



# Gemini Pro 2.5 #7

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.

Show thinking

A contract was formed, and the Buyer is in breach. The **Seller will be successful** in a breach of contract action against the Buyer.

The outcome is determined by applying the Uniform Commercial Code (UCC), which governs contracts for the sale of goods (in this case, salt). The legal effect of each communication is as follows.

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## July 1: Buyer's Telegram

- **Legal Effect: Invitation to Offer**

The Buyer's first telegram ("Will you supply carload at \$2.40 per cwt?") is not an offer. It is phrased as an inquiry or a solicitation of an offer. It lacks the clear promissory intent required to be an offer; it simply invites the Seller to make an offer on the proposed terms.

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## July 12: Seller's Telegram

- **Legal Effect: Offer**

The Seller's response ("Accept your offer... immediate shipment, terms cash on delivery") constitutes a **valid offer**. Although it uses the word "accept," it cannot legally be an acceptance since the Buyer's July 1 telegram was not an offer. This communication clearly expresses the Seller's willingness to sell a specific quantity ("carload") at a specific price ("\$2.40 per cwt") with defined terms for shipment and payment.

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## July 13: Buyer's Purchase Order

- **Legal Effect: Acceptance and Contract Formation**

The Buyer's Purchase Order, mailed on July 13, acts as an **acceptance** of the Seller's July 12 offer. Under the **mailbox rule**, an acceptance is effective upon dispatch (when it was mailed), not upon receipt. Therefore, a **contract was formed on the morning of July 13** when the Buyer mailed this form.

This situation invokes the UCC's "Battle of the Forms" rule (§ 2-207) because the acceptance (the Purchase Order) contains a term regarding payment ("30 days following delivery") that is different from the offer's term ("cash on delivery").

Under UCC § 2-207, an acceptance with different or additional terms still creates a contract. Between merchants, the new terms become part of the contract *unless* they **materially alter** the original offer. A change in payment terms from cash on delivery to a 30-day credit period is a significant shift in financial risk and is considered a **material alteration**. Therefore, the Buyer's 30-day payment term is excluded, and the contract is formed on the terms where the documents agree, with the conflicting payment term being supplied by the UCC's "gap-filler" provisions. The relevant UCC provision would require payment at the time and place of delivery, which aligns with the Seller's original offer.

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## July 13: Buyer's Rejection Telegram

- **Legal Effect: Ineffective Rejection; Repudiation of Contract**

This telegram is an attempt to reject the Seller's offer, but it is **ineffective** because a contract had already been formed earlier that day when the Buyer mailed the Purchase Order. An acceptance is effective on dispatch (mailbox rule), while a rejection is effective only on receipt. Since the acceptance was effective *before* the rejection was received, the rejection fails to prevent contract formation.

Instead, this telegram functions as a **repudiation**, which is a clear indication that the Buyer will not perform its obligations under the newly formed contract. This repudiation constitutes a **breach of contract**.

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## Conclusion

A valid contract was formed on July 13 when the Buyer dispatched its Purchase Order. The Buyer's subsequent telegram, while intended as a rejection, was legally a repudiation of that existing contract. The Seller is therefore entitled to sue for breach of contract and can recover damages as provided by the UCC.

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