

(4) Demand or tender of delivery may be treated as ineffectual unless made at a reasonable hour. What is a reasonable hour is a question of fact.

(5) Unless otherwise agreed, the expenses of and incidental to putting the goods into a deliverable state must be borne by the seller.

An. Code, sec. 65. 1910, ch. 346, sec. 62 (p. 284).

65. (1) Where the seller delivers to the buyer a quantity of goods less than he contracted to sell, the buyer may reject them; but if the buyer accepts or retains the goods so delivered, knowing that the seller is not going to perform the contract in full, he must pay for them at the contract rate. If, however, the buyer has used or disposed of the goods delivered before he knows that the seller is not going to perform his contract in full, the buyer shall not be liable for more than the fair value to him of the goods so received.

(2) Where the seller delivers to the buyer a quantity of goods larger than he contracted to sell, the buyer may accept the goods included in the contract and reject the rest, or he may reject the whole. If the buyer accepts the whole of the goods so delivered, he must pay for them at the contract rate.

(3) Where the seller delivers to the buyer the goods he contracted to sell mixed with goods of a different description not included in the contract, the buyer may accept the goods which are in accordance with the contract and reject the rest, or he may reject the whole.

(4) The provisions of this section are subject to any usage of trade, special agreement, or course of dealing between the parties.

An. Code, sec. 66. 1910, ch. 346, sec. 63 (p. 285).

66. (1) Unless otherwise agreed, the buyer of goods is not bound to accept delivery thereof by installment.

(2) Where there is a contract to sell goods to be delivered by stated installments, which are to be separately paid for, and the seller makes defective deliveries in respect of one or more installments, or the buyer neglects or refuses to take delivery of or pay for one or more installments, it depends in each case on the terms of the contract and the circumstances of the case whether the breach of contract is so material as to justify the injured party in refusing to proceed further and suing for damages for breach of the entire contract, or whether the breach is severable, giving rise to a claim for compensation, but not to a right to treat the whole contract as broken.

A contract held not to be in accordance with this section; but if it were, the buyer was justified in treating the contract as rescinded or cancelled, because seller drew on vendee before delivery with bill of lading attached, and upon non-payment of draft instructed railroad not to deliver goods and notified buyer. *Hazel Hill Co. v. Roberts Bros.*, 129 Md. 315.

If this section applied, the refusal of buyer to accept delivery of tomatoes tendered in conformity with contract was a breach thereof which justified seller in refusing to proceed further with contract and suing for breach thereof; prayers. Law apart from this section. *Roberts v. Link*, 142 Md. 683.