Under a written agreement, a pastry supplier promised to sell its entire output of baked buns at a specified unit price to a retailer, for one year. The retailer promised not to sell any other supplier's baked buns.

Shortly after making the contract, and before the supplier had tendered any buns, the retailer decided that the contract had become undesirable because of a sudden, sharp decline in its customers' demand for baked buns. It renounced the agreement, and the supplier sues for breach of contract.

Which of the following will the court probably decide?

A. The retailer wins, because mutuality of obligation was lacking in that the retailer made no express promise to buy any of the supplier's baked buns.

B. The retailer wins, because the agreement was void for indefiniteness of quantity and total price for the year involved.

C. The supplier wins, because the retailer's promise to sell the supplier's baked buns exclusively, if it sold any such buns at all, implied a promise to use its best efforts to sell the supplier's one-year output of baked buns.

D. The supplier wins, because under the applicable law both parties to a sale-of-goods contract impliedly assume the risk of price and demand fluctuations.

Explanation:

Output v. Requirements contracts

(UCC § 2-306)

Output	Contract for sale of as many goods as seller *produces* during specified period
Requirements	Contract for sale of as many goods as buyer *requires* during specified period

UCC = Uniform Commercial Code.

Article 2 of the Uniform Commercial Code (UCC) governs contracts for the sale of goods (eg, baked buns). Under the **UCC**, a **contract for exclusive dealing** in the type of goods concerned (eg, output or requirements contract) carries with it an **implied obligation** by the seller to use its **best efforts to supply the goods** and by the buyer to **promote their sale**.

Here, the pastry supplier promised to sell its entire output of baked buns to the retailer for one year. The retailer made no express promise to buy any of the supplier's baked buns. But since the retailer promised to sell the supplier's baked buns *exclusively*, if it sold any such buns at all, the retailer impliedly promised that it would use its best efforts to sell the supplier's one-year output of baked buns **(Choice A)**. Therefore, the supplier probably wins.

(Choice B) Contracts for the sale of goods must contain definite terms that (1) reasonably *identify* the goods to be sold and (2) specify a *quantity* of goods to be sold that is certain or capable of being made certain by reference to objective facts. The quantity term is sufficiently definite in output contracts (as seen here) since the seller's actual output can be determined objectively.

(Choice D) Although both parties to a sale-of-goods contract impliedly assume the risk of price and demand fluctuations, this is not a basis for the supplier's success. Instead, the supplier will win because the retailer is required to use its best efforts to sell the supplier's baked buns.

Educational objective:

Contracts for exclusive dealing in the type of goods concerned carry with them an implied obligation by the seller to use its best efforts to supply the goods and by the buyer to promote their sale.

References

UCC § 2-306 (output, requirements, and exclusive dealings).