



Gemini Pro 2.5 #8

On July 1 Buyer sent the following telegram to Seller: "Have customers for salt and need carload immediately. Will you supply carload at \$2.40 per cwt?" Seller received the telegram the same day. On July 12 Seller sent Buyer the following telegram, which Buyer received the same day: "Accept your offer carload of salt, immediate shipment, terms cash on delivery." On July 13 Buyer sent by Air Mail its standard form "Purchase Order" to Seller. On the face of the form Buyer had written that it accepted "Seller's offer of July 12" and had written "One carload and \$2.40 per cwt." in the appropriate spaces for quantity and price. Among numerous printed provisions on the reverse of the form was the following: "Unless otherwise stated on the face hereof, payment on all purchase orders shall not be due until 30 days following delivery." There was no statement on the face of the form regarding time of payment. Later on July 13 another party offered to sell Buyer a carload of salt for \$2.30 per cwt. Buyer immediately wired Seller: "Ignore purchase order mailed earlier today; your offer of July 12 rejected." This telegram was received by Seller on the same day (July 13). Seller received Buyer's purchase order in the mail the following day (July 14). Briefly analyze each of the items of correspondence in terms of its legal effect and indicate what the result will be in Seller's action against Buyer for breach of contract.

Gemini:

A contract was formed between the Buyer and Seller. The Seller will succeed in a lawsuit against the Buyer for breach of contract.

The legal analysis of each communication is as follows:

July 1: Buyer's Initial Telegram

Buyer's telegram stating "Will you supply carload at \$2.40 per cwt?" is not a formal offer. The language "Will you..." is more of an **inquiry or an invitation to**

negotiate rather than a definite promise to purchase. It invites the Seller to make an offer.

July 12: Seller's Response Telegram

Seller's telegram stating "Accept your offer... immediate shipment, terms cash on delivery" is the first legally binding **offer**. Although it uses the word "accept," it cannot be an acceptance because Buyer's July 1 telegram was not an offer. This communication contains specific terms (quantity, price, delivery, payment) and creates the power of acceptance in the Buyer.

July 13: Buyer's Purchase Order

This purchase order is an **acceptance** that forms a contract. Since this is a transaction for the sale of goods between merchants, the Uniform Commercial Code (UCC) applies, specifically § 2-207 (the "battle of the forms").

- **Contract Formation:** Under UCC § 2-207(1), a document intended as an acceptance creates a contract even if it contains different or additional terms. Buyer's purchase order explicitly accepts Seller's offer and thus forms a contract.
- **Conflicting Terms:** The purchase order's printed term of "payment... 30 days following delivery" directly conflicts with the Seller's offer term of "cash on delivery." Under the UCC's "**knockout rule**," conflicting terms cancel each other out. The contract would then include the terms they agreed on, and any gaps are filled by UCC default provisions. The UCC's default for payment (§ 2-310(a)) is payment at the time and place of delivery, which aligns with the Seller's original offer.

The **Mailbox Rule** dictates that an acceptance is effective upon dispatch. Therefore, a binding contract was formed on the morning of July 13, when Buyer mailed the purchase order.

July 13: Buyer's Rejection Telegram

Buyer's telegram attempting to reject the offer is legally ineffective. Because a contract was already formed when the purchase order was mailed, the Buyer can no longer reject the offer. This telegram instead acts as an **anticipatory**

repudiation—a clear statement that the Buyer will not perform its duties under the existing contract.

Conclusion

The Seller will win a breach of contract action against the Buyer. A valid contract was formed on July 13 when the Buyer dispatched its purchase order. The contract's terms are for one carload of salt at \$2.40 per cwt, with payment due on delivery. The Buyer's subsequent telegram was an anticipatory breach of that contract, entitling the Seller to damages.

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