

21-103. PROSPECTIVE APPLICATION.

THIS TITLE APPLIES TO ANY ELECTRONIC RECORD OR ELECTRONIC SIGNATURE CREATED, GENERATED, SENT, COMMUNICATED, RECEIVED, OR STORED ON OR AFTER THE EFFECTIVE DATE OF THIS TITLE.

21-104. USE OF ELECTRONIC RECORDS AND ELECTRONIC SIGNATURES; VARIATION BY AGREEMENT.

(A) THIS TITLE DOES NOT REQUIRE A RECORD OR SIGNATURE TO BE CREATED, GENERATED, SENT, COMMUNICATED, RECEIVED, STORED, OR OTHERWISE PROCESSED OR USED BY ELECTRONIC MEANS OR IN ELECTRONIC FORM.

(B) (1) THIS TITLE APPLIES ONLY TO TRANSACTIONS BETWEEN PARTIES, EACH OF WHICH HAS AGREED TO CONDUCT TRANSACTIONS BY ELECTRONIC MEANS.

(2) WHETHER THE PARTIES HAVE AGREED TO CONDUCT A TRANSACTION BY ELECTRONIC MEANS IS DETERMINED FROM THE CONTEXT AND SURROUNDING CIRCUMSTANCES, INCLUDING THE PARTIES' CONDUCT.

(3) EXCEPT FOR A SEPARATE AND OPTIONAL AGREEMENT THE PRIMARY PURPOSE OF WHICH IS TO AUTHORIZE A TRANSACTION TO BE CONDUCTED BY ELECTRONIC MEANS, A PROVISION TO CONDUCT A TRANSACTION ELECTRONICALLY MAY NOT BE CONTAINED IN A STANDARD FORM CONTRACT UNLESS THAT PROVISION IS CONSPICUOUSLY DISPLAYED AND SEPARATELY CONSENTED TO.

(4) AN AGREEMENT TO CONDUCT A TRANSACTION ELECTRONICALLY MAY NOT BE INFERRED SOLELY FROM THE FACT THAT A PARTY HAS USED ELECTRONIC MEANS TO PAY AN ACCOUNT OR REGISTER A PURCHASE WARRANTY.

(5) THIS SUBSECTION MAY NOT BE VARIED BY AGREEMENT.

(C) (1) A PARTY THAT AGREES TO CONDUCT A TRANSACTION BY ELECTRONIC MEANS MAY REFUSE TO CONDUCT OTHER TRANSACTIONS BY ELECTRONIC MEANS.

(2) THE RIGHT GRANTED BY THIS SUBSECTION MAY NOT BE WAIVED BY AGREEMENT.

(D) (1) EXCEPT AS OTHERWISE PROVIDED IN THIS TITLE, THE EFFECT OF ANY OF ITS PROVISIONS MAY BE VARIED BY AGREEMENT.

(2) THE PRESENCE IN PROVISIONS OF THIS TITLE 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.

(E) WHETHER AN ELECTRONIC RECORD OR ELECTRONIC SIGNATURE HAS LEGAL CONSEQUENCES IS DETERMINED BY THIS TITLE AND OTHER APPLICABLE LAW.