

(C) EVEN IF ONE OR MORE TERMS ARE LEFT OPEN OR TO BE AGREED UPON, A CONTRACT DOES NOT FAIL FOR INDEFINITENESS IF THE PARTIES INTENDED TO MAKE A CONTRACT AND THERE IS A REASONABLY CERTAIN BASIS FOR GIVING AN APPROPRIATE REMEDY.

(D) IN THE ABSENCE OF CONDUCT OR PERFORMANCE BY BOTH PARTIES TO THE CONTRARY, A CONTRACT IS NOT FORMED IF THERE IS A MATERIAL DISAGREEMENT ABOUT A MATERIAL TERM, INCLUDING A TERM CONCERNING SCOPE.

(E) IF A TERM IS TO BE ADOPTED BY LATER AGREEMENT AND THE PARTIES INTEND NOT TO BE BOUND UNLESS THE TERM IS SO ADOPTED, A CONTRACT IS NOT FORMED IF THE PARTIES DO NOT AGREE TO THE TERM. IN THAT CASE, EACH PARTY SHALL DESTROY, ALL COPIES OF INFORMATION, ACCESS MATERIALS, AND OTHER MATERIALS RECEIVED OR MADE, AND EACH PARTY IS ENTITLED TO A RETURN WITH RESPECT TO ANY CONTRACT FEE PAID FOR WHICH PERFORMANCE HAS NOT BEEN RECEIVED, HAS NOT BEEN ACCEPTED, OR HAS BEEN REDELIVERED WITHOUT ANY BENEFIT BEING RETAINED. THE PARTIES REMAIN BOUND BY ANY CONTRACTUAL USE TERM ONLY WITH RESPECT TO INFORMATION OR COPIES RECEIVED OR MADE FROM COPIES RECEIVED PURSUANT TO THE AGREEMENT ~~AND NOT DELIVERED OR DELIVERABLE TO THE OTHER PARTY, BUT THE CONTRACTUAL USE TERM DOES NOT APPLY TO INFORMATION OR COPIES PROPERLY RECEIVED OR OBTAINED FROM ANOTHER SOURCE.~~

#### 21-203. OFFER AND ACCEPTANCE IN GENERAL.

UNLESS OTHERWISE UNAMBIGUOUSLY INDICATED BY THE LANGUAGE OR THE CIRCUMSTANCES:

(1) AN OFFER TO MAKE A CONTRACT INVITES ACCEPTANCE IN ANY MANNER AND BY ANY MEDIUM REASONABLE UNDER THE CIRCUMSTANCES.

(2) AN ORDER OR OTHER OFFER TO ACQUIRE A COPY FOR PROMPT OR CURRENT DELIVERY INVITES ACCEPTANCE BY EITHER A PROMPT PROMISE TO SHIP OR A PROMPT OR CURRENT SHIPMENT OF A CONFORMING OR NONCONFORMING COPY. HOWEVER, A SHIPMENT OF A NONCONFORMING COPY IS NOT AN ACCEPTANCE IF THE LICENSOR SEASONABLY NOTIFIES THE LICENSEE THAT THE SHIPMENT IS OFFERED ONLY AS AN ACCOMMODATION TO THE LICENSEE.

(3) IF THE BEGINNING OF A REQUESTED PERFORMANCE IS A REASONABLE MODE OF ACCEPTANCE, AN OFFEROR THAT IS NOT NOTIFIED OF ACCEPTANCE OR PERFORMANCE WITHIN A REASONABLE TIME MAY TREAT THE OFFER AS HAVING LAPSED BEFORE ACCEPTANCE.

(4) IF AN OFFER IN AN ELECTRONIC MESSAGE EVOKES AN ELECTRONIC MESSAGE ACCEPTING THE OFFER, A CONTRACT IS FORMED:

(A) WHEN AN ELECTRONIC ACCEPTANCE IS RECEIVED; OR