

# **Big Changes to UCC Rules on Contract Formation and Terms of the Deal are Around the Corner— Are You Ready?**

Charles E. Rumbaugh

## Overview of Impact on buying/selling organizations/professionals:

Nature/operation of UCC in private sector transactions.  
State-by-state adoption of UCC changes.  
U.S. Gov't contract implications: commercial items; general source of guidance.  
Potential need for revisiting company contract terms / practices.

## Applicability/Scope of UCC—Article 2:

Definition of “Goods”  
Sales v. Leases of Goods (Article 2A)  
Excluded items: Services, information, etc.  
Applicability for mixed transactions, e.g. goods/information; goods/services, etc.  
UCC “As compared” to Convention on International Sales of Goods (CISG).

## New Definitions / Relationship to Recent Electronic Commerce Statutory Changes:

“Record” verses “writing”.  
“Electronic,” “electronic agent,” and “electronic record”.  
“Sign”.

## Contract Formation and Terms of the Deal—“Battle-of-the-Forms” coverage greatly changed. Does it end the battle?

The new §2-207 (as compared to old §2-207)—Scope of the deal! Terms of the Deal!  
The new §2-204 and §2-206—Formation of the Contract.  
New “Statute of Frauds” threshold of \$5,000—§2-201.  
Absence of Shipping Terms in Revised Article 2  
UCC as “filling the gap” for contract interpretation--§2-202, 2-204, & 2-207  
Course of Performance, Course of Dealing, and Usage of Trade—§1-303.  
Risk of loss, price, etc.  
Modifications, waivers, etc.—§2-209  
UCC may be varied by agreement of the parties—§1-302  
Exceptions: Good Faith, diligence, reasonableness, and standard of care.

## Warranties:

Express warranties—§2-313  
Implied warranties (quality/title/infringement) continue—§2-314, 2-315, & 2-312  
“Remedial promises”—part of §2-313.  
“Pass-through warranties”—§2-313A & §-313B.

## Performance and Breach:

Changes in areas of acceptance, rejection and revocation—§2-508, §2-601, §2-608, §2-610,  
§2-612, §2-703, §2-708, §2-710, §2-711, & §2-718

## Remedies:

Statute of Limitation changes—§2-725.

## Closing/Recommendations:



### **Charles E. Rumbaugh**

Charles E. Rumbaugh is an attorney practicing in commercial/international/government contract law with an emphasis in the private dispute/negotiation related arena as an educator/trainer, professional speaker, arbitrator/mediator as well as private judge. He is a frequent writer/publisher and speaker on substantive and Negotiation/Dispute Resolution topics and has presented advanced/basic negotiation, mediation, and arbitration skills training seminars/workshops in Canada, Latin America, Far East, and the United States.

Previously, Mr. Rumbaugh was Corporate Director of Contracts & Pricing for Lear Astronics Corporation where he was responsible for the contracts, pricing, and business management functions. Earlier he was Assistant to Corporate Vice President, Contracts and legal counsel at a major business unit for Hughes Aircraft Company (Hughes Electronics). Before joining Hughes he was Corporations Counsel for the California Department of Corporations.

Mr. Rumbaugh received his Bachelor of Science degree in engineering from UCLA and was employed as an engineer with Westinghouse Electric Corporation prior to attending California Western School of Law where he received a Juris Doctor degree. He also has an ADR Mediation Certificate from Harvard University, Pepperdine University and Center for Conflict Resolution, an Advanced Management Program Certificate from the USC Graduate School of Business and is currently an adjunct professor at several universities for their commercial/business, contract & procurement, international law and ADR/Negotiation programs. He is an advisor to the California State University Contracts and Procurement Certification Program.

His current/past membership on arbitration and mediation panels includes the Large, Complex Case Panel of the American Arbitration Association and the following:

- Center for Conflict Resolution panel of Arbitrators/Mediators
- State of California Department of Insurance Qualified Mediator
- State of California Public Works Contract Arbitrator
- EEOC Qualified Mediator
- Los Angeles Superior Court Judge Pro Tem
- Former Federal Administrative Law Judge, EEOC
- Numerous Federal/State Courts and Administrative Boards and Arbitrator/Mediator panels

Charles Rumbaugh is an active member of ISM and NCMA. He is past co-chair of the NCMA ADR committee, CPCMC, Fellow, member of the NCMA Board of Advisors, and former member of the Editorial Board for the NCMA Journal. He also is immediate past Chair of the ISM Federal Acquisition & Subcontract Management Group. Mr. Rumbaugh is past Co-Chair of the California State Bar Franchise Law Committee and past Vice-Chair of the California State Bar Business Law Section ADR Committee. He is an active member of the American Bar Association (ABA) including Co-Chair of the ADR Committee and Vice-Chair of the Strategic Alliances Committee of the ABA Public Contract Law Section as well as founder of the Public Contracting Committee of the ABA Dispute Resolution Section. He is also a member of the Procurement Committee of National Defense Industrial Association and has represented it on joint industry/Air Force ADR IPTs.