

eral contract law. Greenwood further argues that the contract is not for the sale of goods; it is a competitively-bid construction contract for the specially-designed system. Greenwood also argues that this Court's mixed-transactions test in *J.O. Hooker & Sons, Inc. v. Roberts Cabinet Co., Inc.*, 683 So.2d 396, 400 (Miss.1996) applies. In *J.O. Hooker* this Court stated:

[W]hether or not the contract should be interpreted under the UCC or general contract law should depend upon the nature of the contract and also upon whether the dispute in question primarily concerns the goods furnished or the services rendered under the contract.

*1111 *Id.* (emphasis in original); see also *Anderson Const. Co., Inc. v. Lyon Metal Products, Inc.*, 370 So.2d 935, 938 (Miss.1979).

¶ 25. Greenwood asserts that only forty percent of the contract deals with hardware, while sixty percent deals with services.^{FN5} Greenwood further asserts that the dispute is over the design of the software and the testing that occurred.

FN5. Greenwood's brief states: "Only 40% of the contract price related to Triconex hardware, with the remaining 60% covering the following 'service' categories: site investigations; initial design; mechanical cabinet assembly; electrical cabinet assembly; specifications; software development; factory acceptance test; field design package; a second factory acceptance test; site acceptance test; start up and commissioning; and project documentation."

¶ 26. In accordance with *J.O. Hooker*, we find that the UCC does not apply. Using this Court's mixed-transactions test, the dispute in the case sub judice clearly concerns testing of the system, which is a service. Additionally, this Court finds that the contract as a whole, as evidenced by Greenwood's demonstration that sixty percent of the contract related to services, was for the specialized design of the turbine by Triconex. Therefore, we find that this issue is without merit.

III. WHETHER OBTAINING ASSISTANCE FROM

GREENWOOD DURING ON-SITE TESTING OF THE CONTROL SYSTEM WAS A BREACH OF CONTRACT BY TRICONEX.

[8] ¶ 27. Triconex argues that the contract in question provided that "[a]t times the Owner may provide personnel to assist the Contractor's field service personnel during on-site testing." Triconex further argues that Greenwood did not object to providing Shaw, and that this type of assistance from Shaw is customary in the industry.

¶ 28. Greenwood argues that the trial judge held that Triconex breached the contract not by requesting assistance from Shaw, but by installing a defective control system. Greenwood further argues that the contract clearly stated that Triconex had sole responsibility for the testing. Contract 103, Article 6, stated:

B. LABOR, MATERIALS AND EQUIPMENT:

2. Unless otherwise specified in the General Requirements, *Contractor shall furnish and assume full responsibility for all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, telephone, temporary facilities and all other facilities and incidentals necessary for the furnishing, performance, testing, start-up and completion of the Work.*

(Emphasis added). Additionally, the contract states:

B. On-Site Testing:

....

3. Provide all labor and technical direction to test and start-up all combustion turbine-generator systems.

....

7. Service personnel shall report with any test equipment or tools required to place the control equipment and systems into operation.

Greenwood also argues that for Triconex to rely upon the provision providing that the "Owner may provide