





Seller's Breach, Inspection, Notice and Cure



Breach, Inspection and Notice

Seller's breach



Failure to perform one or more of the following obligations

Deliver the goods

Arts. 31-33; 35-36

Most frequent breach under Art. 35

Transfer the property interest in the goods

Arts. 41 and 42

Hand over any documents relating to the goods

Art. 34

Obligation to inspect and notify

Buyer must examine the goods



Art. 38



Within "*as short a period as is practicable*" in circumstances

Buyer must notify the seller



Art. 39



Within a "*reasonable time*" after it discovers non-conformity or should have discovered it

If not, buyer loses remedies, except where

- Art. 40 applies (complete)
- Art. 44 applies (partial)

Buyer's obligation to examine

Art. 38.1 *"Within as short a period as is practicable in the circumstances"*

No independent sanction for non-examination

Affects the time for discovery under Art. 39

Art. 38.2 No need to examine until arrival of the goods

Art. 38.3 May defer examination if the goods are resold without buyer having an opportunity to examine and the seller is on notice

Notice to the seller

Art. 39.1

Buyer must "*specify the nature*" of non conformity "*within a reasonable time*" after buyer "*knew*" or "*should have discovered*" it

Purpose is to:

- in case of perishables, allow the seller to inspect the goods
- in other cases, allow the seller to cure

*Failure deprives buyer of **all** associated remedies*

Questions:

1. When should the non-conformity have been discovered (see Art. 38)?
2. How long after discovery is a "*reasonable time*" for notice?
3. How much detail is required in specifying nature of non-conformity?



Seller's Cure and Notice

Buyer's defenses - Arts. 40 and 44

Art. 40

Proof that seller:

- a. "*knew*" or "*could not have been unaware*" of lack of conformity
- b. failed to disclose it to the buyer

Questions:

Is seller required to simply know of facts relating to non-conformity?

Is seller required to know that such facts made goods non-conforming under Art. 35?

Art. 44

Partial relief:

If the buyer has a reasonable excuse for its failure to comply with Art. 39, it may

- reduce the price (Art. 50)
- claim damages, except for damages for loss profit

Art. 44 also applies to Art. 43

Seller's right to cure

Art. 37 Near absolute right to cure before time for delivery has passed

Art. 34 - right to cure incorporated in seller's obligation to deliver documents

Limited by unreasonable inconvenience or expense

Buyer always retains right to damages

Art. 48 After time for delivery has passed, cure issues become more complex

Cure and avoidance

Art. 49 → Buyer has a right to avoid the contract

Might suggest right that right to avoid is superior over the cure

Cure may affect issue of fundamental breach

The tension between the two rights → Uncertainty for seller about his right to cure

Also limited by unreasonable delay

Buyer always has a right to damages

Notice of intent to cure

Arts 48.2 and 48.3

If seller proposes a reasonable cure



If the buyer fails to reply, seller has a right to cure

If seller establishes a right to cure, buyer is barred from inconsistent remedies during the cure period

If the buyer objects, then issue of whether seller had a right under Art. 48.1 remains



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