



Ohio Revised Code

Section 1302.92 Liquidation or limitation of damages - deposits - UCC 2-718.

Effective: July 01, 1962

Legislation: Senate Bill 5 - 104th General Assembly

(A) Damages for breach by either party may be liquidated in the agreement but only at an amount which is reasonable in the light of the anticipated or actual harm caused by the breach, the difficulties of proof of loss, and the inconvenience or non-feasibility of otherwise obtaining an adequate remedy. A term fixing unreasonably large liquidated damages is void as a penalty.

(B) Where the seller justifiably withholds delivery of goods because of the buyer's breach, the buyer is entitled to restitution of any amount by which the sum of his payments exceeds:

(1) the amount to which the seller is entitled by virtue of terms liquidating the seller's damages in accordance with division (A) of this section, or

(2) in the absence of such terms, twenty per cent of the value of the total performance for which the buyer is obligated under the contract or five hundred dollars, whichever is smaller.

(C) The buyer's right to restitution under division (B) of this section is subject to offset to the extent that the seller establishes:

(1) a right to recover damages under the provisions of sections 1302.01 to 1302.98, inclusive, of the Revised Code other than division (A) of this section, and

(2) the amount or value of any benefits received by the buyer directly or indirectly by reason of the contract.

(D) Where a seller has received payment in goods their reasonable value or the proceeds of their resale shall be treated as payments for the purposes of division (B) of this section; but if the seller has notice of the buyer's breach before reselling goods received in part performance, his resale is subject to the conditions laid down in section 1302.80 of the Revised Code on resale by an aggrieved seller.
