

リーガルフロンティア21

プロジェクトベース
実務・英文契約書講座

第1回 動産売買契約

2013 年 5 月 15 日(水) 午後7:00~9:00

会 場

〒101-0051 東京都千代田区神田神保町 3-10 神田第3 アメックスビル 7F
株式会社リーガルフロンティア21
セミナールーム

テーマ	トピック	学習目標
①動産売買契約 2013 年 5 月 15 日（水）	申込・承諾、約因、売買契約の要件（代金の確定性等）、書面性要件（詐欺防止法）・口頭証拠排除法則、品質保証、危険・権利の移転	申込・承諾、約因、売買契約の要件（代金の確定性等）、書面性要件（詐欺防止法）・口頭証拠排除法則、品質保証、危険・権利の移転

動産売買契約

動産売買契約は、UCC Article 2: Sales が取り扱っている。UCC の中でも、この編は特に重要。

動産売買は、交換型の契約の模範になっているもので、（品質）保証、責任制限、損害賠償などの規定のしかた（契約書の書き方）の範型になっている。

日本法

第三節 売買

第一款 総則

（売買）

第五百五十五条 売買は、当事者の一方がある財産権を相手方に移転することを約し、相手方がこれに対してその代金を支払うことを約することによって、その効力を生ずる。

UCC Article 2 Sales

§ 2-204. Formation in General.

(1) A contract for sale of goods may be made in any manner sufficient to show agreement, including offer and acceptance, conduct by both parties which recognizes the existence of a contract, the interaction of electronic agents, and the interaction of an electronic agent and an individual.

(2) An agreement sufficient to constitute a contract for sale may be found even if the moment of its making is undetermined.

(3) Even if one or more terms are left open, a contract for sale does not fail for indefiniteness if the parties have intended to make a contract and there is a reasonably certain basis for giving an appropriate remedy.

GE Capital Global Electronics Solutions, Inc. Sales Agreement (the “Agreement”)

Sales Agreement Number (NUMBER)

GES Proposal Number (Number from Quote/Proposal)

These Terms and Conditions shall apply to any accepted offers or purchase orders (“Purchase Orders”) placed by a Buyer for the equipment (“Equipment”) subject to sale by GE Capital Global Electronics Solutions, Inc. (“Seller”). Any additional terms in any accepted offer or Buyer Purchase Order or other written communication will have no legal effect unless acknowledged in writing by the Seller. In issuing a written offer or Purchase Order to the Seller, Buyer agrees to be bound by these Terms and Conditions. All written offers or Purchase Orders must reflect a GE Capital Global Electronics Solutions Proposal Number.

1. **Sale:** *Seller agrees to sell and Buyer agrees to purchase from Seller the items listed below (referred to as the “Equipment”) in accordance with the terms and conditions specified in this Sales Agreement*

<u>Item</u>	<u>Qty</u>	<u>Manufacturer</u>	<u>Model</u>	<u>Description</u>	<u>Serial Number</u>	<u>ID or Asset #</u>
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Delivery/Pick up date- (DATE AND YEAR)

Delivery/Pick up Location: (Company name and Address)

Contact: (Name, phone and e-mail address of shipping contact)

2. **Sales Price and Payment:** (number and currency) *Sales price is due and payable to Seller by check (please allow 10 days for company checks to clear) at the following address: (address) or by wire transfer to the following account: (wire transfer instructions) (please allow 3 days for U.S. domestic wire transfers, and 5 business days for international wire transfers). The price stated shall be conclusive for all purposes. Payment is due in full within 5 business days upon execution of this Agreement. Seller may terminate this Agreement for any or no reason, with no liability whatsoever to Buyer, at any time until full payment is received. If no sales tax is specified, any such tax will be in addition to the stated price. The Buyer will pay any taxes, duties, or other government levies. Payment shall be made in accordance with the terms set out in this Document. If payment terms are given, Buyer grants to Seller a security interest in all of the Equipment to secure Buyer’s payment of the purchase price and other performance hereunder or under any related agreement.*
3. **Delivery:** *Shipping terms are EXW (INCOTERMS 2000) Seller’s facility. Seller’s liability for delivery shall cease and title and all risk of loss or damage shall pass to Buyer upon Seller making the Equipment available to Buyer on the delivery date, regardless of any provision for payment of freight or insurance or the form of shipping documents. Equipment held by Seller for Buyer shall be at Buyer’s risk and expense. Buyer is responsible for packing and loading the Equipment for shipment and/or for clearing the Equipment*

for export. Buyer shall pay all packing, packaging, loading, transportation, export, customs and insurance costs.

Buyer acknowledges and agrees that Seller's delivery date is an estimated date and that the actual delivery may be later depending upon the completion of de-installation or other contingencies. If the actual delivery date is more than thirty (30) days after the original delivery date, Buyer may terminate this Agreement, with no liability to Seller, and Buyer's deposit, if any, will be reimbursed in full. This is Buyer's sole remedy for late delivery and in no event shall Seller be liable to Buyer for any costs, expenses or damages relating to such delivery.

4. **Cancellation Charges:** If Buyer should cancel its order, in whole or in part, at any time prior to shipment, Buyer agrees to pay to Seller a cancellation fee equal to 10% of the price set forth in the Purchase Order for the item(s) canceled if the order is canceled 30 days or more before the scheduled ship date stated on the Purchase Order, or 20% of the price if the order is canceled less than 30 days before the scheduled ship date. Cancellations are not effective unless and until received by Seller in writing. If no ship date is set forth on the front side hereof, the ship date is presumed to be within 30 days after the date hereof. Buyer specifically authorizes Seller to deduct and retain the amount of the cancellation fee from any down payment or prepayment of the purchase price if Buyer cancels its order or any part thereof. This order is not cancelable after shipment.
5. **Intellectual Property Responsibilities:** Seller and Equipment owner does not transfer license to the Buyer to use any Software. Buyer shall obtain license directly from the manufacturer of the Products. This Agreement does not grant to Buyer a license or right to use the intellectual property (including without limitation the names, patents, trademarks or copyrighted works) owned or controlled by Equipment owner or Equipment manufacturer.
6. **Acknowledgment and Warranty:** Buyer acknowledges that the Equipment being sold is used, and is being sold "AS IS" "WHERE IS" with all defects entirely at Buyer's own risk and reliance solely upon Buyer's own inspection of the equipment and without reliance upon any representation or description by Seller concerning the equipment. Seller neither assumes nor authorizes any person to assume for Seller any liability in connection with the sale of the goods. Seller warrants that Buyer will acquire the Equipment sold hereunder free and clear of all liens and encumbrances and that Seller has the right to sell said Equipment. Seller will cure any breach of the foregoing warranty within a commercially reasonable time after it receives written notice of such breach from Buyer. The warranties set forth in this paragraph are the only warranties given by Seller, and SELLER MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE, WHETHER OR NOT SELLER KNEW OR HAD REASON TO KNOW OF ANY SUCH PURPOSE AND ANY WARRANTY AGAINST INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHT OF A THIRD PARTY. SELLER WILL NOT PROVIDE ANY DOCUMENTATION, SUPPORT, ASSISTANCE, TRAINING, OR OTHER SERVICES.

Software: This is a sale of hardware items only and does not include a sale or license of program code (software) in any form, regardless of whether such software has been packaged with, integrated into or otherwise included with the item(s). Any software included with the item may be the property of a third party. Buyer agrees to destroy all such software or to obtain an appropriate license for its continued use. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY SELLER OR AN AUTHORIZED REPRESENTATIVE SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF THIS WARRANTY. BUYER ACCEPTS THE RISKS OF USE AND EXCEPT AS OTHERWISE STATED HEREIN SUCH RISKS FALL SOLELY ON BUYER.

The remedies set out herein are Buyer's sole remedies for breach of warranty. In no event shall Seller be liable to Buyer for any claim arising out of or related to these Terms and Conditions or the Purchase Order or any Equipment described herein in an amount greater than the purchase price paid by Buyer for such Equipment, whether such claim arises in contract or in tort. Without limiting the generality of the foregoing, Buyer specifically waives and releases Seller and all affiliates, directors, officers and employees of any of them from any claim for indirect, consequential, punitive or exemplary damages arising out of or related to the Purchase Order or these Terms and Conditions or any Equipment described herein.

In no event will Seller be liable for (a) any liability for loss or, or damage to tangible property, (b) any loss of profits, loss of data, loss of use, or interruption of business, or special, incidental, consequential, or indirect damages of any kind irrespective of whether Seller has advance notice of the possibility of such damages, (c) any third party claims against the buyer for any loss, damage, costs or expenses.

Seller neither assumes nor authorizes any person to assume for Seller any liability in connection with the sale of Equipment. It is agreed that neither Seller nor any of its representatives have made any representations of any nature on which Buyer has relied regarding the sale of Equipment.

7. **Force Majeure:** Seller shall not be liable for any delay in performance or nonperformance caused by circumstances beyond Seller's control including, but not limited to, acts of God, fire, flood, earthquake, riot, war, changes in applicable law or government regulations, court order, accidents or labor trouble.
8. **Complete Agreement:** These Terms and Conditions incorporate all representations, promises and statements made by Seller in connection with the subject matter hereof and no representation, warranty, promise or statement not contained herein shall be binding on Seller. These Terms and Conditions shall also be binding upon and inure to the benefit of Buyer's and Seller's respective successors, assigns, heirs, administrators, executors and legal representatives.
9. **Other Agreements:** These Terms and Conditions replace, supersedes and cancel all prior documents, purchase orders and similar agreements and understandings between Seller and Buyer with respect to the subject matter hereof, whether written or oral, and all contemporaneous oral agreements and understandings.

10. **Indemnification:** Buyer's exclusive remedy for breach of the express warranties contained in Section 6 shall be actual damages and in no event shall exceed that portion of the Price applicable to that portion of the Equipment for which the said warranty has been breached. Upon transfer of title to the Equipment from Seller to Buyer, Seller shall be relieved from any further obligation including but not limited to the handling, labeling, transportation, storage, use, disposal, or other activity relating to the Equipment. Buyer agrees to defend, indemnify, and hold Seller harmless from and against any and all claims, liabilities, demands, suits, judgments, damages, fines, penalties, and any associated cost and expenses, including but not limited to consequential damages and attorney's fees which may be asserted against or incurred by Seller as a result of Buyer's handling, labeling, transportation, storage, use, disposal, or other activity relating to the Equipment, including but not limited to removal of Equipment herein at Seller's location, and resale thereof.
11. **Hazardous Material Disclosure:** Hazardous Materials may have been used in the Equipment. The Equipment has been cleaned, but some residual amounts may remain or may have leached into the Equipment structure. Proper protective gear and clothing, and proper safety methods should be used at all times when handling and/or using the Equipment.
12. **Attorneys Fees and Cost:** In the event that Buyer is in breach or default under this Document or brings any unsuccessful action against Seller, Buyer agrees to pay all of Seller's attorney's fees and costs
13. **Export:** *The Buyer agrees to comply fully with all applicable federal, state, and local laws and regulations, and the laws and regulations of other countries to the extent that such may be applicable, including, but not limited to, the export control laws of the United States of America. Unless specifically authorized by appropriate government license or regulation, the Buyer agrees not to export, directly or indirectly, any technology, software or commodities sold by Seller or its direct product to any countries or to their assimilated entities (i.e. Embassies, Consulates, Controlled In Fact Entities) or to the nationals of any country which are subject to the United States export control laws and regulations, including the Export Administration Regulations.*

The Buyer agrees to indemnify and hold Seller harmless from any claims, liabilities, penalties, forfeitures, and associated costs and expenses (including attorneys' fees), which Seller may incur due to Buyer's non-compliance with applicable laws, rules and regulations. The Buyer agrees to immediately notify Seller of Buyer's receipt of any such notice of a violation of any law, rule or regulation, which may affect Seller.

The Buyer acknowledges that Seller's obligations contained in this letter shall survive the termination of any agreement or other arrangement under which the technology, software, or commodities were provided to The Buyer. In addition, in the event of any conflict in the terms provided in this Agreement with any other document entered into between the Buyer and Seller, the Buyer understands that the terms of this Agreement shall control and be binding upon the Buyer.

As Buyer:

(Authorized Signature)

Print Name: _____

Date: _____

As Seller:

(Authorized Signature)

Print Name: _____

Date: _____

GENERAL TERMS AND CONDITIONS OF PURCHASE AGREEMENT

This agreement dated as of the _____ is made by and between
_____, (hereinafter called "THE BUYER") and
_____, (hereinafter called "THE SELLER") under in respect of
materials and services by BUYER from SELLER.

1. General Obligations

- 1.1 Basically, ordering should be made by issuing purchase order and other attached documents, if any, by BUYER, to indicate clearly the details of orders and payments will be made by BUYER and SELLER for goods delivered as ordered and accepted by BUYER after quality inspection on for services rendered as ordered and accepted by BUYER as having been satisfactorily performed.
- 1.2 Should there be any doubts as to the above mentioned documents; SELLER should inform BUYER immediately in order to get instruction from BUYER
- 1.3 SELLER must follow the instructions stipulated on purchase orders to make delivery and also abide by business procedures adopted by BUYER.
- 1.4 SELLER may assign a part or all of individual orders to third parties only with prior written consent of BUYER.

2. Forecast and Purchase Order Confirmation

- 2.1 BUYER shall give SELLER forecast prior to the expected delivery date. The forecast is for SELLER material preparation and planning purpose. For those model without forecast provided, purchase order will be issued.
- 2.2 BUYER shall place a purchase order to SELLER by facsimile or E-mail.
- 2.3 The purchase order shall indicate the products to be purchased and their quantities and prices. The purchase order number and such other information as may be necessary for the fulfillment of the order.
- 2.4 SELLER will forward a written acceptance of the purchase order within three (3) working days after SELLER's receipt of said purchase order. If SELLER does not forward a written acceptance of the purchase order within three (3) working days, SELLER shall be deemed to have accepted the order.
- 2.5 If SELLER does not desire to accept the order, it shall inform BUYER by facsimile or Email within three (3) days from receipt of the order. BUYER and SELLER shall enter into discussion.

- 2.6 BUYER shall give SELLER “Part Approval Sheet” upon mass production confirmation. SELLER shall bear all cost for any cancellation of purchase order, changing of part’s tooling or specification if did not receive the part approval sheet from BUYER.

3. Prices and Payment

- 3.1 Agreed price as finalized by both parties.
- 3.2 The prices of the products shall be, upon request of either Party, reviewed through discussion between the parties and may be changed subject to mutual agreement of the parties.
- 3.2 BUYER shall review the prices from time to time, and agree on new prices of the products.
- 3.3 BUYER shall pay to SELLER for parts delivered here under by remittance to SELLER designated bank account based on payment due date after receipt and confirmation of each delivery of the concerned parts.

4 Delivery and Shipment

- 4.1 SELLER shall deliver the product to BUYER at the date and the place designated by BUYER.
- 4.2 The delivery routes (by air, sea, land) of the product shall be based on and determined by the agreement between both the SELLER and the BUYER.
- 4.3 If the delivery of the product is delayed and caused production of BUYER, BUYER has the right to charge SELLER according to BUYER charges rate.
- 4.4 If the delivery of the product is delayed more than one (1) week, SELLER shall, if requested by BUYER, send the finished product of BUYER by air and shall bear airfreight charges.
- 4.5 If the delivery of the product is delayed more than four (4) weeks, SELLER shall be responsible for any loss or damage caused to BUYER by such delay. In such event, BUYER may also cancel the order in whole or in part or this agreement.

5 Rescheduling and Cancellation

- 5.1 BUYER may reschedule or cancel any purchase order in whole or in part at any time without any charge to BUYER or without any liability to pay any penalty or damages, provided. If BUYER is cancel the purchase order, SELLER shall use its best efforts to return, sell or use raw material and/or parts procured by SELLER for the manufacture of the products ordered by BUYER and, if after a period of six (6)

months, the materials and/or parts remain unreturned, sold or unused, BUYER shall pay SELLER the cost of such material and/or parts as below conditions:

5.1.1 If the product is completed and within the process period from due date mentioned in the purchase order, BUYER shall pay the cost of product.

5.1.2 If the period is before process period and within the materials / parts lead time, BUYER shall pay the cost of materials / parts.

5.1.3 If the period is before the materials / parts lead time, BUYER shall not pay the cost of materials / parts.

6 Tooling and Dies

6.1 SELLER shall not, without the consent of BUYER, re-lend the tooling and dies to a third party.

6.2 SELLER shall take good care of the tooling and dies and shall not make any change to the tooling and dies without prior approval of the BUYER. Neither the SELLER is allowed to use the tooling and dies for any purpose other than the stated by the BUYER.

6.3 SELLER shall not dispose the tooling and dies without the prior agreement by BUYER.

6.4 SELLER shall inspect tooling and dies regularly and report to BUYER in the case of any abnormality found.

6.5 SELLER shall not, without the consent of BUYER, start a new tooling and dies for third party.

6.6 Any modification of the tooling and dies shall require the prior written consent of BUYER.

7 Supply of Service Part

7.1 SELLER shall, upon request from BUYER, provide BUYER at a reasonable price with service parts for the products for ten (10) years from the date of the last shipment of the products to BUYER hereunder.

8. Quantity

8.1 SELLER must make good any shortage immediately after such shortages have been reported by BUYER.

9. Quality

- 9.1 The goods supplied by SELLER under purchase orders must confirm in every respect to the specifications and instructions of BUYER.
- 9.2 Goods delivered by SELLER in accordance with the above mentioned conditions shall be inspected by BUYER. BUYER shall prescribe the methods of inspection, criteria of acceptance and other matters related to inspection.
- 9.3 Promptly after the products have been manufactured and prior to the shipment of the products, SELLER shall conduct an inspection in accordance with the inspection standards and the inspection regulations agreed to between BUYER and SELLER.
- 9.4 If the above inspection finds any defect or deviation in design, materials or workmanship or in quality or performance, SELLER shall inspect all the products in the production lot containing such products and shall repair all defective products. The outgoing inspection shall be conducted again for such repaired products.
- 9.5 Any proposed changes to be made by SELLER to the inspection regulations and the inspection standards or to the manufacturing place, process, facility, equipment or tool or material or material maker, which may affect the products shall have to be reviewed and approved by BUYER, before such changes are implemented.
- 9.6 BUYER shall have the right from time to time to inspect samples of the products on the premises of SELLER and / or a subcontractor (if BUYER agrees SELLER using a subcontractor) during the manufacturing process to see whether the products are manufactured in accordance with the specification, standard and drawing. If BUYER finds any defect or any deviation from the specification, standard and drawing, BUYER shall have the right to request SELLER to take necessary steps to correct or cure such defect or deviation and SELLER agrees to comply with such request.
- 9.7 BUYER shall conduct an incoming inspection in accordance with inspection standards and the inspection regulations agreed to between BUYER and SELLER after BUYER receipt of the products.
- 9.8 If incoming inspection finds any defect or deviation in design, material and workmanship or in quality or performance, SELLER shall take actions to correct or cure such defect or deviation.
- 9.9 BUYER may reject unacceptable products and may also refuse to receive any subsequent shipment of the products by SELLER to BUYER.

10. Supply of materials and parts by BUYER to SELLER

- 10.1 Terms and conditions governing the supply of materials and parts by BUYER to SELLER are as stipulated in a separate agreement between BUYER and SELLER.

11. Trouble Shooting

11.1 In case any defect or trouble design, material or workmanship is found in the product, BUYER shall do its best to clarify the cause thereof and take steps to correct and prevent such defect or trouble and shall notify BUYER. BUYER shall cooperate with SELLER in clarifying such cause and correcting and preventing such defect or trouble.

12. Right of Industrial Property, etc

12.1 SELLER warrants and guarantees that the product sold by SELLER to BUYER hereunder will not infringe any patent, utility model, design patent, copyright, trademark or any other right of any third party. And SELLER shall indemnify and hold BUYER harmless from any and all claims and liability for damages losses or costs arising out of any infringement of any patent, copyright, trademark or any other right of any third party.

13 Use of Subcontractors

13.1 SELLER shall not employ or otherwise engage any sub contractors to manufacture products without BUYER prior written consent.

13.2 If SELLER employs a subcontractors with the consent of BUYER, SELLER shall cause such subcontractors to observe the relevant provisions of this Agreement as if they were a party to this Agreement and SELLER shall be liable to BUYER for any act or conduct of such subcontractor.

14 Term of Agreement

14.1 This Agreement shall be valid and in force for a period of one (1) year from the date of this agreement and shall be automatically extended for another year and thereafter on a one (1) year basis successively, unless either of the parties hereto gives to the other party a written notice of termination, at least, one (1) month prior to the expiration of the first one year period or any such extension of this agreement.

15 Termination

15.1 In case either party fails to comply with any of the provisions or term or conditions of this agreement or any individual contract and such failure is not corrected within thirty (30) days of the written notice from the other party, such other party may terminate this agreement or the individual contract forthwith.

15.2 In the event that either party shall become insolvent or bankrupt, commence an involuntary proceeding for liquidation or reorganization, or enter into any composition for the benefit of creditors, or if either party

shall discontinue or suspend its business for more than three (3) months, then the other party shall have the option, in addition to all other rights and remedies, if any, to terminate this agreement immediately upon a written notice of termination.

15.3 Upon the termination or expiration of this agreement, SELLER immediately shall cause and desist utilizing and technology, specification sheet, drawing, blueprints, documents, materials or information therefore supplied by BUYER to SELLER (hereinafter called collectively “the proprietary information”), and, to the extent that SELLER is in the possession of any such proprietary information in tangible form, shall return to BUYER promptly.

15.4 Notwithstanding anything contained herein, upon the termination or expiration of this agreement, SELLER shall diligently and timely complete the manufacture of all the products ordered by BUYER prior to the termination or expiration of the agreement and shall submit same to BUYER in accordance with the agreed upon shipping and/or delivery date.

15.5 If BUYER terminates this agreement or any individual contract due to any breach by SELLER of any of the provisions or terms or conditions of this agreement or any individual contract, BUYER shall entitled to claim SELLER against SELLER damages caused by such breach or termination.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the day and year first above written.

Signed for and on behalf of:

Name:

Designation

(Formosa Prosonic Group of Companies)

Signed for and on behalf of:

Name:

Designation:

Installment Sale and Purchase Agreement

This Installment Sale and Purchase Agreement (this “**Agreement**”) is entered into as of January 1, 2007 between FMC Machinery (Germany) GmbH, a German company with limited liability with its principal place of business at Achenbachstrasse 78, Düsseldorf, 40237, Germany (the “**SELLER**”), and Carnegie Mellon Robotics, LLC, a Pennsylvania limited liability company with its principal place of business at 5000 Forbes Avenue, Pittsburgh, Pennsylvania, PA 15213, United States of America (the “**BUYER**”). The SELLER and the BUYER are sometimes individually referred to as a “Party” and, collectively as the “**Parties**.”

Preamble

The SELLER is in the business of manufacturing and selling widgets worldwide. The BUYER desires to purchase from the SELLER the widgets listed on Exhibit A attached hereto and made a part hereof (the “**Goods**”), and the SELLER desires to sell the Goods to the BUYER, all upon, and subject to, the terms and conditions of this Agreement. Therefore, the Parties agree as follows with the intent to be legally bound.

Agreement

1. Sale and Purchase of the Goods.

During the Term (defined in Section 7(a) below) of this Agreement, and in accordance with its terms and conditions, the SELLER agrees to sell, and the BUYER agrees to purchase, the monthly quantities of the Goods set forth in Section below (subject to adjustment as also set forth in Section 2 below) at the prices (the “**Prices**”) set forth on Exhibit B (subject to price adjustment in accordance with Section 3 below).

2. Quantity and Forecasts.

The BUYER agrees to purchase and the SELLER agrees to sell (i) during the months of January and February, the fixed and firm quantities of the Goods identified on Exhibit C, attached hereto and made a part hereof, itemized by manufacturer’s part number and firm weekly deliveries of the Goods, and (ii) with respect to subsequent months during the Term, monthly quantities of the Goods within the firm ranges set forth on Exhibit C hereto (the “**Quantity Ranges**”), itemized by manufacturer’s part number. No later than January 15, 2007, and, thereafter, no later than the 15th of each month during the Term, the BUYER shall deliver to the SELLER a written schedule (each, a “**Quantity Schedule Report**”) setting forth updates, within the Quantity Ranges for each remaining month during the Term, that contains (a) with respect to each of the immediately following two months (“**Firm Quantity Period**”), fixed and firm quantities of the Goods (where the first month of each such Firm Quantity Period shall be identical to the fixed and firm quantity for that same month identified in Exhibit C or in the previously submitted Quantity Schedule Report), itemized by manufacturer’s part number and firm weekly deliveries of the Goods, and (b) with respect to subsequent months during the Term, updated monthly estimated quantities of the Goods within the Quantity Ranges, itemized by manufacturer’s part number

(“**Forecasts**”). Any quantities, manufacturer’s part numbers and weekly deliveries for the months of January and February and/or set forth in any Firm Quantity Period are subject to change only upon the approval of the SELLER. Similarly, deviations from any Quantity Ranges require the approval of the SELLER. Quantity Ranges and Forecasts are not firm and represent the BUYER’s best efforts at estimating future requirements of the BUYER’s need for the Goods.

3. Delivery and Passing of Risk, Delivery Time, Force Majeure and Inspection.

(a) Delivery and Passing of Risk. The Parties agree that this Agreement involves carriage of the goods and that the sale, delivery, passing of risk and associated obligations, such as risk of loss of documents, occurs under the FCA term, as defined in INCOTERMS 2000, the SELLER’s facility in Pittsburgh, Pennsylvania, USA (“**FCA**”). The risks that pass FCA (“**Risks**”) shall include: any imposts, taxes, costs, expenses or fees relating to the Goods, and any acts, omissions, determinations or circumstances relating to the Goods, including ancillary matters such as the loss of documents relating to the Goods. Upon such transfer of Risk, all claims for loss or damage in transit or any other Risks passed to the BUYER shall be made by the BUYER against the carrier, the BUYER’s insurance company or other third parties.

(b) Delivery Time. All delivery information provided by the SELLER (including time for shipment) is approximate and the SELLER is entitled to deliver after any agreed delivery date for an additional period of two (2) weeks. The SELLER’s sole responsibility is to use reasonable commercial efforts to meet specified shipment dates.

(c) Force Majeure. The SELLER shall not be liable for a failure to deliver or perform any of its obligations if such failure is due to an impediment beyond the SELLER’s control and the SELLER could not reasonably be expected to have taken into account at the time of the conclusion of the contract or to have avoided or overcome the impediment or its consequences (collectively, such impediments are referred to as “**Force Majeure**”). Force Majeure shall include, but not be limited to, any of the following events or circumstances: a demand for the Goods and other products manufactured by the SELLER that exceeds the SELLER’s ability to supply those Goods, earthquakes, fire, accidents, floods, storms, other Acts of God, riots, wars, rebellions, strikes, lockouts or other labor disturbances, national or international emergencies, failure to secure materials or equipment from usual sources of supply, power failures, failure of carriers to furnish transportation, government rules and regulations (including failure to secure an Export License), regulations, acts, orders, restrictions or requirements or any other costs or causes of like or different nature. If Force Majeure only affects a part of the SELLER’s production or other performance, the SELLER may, without incurring any liability, in its sole discretion, apportion the production or other performance among all its customers. In the event Force Majeure continues for 4 (four) months, upon notice to the BUYER, the SELLER may declare this Agreement terminated and avoided, without incurring any liability, and is thereupon excused from any further performance hereunder. By this Section 3(c), the Parties intend to derogate from and vary the effect of Article 79 of CISG, which Article 79 shall have no application to this Agreement.

(d) Examination. Within three (3) days of receipt, the BUYER shall examine the Goods. Unless the BUYER notifies the SELLER in writing of any lack of conformity within five (5) days of receipt, the BUYER shall be deemed to have accepted the Goods without qualification, and cannot, thereafter, avoid the contract with respect to any of the goods or otherwise reject any of the Goods. Once used, the Goods are deemed to be fully conforming to this Agreement.

4. Price, Price Adjustments and Payment.

(a) Prices. The Prices for the Goods are in US Dollar and are net FCA, with freight, insurance and other costs, fees and expenses associated with Risks for the BUYER's account. Prices exclude all duties, taxes, tariffs, or other charges ("**Charges**") which may be imposed upon the sale or use of the Goods. All Charges paid by the SELLER shall be for the BUYER's account.

(b) Price Adjustments. The Prices are firm for the initial three months (the "**First Quarter**") of this Agreement and, thereafter, are subject to increase or decrease, as the case may be, in the event the SELLER's direct costs for raw material and parts incorporated into the Goods ("**Direct Input**") purchased from third parties increase or decrease, as the case may be, by three percent (3%) or more ("**Adjustment Factor**") during the First Quarter, whereupon the Prices shall be increased or decreased, as the case may be, by an amount equal to the Adjustment Factor. Prices for any subsequent calendar quarter during the term of this Agreement shall be increased or decreased, as the case may be, by an amount equal to the Adjustment Factor for the previous calendar quarter during the Term of this Agreement.

(c) Payment. Payments are due to SELLER net 10 calendar days from the date of invoice, without any further notice, in cash, without deductions or set-off, expressly excluding the application of the second phrase of Article 66 of CISG ("**Net 10**"). The SELLER may require, in its sole discretion, payment to be made C.O.D. or via irrevocable letter of credit in favor of, and acceptable to, the SELLER, established at the BUYER's expense. If payment is not made when due Net 10, the Parties agree that a fundamental breach exists, and the SELLER may, after notice and five calendar days' opportunity to cure all late payments, in addition to all other damages available to the SELLER, suspend all future delivery or other performance with respect to the BUYER without liability or penalty to the SELLER and, in addition to all other sums payable hereunder, the BUYER shall pay to the SELLER (i) the reasonable costs and expenses incurred by the SELLER in connection with all actions taken to enforce collection or to preserve and protect the SELLER's rights hereunder, whether by legal proceedings or otherwise, including without limitation reasonable attorneys' fees, court costs and other expenses and (ii) interest on all amounts unpaid after 30 days charged at the monthly rate of 1½% or the highest rate permitted by law, whichever is lower.

5. Warranty, Warranty Disclaimer, Warranty Limitation and Remedy.

(a) The SELLER's Contractual Quality Obligations with Respect to the Goods. Subject to the Warranty limitation set forth in Section 5(b) below, the SELLER represents, promises and warrants that the

Goods shall comply with the following quality and description: (i) the Goods sold under this Agreement shall, at the time of FCA delivery, substantially conform to the written quality and description for the Goods (“**Specifications**”), and shall be contained and packaged, in accordance with Exhibit C attached hereto and incorporated herein by reference and (ii) shall comply with the applicable written Specifications for a period of time of 1 (one) year (however, not to extend under any circumstances beyond such one year period) (“**Warranty Period**”) after shipment FCA, under normal and proper use and service (collectively, Subsection (i) and (ii), the “**Warranty**”). Any Goods repaired or replaced under Warranty are warranted only for the remainder of the original Warranty Period.

(b) Warranty Disclaimer. Except for the Warranty set forth in Section 5(a) above, the BUYER acknowledges and agrees that the SELLER has made no other representations, promises or warranties concerning the quality and description of the Goods. THE SELLER AND THE BUYER EXPRESSLY DISCLAIM AND EXCLUDE THE APPLICATION OF ALL OTHER WARRANTIES, GUARANTEES, EXPRESS OR IMPLIED, ARISING BY OPERATION OF LAW, UNDER ARTICLE 9(2) OF THE CISG OR OTHERWISE, SPECIFICALLY EXCLUDING THE APPLICATION OF ARTICLE 35(2) OF THE CISG, INCLUDING ANY OBLIGATION THAT THE SELLER DELIVER GOODS THAT ARE MERCHANTABLE.

(c) Warranty Limitation. The Warranty and remedies for breach of Warranty provided for in this Agreement extend only to the original sale of the Goods to the BUYER and do not cover, and the SELLER shall not be liable for, (i) abnormal wear and tear or damage caused by installation, maintenance, or use which is improper or contrary to the instructions for the Goods published by the SELLER, or (ii) storage of the Goods in a wet or damp area or unprotected from weather and other job conditions or contrary to the instructions published by the SELLER, or (iii) any cause beyond the control of the SELLER, including without limitation conditions caused by movement, settlement or structural defects of the environment in which the Goods are installed, fire, wind, hail, flood, lightning or other acts of God, any conditions related to, or caused by, failure to process or inaccurate processing of time-sensitive information and/or mechanisms, intentional acts, accidents, negligence or exposure to harmful chemicals, pollutants or other foreign matter or energy, or (iv) repair or damage caused by anyone except personnel authorized by the SELLER. The SELLER’s advice relating to the technical usage by the BUYER of the Goods, whether provided orally or in writing or through the provision of test results, is given in accordance with the SELLER’s best knowledge at that time, but shall at all times be deemed to be nonbinding and shall not entitle the BUYER to rely on such advice. Such advice does not relieve the BUYER from the obligation, and the BUYER accepts full responsibility, to confirm for himself the suitability of the Goods for the intended particular purpose(s).

(d) Remedy. The BUYER’s sole and exclusive remedy (to the exclusion of any other, different or additional remedy of the BUYER under the CISG), and the SELLER’s only obligation (to the exclusion of any other, different or additional obligation of SELLER under the CISG) for breach of Warranty hereunder, including a breach of Warranty amounting to a fundamental breach by the SELLER, shall be, at the SELLER’s option and in its sole discretion, to (i) either repair or deliver substitute Goods to replace defective Goods which fail within the Warranty Period, free of charge, provided that the BUYER promptly notifies the SELLER of

such failure and, after receipt of prior written authorization from the SELLER, returns such Goods to the place requested by the SELLER, freight prepaid, and thereupon t the SELLER finds such to be defective; or (ii) issue a credit equal to the Price of the defective Goods paid by the BUYER which fail within the Warranty Period. The BUYER must pay all related costs of repair or replacement, including removal, installation or reinstallation costs. The SELLER's personnel must be granted access to inspect the Goods claimed to be defective at the site of their installation or use.

6. Limitation of Liability and Remedy.

(a) **Limitation of Liability.** Notwithstanding anything to the contrary contained in this Agreement, the BUYER and the SELLER agree that the SELLER shall not be liable for any indirect, incidental special or consequential damages or penalties whatsoever, including but not limited to loss of profits, loss of business opportunities, or for losses or damages caused directly or indirectly by the Goods or failure to deliver the Goods. The SELLER and the BUYER agree to derogate from and exclude the application of Article 74 of the CISG and any other provisions of the CISG to the extent such provisions are contrary to, or conflict with, the exclusions and limitations set forth in the immediately preceding sentence or the limitations to liability and limitations on the BUYER's remedies set forth in this Agreement.

(b) **Limitation of Remedy.** If the SELLER should be held liable for damages to the BUYER for any cause arising out of this Agreement, or its breach, whether arising under the CISG or otherwise, such damages, in the aggregate, shall not exceed the lesser of (i) the Price for the Goods that are at issue in such claim, or (ii) actual damages incurred. The BUYER expressly waives its entitlement to any greater amount.

7. Term and Termination.

(a) **Term.** Unless otherwise terminated as provided herein, this Agreement shall commence as of January 1, 2007 (the "**Effective Date**") and shall continue thereafter for a term of twelve (12) months through December 31, 2007 (the "**Term**").

(b) **Avoidance of the Entire Agreement by the SELLER.** The SELLER may, without incurring any liability, avoid this Agreement in its entirety prior to its expiration upon the occurrence of any of the following events or circumstances, each of which shall be deemed to be a "fundamental breach" of the entire Agreement: (i) immediately, in the event the BUYER becomes insolvent, or institutes (or there is instituted against it) proceedings in bankruptcy, insolvency, reorganization or dissolution, or makes an assignment for the benefit of creditors, or becomes nationalized, or has any of its material assets confiscated or expropriated; (ii) immediately, in the event the BUYER attempts to sell, assign, delegate, or transfer any of its rights and obligations under this Agreement, or the BUYER is dissolved, substantially changes its line of business, sells substantially all of its assets, or suffers a change in ownership; (iii) immediately, in the event the BUYER fails to render payment when due Net 10 on two consecutive invoices or at any time for more than 10 days; (iv) immediately, when the BUYER fails to take delivery of the Goods in the quantities and at the weekly delivery

schedules set forth in Exhibit C for the months of January and February and/or any Firm Quantity Period; or (v) immediately, when the BUYER commits any other fundamental breach of this Agreement.

(c) Avoidance of the Entire Agreement by the BUYER. The BUYER may, without incurring any liability, avoid this Agreement in its entirety prior to its expiration upon the occurrence of any of the following events or circumstances, each of which shall be deemed to be a “fundamental breach” of the entire agreement: (a) immediately, in the event the SELLER becomes insolvent, or institutes (or, with 30 days notice and opportunity to have dismissed, there is instituted against it) proceedings in bankruptcy, insolvency, reorganization or dissolution, or makes an assignment for the benefit of creditors or becomes nationalized or has any of its material assets confiscated or expropriated; or (b) with 30 days notice and opportunity to cure, in the event the SELLER fails to deliver the Goods constituting part of any Firm Monthly Quantities during the week scheduled for delivery in any Quantity Schedule Report.

(d) Suspension of the Entire Agreement. If payment is not made when due Net 10, after notice and five calendar days’ opportunity to cure all late payments, the SELLER, in the SELLER’s discretion, may deem that there are good grounds to conclude that a fundamental breach, i.e. late payment or non-payment, will occur with respect to future deliveries and declare, at the discretion of the SELLER, that (without prejudice to SELLER’s right to avoid the entire Agreement under Section 2(b) above) future performance by the SELLER is suspended. The preceding sentence is without prejudice to the right of the SELLER to suspend future performance under the Agreement or to avoid the Agreement in its entirety on account of the occurrence of other events and circumstances that entitle the SELLER under applicable law to suspend performance or to avoid the Agreement in its entirety.

8. Exports.

The BUYER warrants that it is and will remain in compliance with all export and re-export requirements, laws and regulations of the United States of America, and any other applicable export and re-export laws and regulations.

9. Applicable Law and Dispute Resolution.

(a) Applicable Law. The applicable law of this Agreement shall be, and all disputes arising under this Agreement, and concerning matters governed by it, shall be settled by, the law of the Commonwealth of Pennsylvania, including the United Nations Convention on Contracts for the International Sale of Goods 1980 (“CISG”). Disputes not concerning matters governed by CISG, including matters not governed by the CISG on account of the Parties’ express derogation from the CISG, shall be settled in accordance the laws of the Commonwealth of Pennsylvania, excluding its conflict of laws provisions.

(b) Dispute Resolution. Any and all actions and disputes arising out of or related to this Agreement shall be brought in the U.S. Federal District Court for the Western District of Pennsylvania, USA, to

the exclusion of all other courts and dispute resolution bodies. The BUYER hereby consents to the jurisdiction of the state and federal courts sitting in Allegheny County, appoints the Secretary of State of Pennsylvania in Harrisburg as its agent for service of process, and agrees to appear in an action upon written notice thereof.

10. Notices.

Unless otherwise specifically provided herein, all notices, consents, requests, demands and other communications required or permitted hereunder:

- (i) shall be in writing;
- (ii) shall be sent by messenger, certified or registered U.S. mail, a reliable express delivery service, or e-mail or telecopier (with a copy sent by one of the foregoing means identified in subsection (x)),

charges prepaid as applicable, to the appropriate address(es) or number(s) set forth below; and

- (iii) shall be deemed to have been timely given³⁸ on the date of receipt by the addressee, as evidenced by (A) a receipt executed by the addressee (or a responsible person in his or her office), the records of the Person delivering such communication or a notice to the effect that such addressee refused to claim or accept such communication, if sent by messenger, U.S. mail or express delivery service, or (B) a receipt generated by the sender's telecopier showing that such communication was sent to the appropriate number on a specified date, if sent by telecopier.

All such communications shall be sent to the following addresses or numbers, or to such other addresses or numbers as any Party may inform the others by giving five days' prior notice:

If to the BUYER:

Attn: _____
Telecopier No.: _____
e-mail: _____

If to the SELLER:

Attn: _____

Telecopier No.: _____

e-mail: _____

11. **Miscellaneous.**

(a) Entire Agreement. This writing constitutes the final and complete agreement of the Parties, and it cannot be contradicted or supplemented by evidence, or practices, of prior or contemporaneous statements, understandings or agreements. By the immediately preceding sentence, the Parties intend to derogate from and/or vary the effect of Articles 8(3), 9(2), 11 and any other provision of the CISG or other applicable law that would permit this writing to be contradicted or supplemented by evidence of prior or contemporaneous statements, understandings or Agreements.

(b) Derogation from the CISG. Whenever this Agreement excludes, modifies, varies or changes the application of any Article, sentence, phrase or word of the CISG, it is the Parties' express intent to derogate from and/or vary the effect of such referenced Article, sentence phrase or word of the CISG. It is also the Parties' express intent that in the event any terms and conditions in this Agreement differ or vary from or contradict any terms and conditions of the CISG (collectively "**Different CISG Terms**"), the terms and conditions of this Agreement shall prevail and control and exclude the application of any such Different CISG Terms.

(c) Amendments. This Agreement may be amended only by a writing signed by each of the Parties, and any such amendment shall be effective only to the extent specifically set forth in such writing.

(d) Counterparts; Telefacsimile Execution. This Agreement may be executed in any number of counterparts, and by each of the Parties on separate counterparts, each of which, when so executed, shall be deemed an original, but all of which shall constitute but one and the same instrument. Delivery of an executed counterpart of this Agreement by telefacsimile shall be equally as effective as delivery of a manually executed counterpart of this Agreement. Any Party delivering an executed counterpart of this Agreement by telefacsimile shall also deliver a manually executed counterpart of this Agreement, but the failure to deliver a manually executed counterpart shall not affect the validity, enforceability, or binding effect of this Agreement.

(e) Exhibits and Schedules. The Exhibits attached hereto are an integral part hereof and all references herein to this Agreement shall include such Exhibits and Schedules.

(f) Severability. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining portions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

(g) Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit

of each of the Parties and their respective successors and permitted assigns.

CARNEGIE MELLON ROBOTICS LLC

FMC Machinery (Germany) GmbH

By: _____

[Authorized Person]

[Title]

By:_____

[Authorized Person]

[Title]

【チェックポイント】

① 3種類の「動産売買契約書」を検討して、共通項を見つける。

②アプローチの仕方

§ 2-103. Definitions and Index of Definitions.

(a) “Buyer” means a person that buys or contracts to buy goods.

(o) “Seller” means a person that sells or contracts to sell goods.

(k) “Goods” means all things that are movable at the time of identification to a contract for sale. The term includes future goods, specially manufactured goods, the unborn young of animals, growing crops, and other identified things attached to realty as described in Section 2-107. The term does not include information, the money in which the price is to be paid, investment securities under Article 8, the subject matter of foreign exchange transactions, or choses in action.

(1) Goods must be both existing and identified before any interest in them may pass. Goods that are not both existing and identified are “future” goods. A purported present sale of future goods or of any interest therein operates as a contract to sell.

§ 2-204. Formation in General.

(1) A contract for sale of goods may be made in any manner sufficient to show agreement, including offer and acceptance, conduct by both parties which recognizes the existence of a contract, the interaction of electronic agents, and the interaction of an electronic agent and an individual.

§ 2-206. Offer and Acceptance in Formation of Contract.

(1) Unless otherwise unambiguously indicated by the language or circumstances

(a) an offer to make a contract shall be construed as inviting acceptance in any manner and by any medium reasonable in the circumstances:

(b) an order or other offer to buy goods for prompt or current shipment shall be construed as inviting acceptance either by a prompt promise to ship or by the prompt or current shipment of conforming or nonconforming goods, but the shipment of nonconforming goods is not an

acceptance if the seller seasonably notifies the buyer that the shipment is offered only as an accommodation to the buyer.

(2) If the beginning of a requested performance is a reasonable mode of acceptance, an offeror that is not notified of acceptance within a reasonable time may treat the offer as having lapsed before acceptance.

§ 2-201. Formal Requirements; Statute of Frauds.

(1) A contract for the sale of goods for the price of \$5,000 or more is not enforceable by way of action or defense unless there is some record sufficient to indicate that a contract for sale has been made between the parties and signed by the party against which enforcement is sought or by the party's authorized agent or broker. A record is not insufficient because it omits or incorrectly states a term agreed upon but the contract is not enforceable under this subsection beyond the quantity of goods shown in the record.

§ 2-202. Final Expression in a Record: Parol or Extrinsic Evidence.

(1) Terms with respect to which the confirmatory records of the parties agree or which are otherwise set forth in a record intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be supplemented by evidence of:

(a) course of performance, course of dealing, or usage of trade (Section 1-303); and

(b) consistent additional terms unless the court finds the record to have been intended also as a complete and exclusive statement of the terms of the agreement .

(2) Terms in a record may be explained by evidence of course of performance, course of dealing, or usage of trade without a preliminary determination by the court that the language used is ambiguous.

PART 3. GENERAL OBLIGATION AND CONSTRUCTION OF CONTRACT [Table of Contents]

§ 2-301. General Obligations of Parties.

The obligation of the seller is to transfer and deliver and that of the buyer is to accept and pay in accordance with the contract.

§ 2-305. Open Price Term.

(1) The parties if they so intend may conclude a contract for sale even if the price is not settled. In such a case the price is a reasonable price at the time for delivery if:

(a) nothing is said as to price;

(b) the price is left to be agreed by the parties and they fail to agree; or

(c) the price is to be fixed in terms of some agreed market or other standard as set or recorded by a third person or agency and it is not so set or recorded.

(2) A price to be fixed by the seller or by the buyer means a price to be fixed in good faith.

(3) If a price left to be fixed otherwise than by agreement of the parties fails to be fixed through fault of one party the other may at the party's option treat the contract as cancelled or the party may fix a reasonable price.

(4) If, however, the parties intend not to be bound unless the price is fixed or agreed and it is not fixed or agreed there is no contract. In such a case the buyer must return any goods already received or if unable to do so must pay their reasonable value at the time of delivery and the seller must return any portion of the price paid on account.

§ 2-308. Absence of Specified Place for Delivery.

Unless otherwise agreed

(a) the place for delivery of goods is the seller's place of business or if none, the seller's residence; but

(b) in a contract for sale of identified goods which to the knowledge of the parties at the time of contracting are in some other place, that place is the place for their delivery; and

(c) documents of title may be delivered through customary banking channels.

§ 2-312. Warranty of Title and Against Infringement; Buyer's Obligation Against Infringement.

(1) Subject to subsection (3), there is in a contract for sale a warranty by the seller that:

(a) the title conveyed shall be good and its transfer rightful and shall not unreasonably expose the buyer to litigation because of any colorable claim to or interest in the goods; and

(b) the goods shall be delivered free from any security interest or other lien or encumbrance of which the buyer at the time of contracting has no knowledge.

(2) Unless otherwise agreed, a seller that is a merchant regularly dealing in goods of the kind warrants that the goods shall be delivered free of the rightful claim of any third person by way of infringement or the like but a buyer that furnishes specifications to the seller must hold the seller harmless against any such claim that arises out of compliance with the specifications.

(3) A warranty under this section may be disclaimed or modified only by specific language or by circumstances that give the buyer reason to know that the seller does not claim title, that the seller is purporting to sell only the right or title as the seller or a third person may have, or that the seller is selling subject to any claims of infringement or the like.

§ 2-313. Express Warranties by Affirmation, Promise, Description, Sample.

(1) In this section, “immediate buyer” means a buyer that enters into a contract with the seller.

(2) Express warranties by the seller to the immediate buyer are created as follows:

(a) Any affirmation of fact or promise made by the seller which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise.

(b) Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods shall conform to the description.

(c) Any sample or model that is made part of the basis of the bargain creates an express warranty that the whole of the goods shall conform to the sample or model.

(3) It is not necessary to the creation of an express warranty that the seller use formal words such as “warrant” or “guarantee” or that the seller have a specific intention to make a

warranty, but an affirmation merely of the value of the goods or a statement purporting to be merely the seller's opinion or commendation of the goods does not create a warranty.

(4) Any remedial promise made by the seller to the immediate buyer creates an obligation that the promise will be performed upon the happening of the specified event.

§ 2-314. Implied Warranty: Merchantability; Usage of Trade.

(1) Unless excluded or modified (Section 2-316), a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale.

(2) Goods to be merchantable must be at least such as:

(a) pass without objection in the trade under the contract description;

(b) in the case of fungible goods, are of fair average quality within the description;

(c) are fit for the ordinary purposes for which goods of that description are used;

(d) run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all units involved;

(e) are adequately contained, packaged, and labeled as the agreement may require; and

(f) conform to the promise or affirmations of fact made on the container or label if any.

(3) Unless excluded or modified (Section 2-316) other implied warranties may arise from course of dealing or usage of trade.

§ 2-315. Implied Warranty: Fitness for Particular Purpose.

Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is unless excluded or modified under the next section an implied warranty that the goods shall be fit for such purpose.

§ 2-316. Exclusion or Modification of Warranties.

(1) Words or conduct relevant to the creation of an express warranty and words or conduct tending to negate or limit warranty shall be construed wherever reasonable as consistent with each other; but subject to Section 2-202, negation or limitation is inoperative to the extent that such construction is unreasonable.

(2) Subject to subsection (3), to exclude or modify the implied warranty of merchantability or any part of it in a consumer contract the language must be in a record, be conspicuous, and state "The seller undertakes no responsibility for the quality of the goods except as otherwise provided in this contract," and in any other contract the language must mention merchantability and in case of a record must be conspicuous. Subject to subsection (3), to exclude or modify the implied warranty of fitness, the exclusion must be in a record and be conspicuous. Language to exclude all implied warranties of fitness in a consumer contract must state "The seller assumes no responsibility that the goods will be fit for any particular purpose for which you may be buying these goods, except as otherwise provided in the contract," and in any other contract the language is sufficient if it states, for example, that "There are no warranties that extend beyond the description on the face hereof." Language that satisfies the requirements of this subsection for the exclusion or modification of a warranty in a consumer contract also satisfies the requirements for any other contract.

(3) Notwithstanding subsection (2)

(a) unless the circumstances indicate otherwise, all implied warranties are excluded by expressions like "as is", "with all faults" or other language that in common understanding calls the buyer's attention to the exclusion of warranties, makes plain that there is no implied warranty, and, in a consumer contract evidenced by a record, is set forth conspicuously in the record;

(b) if the buyer before entering into the contract has examined the goods or the sample or model as fully as desired or has refused to examine the goods after a demand by the seller there is no implied warranty with regard to defects that an examination in the circumstances should have revealed to the buyer; and

(c) an implied warranty may also be excluded or modified by course of dealing or course of performance or usage of trade.

(4) Remedies for breach of warranty may be limited in accordance with Sections 2-718 and 2-719.

PART 4. TITLE, CREDITORS AND GOOD FAITH PURCHASERS [Table of Contents]

§ 2-401. Passing of Title; Reservation for Security; Limited Application of This Section.

Each provision of this Article with regard to the rights, obligations and remedies of the seller, the buyer, purchasers or other third parties applies irrespective of title to the goods except where the provision refers to such title. Insofar as situations are not covered by the other provisions of this Article and matters concerning title become material the following rules apply:

(1) Title to goods cannot pass under a contract for sale prior to their identification to the contract (Section 2-501), and unless otherwise explicitly agreed the buyer acquires by their identification a special property as limited by this Act. Any retention or reservation by the seller of the title (property) in goods shipped or delivered to the buyer is limited in effect to a reservation of a security interest. Subject to these provisions and to the provisions of Article 9, title to goods passes from the seller to the buyer in any manner and on any conditions explicitly agreed on by the parties.

(2) Unless otherwise explicitly agreed title passes to the buyer at the time and place at which the seller completes performance with reference to the physical delivery of the goods, despite any reservation of a security interest and even though a document of title is to be delivered at a different time or place; and in particular and despite any reservation of a security interest by the bill of lading

(a) if the contract requires or authorizes the seller to send the goods to the buyer but does not require the seller to deliver them at destination, title passes to the buyer at the time and place of shipment; but

(b) if the contract requires delivery at destination, title passes on tender there.

(3) Unless otherwise explicitly agreed where delivery is to be made without moving the goods,

(a) if the seller is to deliver a tangible document of title, title passes at the time when and the place where he delivers such documents and if the seller is to deliver an electronic document of title, title passes when the seller delivers the document; or

(b) if the goods are at the time of contracting already identified and no documents of title are to be delivered, title passes at the time and place of contracting.

(4) A rejection or other refusal by the buyer to receive or retain the goods, whether or not justified, or a justified revocation of acceptance reverts title to the goods in the seller. Such reversion occurs by operation of law and is not a “sale”.

§ 2-403. Power to Transfer; Good Faith Purchase of Goods; “Entrusting”.

(1) A purchaser of goods acquires all title which his transferor had or had power to transfer except that a purchaser of a limited interest acquires rights only to the extent of the interest purchased. A person with voidable title has power to transfer a good title to a good faith purchaser for value. When goods have been delivered under a transaction of purchase the purchaser has such power even though

(a) the transferor was deceived as to the identity of the purchaser, or

(b) the delivery was in exchange for a check which is later dishonored, or

(c) it was agreed that the transaction was to be a “cash sale”, or

(d) the delivery was procured through fraud punishable as larcenous under the criminal law.

(2) Any entrusting of possession of goods to a merchant that deals in goods of that kind gives him power to transfer all rights of the entruster to a buyer in ordinary course of business.

(3) “Entrusting” includes any delivery and any acquiescence in retention of possession regardless of any condition expressed between the parties to the delivery or acquiescence and regardless of whether the procurement of the entrusting or the possessor’s disposition of the goods have been such as to be larcenous under the criminal law.

§ 2-503. Manner of Seller’s Tender of Delivery.

(1) Tender of delivery requires that the seller put and hold conforming goods at the buyer’s disposition and give the buyer any notification reasonably necessary to enable him to take delivery. The manner, time and place for tender are determined by the agreement and this Article, and in particular

(a) tender must be at a reasonable hour, and if it is of goods they must be kept available for the period reasonably necessary to enable the buyer to take possession; but

(b) unless otherwise agreed the buyer must furnish facilities reasonably suited to the receipt of the goods.

(2) Where the case is within the next section respecting shipment tender requires that the seller comply with its provisions.

(3) Where the seller is required to deliver at a particular destination tender requires that he comply with subsection (1) and also in any appropriate case tender documents as described in subsections (4) and (5) of this section.

(4) Where goods are in the possession of a bailee and are to be delivered without being moved

(a) tender requires that the seller either tender a negotiable document of title covering such goods or procure acknowledgment by the bailee of the buyer's right to possession of the goods; but

(b) tender to the buyer of a non-negotiable document of title or of a record directing the bailee to deliver is sufficient tender unless the buyer seasonably objects, and except as otherwise provided in Article 9 receipt by the bailee of notification of the buyer's rights fixes those rights as against the bailee and all third persons; but risk of loss of the goods and of any failure by the bailee to honor the non-negotiable document of title or to obey the direction remains on the seller until the buyer has had a reasonable time to present the document or direction, and a refusal by the bailee to honor the document or to obey the direction defeats the tender.

(5) Where the contract requires the seller to deliver documents

(a) he must tender all such documents in correct form, except as provided in this Article with respect to bills of lading in a set (subsection (2) of Section 2-323); and

(b) tender through customary banking channels is sufficient and dishonor of a draft accompanying or associated with the documents constitutes non-acceptance or rejection.

§ 2-509. Risk of Loss in the Absence of Breach.

(1) Where the contract requires or authorizes the seller to ship the goods by carrier

(a) if it does not require him to deliver them at a particular destination, the risk of loss passes

to the buyer when the goods are duly delivered to the carrier even though the shipment is under reservation (Section 2-505); but

(b) if it does require him to deliver them at a particular destination and the goods are there duly tendered while in the possession of the carrier, the risk of loss passes to the buyer when the goods are there duly so tendered as to enable the buyer to take delivery.

(2) Where the goods are held by a bailee to be delivered without being moved, the risk of loss passes to the buyer

(a) on his receipt of possession or control of a negotiable document of title covering the goods; or

(b) on acknowledgment by the bailee of the buyer's right to possession of the goods; or

(c) after his receipt of possession or control of a non-negotiable document of title or other direction to deliver in a record, as provided in subsection (4)(b) of Section 2-503.

(3) In any case not within subsection (1) or (2), the risk of loss passes to the buyer on his receipt of the goods if the seller is a merchant; otherwise the risk passes to the buyer on tender of delivery.

(4) The provisions of this section are subject to contrary agreement of the parties and to the provisions of this Article on sale on approval (Section 2-327) and on effect of breach on risk of loss (Section 2-510).

§ 2-510. Effect of Breach on Risk of Loss.

(1) Where a tender or delivery of goods so fails to conform to the contract as to give a right of rejection the risk of their loss remains on the seller until cure or acceptance.

(2) Where the buyer rightfully revokes acceptance he may to the extent of any deficiency in his effective insurance coverage treat the risk of loss as having rested on the seller from the beginning.

(3) Where the buyer as to conforming goods already identified to the contract for sale repudiates or is otherwise in breach before risk of their loss has passed to him, the seller may to the extent of any deficiency in his effective insurance coverage treat the risk of loss as resting on the buyer for a commercially reasonable time.

§ 2-513. Buyer's Right to Inspection of Goods.

(1) Unless otherwise agreed and subject to subsection (3), where goods are tendered or delivered or identified to the contract for sale, the buyer has a right before payment or acceptance to inspect them at any reasonable place and time and in any reasonable manner. When the seller is required or authorized to send the goods to the buyer, the inspection may be after their arrival.

(2) Expenses of inspection must be borne by the buyer but may be recovered from the seller if the goods do not conform and are rejected.

(3) Unless otherwise agreed and subject to the provisions of this Article on C.I.F. contracts (subsection (3) of Section 2-321), the buyer is not entitled to inspect the goods before payment of the price when the contract provides

(a) for delivery "C.O.D." or on other like terms; or

(b) for payment against documents of title, except where such payment is due only after the goods are to become available for inspection.

(4) A place or method of inspection fixed by the parties is presumed to be exclusive but unless otherwise expressly agreed it does not postpone identification or shift the place for delivery or for passing the risk of loss. If compliance becomes impossible, inspection shall be as provided in this section unless the place or method fixed was clearly intended as an indispensable condition failure of which avoids the contract.

§ 2-606. What Constitutes Acceptance of Goods.

(1) Acceptance of goods occurs when the buyer

(a) after a reasonable opportunity to inspect the goods signifies to the seller that the goods are conforming or that he will take or retain them in spite of their non-conformity; or

(b) fails to make an effective rejection (subsection (1) of Section 2-602), but such acceptance does not occur until the buyer has had a reasonable opportunity to inspect them; or

(c) does any act inconsistent with the seller's ownership; but if such act is wrongful as against the seller it is an acceptance only if ratified by him.

(2) Acceptance of a part of any commercial unit is acceptance of that entire unit.

§ 2-607. Effect of Acceptance; Notice of Breach; Burden of Establishing Breach After Acceptance; Notice of Claim or Litigation to Person Answerable Over.

(1) The buyer must pay at the contract rate for any goods accepted.

(2) Acceptance of goods by the buyer precludes rejection of the goods accepted and if made with knowledge of a non-conformity cannot be revoked because of it unless the acceptance was on the reasonable assumption that the non-conformity would be seasonably cured but acceptance does not of itself impair any other remedy provided by this Article for non-conformity.

(3) Where a tender has been accepted

(a) the buyer must within a reasonable time after he discovers or should have discovered any breach notify the seller of breach or be barred from any remedy; and

(b) if the claim is one for infringement or the like (subsection (3) of Section 2-312) and the buyer is sued as a result of such a breach he must so notify the seller within a reasonable time after he receives notice of the litigation or be barred from any remedy over for liability established by the litigation.

(4) The burden is on the buyer to establish any breach with respect to the goods accepted.

(5) Where the buyer is sued for breach of a warranty or other obligation for which his seller is answerable over

(a) he may give his seller written notice of the litigation. If the notice states that the seller may come in and defend and that if the seller does not do so he will be bound in any action against him by his buyer by any determination of fact common to the two litigations, then unless the seller after seasonable receipt of the notice does come in and defend he is so bound.

(b) if the claim is one for infringement or the like (subsection (3) of Section 2-312) the original seller may demand in writing that his buyer turn over to him control of the litigation including settlement or else be barred from any remedy over and if he also agrees to bear all expense and to satisfy any adverse judgment, then unless the buyer after seasonable receipt of the demand does turn over control the buyer is so barred.

(6) The provisions of subsections (3), (4) and (5) apply to any obligation of a buyer to hold the seller harmless against infringement or the like (subsection (3) of Section 2-312).

§ 2-610. Anticipatory Repudiation.

When either party repudiates the contract with respect to a performance not yet due the loss of which will substantially impair the value of the contract to the other, the aggrieved party may

- (a) for a commercially reasonable time await performance by the repudiating party; or
- (b) resort to any remedy for breach (Section 2-703 or Section 2-711), even though he has notified the repudiating party that he would await the latter's performance and has urged retraction; and
- (c) in either case suspend his own performance or proceed in accordance with the provisions of this Article on the seller's right to identify goods to the contract notwithstanding breach or to salvage unfinished goods (Section 2-704).

§ 2-703. Seller's Remedies in General.

- (1) A breach of contract by the buyer includes the buyer's wrongful rejection or wrongful attempt to revoke acceptance of goods, wrongful failure to perform a contractual obligation, failure to make a payment when due, and repudiation.
- (2) If the buyer is in breach of contract the seller, to the extent provided for by this Act or other law, may:
 - (a) withhold delivery of such goods;
 - (b) stop delivery of the goods under Section 2-705;
 - (c) proceed under Section 2-704 with respect to goods unidentified to the contract or unfinished;
 - (d) reclaim the goods under Section 2-507(2) or 2-702(2);
 - (e) require payment directly from the buyer under Section 2-325(c);

- (f) cancel;
 - (g) resell and recover damages under Section 2-706;
 - (h) recover damages for non-acceptance or repudiation under (Section 2-708(1) or in a proper case the price (Section 2-709);
 - (j) recover the price under Section 2-709;
 - (k) obtain specific performance under Section 2-716;
 - (l) recover liquidated damages under Section 2-718;
 - (m) in other cases, recover damages in any manner that is reasonable under the circumstances.
- (3) If the buyer becomes insolvent, the seller may:
- (a) withhold delivery under Section 2-702(1);
 - (b) stop delivery of the goods under Section 2-705;
 - (c) reclaim the goods under Section 2-702(2).

§ 2-706. Seller's Resale Including Contract for Resale.

- (1) Under the conditions stated in Section 2-703 on seller's remedies, the seller may resell the goods concerned or the undelivered balance thereof. Where the resale is made in good faith and in a commercially reasonable manner the seller may recover the difference between the resale price and the contract price together with any incidental damages allowed under the provisions of this Article (Section 2-710), but less expenses saved in consequence of the buyer's breach.
- (2) Except as otherwise provided in subsection (3) or unless otherwise agreed resale may be at public or private sale including sale by way of one or more contracts to sell or of identification to an existing contract of the seller. Sale may be as a unit or in parcels and at any time and place and on any terms but every aspect of the sale including the method, manner, time, place and terms must be commercially reasonable. The resale must be reasonably identified as

referring to the broken contract, but it is not necessary that the goods be in existence or that any or all of them have been identified to the contract before the breach.

§ 2-711. Buyer's Remedies in General; Buyer's Security Interest in Rejected Goods.

(1) A breach of contract by the seller includes the seller's wrongful failure to deliver or to perform a contractual obligation, making of a nonconforming tender of delivery or performance, and repudiation.

(2) If the seller is in breach of contract under subsection (1), the buyer, to the extent provided for by this Act or other law, may:

(a) in the case of rightful cancellation, rightful rejection, or justifiable revocation of acceptance, recover so much of the price as has been paid;

(b) deduct damages from any part of the price still due under Section 2-717;

(c) cancel;

(d) cover and have damages under Section 2-712 as to all goods affected whether or not they have been identified to the contract;

(e) recover damages for nondelivery or repudiation under Section 2-713;

(f) recover damages for breach with regard to accepted goods or breach with regard to a remedial promise under Section 2-714;

(g) recover identified goods under Section 2-502;

(h) obtain specific performance or obtain the goods by replevin or similar remedy under Section 2-716;

(i) recover liquidated damages under Section 2-718;

(j) in other cases, recover damages in any manner that is reasonable under the circumstances.

(3) On rightful rejection or justifiable revocation of acceptance a buyer has a security interest in goods in his possession or control for any payments made on their price and any expenses

reasonably incurred in their inspection, receipt, transportation, care and custody and may hold such goods and resell them in like manner as an aggrieved seller (Section 2-706).

§ 2-712. “Cover”; Buyer’s Procurement of Substitute Goods.

(1) If the seller wrongfully fails to deliver or repudiates or the buyer rightfully rejects or justifiably revokes acceptance, the buyer may “cover” by making in good faith and without unreasonable delay any reasonable purchase of or contract to purchase goods in substitution for those due from the seller.

(2) The buyer may recover from the seller as damages the difference between the cost of cover and the contract price together with any incidental or consequential damages as hereinafter defined (Section 2-715), but less expenses saved in consequence of the seller’s breach.

(3) Failure of the buyer to effect cover within this section does not bar him from any other remedy.

§ 2-715. Buyer’s Incidental and Consequential Damages.

(1) Incidental damages resulting from the seller’s breach include expenses reasonably incurred in inspection, receipt, transportation and care and custody of goods rightfully rejected, any commercially reasonable charges, expenses or commissions in connection with effecting cover and any other reasonable expense incident to the delay or other breach.

(2) Consequential damages resulting from the seller’s breach include

(a) any loss resulting from general or particular requirements and needs of which the seller at the time of contracting had reason to know and which could not reasonably be prevented by cover or otherwise; and

(b) injury to person or property proximately resulting from any breach of warranty.

§ 2-716. Buyer’s Right to Specific Performance or Replevin.

(1) Specific performance may be decreed if the goods are unique or in other proper circumstances. In a contract other than a consumer contract, specific performance may be decreed if the parties have agreed to that remedy. However, even if the parties agree to specific performance, specific performance may not be decreed if the breaching party’s sole

remaining contractual obligation is the payment of money.

(2) The decree for specific performance may include such terms and conditions as to payment of the price, damages, or other relief as the court may deem just.

(3) The buyer has a right of replevin or similar remedy for goods identified to the contract if after reasonable effort the buyer is unable to effect cover for such goods or the circumstances reasonably indicate that such effort will be unavailing or if the goods have been shipped under reservation and satisfaction of the security interest in them has been made or tendered.

(4) The buyer's right under subsection (3) vests upon acquisition of a special property, even if the seller had not then repudiated or failed to deliver.

§ 2-725. Statute of Limitations in Contracts for Sale.

(1) Except as otherwise provided in this section, an action for breach of any contract for sale must be commenced within the later of four years after the right of action has accrued under subsection (2) or (3) or one year after the breach was or should have been discovered, but no longer than five years after the right of action accrued. By the original agreement the parties may reduce the period of limitation to not less than one year but may not extend it. However, in a consumer contract, the period of limitation may not be reduced.

(2) Except as otherwise provided in subsection (3), the following rules apply:

(a) Except as otherwise provided in this subsection, a right of action for breach of a contract accrues when the breach occurs, even if the aggrieved party did not have knowledge of the breach.

(b) For breach of a contract by repudiation, a right of action accrues at the earlier of when the aggrieved party elects to treat the repudiation as a breach or when a commercially reasonable time for awaiting performance has expired.

(c) For breach of a remedial promise, a right of action accrues when the remedial promise is not performed when performance is due.

(d) In an action by a buyer against a person that is answerable over to the buyer for a claim asserted against the buyer, the buyer's right of action against the person answerable over accrues at the time the claim was originally asserted against the buyer.

(3) If a breach of a warranty arising under Section 2-312, 2-313(2), 2-314, or 2-315, or a breach of an obligation, other than a remedial promise, arising under Section 2-313A or 2-313B, is claimed, the following rules apply:

(a) Except as otherwise provided in paragraph (c), a right of action for breach of a warranty arising under Section 2-313(2), 2-314, or 2-315 accrues when the seller has tendered delivery to the immediate buyer, as defined in Section 2-313, and has completed performance of any agreed installation or assembly of the goods.

(b) Except as otherwise provided in paragraph (c), a right of action for breach of an obligation, other than a remedial promise, arising under Section 2-313A or 2-313B accrues when the remote purchaser, as defined in Section 2-313A or 2-313B, receives the goods.