A commercial baker and an ingredient supplier orally agreed that the baker would purchase 1,000 pounds of flour from the supplier for a price between 50 and 75 cents per pound. The parties agreed that they would determine the final price upon delivery. The supplier promised to deliver the flour in two weeks.

Later that day, the baker sent the supplier a signed note reminding the supplier about the terms of their agreement, including the quantity of flour. The supplier received the note, read it, and took no further action. When the supplier failed to deliver the flour, the baker sued the supplier for breach of contract.

Can the baker enforce the contract against the supplier?

A. No, because the parties did not agree to a definitive price term.

B. No, because the supplier did not sign the note.

C. Yes, because the baker sent the supplier a signed confirmation.

D. Yes, because the parties' oral agreement is enforceable.

Explanation:

Statute of frauds requirements

Writing	Physical or electronic document(s) containing reasonable basis to believe contract was formed (eg, receipt, check, emails) AND • at common law – identifies parties, subject matter, consideration, time & nature of performance • under UCC – lists quantity of goods (contract enforceable only up to written quantity)
Signature	General rule – handwritten signature from, or other mark identifying, party to be charged (eg, letterhead, electronic signature, initials) • Merchant exception – between merchants, written confirmation that satisfies statute of frauds as to *sender* will bind both parties if no written objection within 10 days

UCC = Uniform Commercial Code,

The **UCC statute of frauds** applies to contracts for the sale of goods valued at $500 or more. To be enforceable, these agreements must be evidenced by a writing that:

- provides a reasonable basis to believe a contract was formed (eg, the baker's note)
- lists the quantity of goods sold or the means to determine quantity (eg, 1,000 pounds of flour) *and*
- is signed by the party against whom enforcement is sought (here, the supplier) **(Choice B)**.

However, the UCC relaxes the signature requirement in agreements between merchants—ie, regular dealers of the goods involved in the transaction. Under the **merchant exception**, a written confirmation need only be **signed by *one* merchant** and sent to the other merchant. If the recipient has reason to know the confirmation's contents and does not object within 10 days, then it is **enforceable against *both* merchants**.

Here, the baker and the supplier are both merchants—regular dealers in flour. The baker's signed note was a sufficient writing because it confirmed that a contract was formed and listed the quantity of goods sold. Additionally, the supplier had reason to know the contents of the note (received and read it) and did not object within 10 days. Therefore, the contract was enforceable against both parties.

(Choice A) Although the parties did not agree to a definitive price term, they did agree to determine the final price at delivery. And even if they are unable to do so, the contract is enforceable since UCC gap-fillers will supply the price term at the time of delivery.

(Choice D) An oral agreement is unenforceable when, as here, it is subject to the statute of frauds. However, the parties' oral agreement was memorialized in a written confirmation that satisfied the merchant exception to this statute and can therefore be enforced.

Educational objective:

Under the merchant exception to the UCC statute of frauds, a confirmation signed and sent by one merchant to another binds both parties if the recipient has reason to know its contents and does not object within 10 days.

References

- U.C.C. § 2-201 (Am. Law Inst. & Unif. Law Comm'n 2020) (describing the UCC statute of frauds).
- U.C.C. § 2-305(1)(b) (Am. Law Inst. & Unif. Law Comm'n 2020) (describing open price terms).