On June 1, a wholesaler received a purchase-order form from a retailer that was a new customer, in which the retailer ordered 1,000 anti-recoil widgets for delivery no later than August 30 at a delivered total price of $10,000, as quoted in the wholesaler's current catalog. Both parties are merchants with respect to widgets of all types. On June 2, the wholesaler mailed to the retailer its own form, across the top of which the wholesaler's president had written, "We are pleased to accept your order." This form contained the same terms as the retailer's form except for an additional printed clause in the wholesaler's form that provided for a maximum liability of $100 for any breach of contract by the wholesaler.

As of June 5, when the retailer received the wholesaler's acceptance form, which of the following is an accurate statement concerning the legal relationship between the retailer and wholesaler?

A. There is an enforceable contract whose terms do not include the liability-limitation clause in the wholesaler's form.

B. There is an enforceable contract whose terms include the liability-limitation clause in the wholesaler's form, because liquidation of damages is expressly authorized by the Uniform Commercial Code.

C. There is no contract, because the liability-limitation clause in the wholesaler's form is a material alteration of the retailer's offer.

D. There is no contract, because the retailer did not consent to the liability-limitation clause in the wholesaler's form.

Explanation:

Effect of new terms in reply to offer

Common law (mirror-image)		Offer rejected Reply treated as counteroffer
UCC (battle of the forms)	≥1 party is nonmerchant	Offer accepted unless reply expressly required assent to new/revised terms New/revised terms treated as proposed additions to contract
	All parties are merchants	Offer accepted unless reply expressly required assent to new/revised terms New terms become part of contract unless: offer expressly required assent to new terms new terms materially alter contract *or* offeror objects within reasonable time Revised terms follow split authority & are either: treated as new terms *or* cancelled out under knockout rule

UCC = Uniform Commercial Code.

Contracts for the sale of goods are governed by Article 2 of the **Uniform Commercial Code** (UCC), which follows the **battle-of-the-forms rule** for contract formation. Under this rule, an enforceable contract is created once there has been an **offer** and a reasonable **manifestation of acceptance** (even one that includes new terms). But in a contract between **merchants**, the **new terms will fall away**—ie, will *not* become part of the contract—if:

the offer expressly required **assent to new terms** (and the offeror does not assent)
the offeror **objects** within a **reasonable time** *or*
the new terms **materially alter** the contract (eg, change a party's risks or remedies).

Here, the retailer sent a purchase order for 1,000 widgets. The wholesaler then mailed an acceptance form, which created an enforceable contract despite containing an additional clause limiting the wholesaler's liability for breach to $100 **(Choice C)**. The retailer's order (ie, offer) did not expressly require consent to new terms, and the retailer did not object to the new term. But since the new term materially alters the contract by limiting the retailer's remedy for breach, the contract does not include the liability-limitation clause.

(Choice B) The UCC expressly authorizes liquidation of damages—ie, contractually stipulating to a reasonable estimate of the actual damages to be recovered if one party

breaches. But $100 is not a reasonable estimate for a $10,000 sales contract. And even if it were, the new liability-limitation clause still materially alters the contract.

(Choice D) Had the retailer's offer expressly required assent to new terms, the retailer's failure to consent would prevent the new term from becoming part of the contract. But it would not prevent contract formation.

Educational objective:

Under the UCC's battle-of-the-forms rule, an acceptance is effective even if it contains new terms. But in a contract between merchants, the new terms fall away if (1) the offer expressly required assent to new terms and no assent was given, (2) the offeror objects within a reasonable time, or (3) the new terms materially alter the contract.

References

U.C.C. § 2-207 (Am. Law Inst. & Unif. Law Comm'n 2019) (battle-of-the-forms rule).