A computer company contracted in writing with a bank to sell and deliver to the bank a mainframe computer using a new type of technology, then under development but not perfected by the company, at a price substantially lower than that of a similar computer using current technology. The contract's delivery term was "F.O.B. bank, on or before July 31." The company tendered the computer to the bank on August 15. The bank rejected it because of the delay.

If the company sues the bank for breach of contract, which of the following facts, if proved, will best support a recovery by the company?

A. A usage in the relevant trade allows computer sellers a 30-day leeway in a specified time of delivery, unless the usage is expressly negated by the contract.

B. On the assumption that the bank was getting a "super deal" for its money, the company believed the bank would not reject the computer because of the late tender of delivery.

C. The company's delay in tender was caused by a truckers' strike.

D. The delay did not materially harm the bank.

Explanation:

UCC parol evidence rule

	Description		Priority of evidence
Inadmissible	Prior/contemporaneous agreements that contradict written contract		Express terms always control
Admissible	**Course of performance**	Sequence of conduct under contract involving repeated occasions for performance	Course of performance > course of dealing & trade usage
	Course of dealing	Sequence of conduct pertaining to previous contracts	Course of dealing > trade usage
	Trade usage	Regular practice or method of dealing in that particular business/industry	N/A

UCC = Uniform Commercial Code.

Contracts for the sale of goods (eg, computers) are governed by Article 2 of the Uniform Commercial Code (UCC). Under the **UCC parol evidence rule**, evidence of trade usage can be used to **explain or supplement** the **express terms** of a final, written contract so long as the evidence is **reasonably consistent** with (ie, not negated by) those terms. **Trade usage** refers to a **practice or method of dealing** that is observed with such **regularity in the industry** that the parties to a contract would be expected to observe it.

Here, the computer company and bank's written contract was silent as to leeway for delivery. As a result, evidence of trade usage can be used to supplement the contract. There is a practice in the relevant trade that allows computer sellers a 30-day leeway in a specified time of delivery. Since this fact would show that the bank breached the contract by rejecting the computer because of a 15-day delay, it would best support a recovery by the company.

(Choice B) The computer company's belief that the bank would not reject the computer for late delivery because it was getting a "super deal" for its money is irrelevant.

(Choice C) A seller's delay in delivery (or nondelivery) is not a breach if performance has become commercially impracticable because of unforeseen circumstances not within the contemplation of the parties when the contract was made. But a truckers' strike is *not* an unforeseen circumstance that would trigger impracticability.

(Choice D) Under the UCC's perfect-tender rule, the goods and their delivery must conform to the contract in every respect. Therefore, the fact that the computer company's delay did not materially harm the bank would not support a recovery by the company.

Educational objective:

The UCC parol evidence rule allows the use of trade-usage evidence to explain or supplement the terms of a final, written contract so long as the evidence is reasonably consistent with, not negated by, those terms.

References

- U.C.C. § 2-202 (Am. Law Inst. & Unif. Law Comm'n 2020) (trade usage is admissible to explain or supplement contract's terms).

- U.C.C. § 1-303 (Am. Law Inst. & Unif. Law Comm'n 2020) (definition of trade usage).