

A restaurant supplier sent a letter to a regular customer offering to sell the customer an industrial freezer for \$10,000. Two days later, the customer responded with a letter that stated: "I accept your offer on the condition that you provide me with a warranty that the freezer is merchantable." In response to the customer's letter, the supplier called the customer and stated that the offer was no longer open. The supplier promptly sold the freezer to another buyer for \$11,000.

If the customer sues the supplier for breach of contract, is the customer likely to prevail?

- A. No, because the customer's letter added a term, making it a counteroffer.
- B. No, because the subsequent sale to a bona fide purchaser for value cut off the claims of the customer.
- C. Yes, because the customer's letter was an acceptance of the supplier's offer, since the warranty of merchantability was already implied in the sale.
- D. Yes, because the supplier's letter was a firm offer that could not be revoked for a reasonable time.

Explanation:

Effect of new terms in reply to offer

Common law		Offer rejected
(mirror-image)		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 <i>or</i> offeror objects within reasonable time Revised terms follow split authority & are either: treated as new terms <i>or</i> cancelled out under knockout rule

UCC = Uniform Commercial Code.

Under the common law, an **acceptance** is only effective if it is the mirror-image of the terms in the offer. This rule has been relaxed by Article 2 of the Uniform Commercial Code (UCC), which governs contracts for the sale of goods (eg, industrial freezers). The **UCC** uses the **battle-of-the-forms rule**, where any reasonable **manifestation of acceptance**—even one including new terms—is **effective unless** it is **expressly conditioned** on the offeror's **assent to the new terms**.

Here, the customer's letter conditioned his acceptance on the freezer's **warranty of merchantability**. But under the UCC, this warranty is implied in *all* contracts for the sale of goods by a merchant—ie, one who regularly deals in goods of the kind involved in the contract (like the supplier). Therefore, the letter did *not* add a term (**Choice A**). Instead, it was an acceptance of the supplier's offer that created an enforceable contract. And since the supplier breached that contract by selling the freezer to another buyer, the customer is likely to prevail.

(Choice B) The sale of the freezer to a bona fide purchaser—ie, one who purchased for value and in good faith—may prevent the customer from seeking specific performance from the supplier. However, this would not prevent the buyer from obtaining a legal remedy (ie, damages) for the supplier's breach.

(Choice D) A firm offer is a merchant's signed, written offer to buy or sell goods that promises to hold the offer open for a period of time—not seen here.

Educational objective:

Under the UCC's battle-of-the-forms rule, any reasonable manifestation of acceptance (even one including new terms) is effective unless it is expressly conditioned on the offeror's assent to the new terms.

References

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

U.C.C. § 2-314 (Am. Law Inst. & Unif. Law Comm'n 2019) (implied warranty of merchantability).

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