

1 **13-825. Ambiguity in term or terms; general rule of interpretation.**

2 There is a dispute as to the meaning of the following term[s] in the contract: [~~Fill in term~~
3 ~~or terms~~] (*Fill in term or terms*). [~~If you find that the parties, at the time the contract was made,~~
4 ~~had the same understanding of [this] [these] term[s], then you shall give that meaning to the~~
5 ~~term[s]. Where, however, the parties at the time the contract was made had different meanings in~~
6 ~~mind about [this] [these] term[s], then y~~] You shall give the term[s] that meaning which you find
7 to be most reasonable, taking into consideration all the circumstances, including the following:

8 [the intentions of the parties];

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10 [the words that the parties used];

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12 [the purposes the parties sought to achieve];

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14 [custom in the trade];

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16 [the parties' course of dealing];

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18 [the parties' course of performance];

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20 [whether a party, at the time the contract was entered into, knew or should have

21 known that the other party interpreted the term[s] differently[-]].

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USE NOTES

~~[This instruction should be given together with UJI 13-804 NMRA, as well as together with any applicable instruction from UJI 13-826, 13-827 or 13-828 NMRA. The term or terms in dispute should be inserted after the colon in the first sentence. Before a court may submit a question of interpretation of a contract term or terms to the jury, however, the court must make the threshold determinations that there is ambiguity as to the meaning of the term or terms at issue and that the resolution of any ambiguity requires extrinsic evidence. These threshold issues are ones of law for the court to determine. If the court determines that ambiguity exists, then extrinsic evidence, which is helpful in resolving the ambiguity, is admissible to demonstrate the parties' intentions and the surrounding circumstances and the question of interpretation may be submitted, where appropriate, to the jury. If the court finds no ambiguity, however, then the unambiguous meaning of the term or terms, as determined by the court, is controlling, and no question of interpretation is submitted to the jury. The bracketed language at the end of the instruction should be used where appropriate from the evidence.]~~

A court must make a preliminary determination as a matter of law that a contract contains an ambiguity before this instruction is given. If such a determination is made, the term(s) in dispute should be inserted after the colon in the first sentence of the instruction. The bracketed language regarding the circumstances that the jury may consider in resolving the ambiguity should be included as the evidence in the case warrants. The evidence also may warrant the giving of additional instructions, including UJI 13-804 NMRA (Contract; intention of the

1 parties); UJI 13-826 NMRA (Custom in the trade); UJI 13-827 NMRA (Course of dealing); and
2 UJI 13-828 NMRA (Course of performance).

3 [Adopted, effective November 1, 1991; as amended by Supreme Court Order No. 20-8300-006,
4 effective for all cases pending or filed on or after December 31, 2020.]

5 **Committee commentary.** — ~~[The court’s function is to interpret and enforce the~~
6 ~~contract as made by the parties with reference to the intent of the parties. *CC Housing Corp. v.*~~
7 ~~*Ryder Truck Rental*, 106 N.M. 577, 746 P.2d 1109 (1987); *Segura v. Kaiser Steel Corp.*, 102~~
8 ~~N.M. 535, 697 P.2d 954 (Ct. App. 1984); *Manuel Lujan Insurance, Inc. v. Jordan*, 100 N.M.~~
9 ~~573, 673 P.2d 1306 (1983); *Schaefer v. Hinkle*, 93 N.M. 129, 597 P.2d 314 (1979). — A~~
10 ~~contractual term is ambiguous “only if it is reasonably and fairly susceptible of different~~
11 ~~constructions.” *Levenson v. Mobley*, 106 N.M. 399, 401, 744 P.2d 174, 176 (1987).~~
12 ~~Disagreement between the parties as to what the terms of the contract mean does not in itself~~
13 ~~establish ambiguity. *Id.* Once it has been determined that a contract is ambiguous and its~~
14 ~~construction depends on extrinsic facts and circumstances, terms of a contract become questions~~
15 ~~of fact for triers of fact. *Valdez v. Cillessen & Son, Inc.*, 105 N.M. 575, 734 P.2d~~
16 ~~1258 (1987); *Mobile Investors v. Spratte*, 93 N.M. 752, 605 P.2d 1151 (1980); *Schaeffer v.*~~
17 ~~*Kelton*, 95 N.M. 182, 619 P.2d 1226 (1980); *Young v. Thomas*, 93 N.M. 677, 604 P.2d~~
18 ~~370 (1979).]~~

19 Whether a contract contains an ambiguity presents a preliminary question of law for a
20 court to decide. *Mark V, Inc. v. Mellekas*, 1993-NMSC-001, ¶ 12, 114 N.M. 778, 845 P.2d 1232;
21 *see also C.R. Anthony Co. v. Loretto Mall Partners*, 1991-NMSC-070, ¶ 17, 112 N.M. 504, 817

1 P.2d 238. “If the court determines that the contract is reasonably and fairly susceptible of
2 different constructions, an ambiguity exists.” *Mark V, Inc.*, 1993-NMSC-001, ¶ 12.

3 Once a contract is found to be ambiguous, the meaning to be assigned to the unclear
4 term(s) presents a question of fact. Id. If evidence is proffered regarding the facts and
5 circumstances surrounding the contract and the evidence is in dispute, turns on witness
6 credibility, or is susceptible to conflicting inferences, the meaning must be resolved by a jury (or
7 the court as the fact finder in the absence of a jury). Id. “[T]he [jury] may consider extrinsic
8 evidence of the language and conduct of the parties and the circumstances surrounding the
9 agreement, as well as oral evidence of the parties’ intent.” *Id.* ¶ 13; *see also Allsup’s*
10 *Convenience Stores, Inc. v. N. River Ins. Co.*, 1999-NMSC-006, ¶ 31, 127 N.M. 1, 976 P.2d 1
11 (showing that a jury also may consider evidence regarding the purposes the parties sought to
12 achieve, trade custom, course of dealing, and course of performance). The jury must decide
13 whether the proffered evidence “supports one interpretation rather than the other.” *McNeill v.*
14 *Rice Eng’g & Operating, Inc.*, 2003-NMCA-078, ¶ 13, 133 N.M. 804, 70 P.3d 794; *cf. Mark V,*
15 *Inc.*, 1993-NMSC-001, ¶ 13 (Under the parol evidence rule, “evidence should not be received
16 when its purpose or effect is to contradict or vary the agreement’s terms.”).

17 The jury must resolve the ambiguity before deciding breach and damages. *C.R. Anthony*
18 *Co.*, 1991-NMSC-070, ¶ 11.

19 [As amended by Supreme Court Order No. 20-8300-006, effective for all cases pending or filed
20 on or after December 31, 2020.]