



Gemini Pro 2.5 #9

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.

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A contract was formed between the Buyer and Seller, which the Buyer subsequently breached. In a lawsuit, the **Seller will win**. The Buyer's attempt to reject the offer came after their acceptance was already effective.

Here is a brief analysis of each communication and the final legal outcome.

July 1: Buyer's Initial Telegram

The Buyer's first telegram ("Will you supply carload at \$2.40 per cwt?") was **not an offer**. The language "Will you..." is interrogatory. It does not express a definite willingness to be bound but rather solicits an offer from the Seller. Legally, this is considered an **inquiry** or an invitation to negotiate.

July 12: Seller's Response

The Seller's telegram ("Accept your offer... terms cash on delivery.") was a legally effective **offer**. Although it used the word "accept," it cannot be an acceptance because there was no offer to accept from July 1. Instead, this communication manifested Seller's intent to be bound by definite terms:

- **Quantity:** One carload
- **Subject:** Salt
- **Price:** \$2.40 per cwt (impliedly adopted from Buyer's inquiry)
- **Payment:** Cash on delivery

This offer was communicated to the Buyer, giving the Buyer the power to form a contract by accepting it.

July 13: Buyer's Purchase Order

The Buyer's Purchase Order, mailed on July 13, was an **acceptance** that created a contract.

- **Mailbox Rule:** Under the "mailbox rule," an acceptance sent by mail is legally effective upon **dispatch** (when it is mailed), not upon receipt. Therefore, a binding contract was formed on the morning of July 13 when the Buyer mailed the Purchase Order.
- **Battle of the Forms (UCC § 2-207):** The contract involves the sale of goods (salt), so the Uniform Commercial Code (UCC) applies. The Buyer's form included a payment term ("30 days following delivery") that was different from the Seller's offer ("cash on delivery"). This situation is known as the "battle of the forms."
 - Under UCC § 2-207, a document can still operate as an acceptance even if it states terms additional to or different from those offered.

- The conflicting payment terms would be resolved by the "knock-out rule," which is the majority approach. Under this rule, the contradictory terms cancel each other out, and a UCC gap-filler provision is used. The relevant UCC provision, § 2-310(a), states that payment is due at the time and place of delivery.
 - Therefore, the contract was formed with the Seller's original term of **cash on delivery**. The Buyer's 30-day payment term is not part of the contract.
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July 13: Buyer's Rejection Telegram

The Buyer's telegram attempting to reject the offer ("Ignore purchase order... your offer of July 12 rejected.") was **ineffective as a rejection** because a contract had already been formed earlier that day when the Purchase Order was mailed.

Instead, this telegram served as an **anticipatory repudiation**. It was a clear and unequivocal statement from the Buyer that it would not perform its obligations under the contract. This repudiation constitutes an immediate breach of contract.

Conclusion: Seller's Action Against Buyer

The Seller will prevail in an action for breach of contract. A valid contract was formed on July 13 when the Buyer mailed its Purchase Order. The Buyer's subsequent telegram on the same day was not a rejection but an anticipatory repudiation of the already-formed contract. This breach gives the Seller the right to sue for damages.