

UCC Review:

The Uniform Commercial Code (UCC or the Code) is one of a number of uniform acts that have been promulgated in conjunction with efforts to harmonize the law of sales and other commercial transactions in all 50 states within the United States of America. The UCC deals primarily with transactions involving personal property (movable property), not real property (immovable property).

The UCC has been a long-term, joint project of the [National Conference of Commissioners on Uniform State Laws](#) (NCCUSL) and the [American Law Institute](#) (ALI). The Code, as the product of private organizations, is not itself the law, but only recommendation of the laws that should be adopted in the states. Once enacted in a state by the state's [legislature](#), it becomes true law and is codified into the state's code of statutes.

The Code, in one or another of its several revisions, has been enacted in all of the 50 states, as well as in the [District of Columbia](#), the [Commonwealth of Puerto Rico](#), [Guam](#) and the [U.S. Virgin Islands](#). [Louisiana](#) has enacted most provisions of the UCC with the exception of Article 2, preferring to maintain its own [civil law](#) tradition for governing the sale of goods.

References: <http://www.law.cornell.edu/ucc/ucc.table.html> Index: <http://www.law.cornell.edu/ucc/2/>

Example of how UCC has been adopted by Washington State:
<http://apps.leg.wa.gov/RCW/default.aspx?cite=62A.2-319>



The screenshot shows a web browser window displaying the Washington State Legislature website. The page title is "RCW 62A.2-319: F.O.B. and F.A.S. terms." The browser's address bar shows the URL "http://apps.leg.wa.gov/RCW/default.aspx?cite=62A.2-319". The website header includes the Washington State Legislature logo and navigation links for "Legislature Home", "Senate", and "House of Representatives". The main content area displays the text of RCW 62A.2-319, which defines the terms "F.O.B." (Free on Board) and "F.A.S." (Free Alongside). The text is organized into numbered sections (1, 2, 3, 4) and lettered subsections (a, b, c). The page also includes a sidebar with navigation links and a footer with the year 1965.

RCW 62A.2-319: F.O.B. and F.A.S. terms.

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RCWs > Title 62A > Chapter 62A.2 > Section 62A.2-319

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RCW 62A.2-319
F.O.B. and F.A.S. terms.

(1) Unless otherwise agreed the term F.O.B. (which means "free on board") at a named place, even though used only in connection with the stated price, is a delivery term under which

(a) when the term is F.O.B. the place of shipment, the seller must at that place ship the goods in the manner provided in this Article (RCW [62A.2-504](#)) and bear the expense and risk of putting them into the possession of the carrier, or

(b) when the term is F.O.B. the place of destination, the seller must at his own expense and risk transport the goods to that place and there tender delivery of them in the manner provided in this Article (RCW [62A.2-503](#));

(c) when under either (a) or (b) the term is also F.O.B. vessel, car or other vehicle, the seller must in addition at his own expense and risk load the goods on board. If the term is F.O.B. vessel the buyer must name the vessel and in an appropriate case the seller must comply with the provisions of this Article on the form of bill of lading (RCW [62A.2-323](#)).

(2) Unless otherwise agreed the term F.A.S. vessel (which means "free alongside") at a named port, even though used only in connection with the stated price, is a delivery term under which the seller must

(a) at his own expense and risk deliver the goods alongside the vessel in the manner usual in that port or on a dock designated and provided by the buyer, and

(b) obtain and tender a receipt for the goods in exchange for which the carrier is under a duty to issue a bill of lading.

(3) Unless otherwise agreed in any case falling within subsection (1)(a) or (c) or subsection (2) the buyer must seasonably give any needed instructions for making delivery, including when the term is F.A.S. or F.O.B. the loading berth of the vessel and in an appropriate case its name and sailing date. The seller may treat the failure of needed instructions as a failure of cooperation under this Article (RCW [62A.2-311](#)). He may also at his option move the goods in any reasonable manner preparatory to delivery or shipment.

(4) Under the term F.O.B. vessel or F.A.S. unless otherwise agreed the buyer must make payment against tender of the required documents and the seller may not tender nor the buyer demand delivery of the goods in substitution for the documents.

[1965 ex.s. c 157 § 2-319.]

PART 1. SHORT TITLE, GENERAL CONSTRUCTION AND SUBJECT MATTER

- [§ 2-101](#). Short Title.
- [§ 2-102](#). Scope; Certain Security and Other Transactions Excluded From This Article.
- [§ 2-103](#). Definitions and Index of Definitions.
- [§ 2-104](#). Definitions: "Merchant"; "Between Merchants"; "Financing Agency".
- [§ 2-105](#). Definitions: Transferability; "Goods"; "Future" Goods; "Lot"; "Commercial Unit".
- [§ 2-106](#). Definitions: "Contract"; "Agreement"; "Contract for sale"; "Sale"; "Present sale"; "Conforming" to Contract; "Termination"; "Cancellation".
- [§ 2-107](#). Goods to Be Severed From Realty: Recording.

PART 2. FORM, FORMATION AND READJUSTMENT OF CONTRACT

- [§ 2-201](#). Formal Requirements; Statute of Frauds.
- [§ 2-202](#). Final Written Expression: Parol or Extrinsic Evidence.
- [§ 2-203](#). Seals Inoperative.
- [§ 2-204](#). Formation in General.
- [§ 2-205](#). Firm Offers.
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PART 3. GENERAL OBLIGATION AND CONSTRUCTION OF CONTRACT

- [§ 2-301](#). General Obligations of Parties.
- [§ 2-302](#). Unconscionable contract or Clause.
- [§ 2-303](#). Allocation or Division of Risks.
- [§ 2-304](#). Price Payable in Money, Goods, Realty, or Otherwise.
- [§ 2-305](#). Open Price Term.
- [§ 2-306](#). Output, Requirements and Exclusive Dealings.
- [§ 2-307](#). Delivery in Single Lot or Several Lots.
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- [§ 2-309](#). Absence of Specific Time Provisions; Notice of Termination.
- [§ 2-310](#). Open Time for Payment or Running of Credit; Authority to Ship Under Reservation.
- [§ 2-311](#). Options and Cooperation Respecting Performance.
- [§ 2-312](#). Warranty of Title and Against Infringement; Buyer's Obligation Against Infringement.
- [§ 2-313](#). Express Warranties by Affirmation, Promise, Description, Sample.
- [§ 2-313A](#). Obligation to Remote Purchaser Created by Record Packaged With or Accompanying Goods
- [§ 2-313B](#). Obligation to Remote Purchaser Created by Communication to the Public
- [§ 2-314](#). Implied Warranty: Merchantability; Usage of Trade.
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- [§ 2-324](#). "No Arrival, No sale" Term.
- [§ 2-325](#). "Letter of Credit" Term; "Confirmed Credit".
- [§ 2-326](#). Sale on Approval and Sale or Return; Consignment Sales and Rights of Creditors.
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- [§ 2-504](#). Shipment by Seller.
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- [§ 2-508](#). Cure by Seller of Improper Tender or Delivery; Replacement.
- [§ 2-509](#). Risk of Loss in the Absence of Breach.
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- [§ 2-511](#). Tender of Payment by Buyer; Payment by Check.
- [§ 2-512](#). Payment by Buyer Before Inspection.
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PART 6. BREACH, REPUDIATION AND EXCUSE

- [§ 2-601](#). Buyer's Rights on Improper Delivery.
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- [§ 2-604](#). Buyer's Options as to Salvage of Rightfully Rejected Goods.
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- [§ 2-612](#). "Installment contract"; Breach.
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- [§ 2-701](#). Remedies for Breach of Collateral contracts Not Impaired.
- [§ 2-702](#). Seller's Remedies on Discovery of Buyer's Insolvency.
- [§ 2-703](#). Seller's Remedies in General.
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- [§ 2-712](#). "Cover"; Buyer's Procurement of Substitute Goods.
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- [§ 2-723](#). Proof of Market Price: Time and Place.
- [§ 2-724](#). Admissibility of Market Quotations.
- [§ 2-725](#). Statute of Limitations in Contracts for Sale.

WARRANTY:

§ 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.

§ 2-315. 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.

CAVEATS:

1- UCC as published on the Cornell University Law School pages is more recent than States may have adopted

Example:

Published edition of the UCC includes 2003 amendment which among other things raised the value for Statute of Frauds. **IMPORTANT:** The 2003 amendment has not yet been adopted by any state. See example of the amended UCC and the current state law of Washington.

§ 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.

RCW 62A.2-201

Formal requirements; statute of frauds.

(1) Except as otherwise provided in this section a contract for the sale of goods for the price of five hundred dollars or more is not enforceable by way of action or defense unless there is some writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by his authorized agent or broker. A writing is not insufficient because it omits or incorrectly states a term agreed upon but the contract is not enforceable under this paragraph beyond the quantity of goods shown in such writing.

2- Buyer and Seller can agree not to use parts of the UCC or waive parts, e.g. waive warranty terms

3- Buyer and Seller can agree to include or use other terms FAR or International Terms

May 2003

International Trade is Different!

As our Supply Chain expands to circle the globe, we need to keep in mind that we are crossing legal borders. The Uniform Commercial Code (UCC), which is a large part of U.S. law governing transactions between buyers and sellers, does not apply once our contract crosses the border and leaves the United States.

As a result, many contract terms, which we take for granted, have to be reconsidered. When we contact a distributor in Europe, Asia, Canada and even Mexico, stop and think about each detail of the purchase. Obvious issues that should be considered include the payment currency, exchange rate, payment method and unit of issue (kilos vs. pounds). Less obvious issues might include tariffs, duty, taxes and delivery terms. The more scary examples of issues to consider include; what court has jurisdiction if there is a lawsuit, does the buyer have the "right to cover", can acceptance be revoked and can the warranty be enforced?

Here is a typical transaction:

- You receive a great quotation on some electrical equipment that your company needs.
- The quote is from a company in Taiwan.
- They quoted the price in Taiwan Dollars
- Is the price really lower?
- Is the contractor asking for payment in Taiwan Dollars or U.S. dollars?
- Can my accounts payable department pay the bill in Taiwan Dollars?
- Will I need a letter of credit? (What the heck is that and how do I get one?)
- What is the current exchange rate?
- What will the exchange rate be when I have to pay the invoice?
- The quoted freight term is FAS San Francisco. What does that mean?
- If I use a credit card to pay the invoice, that takes care of my problem with paying in Taiwan Dollars, but what will the bank charge for the transaction?
- When will the bank convert the payment and what exchange rate will the bank use?
- What happens if there is a delay in production and the exchange rate continues to change (in the supplier's favor) during the delay? Do we have to pay the higher charge?
- If I don't want to pay the price increase what are my legal options?
- Who's terms apply? Can I even read their terms?
- Which of my terms reference U.S. laws that probably don't apply to a foreign company?
- Which court would rule on the case?
- Do I need a lawyer who speaks Taiwanese?
- Can the supplier sue me for not accepting the higher price?
- Do I have the right to cover, procure or revoke acceptance?
- What rights do I have anyhow?

International Trade organizations are beginning to resolve these types of issues and publish guidelines. Treaties and agreements between countries are being issued. Here is one reference source that would be a good place to start.

**The ICC (International Chamber of Commerce) is one organization that claims to be "the voice of world business championing the global economy as a force for economic growth, job creation and prosperity".
[Their words not mine]**

References:

INCOTERMS wall chart

<http://www.iccbooks.com/Product/ProductInfo.aspx?id=211>

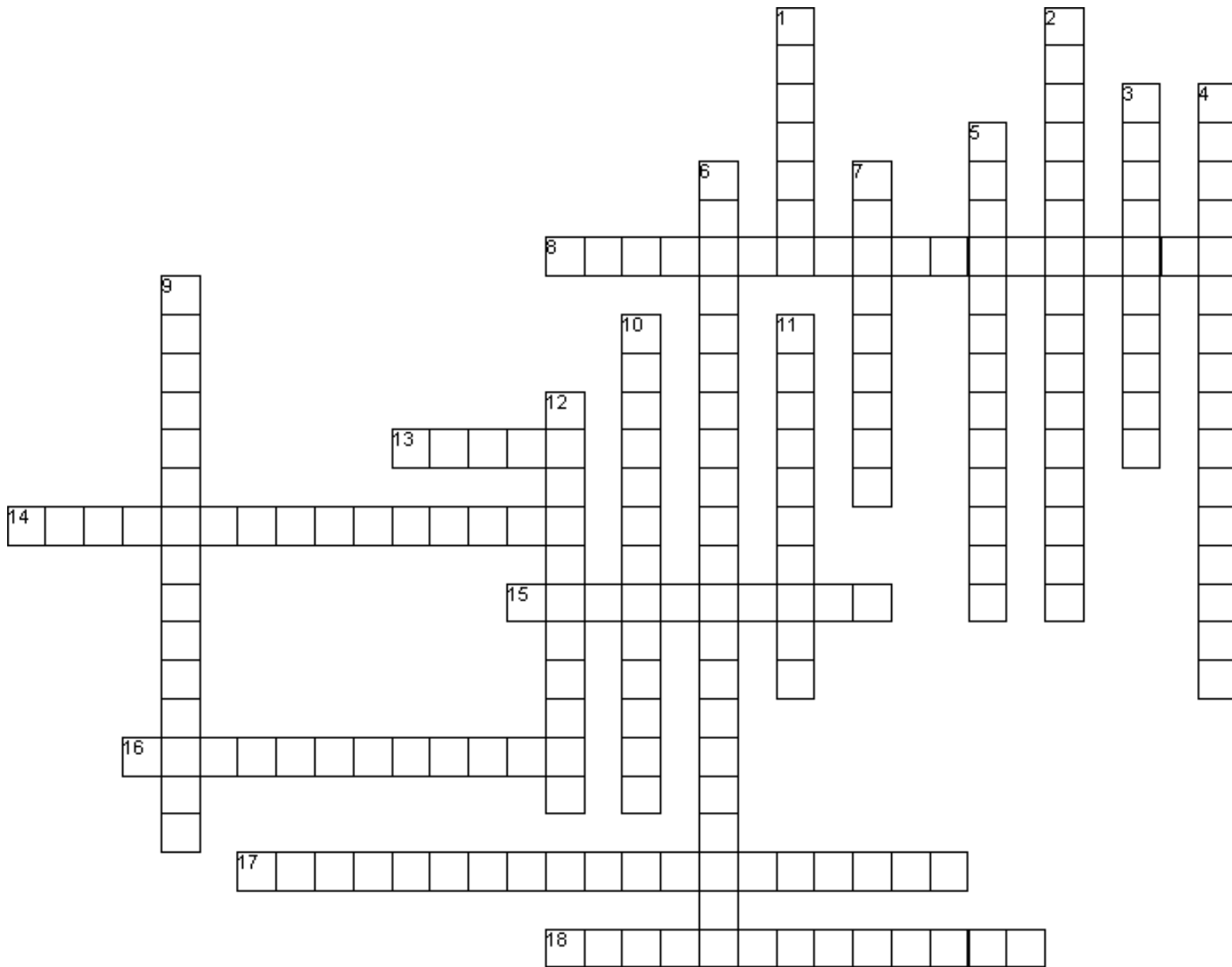
INCOTERMS wall chart

<http://www.i-b-t.net/incoterms.html>

http://www.worldtradeexpress.com/Illustrated_Guide_Incoterms_2000.html

<http://www.itintl.com/incoterms.html>

The following article was prepared by Mike Taylor, C.P.M. for distribution to NAPM affiliate newsletters.



Across

- 8. Court may require one party to perform when the other relied on a promise (2 words)**
- 13. A contract forms when it's accepted**
- 14. A contract clause which is so one-sided the court might throw it out**
- 15. Indirect damages are ____**
- 16. One of Buyer's remedies under the code (3 words)**
- 17. A buyer might ask the judge to require this of the seller if the product was special (2 words)**
- 18. ____ damages happen as a result of failure**

Down

- 1. A warranty that is spelled out in detail**
- 2. when one party fails to perform the contract (3 words)**
- 3. ____ might be revoked when a hidden defect is found**
- 4. when the fine print doesn't agree we have this situation (4 words)**
- 5. ____ must be exchanged to form a contract**
- 6. UCC (3 words)**
- 7. Buyers and Sellers in the marketplace are not consumers, they are ____**
- 9. ____ is an implied warranty that the product will be typical of similar products**
- 10. Presented in court to prove that there was more to the contract than what was written (2 words)**
- 11. "I never meant to form a contract"**
- 12. FOB (3 words)**