

ADMISSIBLE UNLESS AND UNTIL THE PARTY OFFERING THE EVIDENCE HAS GIVEN THE OTHER PARTY NOTICE THAT THE COURT FINDS SUFFICIENT TO PREVENT UNFAIR SURPRISE.

(D) THE EXISTENCE AND SCOPE OF A USAGE OF TRADE MUST BE PROVED AS FACTS.

21-303. MODIFICATION AND RESCISSION.

(A) AN AGREEMENT MODIFYING A CONTRACT SUBJECT TO THIS TITLE NEEDS NO CONSIDERATION TO BE BINDING.

(B) AN AUTHENTICATED RECORD THAT PRECLUDES MODIFICATION OR RESCISSION EXCEPT BY AN AUTHENTICATED RECORD MAY NOT OTHERWISE BE MODIFIED OR RESCINDED. IN A STANDARD FORM SUPPLIED BY A MERCHANT TO A CONSUMER, A TERM REQUIRING AN AUTHENTICATED RECORD FOR MODIFICATION OF THE CONTRACT IS NOT ENFORCEABLE UNLESS THE CONSUMER MANIFESTS ASSENT TO THE TERM.

(C) A MODIFICATION OF A CONTRACT AND THE CONTRACT AS MODIFIED MUST SATISFY THE REQUIREMENTS OF §§ 21-201(A) AND 21-307(G) OF THIS TITLE IF THE CONTRACT AS MODIFIED IS WITHIN THOSE PROVISIONS.

(D) AN ATTEMPT AT MODIFICATION OR RESCISSION WHICH DOES NOT SATISFY SUBSECTION (B) OR (C) OF THIS SECTION MAY OPERATE AS A WAIVER IF § 21-702 OF THIS TITLE IS SATISFIED.

21-304. CONTINUING CONTRACTUAL TERMS.

(A) TERMS OF AN AGREEMENT INVOLVING SUCCESSIVE PERFORMANCES APPLY TO ALL PERFORMANCES, EVEN IF THE TERMS ARE NOT DISPLAYED OR OTHERWISE BROUGHT TO THE ATTENTION OF A PARTY WITH RESPECT TO EACH SUCCESSIVE PERFORMANCE, UNLESS THE TERMS ARE MODIFIED IN ACCORDANCE WITH THIS TITLE OR THE CONTRACT.

(B) IF A CONTRACT PROVIDES THAT TERMS MAY BE CHANGED AS TO FUTURE PERFORMANCES BY COMPLIANCE WITH A DESCRIBED PROCEDURE, A CHANGE PROPOSED IN GOOD FAITH PURSUANT TO THAT PROCEDURE BECOMES PART OF THE CONTRACT IF THE PROCEDURE:

(1) REASONABLY NOTIFIES THE OTHER PARTY OF THE CHANGE; AND

(2) IN A MASS-MARKET TRANSACTION, PERMITS THE OTHER PARTY TO TERMINATE THE CONTRACT AS TO FUTURE PERFORMANCE IF THE CHANGE ALTERS A MATERIAL TERM AND THE PARTY IN GOOD FAITH DETERMINES THAT THE MODIFICATION IS UNACCEPTABLE.

(C) THE PARTIES BY AGREEMENT MAY DETERMINE THE STANDARDS FOR REASONABLE NOTICE UNLESS THE AGREED STANDARDS ARE MANIFESTLY UNREASONABLE IN LIGHT OF THE COMMERCIAL CIRCUMSTANCES.