

SUPPLY CHAIN DISRUPTION: WHAT ARE MY RIGHTS UNDER THE ILLINOIS COMMERCIAL CODE?

In the weeks since the COVID-19 outbreak took hold in the United States, it's clear that the supply chain in many markets has been massively disrupted. With broad government restrictions impacting onsite business operations, workers becoming sick, factories closing, or even considering shuttering, contracts for the sale of goods are far more complicated than they were just weeks ago.

In Illinois, both buyers and sellers must begin to ask, how does the Illinois Commercial Code (the ICC) affect me in all of this?

Fortunately, there is an answer. In short, the ICC says that a seller has not breached a contract for the sale of goods due to a delay in delivery or non-delivery of goods, if:

- seller can't perform because some fundamental assumption failed – that is, performance was made impracticable by some unforeseeable circumstance that no one could have expected; or
- because seller is complying with a government order or regulation.

Sellers can look at Section 2-615 of the ICC, "Excuse by Failure of Presupposed Conditions."

What does this mean for the seller?

Sellers, in order to avoid legal exposure for your non-performance, you have to follow additional requirements.

1. Where the contingency impacts only part of your ability to perform, you have to allocate production and deliveries among your customers. If you want, you can include regular customers who weren't under contract, and your own requirements for further manufacture.
2. You must notify the buyer that there will be delay or non-delivery; and
3. If an allocation is needed, you must notify the buyer of available estimated quota.

This all seems fine and well for the seller, but what about the buyer?

Buyers, Section 2-616 protects you.

If you receive a Section 2-615 notice from a seller, you have two options:

- you can either terminate the contract; or
- modify the contract by agreeing to take the seller's available quota.

However, if the buyer does not act within 30 days, the contract lapses with respect to any affected deliveries. In other words, the buyer needs to be careful and respond in compliance with the ICC.

This document is not intended to, nor shall it be considered legal advice. If you have any questions regarding your legal rights, you should address the specific matter with your attorney.

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