.S. 25-2-703). (1965, c. 700, s. 1.)

18
19 **§ 25-2-603. Merchant buyer's duties as to rightfully rejected goods.**

20 (1) Subject to any security interest in the buyer (subsection (3) of G.S. 25-2-711), when
21 the seller has no agent or place of business at the market of rejection a merchant buyer is under
22 a duty after rejection of goods in his possession or control to follow any reasonable instructions
23 received from the seller with respect to the goods and in the absence of such instructions to
24 make reasonable efforts to sell them for the seller's account if they are perishable or threaten to
25 decline in value speedily. Instructions are not reasonable if on demand indemnity for expenses
26 is not forthcoming.

27 (2) When the buyer sells goods under subsection (1), he is entitled to reimbursement
28 from the seller or out of the proceeds for reasonable expenses of caring for and selling them,
29 and if the expenses include no selling commission then to such commission as is usual in the
30 trade or if there is none to a reasonable sum not exceeding ten per cent (10%) on the gross
31 proceeds.

32 (3) In complying with this section the buyer is held only to good faith and good faith
33 conduct hereunder is neither acceptance nor conversion nor the basis of an action for damages.
34 (1965, c. 700, s. 1.)

35
36 **§ 25-2-604. Buyer's options as to salvage of rightfully rejected goods.**

37 Subject to the provisions of the immediately preceding section [G.S. 25-2-603] on
38 perishables if the seller gives no instructions within a reasonable time after notification of
39 rejection the buyer may store the rejected goods for the seller's account or reship them to him or
40 resell them for the seller's account with reimbursement as provided in the preceding section.
41 Such action is not acceptance or conversion. (1965, c. 700, s. 1.)

42
43 **PART 6.**

44 **BREACH, REPUDIATION AND EXCUSE.**

45 **§ 25-2-605. Waiver of buyer's objections by failure to particularize.**

46 (1) The buyer's failure to state in connection with rejection a particular defect which is
47 ascertainable by reasonable inspection precludes him from relying on the unstated defect to
48 justify rejection or to establish breach

49 (a) where the seller could have cured it if stated seasonably; or

1 (b) between merchants when the seller has after rejection made a request in
2 writing for a full and final written statement of all defects on which the
3 buyer proposes to rely.

4 (2) Payment against documents made without reservation of rights precludes recovery
5 of the payment for defects apparent in the documents. (1965, c. 700, s. 1; 2006-112, s. 36.)
6

7 **§ 25-2-606. What constitutes acceptance of goods.**

8 (1) Acceptance of goods occurs when the buyer

9 (a) after a reasonable opportunity to inspect the goods signifies to the seller that
10 the goods are conforming or that he will take or retain them in spite of their
11 non-conformity; or

12 (b) fails to make an effective rejection (subsection (1) of G.S. 25-2-602), but
13 such acceptance does not occur until the buyer has had a reasonable
14 opportunity to inspect them; or

15 (c) does any act inconsistent with the seller's ownership; but if such act is
16 wrongful as against the seller it is an acceptance only if ratified by him.

17 (2) Acceptance of a part of any commercial unit is acceptance of that entire unit. (1965,
18 c. 700, s. 1.)
19

20 **§ 25-2-607. Effect of acceptance; notice of breach; burden of establishing breach after
21 acceptance; notice of claim or litigation to person answerable over.**

22 (1) The buyer must pay at the contract rate for any goods accepted.

23 (2) Acceptance of goods by the buyer precludes rejection of the goods accepted and if
24 made with knowledge of a nonconformity cannot be revoked because of it unless the
25 acceptance was on the reasonable assumption that the nonconformity would be seasonably
26 cured but acceptance does not of itself impair any other remedy provided by this article for
27 nonconformity.

28 (3) Where a tender has been accepted

29 (a) the buyer must within a reasonable time after he discovers or should have
30 discovered any breach notify the seller of breach or be barred from any
31 remedy; and

32 (b) if the claim is one for infringement or the like (subsection (3) of G.S.
33 25-2-312) and the buyer is sued as a result of such a breach he must so notify
34 the seller within a reasonable time after he receives notice of the litigation or
35 be barred from any remedy over for liability established by the litigation.

36 (4) The burden is on the buyer to establish any breach with respect to the goods
37 accepted.

38 (5) Where the buyer is sued for breach of a warranty or other obligation for which his
39 seller is answerable over

40 (a) he may give his seller written notice of the litigation. If the notice states that
41 the seller may come in and defend and that if the seller does not do so he
42 will be bound in any action against him by his buyer by any determination of
43 fact common to the two litigations, then unless the seller after seasonable
44 receipt of the notice does come in and defend he is so bound.

45 (b) if the claim is one for infringement or the like (subsection (3) of G.S.
46 25-2-312) the original seller may demand in writing that his buyer turn over
47 to him control of the litigation including settlement or else be barred from
48 any remedy over and if he also agrees to bear all expense and to satisfy any
49 adverse judgment, then unless the buyer after seasonable receipt of the
50 demand does turn over control the buyer is so barred.

1 (6) The provisions of subsections (3), (4) and (5) apply to any obligation of a buyer to
2 hold the seller harmless against infringement or the like (subsection (3) of G.S. 25-2-312).
3 (1965, c. 700, s. 1.)
4

5 **§ 25-2-608. Revocation of acceptance in whole or in part.**

6 (1) The buyer may revoke his acceptance of a lot or commercial unit whose
7 nonconformity substantially impairs its value to him if he has accepted it

8 (a) on the reasonable assumption that its nonconformity would be cured and it
9 has not been seasonably cured; or

10 (b) without discovery of such nonconformity if his acceptance was reasonably
11 induced either by the difficulty of discovery before acceptance or by the
12 seller's assurances.

13 (2) Revocation of acceptance must occur within a reasonable time after the buyer
14 discovers or should have discovered the ground for it and before any substantial change in
15 condition of the goods which is not caused by their own defects. It is not effective until the
16 buyer notifies the seller of it.

17 (3) A buyer who so revokes has the same rights and duties with regard to the goods
18 involved as if he had rejected them. (1965, c. 700, s. 1.)
19

20 **§ 25-2-609. Right to adequate assurance of performance.**

21 (1) A contract for sale imposes an obligation on each party that the other's expectation
22 of receiving due performance will not be impaired. When reasonable grounds for insecurity
23 arise with respect to the performance of either party the other may in writing demand adequate
24 assurance of due performance and until he receives such assurance may if commercially
25 reasonable suspend any performance for which he has not already received the agreed return.

26 (2) Between merchants the reasonableness of grounds for insecurity and the adequacy
27 of any assurance offered shall be determined according to commercial standards.

28 (3) Acceptance of any improper delivery or payment does not prejudice the aggrieved
29 party's right to demand adequate assurance of future performance.

30 (4) After receipt of a justified demand failure to provide within a reasonable time not
31 exceeding thirty days such assurance of due performance as is adequate under the
32 circumstances of the particular case is a repudiation of the contract. (1965, c. 700, s. 1.)
33

34 **§ 25-2-610. Anticipatory repudiation.**

35 When either party repudiates the contract with respect to a performance not yet due the loss
36 of which will substantially impair the value of the contract to the other, the aggrieved party
37 may

38 (a) for a commercially reasonable time await performance by the repudiating
39 party; or

40 (b) resort to any remedy for breach (G.S. 25-2-703 or G.S. 25-2-711), even
41 though he has notified the repudiating party that he would await the latter's
42 performance and has urged retraction; and

43 (c) in either case suspend his own performance or proceed in accordance with
44 the provisions of this article on the seller's right to identify goods to the
45 contract notwithstanding breach or to salvage unfinished goods (G.S.
46 25-2-704). (1965, c. 700, s. 1.)
47

48 **§ 25-2-611. Retraction of anticipatory repudiation.**

49 (1) Until the repudiating party's next performance is due he can retract his repudiation
50 unless the aggrieved party has since the repudiation cancelled or materially changed his
51 position or otherwise indicated that he considers the repudiation final.

1 (2) Retraction may be by any method which clearly indicates to the aggrieved party
2 that the repudiating party intends to perform, but must include any assurance justifiably
3 demanded under the provisions of this article (G.S. 25-2-609).

4 (3) Retraction reinstates the repudiating party's rights under the contract with due
5 excuse and allowance to the aggrieved party for any delay occasioned by the repudiation.
6 (1965, c. 700, s. 1.)
7

8 **§ 25-2-612. "Installment contract"; breach.**

9 (1) An "installment contract" is one which requires or authorizes the delivery of goods
10 in separate lots to be separately accepted, even though the contract contains a clause "each
11 delivery is a separate contract" or its equivalent.

12 (2) The buyer may reject any installment which is nonconforming if the nonconformity
13 substantially impairs the value of that installment and cannot be cured or if the nonconformity
14 is a defect in the required documents; but if the nonconformity does not fall within subsection
15 (3) and the seller gives adequate assurance of its cure the buyer must accept that installment.

16 (3) Whenever nonconformity or default with respect to one or more installments
17 substantially impairs the value of the whole contract there is a breach of the whole. But the
18 aggrieved party reinstates the contract if he accepts a nonconforming installment without
19 seasonably notifying of cancellation or if he brings an action with respect only to past
20 installments or demands performance as to future installments. (1965, c. 700, s. 1.)
21

22 **§ 25-2-613. Casualty to identified goods.**

23 Where the contract requires for its performance goods identified when the contract is made,
24 and the goods suffer casualty without fault of either party before the risk of loss passes to the
25 buyer, or in a proper case under a "no arrival, no sale" term (G.S. 25-2-324) then

26 (a) if the loss is total the contract is avoided; and

27 (b) if the loss is partial or the goods have so deteriorated as no longer to
28 conform to the contract the buyer may nevertheless demand inspection and
29 at his option either treat the contract as avoided or accept the goods with due
30 allowance from the contract price for the deterioration or the deficiency in
31 quantity but without further right against the seller. (1965, c. 700, s. 1.)
32

33 **§ 25-2-614. Substituted performance.**

34 (1) Where without fault of either party the agreed berthing, loading, or unloading
35 facilities fail or an agreed type of carrier becomes unavailable or the agreed manner of delivery
36 otherwise becomes commercially impracticable but a commercially reasonable substitute is
37 available, such substitute performance must be tendered and accepted.

38 (2) If the agreed means or manner of payment fails because of domestic or foreign
39 governmental regulation, the seller may withhold or stop delivery unless the buyer provides a
40 means or manner of payment which is commercially a substantial equivalent. If delivery has
41 already been taken, payment by the means or in the manner provided by the regulation
42 discharges the buyer's obligation unless the regulation is discriminatory, oppressive or
43 predatory. (1965, c. 700, s. 1.)
44

45 **§ 25-2-615. Excuse by failure of presupposed conditions.**

46 Except so far as a seller may have assumed a greater obligation and subject to the preceding
47 section [G.S. 25-2-614] on substituted performance:

48 (a) Delay in delivery or nondelivery in whole or in part by a seller who complies
49 with paragraphs (b) and (c) is not a breach of his duty under a contract for
50 sale if performance as agreed has been made impracticable by the occurrence
51 of a contingency the nonoccurrence of which was a basic assumption on

1 which the contract was made or by compliance in good faith with any
2 applicable foreign or domestic governmental regulation or order whether or
3 not it later proves to be invalid.

4 (b) Where the causes mentioned in paragraph (a) affect only a part of the seller's
5 capacity to perform, he must allocate production and deliveries among his
6 customers but may at his option include regular customers not then under
7 contract as well as his own requirements for further manufacture. He may so
8 allocate in any manner which is fair and reasonable.

9 (c) The seller must notify the buyer seasonably that there will be delay or
10 nondelivery and, when allocation is required under paragraph (b), of the
11 estimated quota thus made available for the buyer. (1965, c. 700, s. 1.)
12

13 **§ 25-2-616. Procedure on notice claiming excuse.**

14 (1) Where the buyer receives notification of a material or indefinite delay or an
15 allocation justified under the preceding section [G.S. 25-2-615] he may by written notification
16 to the seller as to any delivery concerned, and where the prospective deficiency substantially
17 impairs the value of the whole contract under the provisions of this article relating to breach of
18 installment contracts (G.S. 25-2-612), then also as to the whole,

19 (a) terminate and thereby discharge any unexecuted portion of the contract; or

20 (b) modify the contract by agreeing to take his available quota in substitution.

21 (2) If after receipt of such notification from the seller the buyer fails so to modify the
22 contract within a reasonable time not exceeding thirty days the contract lapses with respect to
23 any deliveries affected.

24 (3) The provisions of this section may not be negated by agreement except insofar as
25 the seller has assumed a greater obligation under the preceding section [G.S. 25-2-615]. (1965,
26 c. 700, s. 1.)
27

28 **PART 7.**

29 **REMEDIES.**

30 **§ 25-2-701. Remedies for breach of collateral contracts not impaired.**

31 Remedies for breach of any obligation or promise collateral or ancillary to a contract for
32 sale are not impaired by the provisions of this article. (1965, c. 700, s. 1.)
33

34 **§ 25-2-702. Seller's remedies on discovery of buyer's insolvency.**

35 (1) Where the seller discovers the buyer to be insolvent he may refuse delivery except
36 for cash including payment for all goods theretofore delivered under the contract, and stop
37 delivery under this article (G.S. 25-2-705).

38 (2) Where the seller discovers that the buyer has received goods on credit while
39 insolvent he may reclaim the goods upon demand made within ten days after the receipt, but if
40 misrepresentation of solvency has been made to the particular seller in writing within three
41 months before delivery the ten-day limitation does not apply. Except as provided in this
42 subsection the seller may not base a right to reclaim goods on the buyer's fraudulent or innocent
43 misrepresentation of solvency or of intent to pay.

44 (3) The seller's right to reclaim under subsection (2) is subject to the rights of a buyer in
45 ordinary course or other good faith purchaser under this article (G.S. 25-2-403). Successful
46 reclamation of goods excludes all other remedies with respect to them. (1965, c. 700, s. 1;
47 1967, c. 562, s. 1.)
48

49 **§ 25-2-703. Seller's remedies in general.**

50 Where the buyer wrongfully rejects or revokes acceptance of goods or fails to make a
51 payment due on or before delivery or repudiates with respect to a part or the whole, then with

- 1 respect to any goods directly affected and, if the breach is of the whole contract (G.S.
2 25-2-612), then also with respect to the whole undelivered balance, the aggrieved seller may
3 (a) withhold delivery of such goods;
4 (b) stop delivery by any bailee as hereafter provided (G.S. 25-2-705);
5 (c) proceed under the next section [G.S. 25-2-704] respecting goods still
6 unidentified to the contract;
7 (d) resell and recover damages as hereafter provided (G.S. 25-2-706);
8 (e) recover damages for nonacceptance (G.S. 25-2-708) or in a proper case the
9 price (G.S. 25-2-709);
10 (f) cancel. (1965, c. 700, s. 1.)
11

12 **§ 25-2-704. Seller's right to identify goods to the contract notwithstanding breach or to**
13 **salvage unfinished goods.**

- 14 (1) An aggrieved seller under the preceding section [G.S. 25-2-703] may
15 (a) identify to the contract conforming goods not already identified if at the time
16 he learned of the breach they are in his possession or control;
17 (b) treat as the subject of resale goods which have demonstrably been intended
18 for the particular contract even though those goods are unfinished.
19 (2) Where the goods are unfinished an aggrieved seller may in the exercise of
20 reasonable commercial judgment for the purposes of avoiding loss and of effective realization
21 either complete the manufacture and wholly identify the goods to the contract or cease
22 manufacture and resell for scrap or salvage value or proceed in any other reasonable manner.
23 (1965, c. 700, s. 1; 1967, c. 24, s. 9.)
24

25 **PART 7.**
26 **REMEDIES.**

27 **§ 25-2-705. Seller's stoppage of delivery in transit or otherwise.**

- 28 (1) The seller may stop delivery of goods in the possession of a carrier or other bailee
29 when he discovers the buyer to be insolvent (G.S. 25-2-702) and may stop delivery of carload,
30 truckload, planeload or larger shipments of express or freight when the buyer repudiates or fails
31 to make a payment due before delivery or if for any other reason the seller has a right to
32 withhold or reclaim the goods.
33 (2) As against such buyer the seller may stop delivery until
34 (a) receipt of the goods by the buyer; or
35 (b) acknowledgment to the buyer by any bailee of the goods except a carrier that
36 the bailee holds the goods for the buyer; or
37 (c) such acknowledgment to the buyer by a carrier by reshipment or as a
38 warehouse; or
39 (d) negotiation to the buyer of any negotiable document of title covering the
40 goods.
41 (3) (a) To stop delivery the seller must so notify as to enable the bailee by
42 reasonable diligence to prevent delivery of the goods.
43 (b) After such notification the bailee must hold and deliver the goods according
44 to the directions of the seller but the seller is liable to the bailee for any
45 ensuing charges or damages.
46 (c) If a negotiable document of title has been issued for goods the bailee is not
47 obliged to obey a notification to stop until surrender of possession or control
48 of the document.
49 (d) A carrier who has issued a nonnegotiable bill of lading is not obliged to obey
50 a notification to stop received from a person other than the consignor. (1965,
51 c. 700, s. 1; 2006-112, s. 37.)

1
2 **§ 25-2-706. Seller's resale including contract for resale.**

3 (1) Under the conditions stated in G.S. 25-2-703 on seller's remedies, the seller may
4 resell the goods concerned or the undelivered balance thereof. Where the resale is made in good
5 faith and in a commercially reasonable manner the seller may recover the difference between
6 the resale price and the contract price together with any incidental damages allowed under the
7 provisions of this article (G.S. 25-2-710), but less expenses saved in consequence of the buyer's
8 breach.

9 (2) Except as otherwise provided in subsection (3) or unless otherwise agreed resale
10 may be at public or private sale including sale by way of one or more contracts to sell or of
11 identification to an existing contract of the seller. Sale may be as a unit or in parcels and at any
12 time and place and on any terms but every aspect of the sale including the method, manner,
13 time, place and terms must be commercially reasonable. The resale must be reasonably
14 identified as referring to the broken contract, but it is not necessary that the goods be in
15 existence or that any or all of them have been identified to the contract before the breach.

16 (3) Where the resale is at private sale the seller must give the buyer reasonable
17 notification of his intention to resell.

18 (4) Where the resale is at public sale

19 (a) only identified goods can be sold except where there is a recognized market
20 for a public sale of futures in goods of the kind; and

21 (b) it must be made at a usual place or market for public sale if one is reasonably
22 available and except in the case of goods which are perishable or threaten to
23 decline in value speedily the seller must give the buyer reasonable notice of
24 the time and place of the resale; and

25 (c) if the goods are not to be within the view of those attending the sale the
26 notification of sale must state the place where the goods are located and
27 provide for their reasonable inspection by prospective bidders; and

28 (d) the seller may buy.

29 (5) A purchaser who buys in good faith at a resale takes the goods free of any rights of
30 the original buyer even though the seller fails to comply with one or more of the requirements
31 of this section.

32 (6) The seller is not accountable to the buyer for any profit made on any resale. A
33 person in the position of a seller (G.S. 25-2-707) or a buyer who has rightfully rejected or
34 justifiably revoked acceptance must account for any excess over the amount of his security
35 interest, as hereinafter defined (subsection (3) of G.S. 25-2-711). (1965, c. 700, s. 1.)
36

37 **§ 25-2-707. "Person in the position of a seller."**

38 (1) A "person in the position of a seller" includes as against a principal an agent who
39 has paid or become responsible for the price of goods on behalf of his principal or anyone who
40 otherwise holds a security interest or other right in goods similar to that of a seller.

41 (2) A person in the position of a seller may as provided in this article withhold or stop
42 delivery (G.S. 25-2-705) and resell (G.S. 25-2-706) and recover incidental damages (G.S.
43 25-2-710). (1965, c. 700, s. 1.)
44

45 **§ 25-2-708. Seller's damages for nonacceptance or repudiation.**

46 (1) Subject to subsection (2) and to the provisions of this article with respect to proof of
47 market price (G.S. 25-2-723), the measure of damages for nonacceptance or repudiation by the
48 buyer is the difference between the market price at the time and place for tender and the unpaid
49 contract price together with any incidental damages provided in this article (G.S. 25-2-710), but
50 less expenses saved in consequence of the buyer's breach.

1 (2) If the measure of damages provided in subsection (1) is inadequate to put the seller
2 in as good a position as performance would have done then the measure of damages is the
3 profit (including reasonable overhead) which the seller would have made from full performance
4 by the buyer, together with any incidental damages provided in this article (G.S. 25-2-710), due
5 allowance for costs reasonably incurred and due credit for payments or proceeds of resale.
6 (1965, c. 700, s. 1.)
7

8 **§ 25-2-709. Action for the price.**

9 (1) When the buyer fails to pay the price as it becomes due the seller may recover,
10 together with any incidental damages under the next section [G.S. 25-2-710], the price

11 (a) of goods accepted or of conforming goods lost or damaged within a
12 commercially reasonable time after risk of their loss has passed to the buyer;
13 and

14 (b) of goods identified to the contract if the seller is unable after reasonable
15 effort to resell them at a reasonable price or the circumstances reasonably
16 indicate that such effort will be unavailing.

17 (2) Where the seller sues for the price he must hold for the buyer any goods which have
18 been identified to the contract and are still in his control except that if resale becomes possible
19 he may resell them at any time prior to the collection of the judgment. The net proceeds of any
20 such resale must be credited to the buyer and payment of the judgment entitles him to any
21 goods not resold.

22 (3) After the buyer has wrongfully rejected or revoked acceptance of the goods or has
23 failed to make a payment due or has repudiated (G.S. 25-2-610), a seller who is held not
24 entitled to the price under this section shall nevertheless be awarded damages for
25 nonacceptance under the preceding section [G.S. 25-2-708]. (1965, c. 700, s. 1.)
26

27 **§ 25-2-710. Seller's incidental damages.**

28 Incidental damages to an aggrieved seller include any commercially reasonable charges,
29 expenses or commissions incurred in stopping delivery, in the transportation, care and custody
30 of goods after the buyer's breach, in connection with return or resale of the goods or otherwise
31 resulting from the breach. (1965, c. 700, s. 1.)
32

33 **§ 25-2-711. Buyer's remedies in general; buyer's security interest in rejected goods.**

34 (1) Where the seller fails to make delivery or repudiates or the buyer rightfully rejects
35 or justifiably revokes acceptance then with respect to any goods involved, and with respect to
36 the whole if the breach goes to the whole contract (G.S. 25-2-612), the buyer may cancel and
37 whether or not he has done so may in addition to recovering so much of the price as has been
38 paid

39 (a) "cover" and have damages under the next section [G.S. 25-2-712] as to all
40 the goods affected whether or not they have been identified to the contract;
41 or

42 (b) recover damages for nondelivery as provided in this article (G.S. 25-2-713).

43 (2) Where the seller fails to deliver or repudiates the buyer may also

44 (a) if the goods have been identified recover them as provided in this article
45 (G.S. 25-2-502); or

46 (b) in a proper case obtain specific performance or replevy the goods as
47 provided in this article (G.S. 25-2-716).

48 (3) On rightful rejection or justifiable revocation of acceptance a buyer has a security
49 interest in goods in his possession or control for any payments made on their price and any
50 expenses reasonably incurred in their inspection, receipt, transportation, care and custody and

1 may hold such goods and resell them in like manner as an aggrieved seller (G.S. 25-2-706).
2 (1965, c. 700, s. 1.)

3
4 **§ 25-2-712. "Cover"; buyer's procurement of substitute goods.**

5 (1) After a breach within the preceding section [G.S. 25-2-711] the buyer may "cover"
6 by making in good faith and without unreasonable delay any reasonable purchase of or contract
7 to purchase goods in substitution for those due from the seller.

8 (2) The buyer may recover from the seller as damages the difference between the cost
9 of cover and the contract price together with any incidental or consequential damages as
10 hereinafter defined (G.S. 25-2-715), but less expenses saved in consequence of the seller's
11 breach.

12 (3) Failure of the buyer to effect cover within this section does not bar him from any
13 other remedy. (1965, c. 700, s. 1.)

14
15 **§ 25-2-713. Buyer's damages for nondelivery or repudiation.**

16 (1) Subject to the provisions of this article with respect to proof of market price (G.S.
17 25-2-723), the measure of damages for nondelivery or repudiation by the seller is the difference
18 between the market price at the time when the buyer learned of the breach and the contract
19 price together with any incidental and consequential damages provided in this article (G.S.
20 25-2-715), but less expenses saved in consequence of the seller's breach.

21 (2) Market price is to be determined as of the place for tender or, in cases of rejection
22 after arrival or revocation of acceptance, as of the place of arrival. (1965, c. 700, s. 1.)

23
24 **§ 25-2-714. Buyer's damages for breach in regard to accepted goods.**

25 (1) Where the buyer has accepted goods and given notification (subsection (3) of G.S.
26 25-2-607) he may recover as damages for any nonconformity of tender the loss resulting in the
27 ordinary course of events from the seller's breach as determined in any manner which is
28 reasonable.

29 (2) The measure of damages for breach of warranty is the difference at the time and
30 place of acceptance between the value of the goods accepted and the value they would have had
31 if they had been as warranted, unless special circumstances show proximate damages of a
32 different amount.

33 (3) In a proper case any incidental and consequential damages under the next section
34 [G.S. 25-2-715] may also be recovered. (1965, c. 700, s. 1.)

35
36 **§ 25-2-715. Buyer's incidental and consequential damages.**

37 (1) Incidental damages resulting from the seller's breach include expenses reasonably
38 incurred in inspection, receipt, transportation and care and custody of goods rightfully rejected,
39 any commercially reasonable charges, expenses or commissions in connection with effecting
40 cover and any other reasonable expense incident to the delay or other breach.

41 (2) Consequential damages resulting from the seller's breach include

42 (a) any loss resulting from general or particular requirements and needs of
43 which the seller at the time of contracting had reason to know and which
44 could not reasonably be prevented by cover or otherwise; and

45 (b) injury to person or property proximately resulting from any breach of
46 warranty. (1965, c. 700, s. 1.)

47
48 **§ 25-2-716. Buyer's right to specific performance or replevin.**

49 (1) Specific performance may be decreed where the goods are unique or in other proper
50 circumstances.

1 (2) The decree for specific performance may include such terms and conditions as to
2 payment of the price, damages, or other relief as the court may deem just.

3 (3) The buyer has a right of replevin for goods identified to the contract if after
4 reasonable effort he is unable to effect cover for such goods or the circumstances reasonably
5 indicate that such effort will be unavailing or if the goods have been shipped under reservation
6 and satisfaction of the security interest in them has been made or tendered. In the case of goods
7 bought for personal, family, or household purposes, the buyer's right of replevin vests upon
8 acquisition of a special property, even if the seller had not then repudiated or failed to deliver.
9 (1965, c. 700, s. 1; 1967, c. 562, s. 1; 2000-169, s. 12.)

10
11 **§ 25-2-717. Deduction of damages from the price.**

12 The buyer on notifying the seller of his intention to do so may deduct all or any part of the
13 damages resulting from any breach of the contract from any part of the price still due under the
14 same contract. (1965, c. 700, s. 1.)

15
16 **§ 25-2-718. Liquidation or limitation of damages; deposits.**

17 (1) Damages for breach by either party may be liquidated in the agreement but only at
18 an amount which is reasonable in the light of the anticipated or actual harm caused by the
19 breach, the difficulties of proof of loss, and the inconvenience or nonfeasibility of otherwise
20 obtaining an adequate remedy. A term fixing unreasonably large liquidated damages is void as
21 a penalty.

22 (2) Where the seller justifiably withholds delivery of goods because of the buyer's
23 breach, the buyer is entitled to restitution of any amount by which the sum of his payments
24 exceeds

- 25 (a) the amount to which the seller is entitled by virtue of terms liquidating the
26 seller's damages in accordance with subsection (1),
27 (b) in the absence of such terms, twenty per cent (20%) of the value of the total
28 performance for which the buyer is obligated under the contract or five
29 hundred dollars (\$500.00), whichever is smaller, or
30 (c) at the election of the seller in the case of a layaway contract, the aggregate
31 payments received by seller from buyer under the contract or fifty dollars
32 (\$50.00), whichever is smaller.

33 (3) The buyer's right to restitution under subsection (2) is subject to offset to the extent
34 that the seller establishes

- 35 (a) a right to recover damages under the provisions of this article other than
36 subsection (1), and
37 (b) the amount or value of any benefits received by the buyer directly or
38 indirectly by reason of the contract.

39 (4) Where a seller has received payment in goods their reasonable value or the proceeds
40 of their resale shall be treated as payments for the purposes of subsection (2); but if the seller
41 has notice of the buyer's breach before reselling goods received in part performance, his resale
42 is subject to the conditions laid down in this article on resale by an aggrieved seller (G.S.
43 25-2-706). (1965, c. 700, s. 1; 1993, c. 340, s. 2.)

44
45 **§ 25-2-719. Contractual modification or limitation of remedy.**

46 (1) Subject to the provisions of subsections (2) and (3) of this section and of the
47 preceding section [G.S. 25-2-718] on liquidation and limitation of damages,

- 48 (a) the agreement may provide for remedies in addition to or in substitution for
49 those provided in this article and may limit or alter the measure of damages
50 recoverable under this article, as by limiting the buyer's remedies to return of

1 the goods and repayment of the price or to repair and replacement of
2 nonconforming goods or parts; and

3 (b) resort to a remedy as provided is optional unless the remedy is expressly
4 agreed to be exclusive, in which case it is the sole remedy.

5 (2) Where circumstances cause an exclusive or limited remedy to fail of its essential
6 purpose, remedy may be had as provided in this chapter.

7 (3) Consequential damages may be limited or excluded unless the limitation or
8 exclusion is unconscionable. Limitation of consequential damages for injury to the person in
9 the case of consumer goods is prima facie unconscionable but limitation of damages where the
10 loss is commercial is not. (1965, c. 700, s. 1.)

11
12 **§ 25-2-720. Effect of "cancellation" or "rescission" on claims for antecedent breach.**

13 Unless the contrary intention clearly appears, expressions of "cancellation" or "rescission"
14 of the contract or the like shall not be construed as a renunciation or discharge of any claim in
15 damages for an antecedent breach. (1965, c. 700, s. 1.)

16
17 **§ 25-2-721. Remedies for fraud.**

18 Remedies for material misrepresentation or fraud include all remedies available under this
19 article for nonfraudulent breach. Neither rescission or a claim for rescission of the contract for
20 sale nor rejection or return of the goods shall bar or be deemed inconsistent with a claim for
21 damages or other remedy. (1965, c. 700, s. 1.)

22
23 **§ 25-2-722. Who can sue third parties for injury to goods.**

24 Where a third party so deals with goods which have been identified to a contract for sale as
25 to cause actionable injury to a party to that contract

26 (a) a right of action against the third party is in either party to the contract for
27 sale who has title to or a security interest or a special property or an
28 insurable interest in the goods; and if the goods have been destroyed or
29 converted a right of action is also in the party who either bore the risk of loss
30 under the contract for sale or has since the injury assumed that risk as against
31 the other;

32 (b) if at the time of the injury the party plaintiff did not bear the risk of loss as
33 against the other party to the contract for sale and there is no arrangement
34 between them for disposition of the recovery, his suit or settlement is,
35 subject to his own interest, as a fiduciary for the other party to the contract;

36 (c) either party may with the consent of the other sue for the benefit of whom it
37 may concern. (1965, c. 700, s. 1.)

38
39 **§ 25-2-723. Proof of market price; time and place.**

40 (1) If an action based on anticipatory repudiation comes to trial before the time for
41 performance with respect to some or all of the goods, any damages based on market price (G.S.
42 25-2-708 or G.S. 25-2-713) shall be determined according to the price of such goods prevailing
43 at the time when the aggrieved party learned of the repudiation.

44 (2) If evidence of a price prevailing at the times or places described in this article is not
45 readily available the price prevailing within any reasonable time before or after the time
46 described or at any other place which in commercial judgment or under usage of trade would
47 serve as a reasonable substitute for the one described may be used, making any proper
48 allowance for the cost of transporting the goods to or from such other place.

49 (3) Evidence of a relevant price prevailing at a time or place other than the one
50 described in this article offered by one party is not admissible unless and until he has given the

1 other party such notice as the court finds sufficient to prevent unfair surprise. (1965, c. 700, s.
2 1; 1967, c. 562, s. 1.)

3
4 **§ 25-2-724. Admissibility of market quotations.**

5 Whenever the prevailing price or value of any goods regularly bought and sold in any
6 established commodity market is in issue, reports in official publications or trade journals or in
7 newspapers or periodicals of general circulation published as the reports of such market shall
8 be admissible in evidence. The circumstances of the preparation of such a report may be shown
9 to affect its weight but not its admissibility. (1965, c. 700, s. 1.)

10
11 **§ 25-2-725. Statute of limitations in contracts for sale.**

12 (1) An action for breach of any contract for sale must be commenced within four years
13 after the cause of action has accrued. By the original agreement the parties may reduce the
14 period of limitation to not less than one year but may not extend it.

15 (2) A cause of action accrues when the breach occurs, regardless of the aggrieved
16 party's lack of knowledge of the breach. A breach of warranty occurs when tender of delivery is
17 made, except that where a warranty explicitly extends to future performance of the goods and
18 discovery of the breach must await the time of such performance the cause of action accrues
19 when the breach is or should have been discovered.

20 (3) Where an action commenced within the time limited by subsection (1) is so
21 terminated as to leave available a remedy by another action for the same breach such other
22 action may be commenced after the expiration of the time limited and within twelve months
23 after the termination of the first action.

24 (4) This section does not alter the law on tolling of the statute of limitations nor does it
25 apply to causes of action which have accrued before this chapter becomes effective. (1965, c.
26 700, s. 1; 1967, c. 562, s. 1.)