

A producer of small engines contracted to supply 5,000 engines per month of a specified model to a lawn mower manufacturer for the next three years at an agreed-upon price. The producer sent the manufacturer a form quotation that included a standard "boilerplate" indemnification clause requiring the manufacturer to indemnify the producer for losses arising from the transaction. The producer's form also included a statute-of-limitations provision requiring that claims arising from defective engines be brought within one year of delivery.

The manufacturer subsequently ordered engines using a form requiring the producer to indemnify the manufacturer for any loss arising from engine defects and specifying a three-year statute of limitations for claims arising from the engines.

Two years later, the manufacturer discovered that 20% of the engines delivered in the first year were defective and filed suit against the producer seeking indemnification. The jurisdiction has adopted the Uniform Commercial Code (UCC) gap-filling provisions, which include a default four-year statute of limitations.

Is the manufacturer likely to prevail in its suit against the producer for losses arising from the defective engines?

- A. No, because a contract is only enforceable under the mirror-image rule if there is a meeting of the minds on all terms.
- B. No, because the producer is master of the offer and therefore the contractual terms in its form quotation control.
- C. Yes, because the producer failed to object to the conflicting terms when it accepted the manufacturer's purchase order.
- D. Yes, because the UCC operates to replace the conflicting statutes of limitations with its four-year statute of limitations.

Explanation:

Contracts for the **sale of goods** (eg, engines) are governed by the UCC. Under the UCC's **battle-of-the-forms rule** for contract formation, an acceptance is effective even if it contains **revised** (ie, conflicting) **terms** that are different from the offer. In contracts between merchants, the revised terms are **canceled out** by the **knockout rule** (adopted in most jurisdictions). When gaps are created after applying the knockout rule, the court uses the **UCC's gap-filling provisions** to patch the holes.

Here, the manufacturer brought suit after two years. The producer's form quotation (offer) had specified a *one*-year statute of limitations for defective-engine claims, while the manufacturer's order form (acceptance) specified a *three*-year statute of limitations. Both parties are merchants, so the conflicting statute-of-limitations terms are canceled out by the knockout rule. Since the UCC operates to replace those terms with its four-year statute of limitations, the manufacturer is likely to prevail.

(Choice A) Under the common law mirror-image rule, an acceptance must mirror the terms of the offer. A purported acceptance that includes revised or new terms is treated as both a rejection of the original offer and a counteroffer. But since this rule only applies to services and real estate contracts, it does not apply here.

(Choice B) The offeror, as master of the offer, can dictate the manner and means of acceptance. Here, however, the producer's (offeror's) form quotation did not require the manufacturer to accept the one-year statute of limitations provision for an acceptance to be effective.

(Choice C) A few jurisdictions do not follow the knockout rule and instead treat a revised term in an acceptance as a "new" term. New terms are automatically included in a contract between merchants unless, *inter alia*,* the offeror objects within a reasonable time. But this minority rule does not apply here.

Other exceptions to the automatic inclusion of new terms arise when (1) the term materially alters the original contract or (2) the offer expressly limited acceptance to its terms.

Educational objective:

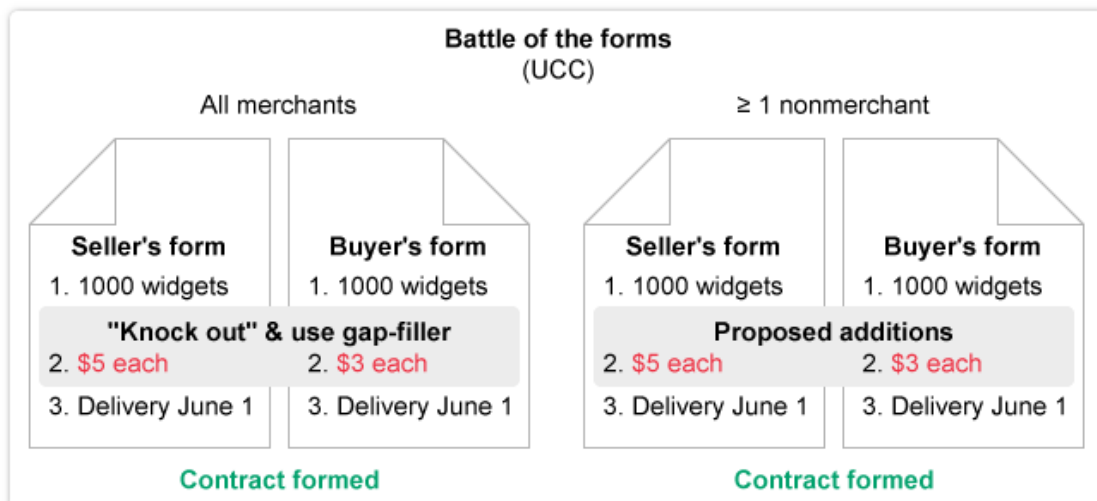
In contracts between merchants, revised (ie, conflicting) terms in the offer and acceptance are canceled out under the knockout rule and replaced with UCC gap-filling provisions.

References

U.C.C. § 2-207 (Am. Law Inst. & Unif. Law Comm'n 2020) (new terms in acceptance or confirmation).

U.C.C. § 2-725 (Am. Law Inst. & Unif. Law Comm'n 2020) (statute of limitations in contracts for sale).

Effect of *revised* term on contract formation



UCC = Uniform Commercial Code