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Chapter 71

2005 EDITION

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SHORT TITLE, CONSTRUCTION, APPLICATION AND SUBJECT MATTER OF UNIFORM COMMERCIAL CODE

71.1010 Short title. This chapter and ORS chapters 72, 72A, 73, 74, 74A, 75, 77, 78 and 79 may be cited as Uniform Commercial Code. [1961 c.726 §71.1010; 1989 c.676 §79; 1991 c.83 §2; 1991 c.442 §§39,40; 2001 c.445 §129]

71.1020 Purposes; rules of construction; variation by agreement. (1) The Uniform Commercial Code shall be liberally construed and applied to promote its underlying purposes and policies.

(2) Underlying purposes and policies of the Uniform Commercial Code are:

(a) To simplify, clarify and modernize the law governing commercial transactions;

(b) To permit the continued expansion of commercial practices through custom, usage and agreement of the parties;

(c) To make uniform the law among the various jurisdictions.

(3) The effect of provisions of the Uniform Commercial Code may be varied by agreement, except as otherwise provided in the Uniform Commercial Code and except that the obligations of good faith, diligence, reasonableness and care prescribed by the Uniform Commercial Code may not be disclaimed by agreement but the parties may by agreement determine the standards by which the performance of such obligations is to be measured if such standards are not manifestly unreasonable.

(4) The presence in certain provisions of the Uniform Commercial Code of the words "unless otherwise agreed" or words of similar import does not imply that the effect of other provisions may not be varied by agreement under subsection (3) of this section.

(5) In the Uniform Commercial Code, unless the context otherwise requires:

(a) Words in the singular number include the plural, and in the plural include the singular;

(b) Words of the masculine gender include the feminine and the neuter, and when the sense so indicates words of the neuter gender may refer to any gender. [1961 c.726 §71.1020]

71.1030 Supplementary general principles of law applicable. Unless displaced by the particular provisions of the Uniform Commercial Code, the principles of law and equity, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause shall supplement its provisions. [1961 c.726 §71.1030]

71.1040 Construction against implicit repeal. The Uniform Commercial Code being a general law intended as a unified coverage of its subject matter, no part of it shall be deemed to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided. [1961 c.726 §71.1040]

71.1050 Territorial application of Uniform Commercial Code; parties' power to choose applicable law. (1) Except as provided hereafter in this section, when a transaction bears a reasonable relation to this state and also to another state or nation the parties may agree that the law either of this state or of such other state or nation shall govern their rights and duties. Failing such agreement the Uniform Commercial Code applies to transactions bearing an appropriate relation to this state.

(2) Where one of the following provisions specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law (including the conflict of laws rules) so specified:

(a) Rights of creditors against sold goods as specified in ORS 72.4020.

(b) Applicability of ORS chapter 72A on leases.

(c) Applicability of ORS chapter 74 as specified in ORS 74.1020.

(d) Applicability of ORS chapter 74A as specified in ORS 74A.5070.

(e) Applicability of ORS chapter 75 as specified in ORS 75.1160.

(f) Applicability of ORS chapter 78 as specified in ORS 78.1100.

(g) ORS 79.0301 to 79.0307 governing perfection, the effect of perfection or nonperfection, and the priority of security interests and agricultural liens. [1961 c.726 §71.1050; 1973 c.504 §1; 1989 c.676 §80; 1991 c.83 §3; 1995 c.328 §66; 1997 c.150 §3; 2001 c.445 §130]

Note: For transition provisions regarding secured transactions, see notes under 79.0628.

71.1060 Remedies to be liberally administered. (1) The remedies provided by the Uniform Commercial Code shall be liberally administered to the end that the aggrieved party may be put in as good a position as if the other party had fully performed but neither consequential or special nor penal damages may be had except as specifically provided in the Uniform Commercial Code or by other rule of law.

(2) Any right or obligation declared by the Uniform Commercial Code is enforceable by action unless the provision declaring it specifies a different and limited effect. [1961 c.726 §71.1060]

71.1070 Waiver or renunciation of claim or right after breach. Any claim or right arising out of an alleged breach can be discharged in whole or in part without consideration by a written waiver or renunciation signed and delivered by the aggrieved party. [1961 c.726 §71.1070]

71.1080 Severability. If any provision or clause of the Uniform Commercial Code or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Uniform Commercial Code which can be given effect without the invalid provision or application, and to this end the provisions of the Uniform Commercial Code are declared to be severable. [1961 c.726 §71.1080]

71.1090 Captions. The unit and section captions, though set forth in the Uniform Commercial Code, are not part of the statutory law of Oregon. [1961 c.726 §71.1090]

DEFINITIONS AND PRINCIPLES OF INTERPRETATION

71.2010 General definitions. Subject to additional definitions contained in other sections of the Uniform Commercial Code which are applicable to a specific series of sections, and unless the context otherwise requires, in the Uniform Commercial Code:

(1) "Action" in the sense of a judicial proceeding includes recoupment, counterclaim, setoff, suit in equity and any other proceedings in which rights are determined.

(2) "Aggrieved party" means a party entitled to resort to a remedy.

(3) "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in ORS 71.2050 and 72.2080. Whether an agreement has legal consequences is determined by the provisions of the Uniform Commercial Code, if applicable; otherwise by the law of contracts as specified in ORS 71.1030.

(4) "Bank" means any person engaged in the business of banking.

(5) "Bearer" means the person in possession of an instrument, document of title or security payable to bearer or indorsed in blank.

(6) "Bill of lading" means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods, and includes an airbill. "Airbill" means a document serving for air transportation as a bill of lading does for marine or rail transportation, and includes an air consignment note or air waybill.

(7) "Branch" includes a separately incorporated foreign branch of a bank.

(8) "Burden of establishing" a fact means the burden of persuading the triers of fact that the existence of the fact is more probable than its nonexistence.

(9) "Buyer in ordinary course of business" means a person that buys goods in good faith, without knowledge that the sale violates the rights of another person in the goods, and in the ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind. A person buys goods in the ordinary course if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller's own usual or customary practices. A person that sells oil, gas or other minerals at the wellhead or minehead is a person in the business of selling goods of that kind. A buyer in ordinary course of business may buy for cash, by exchange of other property, or on secured or unsecured credit, and may acquire goods or documents of title under a preexisting contract for sale. Only a buyer that takes possession of the goods or has a right to recover the goods from the seller under ORS chapter 72 may be a buyer in ordinary course of business. A person that acquires goods in a transfer in bulk or as security for or in total or partial satisfaction of a money debt is not a buyer in ordinary course of business.

(10) "Conspicuous": A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. A printed heading in capitals (as: NONNEGOTIABLE BILL OF LADING) is conspicuous. Language

in the body of a form is "conspicuous" if it is in larger or other contrasting type or color. But in a telegram any stated term is "conspicuous." Whether a term or clause is "conspicuous" or not is for decision by the court.

(11) "Contract" means the total legal obligation which results from the parties' agreement as affected by the Uniform Commercial Code and any other applicable rules of law.

(12) "Creditor" includes a general creditor, a secured creditor, a lien creditor and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity and an executor or administrator of an insolvent debtor's or assignor's estate.

(13) "Defendant" includes a person in the position of defendant in a cross action or counterclaim.

(14) "Delivery" with respect to instruments, documents of title, chattel paper or certificated securities means voluntary transfer of possession.

(15) "Document of title" includes bill of lading, dock warrant, dock receipt, warehouse receipt or order for the delivery of goods, and also any other document which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers. To be a document of title a document must purport to be issued by or addressed to a bailee and purport to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass.

(16) "Fault" means wrongful act, omission or breach.

(17) "Fungible" with respect to goods or securities means goods or securities of which any unit is, by nature or usage of trade, the equivalent of any other like unit. Goods which are not fungible shall be deemed fungible for the purposes of the Uniform Commercial Code to the extent that under a particular agreement or document unlike units are treated as equivalents.

(18) "Genuine" means free of forgery or counterfeiting.

(19) "Good faith" means honesty in fact in the conduct or transaction concerned.

(20) "Holder" means:

(a) With respect to a negotiable instrument, the person in possession of the negotiable instrument if:

(A) The instrument is payable to bearer; or

(B) The instrument is payable to an identified person, and the identified person is in possession.

(b) With respect to a document of title, the person in possession of the document of title if the goods are deliverable to bearer or to the order of the person in possession.

(21) To "honor" is to pay or to accept and pay, or where a credit so engages to purchase or discount a draft complying with the terms of the credit.

(22) "Insolvency proceedings" includes any assignment for the benefit of creditors or other proceedings intended to liquidate or rehabilitate the estate of the person involved.

(23) A person is "insolvent" who either has ceased to pay the person's debts in the ordinary course of business or cannot pay the person's debts as they become due or is insolvent within the meaning of the federal bankruptcy law.

(24) "Money" means a medium of exchange authorized or adopted by a domestic or foreign government and includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more nations.

(25) A person has "notice" of fact when:

(a) The person has actual knowledge of it;

(b) The person has received a notice or notification of it; or

(c) From all the facts and circumstances known to the person at the time in question the person has reason to know that it exists.

A person "knows" or has "knowledge" of a fact when the person has actual knowledge of it. "Discover" or "learn" or a word or phrase of similar import refers to knowledge rather than to reason to know. The time and circumstances under which a notice or notification may cease to be effective are not determined by the Uniform Commercial Code.

(26) A person "notifies" or "gives" a notice or notification to another by taking such steps as may be reasonably required to inform the other in ordinary course whether or not such other actually comes to know of it. A person "receives" a notice or notification when:

(a) It comes to the person's attention; or

(b) It is duly delivered at the place of business through which the contract was made or at any other place held out by the person as the place for receipt of such communications.

(27) Notice, knowledge or a notice or notification received by an organization is effective for a particular transaction from the

time when it is brought to the attention of the individual conducting that transaction, and in any event from the time when it would have been brought to the individual's attention if the organization had exercised due diligence.

(28) "Organization" includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(29) "Party," as distinct from "third party," means a person who has engaged in a transaction or made an agreement within the Uniform Commercial Code.

(30) "Person" includes an individual or an organization.

(31) "Presumption" or "presumed" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

(32) "Purchase" includes taking by sale, discount, negotiation, mortgage, pledge, lien, security interest, issue or reissue, gift or any other voluntary transaction creating an interest in property.

(33) "Purchaser" means a person who takes by purchase.

(34) "Remedy" means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

(35) "Representative" includes an agent, an officer of a corporation or association, and a trustee, executor or administrator of an estate, or any other person empowered to act for another.

(36) "Rights" includes remedies.

(37)(a) "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation. The term also includes any interest of a consignor and a buyer of accounts, chattel paper, a payment intangible or a promissory note in a transaction that is subject to ORS chapter 79. The special property interest of a buyer of goods on identification of such goods to a contract for sale under ORS 72.4010 is not a "security interest," but a buyer may also acquire a "security interest" by complying with ORS chapter 79. Except as otherwise provided in ORS 72.5050, the right of a seller or lessor of goods under ORS chapter 72 or 72A to retain or acquire possession of the goods is not a "security interest," but a seller or lessor may also acquire a "security interest" by complying with ORS chapter 79. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (ORS 72.4010) is limited in effect to a reservation of a "security interest." Whether a transaction creates a lease or security interest is determined by the facts of each case; however, a transaction creates a security interest if the consideration the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease not subject to termination by the lessee and:

(A) The original term of the lease is equal to or greater than the remaining economic life of the goods;

(B) The lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods;

(C) The lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement; or

(D) The lessee has an option to become the owner of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement.

(b) A transaction does not create a security interest merely because it provides that:

(A) The present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into;

(B) The lessee assumes risk of loss of the goods, or agrees to pay taxes, insurance, filing, recording or registration fees, or service or maintenance costs with respect to the goods;

(C) The lessee has an option to renew the lease or to become the owner of the goods;

(D) The lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed; or

(E) The lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.

(c) For purposes of this subsection:

(A) "Additional consideration" is not nominal if, when the option to renew the lease is granted to the lessee, the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed, or when the option to become the

owner of the goods is granted to the lessee the price is stated to be the fair market value of the goods determined at the time the option is to be performed. "Additional consideration" is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised;

(B) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate is not manifestly unreasonable at the time the transaction is entered into, otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into; and

(C) "Reasonably predictable" and "remaining economic life of the goods" are to be determined with reference to the facts and circumstances at the time the transaction is entered into.

(38) "Send" in connection with any writing or notice means to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and in the case of an instrument to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances. The receipt of any writing or notice within the time at which it would have arrived if properly sent has the effect of a proper sending.

(39) "Signed" includes any symbol executed or adopted by a party with present intention to authenticate a writing.

(40) "Surety" includes guarantor.

(41) "Telegram" includes a message transmitted by radio, teletype, cable, any mechanical method of transmission, or the like.

(42) "Term" means that portion of an agreement which relates to a particular matter.

(43) "Unauthorized" signature or indorsement means one made without actual, implied or apparent authority and includes a forgery.

(44) "Value." Except as otherwise provided with respect to negotiable instruments and bank collections in ORS 74.2090 and 74.2100, a person gives "value" for rights if the person acquires them:

(a) In return for a binding commitment to extend credit or for the extension of immediately available credit whether or not drawn upon and whether or not a chargeback is provided for in the event of difficulties in collection;

(b) As security for or in total or partial satisfaction of a preexisting claim;

(c) By accepting delivery pursuant to a preexisting contract for purchase; or

(d) Generally, in return for any consideration sufficient to support a simple contract.

(45) "Warehouse receipt" means a receipt issued by a person engaged in the business of storing goods for hire.

(46) "Written" or "writing" includes printing, typewriting or any other intentional reduction to tangible form. [1961 c.726 §71.2010; 1973 c.504 §2; 1985 c.676 §71.2010; 1989 c.676 §81; 1993 c.545 §1; 1995 c.79 §20; 1997 c.834 §1; 2001 c.445 §131]

Note: For transition provisions regarding secured transactions, see notes under 79.0628.

71.2020 Prima facie evidence by third party documents. A document in due form purporting to be a bill of lading, policy or certificate of insurance, official weigher's or inspector's certificate, consular invoice, or any other document authorized or required by the contract to be issued by a third party shall be prima facie evidence of its own authenticity and genuineness and of the facts stated in the document by the third party. [1961 c.726 §71.2020]

71.2030 Obligation of good faith. Every contract or duty within the Uniform Commercial Code imposes an obligation of good faith in its performance or enforcement. [1961 c.726 §71.2030]

71.2040 Time; reasonable time; "seasonably." (1) Whenever the Uniform Commercial Code requires any action to be taken within a reasonable time, any time which is not manifestly unreasonable may be fixed by agreement.

(2) What is a reasonable time for taking any action depends on the nature, purpose and circumstances of such action.

(3) An action is taken "seasonably" when it is taken at or within the time agreed or if no time is agreed at or within a reasonable time. [1961 c.726 §71.2040]

71.2050 Course of dealing and usage of trade. (1) A course of dealing is a sequence of previous conduct between the parties to a particular transaction which is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.

(2) A usage of trade is any practice or method of dealing having such regularity of observance in a place, vocation or trade as to justify an expectation that it will be observed with respect to the transaction in question. The existence and scope of such a

usage are to be proved as facts. If it is established that such a usage is embodied in a written trade code or similar writing the interpretation of the writing is for the court.

(3) A course of dealing between parties and any usage of trade in the vocation or trade in which they are engaged or of which they are or should be aware give particular meaning to and supplement or qualify terms of an agreement.

(4) The express terms of an agreement and an applicable course of dealing or usage of trade shall be construed wherever reasonable as consistent with each other; but when such construction is unreasonable express terms control both course of dealing and usage of trade and course of dealing controls usage of trade.

(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 the party has given the other party such notice as the court finds sufficient to prevent unfair surprise to the latter. [1961 c.726 §71.2050]

71.2060 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 $5,000 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 the authorized agent of the party.

(2) Subsection (1) of this section does not apply to contracts for the sale of goods nor of securities nor to security agreements. [1961 c.726 §71.2060]

71.2070 Performance or acceptance under reservation of rights; application to accord and satisfaction. (1) 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.

(2) Subsection (1) of this section does not apply to an accord and satisfaction. [1961 c.726 §71.2070; 1993 c.545 §2]

71.2080 Option to accelerate at will. A term providing that one party or the successor in interest of the party may accelerate payment or performance or require collateral or additional collateral "at will" or "when the party deems the party insecure" or in words of similar import shall be construed to mean that the party shall have power to do so only if the party 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. [1961 c.726 §71.2080]