

(5) An applicable usage of trade in the place where any part of performance is to occur shall be used in interpreting the agreement as to that part of the performance.

(6) Evidence of a relevant usage of trade offered by one party is not admissible unless and until he has given the other party such notice as the court finds sufficient to prevent unfair surprise to the latter.

§ 28:1—206. Statute of frauds for kinds of personal property not otherwise covered

(1) Except in the cases described in subsection (2) of this section a contract for the sale of personal property is not enforceable by way of action or defense beyond five thousand dollars in amount or value of remedy unless there is some writing which indicates that a contract for sale has been made between the parties at a defined or stated price, reasonably identifies the subject matter, and is signed by the party against whom enforcement is sought or by his authorized agent.

(2) Subsection (1) of this section does not apply to contracts for the sale of goods (section 28:2—201) nor of securities (section 28:8—319) nor to security agreements (section 28:9—203).

§ 28:1—207. Performance or acceptance under reservation of rights

A party who with explicit reservation of rights performs or promises performance or assents to performance in a manner demanded or offered by the other party does not thereby prejudice the rights reserved. Such words as "without prejudice", "under protest" or the like are sufficient.

§ 28:1—208. Option to accelerate at will

A term providing that one party or his successor in interest may accelerate payment or performance or require collateral or additional collateral "at will" or "when he deems himself insecure" or in words of similar import shall be construed to mean that he shall have power to do so only if he in good faith believes that the prospect of payment or performance is impaired. The burden of establishing lack of good faith is on the party against whom the power has been exercised.

ARTICLE 2—SALES

PART 1—SHORT TITLE, GENERAL CONSTRUCTION AND SUBJECT MATTER

- Sec.
28:2—101. Short title.
28:2—102. Scope; certain security and other transactions excluded from this article.
28:2—103. Definitions and index of definitions.
28:2—104. Definitions: "Merchant"; "between merchants"; "financing agency".
28:2—105. Definitions: transferability; "goods"; "future" goods; "lot"; "commercial unit".
28:2—106. Definitions: "contract"; "agreement"; "contract for sale"; "sale"; "present sale"; "conforming" to contract; "termination"; "cancellation".
28:2—107. Goods to be severed from realty: recording.

PART 2—FORM, FORMATION AND READJUSTMENT OF CONTRACT

- 28:2—201. Formal requirements; statute of frauds.
28:2—202. Final written expression: parol or extrinsic evidence.
28:2—203. Seals inoperative.
28:2—204. Formation in general.
28:2—205. Firm offers.
28:2—206. Offer and acceptance in formation of contract.
28:2—207. Additional terms in acceptance or confirmation.
28:2—208. Course of performance or practical construction.
28:2—209. Modification, rescission and waiver.
28:2—210. Delegation of performance; assignment of rights.

PART 3—GENERAL OBLIGATION AND CONSTRUCTION OF CONTRACT

- 28:2—301. General obligations of parties.
28:2—302. Unconscionable contract or clause.
28:2—303. Allocation or division of risks.
28:2—304. Price payable in money, goods, realty, or otherwise.
28:2—305. Open price term.
28:2—306. Output, requirements and exclusive dealings.
28:2—307. Delivery in single lot or several lots.
28:2—308. Absence of specified place for delivery.
28:2—309. Absence of specific time provisions; notice of termination.
28:2—310. Open time for payment or running of credit; authority to ship under reservation.
28:2—311. Options and cooperation respecting performance.
28:2—312. Warranty of title and against infringement; buyer's obligation against infringement.
28:2—313. Express warranties by affirmation, promise, description, sample.
28:2—314. Implied warranty: merchantability; usage of trade.
28:2—315. Implied warranty: fitness for particular purpose.
28:2—316. Exclusion or modification of warranties.