

# A New Commodity in a Traditional Box: Hemp's Commodity Status Demands Appropriate Attention

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The United States government federally decriminalized hemp on December 20, 2018, making hemp biomass—the raw, harvested agricultural plant—a commodity like any other crop, such as corn, wheat, or soybeans. The transition of hemp from an unlawful item to a traditional agricultural commodity is critical, as commodities are considered "goods" under the default commercial laws of many states, including North Carolina.

**The treatment of hemp as a 'good' triggers a legal structure that those in the business of buying and selling hemp biomass ignore at their own peril.**

## **Goods v. Services**

In the United States, there are typically two forms of law: common law, which is made up of traditional legal concepts that are recognized and applied by the courts, and statutory law, which is comprised of codified laws enacted by a legislative body.

In broad strokes, contracts for services, such as accounting, freight, or construction, are governed by common law. Conversely, contracts for the sale of goods, such as vehicles, consumer products, and such are governed by statutes. As have most states, North Carolina has adopted a version of the Uniform Commercial Code ("UCC"). The UCC is a statutory scheme that provides a default structure for many types of commercial transactions, including, most relevantly here, the sale of goods.

Legally speaking, what is a "good"? North Carolina's version of the UCC defines "goods" as "all things...which are movable at the time of identification to the contract for sale other than the money in which the price is to be paid... [and] also includes the unborn young of animals and growing crops." Like other agricultural commodities, hemp biomass falls under this definition. As a result, North Carolina's UCC—including all of its default rules—applies to the sale of hemp biomass.

## **Beware the Default Rules**

The default rules contained in North Carolina's version of the UCC cover everything from contract formation requirements to special definitions for common sales terms to remedies available to disgruntled buyers and sellers. This article focuses on a single example to illustrate the importance of sellers and buyers being aware

of and prepared to contract around the default rules or risk the consequences of their application.

By default under North Carolina's UCC, a seller impliedly warrants that the goods will be fit for the particular purpose for which they are being sold. This warranty exists whenever there is a sale of goods unless and until it is modified or disclaimed in writing in a specific way detailed in the statutes. This means that if there is a problem with the hemp biomass and the seller did not modify or properly disclaim the warranty, the disgruntled buyer may have an action for damages based on the sellers' breach of the warranty.

Understanding this default rule and how to avoid its application is critical for sellers, while understanding this rule and how to enforce it is critical for buyers. This example is one of many of how North Carolina's UCC can impact the sale and purchase of hemp biomass.

## **Conclusion**

Like with any commercial transaction, risk management is key when selling and buying hemp biomass. A solid step for hemp biomass sellers and buyers towards effectively managing their respective risks is to have an appreciation and understanding of the reach and impact of North Carolina's UCC on the sale and purchase of hemp biomass and how that understanding should shape the contracts they enter.

Ward and Smith's Hemp Law attorneys assist, counsel, and represent all types of entities, including hemp growers, breeders, processors, and retailers, in all stages. Contact us today.

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