

Article 48

[Early delivery; delivery of excess quantity]

(1) If the seller delivers the goods before the date fixed, the buyer may take delivery or refuse to take delivery.

(2) If the seller delivers a quantity of goods greater than that provided for in the contract, the buyer may take delivery or refuse to take delivery of the excess quantity. If the buyer takes delivery of all or part of the excess quantity, he must pay for it at the contract rate.

PRIOR UNIFORM LAW

ULIS, articles 29 and 47.

Commentary

1. Article 48 deals with two situations where the buyer may refuse to take delivery of goods which have been placed at his disposal.

Early delivery, paragraph (1)

2. Article 48 (1) deals with the situation where goods have been delivered to the buyer before the delivery date fixed pursuant to article 31. If the buyer were forced to accept these goods, it might cause him inconvenience and expense in storing them longer than anticipated. Furthermore, if the contract links the day payment is due to the day delivery is made, early delivery will force early payment with consequent interest expense. Therefore, the buyer is given the choice of taking delivery of the goods or refusing to take delivery of them when the seller delivers them prior to the delivery date.

3. The buyer's right to take delivery or to refuse to take delivery is exercisable upon the fact of early delivery. It does not depend on whether early delivery causes the buyer extra expense or inconvenience.¹

¹ Nevertheless, the buyer must have a reasonable commercial need to refuse to take delivery since article 6 requires the observance of good faith in international trade.

4. However, where the buyer does refuse to take delivery of the goods under article 48 (1), according to article 75 (2) he will still be bound to take possession of them on behalf of the seller if the following four conditions are met: (1) the goods have been placed at his disposal at their place of destination, (2) he can take possession without payment of the price, e.g., the contract of sale does not require payment in order for the buyer to take possession of the documents covering the goods, (3) taking possession would not cause the buyer unreasonable inconvenience or unreasonable expense, and (4) neither the seller nor a person authorized to take possession of the goods on his behalf is present at the destination of the goods.

5. If the buyer refuses to take the early delivery, the seller is obligated to redeliver the goods at the time for delivery under the contract.

6. If the buyer does take early delivery of the goods, he may claim from the seller for any damages he may have suffered unless, under the circumstances, the acceptance of early delivery amounts to an agreed modification of the contract pursuant to article 27.²

Excess quantity, paragraph (2)

7. Article 48 (2) deals with the situation where an excess quantity of goods has been delivered to the buyer.

8. Unless there are other reasons which justify the buyer's refusal to take delivery, the buyer must accept at least the quantity specified in the contract. In respect of the excess amount, the buyer may either refuse to take delivery or he may take delivery of some or all of it. If the buyer refuses to take delivery of the excess quantity, the seller is liable for any damages suffered by the buyer. If the buyer takes delivery of some or all of the excess quantity he must pay for it at the contract rate.

9. If it is not feasible for the buyer to reject only the excess amount, as where the seller tenders a single bill of lading covering the total shipment in exchange for payment for the entire shipment, the buyer may avoid the contract if the delivery of such an excess quantity constitutes a fundamental breach. If the delivery of the excess quantity does not constitute a fundamental breach or if for commercial reasons the buyer is impelled to take delivery of the shipment, he may claim any damages he has suffered as a result.

² Article 48 (1) does not refer to the buyer's right to seek damages. However, the buyer's right to damages is a general right under article 41 (1) (b).