13-826. Custom in the trade.

A custom in the trade is any manner of dealing that is commonly followed in a place or trade so as to create a reasonable expectation that it will be followed with respect to the transaction between the parties.

USE NOTES

This instruction should be [used,]given in conjunction with UJI 13-825 NMRA when [a question of interpretation exists as to a term or terms in a contract and there is evidence submitted concerning custom in the trade]there is a dispute as to the meaning of an ambiguous term or terms in a contract and there has been a sufficient showing of a trade custom to submit the evidence to the jury to consider in resolving the dispute.

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

Committee commentary. — [Evidence of trade custom is admissible to determine the meaning of disputed terms in the contract. This instruction should not be considered as having created any duty independent of the contract.

The existence and scope of the trade custom must be proved as facts, and the issue should not be submitted to the jury unless there is evidence to make a triable issue. While a practice, in order to be considered “custom,” must be sufficiently common so as to justify the expectation that it will be followed, it is not necessary that the practice be long-standing, universal, or without-dissent.]
Evidence of a trade custom is admissible for the factfinder to consider in determining the
meaning of an ambiguous term in a contract. See Allsup’s v. Convenience Stores, Inc. v. N. River
Ins. Co., 1999-NMSC-006, ¶ 31, 127 N.M. 1, 976 P.2d 1. A trade custom may be proved through
witness testimony and other evidence. Romero v. H.A. Lott, Inc., 1962-NMSC-037, ¶ 12, 70
N.M. 40, 369 P.2d 777; see also Briggs v. Zia Co., 1957-NMSC-074, ¶¶ 6-10, 63 N.M. 148, 315
P.2d 217. Guidance regarding the roles of the trial court and the jury when a party seeks to rely
on evidence of trade custom may be found in 12 Richard A. Lord, Williston on Contracts § 34:19

[Amended by Supreme Court Order No. 18-8300-013, effective for all cases pending or filed on
or after December 31, 2018; as amended by Supreme Court Order No. 20-8300-006, effective for
all cases pending or filed on or after December 31, 2020.]