

# What the UCC Says About Terms in Contracts for the Sale of Goods

Article 2 of the Uniform Commercial Code was enacted by North Carolina's General Assembly in 1965. This detailed set of statutes regulates contracts for the sale of goods by establishing rules "to more effectively respond to the realistic needs of modern commerce." Hutson & Miskimon, North Carolina Contract Law §6-3 (2015). Many other states have adopted their own versions of Art. 2, and law schools throughout the country offer courses about its provisions. (The same is true of Art. 9, which governs secured transactions.) UCC law differs from traditional contract law in a number of significant ways, requiring small claims magistrates to begin any contracts case by making an immediate determination: does this case involve a contract for the sale of goods?

## What if it does?

Determining that a contract case is governed by GS 25, Art. 2, has a number of important consequences. For example, the statute of limitations for these contracts is 4 years, rather than the 3-year period applicable to most other contracts. There are other distinctions, but the most sweeping changes implemented by Art. 2 relate to the terms of covered contracts.

Art. 2 provisions establishing implied warranties are among the most important for magistrates to know about, but there are other significant rules about how courts are to deal with determining terms in contracts for the sale of goods. In particular, the UCC differs from common law in its preference for determining and enforcing contracts in a manner consistent with the intentions of the parties—even when those contracts are vague, incomplete, informal, or inconsistently expressed. The parole evidence rule is applied in a more relaxed manner, and courts are called upon to take into account surrounding circumstances and other evidence of intent in addition to the formal written agreement of the parties. **In particular, three additional sources of contract interpretation are specifically authorized:**

1. Course of dealing: When a buyer and seller have been involved in previous transactions, the court may look to those transactions "as establishing a common basis of understanding for interpreting their expressions and conduct." GS 25-1-303(b).
2. Usage of trade: A court may consider common trade practices proven to "justify an expectation that it will be observed with respect to the transaction in question." Whether and to what degree the court relies on trade usage is

determined by the court based upon the evidence presented. GS 25-1-303(c).

3. Course of performance: A court may consider conduct by the parties in carrying out their agreement if that conduct by one party is known and accepted by the other party. GS 25-1-303(a)

These three things are identified by the law as **potentially relevant to**:

- The meaning of their agreement;
- The particular meaning of specific terms of their agreement;
- A supplement or qualification of the terms of their agreement.

The law requires that, as much as is reasonable, the express terms of the agreement and the evidence of terms arising from these three considerations should be construed together as being consistent with each other. When there is conflict, the following rules apply:

- Express terms prevail over the other three;
- Course of performance prevails over course of dealing and trade usage;
- Course of dealing prevails over trade usage;
- Course of performance is relevant to determining whether a term has been modified or waived.