

1 **13-826. Custom in the trade.**

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

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USE NOTES

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

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

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

17 ~~The existence and scope of the trade custom must be proved as facts, and the issue should~~
18 ~~not be submitted to the jury unless there is evidence to make a triable issue. While a practice, in~~
19 ~~order to be considered “custom,” must be sufficiently common so as to justify the expectation~~
20 ~~that it will be followed, it is not necessary that the practice be long standing, universal, or~~
21 ~~without dissent.]~~

1 Evidence of a trade custom is admissible for the factfinder to consider in determining the
2 meaning of an ambiguous term in a contract. See *Allsup's v. Convenience Stores, Inc. v. N. River*
3 *Ins. Co.*, 1999-NMSC-006, ¶ 31, 127 N.M. 1, 976 P.2d 1. A trade custom may be proved through
4 witness testimony and other evidence. *Romero v. H.A. Lott, Inc.*, 1962-NMSC-037, ¶ 12, 70
5 N.M. 40, 369 P.2d 777; see also *Briggs v. Zia Co.*, 1957-NMSC-074, ¶¶ 6-10, 63 N.M. 148, 315
6 P.2d 217. Guidance regarding the roles of the trial court and the jury when a party seeks to rely
7 on evidence of trade custom may be found in 12 Richard A. Lord, *Williston on Contracts* § 34:19
8 (4th ed. 2012).
9 [Amended by Supreme Court Order No. 18-8300-013, effective for all cases pending or filed on
10 or after December 31, 2018; as amended by Supreme Court Order No. 20-8300-006, effective for
11 all cases pending or filed on or after December 31, 2020.]