

GUAM CODE ANNOTATED

TITLE 13

UNIFORM COMMERCIAL CODE

**UPDATED THROUGH P.L. 29-002
(MAY 18, 2007)**

TABLE OF CONTENTS

TITLE 13 UNIFORM COMMERCIAL CODE

- Division 1. General Provisions.
 - Chapter 1. Short Title, Construction, Application and Subject Matter of the Code. §§ 1101-1108
 - Chapter 2. General Definitions and Principles of Interpretation. §§ 1201-1210

- Division 2. Sales.
 - Chapter 1. Short Title, General Construction and Subject Matter. §§ 2101-2107
 - Chapter 2. Form, Formation and Readjustment of Contract. §§ 2201-2210
 - Chapter 3. General Obligation and Construction of Contract. §§ 2301-2328
 - Chapter 4. Title, Creditors and Good Faith Purchasers. §§ 2401-2403
 - Chapter 5. Performance. §§ 2501-2515
 - Chapter 6. Breach, Repudiation and Excuse. §§ 2601-2616
 - Chapter 7. Remedies. §§ 2701-2725
 - Chapter 8. Retail Sales. §§ 2800-2801

- Division 3. Commercial Paper.
 - Chapter 1. Short Title Form and Interpretation. §§ 3101-3123
 - Chapter 2. Transfer and Negotiation. §§ 3201-3208
 - Chapter 3. Rights of a Holder. §§ 3301-3307
 - Chapter 4. Liability of Parties. §§ 3401-3419
 - Chapter 5. Presentment, Notice of Dishonor and Protest. §§ 3501-3511
 - Chapter 6. Discharge. §§ 3601-3606
 - Chapter 7. Advice of International Sight Draft. § 3701
 - Chapter 8. Miscellaneous. §§ 3801-3805

- Division 4. Bank Deposits and Collections.
 - Chapter 1. General Provisions and Definitions. §§ 4101-4109
 - Chapter 2. Collection of Items: Depositary and Collecting Banks. §§ 4201-4214
 - Chapter 3. Collection of Items: Payor Banks. §§ 4301-4303

- Chapter 4. Relationship Between Payor Bank and Its Customer. §§ 4401-4407
- Chapter 5. Collection of Documentary Drafts. §§ 4501-4504
- Division 5. Letters of Credit. §§ 5101-5118
- Division 6. Bulk Transfers. §§ 6101-6111
- Division 7. Warehouse Receipts, Bills of Lading and Other Documents of Title.
 - Chapter 1. General. §§ 7101-7105
 - Chapter 2. Warehouse Receipts: Special Provisions. §§ 7201-7210
 - Chapter 3. Bills of Lading: Special Provisions. §§ 7301-7309
 - Chapter 4. Warehouse Receipts and Bills of Lading: General Obligations. §§ 7401-7404
 - Chapter 5. Warehouse Receipts and Bills of Lading: Negotiation and Transfer. §§ 7501-7509
 - Chapter 6. Warehouse Receipts and Bill of Lading: Miscellaneous Provisions. §§ 7601-7603
- Division 8. Investment Securities.
 - Chapter 1. Short Title and General Matters. §§ 8101-8107
 - Chapter 2. Issue--Issuer. §§ 8201-8208
 - Chapter 3. Purchase. §§ 8301-8320
 - Chapter 4. Registration. §§ 8401-8406
- Division 9. Secured Transactions; Sales of Accounts and Chattel Paper.
 - Chapter 1. Short Title, Applicability and Definitions. §§ 9101-9114
 - Chapter 2. Validity of Security Agreement and Rights of Parties Thereto. §§ 9201-9208
 - Chapter 3. Rights of Third Parties; Perfected and Unperfected Security Interests; Rules of Priority. §§ 9301-9318
 - Chapter 4. Filing. §§ 9401-9408
 - Chapter 5. Default. §§ 9501-9508
- Division 10. Effective Date and Repealer. §§ 10101-10104.

INTRODUCTION (2005)

The Uniform Commercial Code of Guam was enacted by P.L. 13-160. The Legislature adopted "The Uniform Commercial Code of California commencing with Division I in the form attached subject to the amendments set forth below. The Code shall include the division, chapter and section headings in the form indicated but shall not include any tables of contents or editorial material which is not a part of the California statute." (P.L. 13-160, 1)

One hundred seventy-four (174) amendments follow. Most deal with typographical errors found in the version of the California UCC adopted, changes to reflect the term "Guam" instead of "California" or "state", and certain substantive amendments which bring the Guam UCC closer to the Official UCC as promulgated by the Commissioners on Uniform State Laws.

In order to assist the users of this Code, the Guam Law Revision Commission has prepared its editorial comments on the substantive changes made in enacting the Guam UCC. These editorial comments, the Index and the full text of the UCC as adopted on Guam are included in this volume of the Guam UCC.

Public Law 13-150 repealed those portions of the Guam Codes which conflicted with the new UCC and which were replaced by it. Those laws repealed are:

§ 1624(4), Civil Code;

Title I of Part IV of Division Third of the Civil Code

(Uniform Sales Act);

Chapter II of Title II of Part IV of Division Third of the Civil Code;

Article III-A (Uniform Warehouse Receipts Act) of Chapter II of

Title III of Part IV of Division Third of the Civil Code;

Article III of Chapter III of Title VII of Part IV of Division Third of the Civil Code;

Article V of Chapter II of Title XIII of Part IV of Division Third of the Civil Code;

Article III of Chapter II of Title XIV of Part IV of Division Third of the Civil Code;

Chapter II-A of Title XIV of Part IV of Division Third of the Civil Code

Chapter III of Title XIV of Part IV of Division Third of the Civil Code;
§ 3049, Civil Code;

Chapter VII of Title XIV of Part IV of Division Third of the Civil Code;

Title XV (Bulk Transfers Act) of Part II of Division Fourth of the Civil Code;

§ 542(4), Code of Civil Procedure;

§ 1973a, Code of Civil Procedure;

§ 30036-30039, Government Code;

§ 30041, Government Code;

§ 30043, Government Code; and

Part E (commencing 30300), Chapter I, Art. III of Title XXXI, Government Code

§ 30040(b) of the Government Code was amended to read:

"(b) Nothing herein shall be construed to relieve the depositor from the duty now imposed by law of exercising due diligence in the examination of such account and vouchers, if any, when rendered by the bank and of immediate notification to the bank upon discovery of any error therein, nor from the legal consequences of neglect of such duty; nor to prevent the application of § 3406 and § 4406 of the Commercial Code to cases governed thereby."

Section 22 of P.L. 13-150 provided that laws repealed by that Act were to remain in effect as provided by § 10102 of the Commercial Code (dealing with rights and remedies vested or in process at the time of enactment).

Public Law 15-104 codified this UCC as Title 13 of the Guam Code Annotated.

Public Law 26-172 (Dec. 30, 2002) repealed and reenacted Division 9 to adopt the 2001 Revision of the Article 9 of the Uniform Commercial Code

and did not provide an effective date. Public Law 27-40 (Nov. 18, 2003) amended P.L. 26-172 to add section 5 which made the effective date Oct. 1, 2004. Public Law 27-106 (Sept. 30, 2004) extended the effective date until Oct. 1, 2005. Public Law 28-067 (Sept. 20, 2005) further extended the effective date until Oct. 1, 2006. The Division 9 provided below is pre-P.L. 26-172 and is the current version of the law.

**13 GCA UNIFORM COMMERCIAL CODE
DIV. 1 GENERAL PROVISIONS**

**DIVISION 1
GENERAL PROVISIONS**

Chapter 1. Short Title, Construction, Application and Subject Matter of the Code.

Chapter 2. General Definitions and Principles of Interpretation.

**CHAPTER 1
SHORT TITLE, CONSTRUCTION, APPLICATION AND SUBJECT
MATTER OF THE CODE**

- § 1101. Short Title.
- § 1102. Purposes; Rules of Construction; Variation by Agreement.
- § 1103. Supplementary General Principles of Law Applicable.
- § 1104. Construction Against Implicit Repeal.
- § 1105. Territorial Application of the Act; Parties' Power to Choose Applicable Law.
- § 1106. Remedies to be Liberally Administered.
- § 1107. Waiver or Renunciation of Claim or Right After Breach.
- § 1108. Severability.

§ 1101. Short Title.

This Code shall be known and may be cited as the *Uniform Commercial Code of Guam*.

§ 1102. Purposes; Rules of Construction Variation by Agreement.

(1) This code shall be liberally construed and applied to promote its underlying purposes and policies.

(2) Underlying purposes and policies of this code are:

(a) To simplify, clarify and modernize the law governing commercial transactions;

(b) To permit the continued expansion of commercial practices through custom, usage and agreement of the parties;

(c) To make uniform the law among the various jurisdictions.

13 GCA UNIFORM COMMERCIAL CODE
DIV. 1 GENERAL PROVISIONS

(3) The effect of provisions of this code may be varied by agreement, except as otherwise provided in this code and except that the obligations of good faith, diligence, reasonableness and care prescribed by this code may not be disclaimed by agreement, but the parties may by agreement determine the standards by which the performance of such obligations is to be measured if such standards are not manifestly unreasonable.

(4) The presence in certain provisions of this code of the words “unless otherwise agreed” or words of similar import does not imply that the effect of other provisions may not be varied by agreement under subdivision (3).

(5) In this code unless the context otherwise requires

(a) Words in the singular number include the plural, and in the plural include the singular;

(b) Words of the masculine gender include the feminine and the neuter, and when the sense so indicates words of the neuter gender may refer to any gender.

COMMENT: Part of the Committee Report on Substitute Bill No. 727 (this Act) states:

“The purpose and effect of Substitute Bill No. 727 is explained more fully in the Official Comments to the 1972 Official Text of the Uniform Commercial Code and in the California Code Comments set forth in West’s Annotated California Commercial Code (1964, Supp. 1975) and it is the intent of this Committee that explanatory material be given due consideration in the interpretation and application of the Guam Code. (Committee on Commerce, Tourism and Transportation, 13th Guam Legislature, Report on Substitute Bill No. 727, Attachment #10, pp. 1-2)

§ 1103. Supplementary General Principles of Law Applicable.

Unless displaced by the particular provisions of this code, the principles of law and equity, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause shall supplement its provisions.

§ 1104. Construction Against Implicit Repeal.

This code being a general act intended as a unified coverage of its subject matter, no part of it shall be deemed to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided.

§ 1105. Territorial Application of the Act; Parties' Power to Choose Applicable Law.

13 GCA UNIFORM COMMERCIAL CODE
DIV. 1 GENERAL PROVISIONS

(1) Except as provided hereafter in this section, when a transaction bears a reasonable relation to this territory and also to any state or nation the parties may agree that the law either of this territory or of such other state or nation shall govern their rights and duties. Failing such agreement this code applies to transactions bearing an appropriate relation to this territory.

(2) Where one of the following provisions of this code specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law (including the conflict of law rules) so specified:

Rights of creditors against sold goods. § 2402.

Applicability of the division on bank deposits and collections. § 4102.

Bulk transfers subject to the division on bulk transfers. § 6102.

Applicability of the division on investment securities. § 8106.

Perfection provisions of the division on secured transactions. § 9103.

NOTE: The Compiler has deleted references in this Section to Divisions 2A and 4A, which have not been enacted on Guam.

§ 1106. Remedies to be Liberally Administered.

(1) The remedies provided by this code shall be liberally administered to the end that the aggrieved party may be put in as good a position as if the other party had fully performed but neither consequential or special nor penal damages may be had except as specifically provided in this code or by other rule of law.

(2) Any right or obligation declared by this code is enforceable by action unless the provision declaring it specifies a different and limited effect.

§ 1107. Waiver or Renunciation of Claim or Right After Breach.

Any claim or right arising out of an alleged breach can be discharged in whole or in part without consideration by a written waiver or renunciation signed and delivered by the aggrieved party.

§ 1108. Severability.

13 GCA UNIFORM COMMERCIAL CODE
DIV. 1 GENERAL PROVISIONS

If any provision or clause of this code or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or application of the code which can be given effect without the invalid provision or application, and to this end the provisions of this code are declared to be severable.

CHAPTER 2
GENERAL DEFINITIONS AND PRINCIPLES OF INTERPRETATION

- § 1201. General Definitions.
- § 1202. Documents Required of Third Party; Admissibility; Presumptions.
- § 1203. Obligation of Good Faith.
- § 1204. Time; Reasonable Time; "Seasonably".
- § 1205. Course of Dealing and Usage of Trade.
- § 1206. Statute of Frauds for Kinds of Personal Property not Otherwise Covered.
- § 1207. Performance or Acceptance Under Reservation of Rights.
- § 1208. Option to Accelerate at Will.
- § 1209. Obligation; Limits of Subordination.
- § 1210. Presumptions Affect Burden of Proof.

§ 1201. General Definitions.

Subject to additional definitions contained in the subsequent Divisions of this Title which are applicable to specific Divisions or Chapters thereof, and unless the context otherwise requires, in this Title:

(1) *Action* in the sense of a judicial proceeding includes recoupment, counterclaim, setoff, suit in equity and any other proceedings in which rights are determined.

(2) *Aggrieved party* means a party entitled to resort to a remedy.

(3) *Agreement* means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this code (§ 1205 and § 2208.) Whether an agreement has legal consequences is

13 GCA UNIFORM COMMERCIAL CODE
DIV. 1 GENERAL PROVISIONS

determined by the provisions of this code, if applicable; otherwise by the law of contracts (§ 1103.) (Compare *contract*.)

(4) *Bank* means any person engaged in the business of banking.

(5) *Bearer* means the person in possession of an instrument, document of title or security payable to bearer or indorsed in blank.

(6) *Bill of Lading* means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods, and which, by its terms, evidences the intention of the issuer that the person entitled under the document (7403(4)) has the right to receive, hold and dispose of the document and the goods it covers. Designation of a document by the issuer as a bill of lading is conclusive evidence of such intention. *Bill of Lading* includes an airbill. Airbill means a document serving for air transportation as a bill of lading does for marine or rail transportation, and includes an air consignment note or air waybill.

(7) *Branch* includes a separately incorporated foreign branch of a bank.

(8) *Burden of establishing a fact* means the burden of persuading the triers of fact that the existence of the fact is more probable than its nonexistence.

(9) *Buyer in ordinary course of business* means a person who in good faith and without knowledge that the sale to him is in violation of the ownership rights or security interest of a third party in the goods buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. All persons who sell minerals or the like (including oil and gas) at well-head or mineralhead shall be deemed to be persons in the business of selling goods of that kind. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a preexisting contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(10) *Conspicuous*. A term or clause is *conspicuous* when it is so written that a reasonable person against whom it is to operate ought to have noticed it. A printed heading in capitals (as: NON-NEGOTIABLE BILL OF LADING) is conspicuous. Language in the body of a form is "conspicuous" if it is in larger or other contrasting type or color. But in a telegram any stated term

13 GCA UNIFORM COMMERCIAL CODE
DIV. 1 GENERAL PROVISIONS

is “conspicuous.” Whether a term or clause is “conspicuous” or not is for decision by the court.

(11) *Contract* means the total legal obligation which results from the parties' agreement as affected by this code and any other applicable rules of law. (Compare “Agreement.”)

(12) *Creditor* includes a general creditor, a secured creditor, a lien creditor and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity and an executor or administrator of an insolvent debtor's or assignor's estate.

(13) *Defendant* includes a person in the position of defendant in a cross-action or counterclaim.

(14) *Delivery* with respect to instruments, documents of title, chattel paper or securities means voluntary transfer of possession.

(15) *Document of title* includes bill of lading, dock warrant, dock receipt, warehouse receipt, gin ticket, compress receipt, and also any other document which in the regular course of business or financing is treated as adequately evidencing that the person entitled under the document (§ 7403(4)) has the right to receive, hold and dispose of the document and the goods it covers. To be a document of title, a document must purport to be issued by a bailee and purport to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass.

(16) *Fault* means wrongful act, omission or breach.

(17) *Fungible* with respect to goods or securities means goods or securities of which any unit is, by nature or usage of trade, the equivalent of any other like unit. Goods which are not fungible shall be deemed fungible for the purposes of this code to the extent that under a particular agreement or document unlike units are treated as equivalents.

(18) *Genuine* means free of forging or counterfeiting.

(19) *Good faith* means honesty in fact in the conduct or transaction concerned.

(20) *Holder* means a person who is in possession of a document of title or an instrument or an investment security drawn, issued or indorsed to him or to his order or to bearer or in blank.

13 GCA UNIFORM COMMERCIAL CODE
DIV. 1 GENERAL PROVISIONS

(21) To *honor* is to pay or to accept and pay, or where a credit so engages to purchase or discount a draft complying with the terms of the credit.

(22) *Insolvency proceedings* includes any assignment for the benefit of creditors or other proceedings intended to liquidate or rehabilitate the estate of the person involved.

(23) A person is *insolvent* who either has ceased to pay his debts in the ordinary course of business or cannot pay his debts as they become due or is insolvent within the meaning of the federal bankruptcy law.

(24) *Money* means a medium of exchange authorized or adopted by a domestic or foreign government as a part of its currency.

(25) A person has *notice* of a fact when:

(a) He has actual knowledge of it; or

(b) He has received notice or notification of it; or

(c) From all the facts and circumstances known to him at the time in question he has reason to know that it exists. A person knows or has knowledge of a fact when he has actual knowledge of it. Discover or learn or a word or phrase of similar import refers to knowledge rather than to reason to know. The time and circumstances under which a notice or notification may cease to be effective are not determined by this code.

(26) A person *notifies* or *gives a notice* or notification to another by taking such steps as may be reasonably required to inform the other in ordinary course whether or not such other actually comes to know of it. A person receives a notice or notification when:

(a) It comes to his attention; or

(b) It is duly delivered at the place of business through which the contract was made or at any other place held out by him as the place for receipt of such communications.

(27) *Notice, knowledge* or a *notice* or *notification* received by an organization is effective for a particular transaction from the time when it is brought to the attention of the individual conducting that transaction, and in any event from the time when it would have been brought to his attention if the organization had exercised due diligence. An organization exercises due

13 GCA UNIFORM COMMERCIAL CODE
DIV. 1 GENERAL PROVISIONS

diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of his regular duties or unless he has reason to know of the transaction and that the transaction would be materially affected by the information.

(28) *Organization* includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(29) *Party*, as distinct from “third party,” means a person who has engaged in a transaction or made an agreement within this division.

(30) *Person* includes an individual or an organization. (See Section 1102.)

(31) *Purchase* includes taking by sale, discount negotiation, mortgage, pledge, lien, issue or reissue, gift or any other voluntary transaction creating an interest in property.

(32) *Purchaser* means a person who takes by purchase.

(33) *Remedy* means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

(34) *Representative* includes an agent, an officer of a corporation or association, and a trustee, executor or administrator of an estate, or any other person empowered to act for another.

(35) *Rights* includes remedies.

(36) *Security interest* means an interest in personal property or fixtures which secures payment or performance of an obligation. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (Section 2401) is limited in effect to a reservation of a “security interest.” The term also includes any interest of a buyer of accounts or chattel paper, which is subject to Division 9. The special property interest of a buyer of goods on identification of such goods to a contract for sale under Section 2501 is not a “security interest,” but a buyer may also acquire a “security interest” by complying with Division 9. Unless a lease or consignment is intended as security, reservation of title thereunder is not a

13 GCA UNIFORM COMMERCIAL CODE
DIV. 1 GENERAL PROVISIONS

“security interest” but a consignment is in any event subject to the provisions on consignment sales (Section 2326.) Whether a lease is intended as security is to be determined by the facts of each case; however, (a) the inclusion of an option to purchase does not of itself make the lease one intended for security, and (b) an agreement that upon compliance with the terms of the lease the lessee shall become or has the option to become the owner of the property for no additional consideration or for a nominal consideration does make the lease one intended for security.

(37) *Send* in connection with any writing or notice means to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and in the case of an instrument to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances. The receipt of any writing or notice within the time at which it would have arrived if properly sent has the effect of a proper sending. When a writing or notice is required to be sent by registered or certified mail, proof of mailing is sufficient, and proof of receipt by the addressee is not required unless the words “with return receipt requested” are also used.

(38) *Signed* includes any symbol executed or adopted by a party with present intention to authenticate a writing.

(39) *Surety* includes guarantor.

(40) *Telegram* includes a message transmitted by radio, teletype, cable, any mechanical method of transmission, or the like.

(41) *Term* means that portion of an agreement which relates to a particular matter.

(42) *Unauthorized signature or indorsement* means one made without actual, implied or apparent authority and includes a forgery.

(43) *Value*. Except as otherwise provided with respect to negotiable instruments and bank collections (Sections 3303, 4208 and 4209) a person gives “value” for rights if he acquires them:

(a) In return for a binding commitment to extend credit or for the extension of immediately available credit whether or not drawn upon and whether or not a chargeback is provided for in the event of difficulties in collection; or

13 GCA UNIFORM COMMERCIAL CODE
DIV. 1 GENERAL PROVISIONS

(b) As security for or in total or partial satisfaction of a pre-existing claim; or

(c) By accepting delivery pursuant to a pre-existing contract for purchase; or

(d) Generally, in return for any consideration sufficient to support a simple contract.

(44) *Warehouse receipt* means a document evidencing the receipt of goods for storage issued by a warehouseman (Section 7102), and which, by its terms, evidences the intention of the issuer that the person entitled under the document (Section 7403(4)) has the right to receive, hold and dispose of the document and the goods it covers. Designation of a document by the issuer as a "warehouse receipt" is conclusive evidence of such intention.

(45) *Written or writing* includes printing, typewriting or any other intentional reduction to tangible form.

§ 1202. Documents Required of Third Party; Admissibility; Presumptions.

(1) A bill of lading, policy or certificate of insurance, official weigher's or inspector's certificate, consular invoice, or any other document authorized or required by the contract to be issued by a third party is admissible as evidence of the facts stated in the document by the third party in any action arising out of the contract which authorized or required the document.

(2) In any action arising out of the contract which authorized or required the document referred to in subdivision (1):

(a) A document in due form purporting to be the document referred to in subdivision (1) is presumed to be authentic and genuine. This presumption is a presumption affecting the burden of producing evidence.

(b) If the document is found to be authentic and genuine, the facts stated in the document by the third party are presumed to be true. This presumption is a presumption affecting the burden of proof.

§ 1203. Obligation of Good Faith.

Every contract or duty within this code imposes an obligation of good faith in its performance or enforcement.

§ 1204. Time; Reasonable Time; "Seasonably".

13 GCA UNIFORM COMMERCIAL CODE
DIV. 1 GENERAL PROVISIONS

(1) Whenever this code requires any action to be taken within a reasonable time, any time which is not manifestly unreasonable may be fixed by agreement.

(2) What is a reasonable time for taking any action depends on the nature, purpose and circumstances of such action.

(3) An action is taken "seasonably" when it is taken at or within the time agreed or if no time is agreed at or within a reasonable time.

§ 1205. Course of Dealing and Usage of Trade.

(1) A course of dealing is a sequence of previous conduct between the parties to a particular transaction which is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.

(2) A usage of trade is any practice or method of dealing having such regularity of observance in a place, vocation or trade as to justify an expectation that it will be observed with respect to the transaction in question. The existence and scope of such a usage are to be proved as facts. If it is established that such a usage is embodied in a written trade code or similar writing the interpretation of the writing is for the court.

(3) A course of dealing between parties and any usage of trade in the vocation or trade in which they are engaged or of which they are or should be aware give particular meaning to and supplement or qualify terms of an agreement.

(4) The express terms of an agreement and an applicable course of dealing or usage of trade shall be construed wherever reasonable as consistent with each other; but when such construction is unreasonable express terms control both course of dealing and usage of trade and course of dealing controls usage of trade.

(5) An applicable usage of trade in the place where any part of performance is to occur shall be used in interpreting the agreement as to that part of the performance.

(6) Evidence of a relevant usage of trade offered by one party is not admissible unless and until he has given the other party such notice as the court finds sufficient to prevent unfair surprise to the latter.

COURT DECISIONS: *Course of Dealing* analyzed. *Craftworld, Inc. v. King Enterprises, Inc.* 200 Guam 17 (Guam Supreme Court).

§ 1206. Statute of Frauds for Kinds of Personal Property Not Otherwise Covered.

(1) Except in the cases described in subdivision (2) of this section a contract for the sale of personal property is not enforceable by way of action or defense beyond five thousand dollars (\$5,000) in amount or value of remedy unless there is some writing which indicates that a contract for sale has been made between the parties at a defined or stated price, reasonably identifies the subject matter, and is signed by the party against whom enforcement is sought or by his authorized agent.

(2) Subdivision (1) of this section does not apply to contracts for the sale of goods (Section 2201) nor of securities (Section 8319) nor to security agreements (Section 9203.)

§ 1207. Performance or Acceptance Under Reservation of Rights.

A party who with explicit reservation of rights performs or promises performance or assents to performance in a manner demanded or offered by the other party does not thereby prejudice the rights reserved. Such words as "without prejudice," "under protest" or the like are sufficient.

§ 1208. Option to Accelerate at Will.

A term providing that one party or his successor in interest may accelerate payment or performance or require collateral or additional collateral "at will" or "when he deems himself insecure" or in words of similar import shall be construed to mean that he shall have power to do so only if he in good faith believes that the prospect of payment or performance is impaired. The burden of establishing lack of good faith is on the party against whom the power has been exercised.

§ 1209. Subordinated Obligations.

An obligation may be issued as subordinated to payment of another obligation of the person obligated, or a creditor may subordinate his right to payment of an obligation by agreement with either the person obligated or another creditor of the person obligated. Such a subordination does not create a security interest as against either the common debtor or a subordinated creditor. This section shall be construed as declaring the law as it existed prior to the enactment of this section and not as modifying it.

§ 1210. Presumptions Affect Burden of Producing Evidence.

13 GCA UNIFORM COMMERCIAL CODE
DIV. 1 GENERAL PROVISIONS

Except as otherwise provided in Section 1202, the presumptions established by this code are presumptions affecting the burden of producing evidence.
