

## [Excuses for Nonperformance: Conditions Following Contract Formation](#)

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This practice note discusses the various excuses that a party to a contract can rely on to justifiably avoid performance. They are commonly used as affirmative defenses in litigation claiming breach of contract. This practice note covers excuses that develop after contract formation, such as failure of a condition, supervening events, impossibility, impracticability, frustration of purpose, anticipatory repudiation, and later agreements between the parties (including modifications, waivers, rescissions, and accord and satisfactions).

For information on voiding an agreement before contract formation, see [Excuses for Nonperformance: Conditions Preceding Contract Formation](#).

### **Failure of a Condition**

A party may not be required to fulfill a contractual obligation because of an unmet condition. A condition is a fact or event upon which a party's obligation to render performance is contingent. Pursuant to the *Restatement (Second) of Contracts*, § 224 (2nd 1981), a condition is defined as "an event, not certain to occur, which must occur, unless its nonoccurrence is excused, before performance under a contract becomes due." *Restat 2d of Contracts*, § 224 (2nd 1981). A condition can sometimes be outside of a party's control, such as the weather, or within its control, such as timely delivery. It must, however, be an event that may or may not occur. For example, the passage of time is not a condition, as it is certain to occur. An unmet condition relieves a party's performance of a related obligation and may also give rise to suspension and/or termination rights. A condition, in this way, serves as an effective risk allocation tool. For more information about conditions, see [Commercial Agreement Representations, Warranties, Covenants, Rights, and Conditions](#).

### **Express versus Implied Conditions**

There are two types of conditions: express and implied. Express conditions are those set forth in writing in a contract, such as a party's payment obligations. They must be strictly satisfied by the obligated party or the other party's performance may be excused. Implied conditions (also referred to as constructive conditions), on the other hand, are those that are unstated yet inferred from either the contract's language or the conduct of one or both of the parties. Implied conditions can also be imposed by a court in the interest of justice. Implied conditions must be substantially complied with by the obligated party.

### **Timing of Conditions**

Conditions can be required to occur before, during, or after a party's performance obligations become due. A condition precedent is one that must occur prior to a party's performance obligations becoming due. If the condition does not occur, the related obligation is excused. A concurrent condition is one that is required by each party (i.e., neither party is required to perform on the contract until the other party has rendered performance). Concurrent conditions may or may not occur simultaneously. Pursuant to the *Restatement (Second) of Contracts*, § 238 (2nd 1981):

[W]here all or part of the performances to be exchanged under an exchange of promises are due simultaneously, it is a condition of each party's duties to render such performance that the other party either render or, with manifested present ability to do so, offer performance of his part of the simultaneous exchange.

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*Restatement 2d of Contracts*, § 238 (2nd 1981). Finally, a condition subsequent is a future event or fact that, when fulfilled, dismisses a party's performance obligation. For example, if a contract requires a buyer to return goods to a seller if they are defective, the buyer's return serves to dismiss his or her payment obligations.

### ***Excuse of Condition by Waiver***

A party can choose to waive (i.e., excuse) an express or implied condition. A waiver is the intentional relinquishment of a known right. Waivers are commonly entered into by parties to an agreement when one party is looking to obtain a one-time release from the other party with respect to a contractual obligation, and the other party agrees to grant it. This is an appropriate course of action when the parties are not looking to permanently amend a provision of the underlying agreement, but solely to grant this one-time release, such as waiving a condition. For information respecting amendments, see "Modification/Amendment" in [Later Agreements](#) below.

A waiver can be provided on a revocable basis. Once the receiving party has reasonably relied on it, however, revocation is no longer permitted. Waivers can also be made either orally or in writing. Commercial contracts routinely incorporate a waiver clause addressing the manner in which the parties may waive a provision or multiple provisions of the agreement. Waiver clauses are typically found in the "Miscellaneous" section at the end of an agreement. Most of these clauses require waivers to be made in writing and signed by either all of the parties to the agreement or "the party to be charged" (i.e., the party against whom the waiver is to be enforced). These clauses, sometimes referred to as "no-waiver" clauses, generally state that waivers are not permitted unless made pursuant to an executed writing. For form waiver clauses, see [Waiver Clauses](#).

The purpose of a waiver clause is to prevent a party from accidentally or unintentionally waiving its right to bring claims and recover damages under an agreement in the event of a breach by the other party. However, parties to an agreement commonly waive certain terms throughout the course of their relationship without preparing and executing a waiver agreement, even when a no-waiver clause existed in the underlying contract. In such instances, courts regularly uphold oral waivers based upon the parties' actions and words, even when the underlying agreement required a waiver to be made pursuant to an executed writing. For example, in [Quality Products & Concepts Co. v. Nagel Precision, Inc., 469 Mich. 362 \(2003\)](#), a dispute arose between an employer and its employee. The applicable employment agreement contained a no-waiver clause. The parties, however, mutually agreed to amend certain terms of the employee's employment. The court supported the oral modification, holding that "parties to a contract are free mutually to waive or modify their agreement through written and oral agreements, as well as through conduct, notwithstanding the presence of a non-waiver clause purporting to restrict that ability." The court, however, imposed a heightened standard for determining the parties' mutual intent to make any such waiver (i.e., that such intent be established by "clear and convincing evidence"). This is not, however, the case with sales of goods contracts, which are governed by the Uniform Commercial Code (UCC). Specifically, [U.C.C. § 2-209](#) gives full effect to waiver clauses and does not enforce oral waivers. Similarly, when the statute of frauds (which requires certain agreements to be made in writing) applies pursuant to [U.C.C. § 2-201](#), oral waivers are generally not enforced. Best practices dictate preparing the written documentation required pursuant to the underlying agreement in all instances.

### **Supervening Events**

A supervening event can also serve to dismiss a party's performance obligation. A supervening event is one that occurs after an agreement has been fully executed but prior to the time performance is due. In order for a supervening event to excuse performance, the following conditions must be met: (1) the event must have occurred through no fault of either party; (2) nonoccurrence of the event was a basic assumption of the parties at the time of contracting ([U.C.C. § 2-615](#) and *Restat 2d of Contracts*, § 261 (2nd 1981)); (3) the risk of nonoccurrence was not otherwise allocated to one of the parties either by the agreement's language (see Risk Allocation, below) or by operation of law; and (4) the event renders performance either impossible, impractical, or contrary to the purpose of the agreement (all as discussed below). When making risk-allocation decisions that are not precisely dictated by statute, courts commonly consider the foreseeability of the event in question. When a party is discharged from

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performing its contractual obligations under an agreement for reasons of impossibility, impracticability, or frustration of purpose due to a supervening event, the other party's contractual duties will also be discharged.

### ***Impossibility***

Some supervening events make performance impossible, such as a hurricane preventing the timely delivery of goods by a seller. Courts will generally discharge both parties if performance of a contract has been rendered impossible as a result of the occurrence of such an unanticipated event. Examples of common supervening events that render performance impossible include (1) the death or incapacitation of one of the performing parties, or (2) the destruction of the subject matter of the agreement (through no fault of either party).

### ***Impracticability***

Courts may also discharge contractual duties when performance is rendered impracticable from a commercial perspective as a result of the supervening event. Pursuant to [Section 2-615 of the UCC](#) and Section 261 of the Restatement (Second) of Contracts (2nd 1981), impracticability occurs when a party's obligation to perform is made impracticable solely as a result of the occurrence of an event, the nonoccurrence of which was a basic assumption upon which the parties relied when entering into the agreement in the first place. See *Restat 2d of Contracts*, § 261 (2nd 1981). In order to find impracticability, the following must be established:

- 1 The supervening event must render performance unduly burdensome (i.e., it can only be performed with unreasonable risk, expense, and/or difficulty).
- 2 The event's nonoccurrence must have been assumed by the parties when entering into the agreement (i.e., if the event was reasonably likely to transpire, it was not a basic assumption).
- 3 The affected party must not be responsible for the event's occurrence (including, without limitation, by failing to take reasonable measures to overcome the event).
- 4 The added risk caused by the event must not have been allocated by the agreement or applicable law to the affected party.

An example of a supervening event that courts generally do not treat as rendering performance impracticable is an increase in costs due to fluctuating interest rates (unless such fluctuations are extreme and resulting from highly unusual circumstances such as war). The rationale is simple: the parties have assumed the risk of reasonably foreseeable events when entering into the agreement.

### ***Frustration of Purpose***

Courts will also discharge a party from performing under an agreement if the primary purpose for entering into the contract is frustrated by a supervening event. Unlike impossibility and impracticability, the affected party is fully capable of performing. Instead, pursuant to a frustration-of-purpose claim, the affected party is making the statement that performance has been rendered no longer valuable by the event. Courts will generally discharge a party for frustration of purpose when (1) the supervening event and the ensuing frustration were not reasonably foreseeable, and (2) the primary purpose of the agreement is substantially or totally destroyed by the event.

### ***Risk Allocation and Force Majeure Clauses***

Commercial contracts generally incorporate ***force majeure*** clauses. Such provisions serve to allocate the risk of supervening events outside the parties' control (such as inclement weather, war, terrorism, government acts, and labor strikes), which render performance either impossible, impracticable, or not serving the agreement's primary purpose. Contractual risk in general can also be allocated by some or all of the following provisions: indemnifications, warranties, limitation-of-liability clauses, insurance clauses, and/or termination provisions, among other methods. Once the parties to a contract have allocated the risk of supervening events by incorporating a ***force majeure*** clause, the parties are bound by its terms.

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***Force majeure*** clauses are permitted by both the UCC and the Restatement (Second) of Contracts (2nd 1981). They often require the affected party to (1) notify the other party in writing of the event of ***force majeure*** as soon as practically possible, and (2) use reasonable efforts to limit its impact on performance. For form ***force majeure*** clauses, see [Force Majeure Clauses](#).

Counsel should keep in mind that ***force majeure*** clauses typically reference only those events that would render performance either impossible, impracticable, or in frustration of the agreement's purpose and, as such, their inclusion may be considered unnecessary since a court would most likely excuse performance in such instances. Best practices, however, dictate the inclusion of a ***force majeure*** clause for added protection.

Furthermore, it is virtually impossible to list every event rendering performance impossible, impracticable, or in frustration of the agreement's purpose when drafting a ***force majeure*** clause. Listing only certain events, however, can serve to exclude those which are not specifically referenced, rendering the affecting party responsible for non-enumerated occurrences. As such, counsel should consider including the italicized language any ***force majeure*** clause:

Neither party shall be held responsible for war, weather, strikes, lockouts, fires, ***acts of God***, terrorism, or any other activities or factors beyond its reasonable control, whether similar or dissimilar to any of the foregoing.

Also, parties may wish to add certain additional events to the list if and to the extent deemed important by their respective counsel, given the nature and subject matter of the deal in question. For example, one or both parties may not be willing to assume particular market risks, such as foreign exchange rate fluctuations, computer failures, software glitches, or troubles with a supplier or distributor. The more specific counsel is as to the events covered, the better protection the language will provide to his or her client.

For form ***force majeure*** clauses, see [Force Majeure Clauses](#). For information on drafting ***force majeure*** clauses, see [Force Majeure Clause Drafting](#).

### **Temporary and Partial Performance Interruptions**

When a supervening event temporarily causes impossibility, impracticability, or frustration of purpose, the affected party may suspend its performance during the change in circumstances. Once the situation clears, however, performance obligations generally resume, and the affected party is provided with a reasonable time extension to fulfill its duties. *Restat 2d of Contracts*, § 269 (2nd 1981). Notwithstanding the foregoing, if the supervening event permanently alters a party's obligations or anticipated benefits, it could excuse the affected party's performance altogether.

Additionally, a supervening event excuses only those particular obligations affected by the event. Therefore, in agreements with divisible performance obligations, a supervening event could create only partial impossibility, impracticability, or frustration of purpose. A party's unaffected performance requirements are not excused if (1) substantial performance is still practicable; or (2) within a reasonable time following the event, the affected party agrees to fulfill its obligations and allow the non-affected party to retain all performance benefits. *Restat 2d of Contracts*, § 270 (2nd 1981).

### **Anticipatory Repudiation**

A party's anticipatory repudiation can also serve to discharge the other party's contractual obligations. Anticipatory repudiation, sometimes referred to as anticipatory breach, occurs when one party to an agreement makes a statement or takes an action that indicates to the other party that it will not or may not fulfill its contractual obligations on or before the time performance is due. When this occurs, the other party has the right to demand adequate assurance of performance instead of simply waiting to see what eventually happens. Anticipatory repudiation requires a party to an agreement to have said or done something that substantially impairs the value of the contract to the other party, and either (1) demonstrates that it will not perform as required pursuant to the terms of the agreement, or (2) renders its performance not reasonably possible under the circumstances. Note that

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performance need not be rendered impossible—it is sufficient that a reasonable person would determine that the repudiating party will not or cannot fulfill its obligations. A mere claim by the performing party that it is facing certain challenges, displeased with the terms of the arrangement, or otherwise unsure of its ability to fulfill its obligations when due, however, is not sufficient to constitute an anticipatory repudiation.

Examples of anticipatory repudiation include the following:

- An unequivocal statement by a buyer that it will not pay for pre-ordered goods
- A statement made by a seller that it will no longer be producing the goods that the buyer has pre-ordered
- A seller's closing of its only production facility (i.e., where the goods pre-ordered by the buyer are made)
- News of a buyer's deteriorating financial condition or material, adverse change in credit rating, but only if it is reasonable to conclude that the buyer's timely performance would be in jeopardy
- An inappropriate (i.e., overreaching) demand for adequate assurance

However, statements indicating a party's need for more time (where time is not of the essence) or requests for contract modification are *not* examples of anticipatory repudiation.

### **Remedies Available**

Once a repudiation has taken place, an aggrieved party may, pursuant to [U.C.C. § 2-610](#), do the following: (1) await performance by the repudiating party (for a commercially reasonable time), in which case it may have an implied duty to mitigate damages; or (2) avail itself of any of the remedies for breach of contract offered (see Breach of Contract, below, for more information), even if it has already notified the repudiating party that it would await performance and has urged retraction. In any event, the aggrieved party is entitled to suspend any performance for which it has not already received the bargained-for return, but only if such suspension is commercially reasonable under the circumstances. An aggrieved party may only rely on [U.C.C. § 2-610](#) remedies if the other party's repudiation would substantially impair the value of the contract. Impairment can be that which materially affects (1) the timing of delivery, (2) the quantity of the goods, (3) the quality of the goods, and/or (4) the assortment of the goods, among other things. Substantial impairment is a qualitative threshold determined on a case-by-case basis. An aggrieved party may not rely on [U.C.C. § 2-610](#) remedies, however, if it is also in breach of the applicable agreement. The principles of [U.C.C. § 2-610](#) have been held to apply to non-sale-of-goods agreements as well as sale-of-goods contracts (although this practice note discusses anticipatory repudiation with a focus on UCC-governed agreements, as that is where its applicability is most common).

### **Demand for Adequate Assurance**

[Section 2-609 of the UCC](#) states that an agreement for the sale of goods imposes an obligation on each party to fulfill its contractual duties so that the other party will receive due performance thereunder. If either party maintains "reasonable grounds for insecurity" with respect to the other party's performance, the insecure party may demand, in writing, adequate assurance of due performance. This provides the aggrieved party with an opportunity to take action instead of sitting back and waiting to see what eventually transpires. The *Restatement (Second) of Contracts*, § 251 (2nd 1981) replicates [U.C.C. § 2-609](#), as it is also based upon the principle that parties are entitled to a continuing sense of security with respect to the other party's future performance. *Restat 2d of Contracts*, § 251 (2nd 1981). While the Second Restatement is not statutory law, courts often adopt its principles with respect to non-UCC governed agreements. Additionally, many states have expanded the right to demand reasonable assurance to non-UCC contracts.

It is imperative that an aggrieved party have reasonable grounds for insecurity prior to sending a demand letter. For example, insecurity cannot be based on factors known at the time the parties entered into the agreement, as the parties will be deemed to have assumed such known risks. It can, however, be based on suspected events that ended up not transpiring, so long as reliance thereon was reasonable at the time. If an aggrieved party errs in this determination, makes a demand for assurance, and suspends its performance, the aggrieved party may ultimately be determined to be the party in breach of the agreement. As such, an aggrieved party should not automatically

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assume repudiation unless the other party provides a clear anticipatory repudiation in writing, as it may be simply attempting to renegotiate the applicable agreement. See [Briarwood Farms, Inc. v. Toll Bros., Inc., 452 Fed. Appx. 59 \(2d Cir. 2011\)](#).

Pursuant to [U.C.C. § 2-609](#), a demand for adequate assurance must be made in writing. The writing requirement is liberally construed by courts and, if the requesting party can show that the other party had a clear understanding that performance would be suspended until adequate assurance was received, the written requirement would be satisfied. See *AMF v. McDonald's Corp.*, [536 F.2d 1167 \(7th Cir. 1976\)](#). Similarly, per the court in [ARB \(American Research Bureau\), Inc. v. E-Systems, Inc., 663 F.2d 189 \(D.C. Cir. 1980\)](#), if the pattern of interaction between the parties demonstrates both parties' clear understanding that performance would be suspended until adequate assurance was received, the written requirement would be satisfied. The *Restatement (Second) of Contracts*, § 251 (2nd 1981) also allows for an oral demand in exigent circumstances. *Restat 2d of Contracts*, § 251 (2nd 1981). Nonetheless, unnecessary risk should be avoided by always seeking written assurance. For form demand letters, see [Letter from Buyer Demanding Adequate Assurances from Seller](#) and [Letter from Seller Demanding Adequate Assurances from Buyer](#).

### **Responding to a Demand Letter**

Failure to respond to a demand letter on a timely basis is tantamount to a repudiation. When responding to a reasonable demand, however, the assurances provided should be adequate in all respects. For example, if a seller is concerned that a buyer will not fulfill its payment obligations, a buyer's advance payment of all, or a significant portion of, the outstanding balance would be adequate assurance. Examples of inadequate assurance include a buyer providing a seller with a statement that it "intends to pay" the agreed-upon amount or a seller providing a buyer with an excuse for a potentially late delivery instead of providing a specific solution to the problem pursuant to the buyer's request. For form response letters, see [Letter from Buyer Responding to Seller's Demand for Adequate Assurance](#) and [Letter from Seller Responding to Buyer's Demand for Adequate Assurance](#).

### **Retracting an Anticipatory Repudiation**

Pursuant to [U.C.C. § 2-611](#), a repudiating party may retract its repudiation prior to the time that such party's next obligation is due, unless the aggrieved party has either (1) communicated to the repudiating party that it is treating the agreement as cancelled or the repudiation as final (best practices would include providing this communication in writing), or (2) materially changed its position in reasonable reliance on the repudiation. An example of materially changing one's position is where a buyer, treating a seller's anticipatory repudiation as final, places an order for the same goods with another seller. Pursuant to [U.C.C. § 2-611\(2\)](#), retraction may be made by any method that clearly indicates the repudiating party's intention to perform, but must include any assurance reasonably demanded by the other party pursuant to [U.C.C. § 2-609](#). Best practices would include providing the applicable retraction in writing. A retraction will reinstate the rights and obligations of both parties under the contract, with allowances being made to the non-repudiating party to the extent that it has incurred damages thereby. [U.C.C. § 2-611\(3\)](#). If the non-repudiating party provided the repudiator with the opportunity to retract a repudiation for a specified time period (i.e., *a locus poenitentiae*), the repudiation will automatically become final and binding upon the expiration thereof, even if the non-repudiating party did not detrimentally rely upon the repudiation.

### **Breach of Contract**

[U.C.C. § 2-703](#) sets forth a seller's remedies in the event of a buyer's breach. It permits the aggrieved seller to:

- 1 Withhold or stop delivery of any untendered portion of a purchase
- 2 Resell the goods and recover damages pursuant to [U.C.C. § 2-706](#)
- 3 Recover damages for nonacceptance of the goods pursuant to [U.C.C. § 2-708](#)
- 4 Recover the purchase price of the goods pursuant to [U.C.C. § 2-709](#) –or–
- 5 Cancel the contract

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[U.C.C. § 2-711](#) sets forth a buyer's remedies in the event of a seller's breach. It permits the buyer to cancel the agreement, recover whatever amount was theretofore paid for the goods, and:

- 1 "Cover" by acquiring substitute goods under [U.C.C. § 2-712](#) and seek damages
- 2 Recover damages for nondelivery pursuant to [U.C.C. § 2-713](#) (potentially subject to a duty to mitigate)
- 3 Recover the goods under [U.C.C. § 2-502](#) if and as identified in the applicable contract –or–
- 4 Obtain specific performance or replevy the goods pursuant to [U.C.C. § 2-716](#)

For more information on specific performance, see [Statutory and Common Law Remedies in Acquisition Agreements](#).

For more information on UCC remedies, see [UCC Damages and Remedies](#).

### **Later Agreements**

Contractual obligations can also be discharged when the parties enter into a modification/amendment, waiver (see Excuse of Condition by Waiver, above), rescission, or accord and satisfaction.

### **Modification/Amendment**

Parties to an executed agreement can enter into an amendment in order to modify its terms. Most of the time, written amendments are prepared and executed in order to memorialize the changes. While not absolutely necessary, a ratification of the underlying agreement's terms and conditions is generally included in the amendment for clarity. However, it is common to modify certain terms without preparing and executing an amendment. In such instances, courts regularly uphold oral amendments based upon the parties' actions and words, even when the underlying agreement contains a "no oral amendments" clause (similar to the no-waiver provision discussed in Excuse of Condition by Waiver, above). For examples of amendment clauses, see [Amendments Clauses](#). Best practices, however, would include preparing the written documentation for clarity and confirmation of each party's new obligations. Sometimes, in lieu of amending an agreement, a party is simply looking to obtain a one-time waiver or consent from the other party. This is an appropriate course of action when the other party will not agree to permanently amend a provision of the underlying agreement, but agrees to grant a one-time waiver for a particular event or instance of nonperformance. For more information on this topic, see Excuse of Condition by Waiver, above.

### **Rescission**

In contract law, rescission refers to the unmaking of an agreement. The goal is to bring the parties back to the position that they were in prior to entering into the contract in the first place. There are two types of rescission: mutual and unilateral. Mutual rescission takes place when the parties to an agreement essentially cancel the contract before either party has performed. The consideration is the release of each party's obligation to render the performance set forth therein. Even when each party has partially performed under an agreement, a court will generally enforce a mutual rescission where mutual consideration exists.

### **Accord and Satisfaction**

Accord and satisfaction addresses a party's release from a contractual obligation pursuant to a mutual settlement agreement between the parties. In order to constitute a valid accord and satisfaction, there must have existed a valid dispute between the parties. An accord and satisfaction is a contract and, as such, all of the requisite elements of a contract must be present. The agreement must include a definitive offer of settlement as well as an unconditional acceptance of the offer pursuant to its terms. It must be both final and definite, leaving nothing unsettled or open to interpretation. The agreement does not need to be based on an earlier agreement between the parties. An accord and satisfaction can be made orally (unless the agreement falls within the statute of frauds). It

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serves to settle the entire controversy between the parties and, therefore, terminates all outstanding obligations arising out of the underlying dispute (whether such dispute relates to an agreement or tort). Unlike a substituted agreement where the original agreement is immediately discharged and replaced with a new agreement, an accord does not discharge a party's original contractual obligations until the terms of the accord are fully performed (i.e., satisfied). However, if a party fails to perform pursuant to the terms of an accord, it has breached the terms of the accord, and the non-breaching party is free to sue for breach of the original contract or the accord in its sole discretion.

### Related Content

#### **Practice Notes**

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- [Commercial Agreement Representations, Warranties, Covenants, Rights, and Conditions](#)
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- [Acceptance and Rejection of Goods under the UCC](#)
- [UCC Damages and Remedies](#)
- [UCC Remedies for Buyer and Seller and Third-Party Rights](#)
- [Force Majeure Clause Drafting](#)
- [Merger Clause and Force Majeure Clause Drafting](#)
- [Statutory and Common Law Remedies in Acquisition Agreements](#)

#### **Annotated Forms**

- [Letter from Buyer Demanding Adequate Assurances from Seller](#)
- [Letter from Seller Demanding Adequate Assurances from Buyer](#)
- [Letter from Buyer Responding to Seller's Demand for Adequate Assurance](#)
- [Letter from Seller Responding to Buyer's Demand for Adequate Assurance](#)
- [Letter Informing of Nonperformance \(UCC/Sale of Goods; rejection after acceptance\)](#)
- [Letter Informing of Nonperformance \(UCC/Sale of Goods; rejection with opportunity to cure\)](#)

## Excuses for Nonperformance: Conditions Following Contract Formation

- [Nonperformance Letter \(Uniform Commercial Code; Sale of Goods; Rejection Prior to Acceptance\)](#)
- [Anticipatory Repudiation Final Notice \(Buyer\)](#)
- [Intent to Cure Defective Shipment Notice \(Seller\)](#)
- [Rejection of Goods Notice \(Nonconformance to Contract\) \(Buyer\)](#)
- [Rejection of Goods \(Notice of Nonconformance to Contract\) \(Buyer\)](#)
- [Rejection of Nonconforming Goods Offered as an Accommodation Notice \(Buyer\)](#)
- [Revocation of Acceptance of Goods Notice \(Nonconformance to Contract\) \(Buyer\)](#)
- [Withholding of Goods Due to Buyer's Nonpayment Notice \(Seller\)](#)
- [Failure of Conditions Clauses](#)
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- [Buyer Precluding Seller's Right to Cure Non-Conforming Goods Clause](#)
- [Expanded Right to Assurance in the Event of Anticipatory Repudiation Clause](#)
- [Inspection and Acceptance Clauses \(Sale of Goods\)](#)
- [Waiver Clauses](#)
- [\*\*Force Majeure\*\* Clauses](#)
- [Amendments Clauses](#)

### **Checklists**

- [Seller's Terms and Conditions of Sale Agreement Drafting Checklist \(Seller\)](#)
- [Commercial Contract Drafting and Review Checklist](#)
- [Contract Management Process Checklist](#)