

21-113. VARIATION BY AGREEMENT; COMMERCIAL PRACTICE.

(A) THE EFFECT OF ANY PROVISION OF THIS TITLE, INCLUDING AN ALLOCATION OF RISK OR IMPOSITION OF A BURDEN, MAY BE VARIED BY AGREEMENT OF THE PARTIES. HOWEVER, THE FOLLOWING RULES APPLY:

(1) OBLIGATIONS OF GOOD FAITH, DILIGENCE, REASONABLENESS, AND CARE IMPOSED BY THIS TITLE MAY NOT BE DISCLAIMED BY AGREEMENT, BUT THE PARTIES BY AGREEMENT MAY DETERMINE THE STANDARDS BY WHICH THE PERFORMANCE OF THE OBLIGATION IS TO BE MEASURED IF THE STANDARDS ARE NOT MANIFESTLY UNREASONABLE.

(2) THE LIMITATIONS ON ENFORCEABILITY IMPOSED BY UNCONSCIONABILITY UNDER § 21-111 OF THIS SUBTITLE AND FUNDAMENTAL PUBLIC POLICY UNDER § 21-105(B) OF THIS SUBTITLE MAY NOT BE VARIED BY AGREEMENT.

(3) LIMITATIONS ON ENFORCEABILITY OF, OR AGREEMENT TO, A CONTRACT, TERM, OR RIGHT EXPRESSLY STATED IN THE SECTIONS OF THIS TITLE LISTED IN THE FOLLOWING SUBPARAGRAPHS MAY NOT BE VARIED BY AGREEMENT EXCEPT TO THE EXTENT PROVIDED IN EACH SECTION:

(A) THE LIMITATIONS ON AGREED CHOICE OF LAW IN § 21-109(A);

(B) THE LIMITATIONS ON AGREED CHOICE OF FORUM IN § 21-110;

(C) THE REQUIREMENTS FOR MANIFESTING ASSENT AND OPPORTUNITY FOR REVIEW IN § 21-112;

(D) THE LIMITATIONS ON ENFORCEABILITY IN § 21-201;

(E) THE LIMITATIONS ON A MASS-MARKET LICENSE IN § 21-209;

(F) THE CONSUMER DEFENSE ARISING FROM AN ELECTRONIC ERROR IN § 21-214;

(G) THE REQUIREMENTS FOR AN ENFORCEABLE TERM IN §§ 21-303(B), 21-307(G), 21-406(B) AND (C), AND 21-804(A);

(H) THE LIMITATIONS ON A FINANCIER IN §§ 21-507 THROUGH 21-511;

(I) THE RESTRICTIONS ON ALTERING THE PERIOD OF LIMITATIONS IN § 21-805(A) AND (B); AND

(J) THE LIMITATIONS ON SELF-HELP REPOSSESSION IN §§ 21-815(B) AND 21-816.

(B) ANY USAGE OF TRADE OF WHICH THE PARTIES ARE OR SHOULD BE AWARE AND ANY COURSE OF DEALING OR COURSE OF PERFORMANCE BETWEEN THE PARTIES ARE RELEVANT TO DETERMINING THE EXISTENCE OR MEANING OF AN AGREEMENT.