

INCIDENTAL DAMAGES UNENFORCEABLE UNLESS THE AGREEMENT EXPRESSLY MAKES THE DISCLAIMER OR LIMITATION INDEPENDENT OF THE AGREED REMEDY.

(D) CONSEQUENTIAL DAMAGES AND INCIDENTAL DAMAGES MAY BE EXCLUDED OR LIMITED BY AGREEMENT UNLESS THE EXCLUSION OR LIMITATION IS UNCONSCIONABLE. EXCLUSION OR LIMITATION OF CONSEQUENTIAL DAMAGES FOR PERSONAL INJURY IN A CONSUMER CONTRACT FOR A COMPUTER PROGRAM THAT IS SUBJECT TO THIS TITLE AND IS CONTAINED IN CONSUMER GOODS IS PRIMA FACIE UNCONSCIONABLE, BUT EXCLUSION OR LIMITATION OF DAMAGES FOR A COMMERCIAL LOSS IS NOT UNCONSCIONABLE.

21-804. LIQUIDATION OF DAMAGES.

(A) DAMAGES FOR BREACH OF CONTRACT BY EITHER PARTY MAY BE LIQUIDATED BY AGREEMENT IN AN AMOUNT THAT IS REASONABLE IN LIGHT OF:

- (1) THE LOSS ANTICIPATED AT THE TIME OF CONTRACTING;
- (2) THE ACTUAL LOSS; OR
- (3) THE ACTUAL OR ANTICIPATED DIFFICULTIES OF PROVING LOSS IN THE EVENT OF BREACH.

(B) IF A TERM LIQUIDATING DAMAGES IS UNENFORCEABLE UNDER THIS SUBSECTION, THE AGGRIEVED PARTY MAY PURSUE THE REMEDIES PROVIDED IN THIS TITLE, EXCEPT AS LIMITED BY OTHER TERMS OF THE CONTRACT.

(C) IF A PARTY JUSTIFIABLY WITHHOLDS DELIVERY OF COPIES BECAUSE OF THE OTHER PARTY'S BREACH OF CONTRACT, THE PARTY IN BREACH IS ENTITLED TO RESTITUTION FOR ANY AMOUNT BY WHICH THE SUM OF THE PAYMENTS IT MADE FOR THE COPIES EXCEEDS THE AMOUNT OF THE LIQUIDATED DAMAGES PAYABLE TO THE AGGRIEVED PARTY IN ACCORDANCE WITH SUBSECTION (A) OF THIS SECTION. THE RIGHT TO RESTITUTION IS SUBJECT TO OFFSET TO THE EXTENT THAT THE AGGRIEVED PARTY ESTABLISHES:

- (1) A RIGHT TO RECOVER DAMAGES OTHER THAN UNDER SUBSECTION (A) OF THIS SECTION; AND
- (2) THE AMOUNT OR VALUE OF ANY BENEFITS RECEIVED BY THE PARTY IN BREACH, DIRECTLY OR INDIRECTLY, BY REASON OF THE CONTRACT.

(D) A TERM THAT DOES NOT LIQUIDATE DAMAGES, BUT THAT LIMITS DAMAGES AVAILABLE TO THE AGGRIEVED PARTY, MUST BE EVALUATED UNDER § 21-803 OF THIS SUBTITLE.

21-805. LIMITATION OF ACTIONS.

(A) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (B) OF THIS SECTION, AN ACTION FOR BREACH OF CONTRACT MUST BE COMMENCED WITHIN THE LATER OF FOUR YEARS AFTER THE RIGHT OF ACTION ACCRUES OR ONE YEAR AFTER THE BREACH WAS OR SHOULD HAVE BEEN DISCOVERED, BUT NOT LATER THAN FIVE YEARS AFTER THE RIGHT OF ACTION ACCRUES.