On June 1, a widget manufacturer entered into a written agreement with a tool maker, in which the tool maker agreed to produce and sell to the widget manufacturer 12 sets of newly designed dies to be delivered August 1 for the price of $50,000, payable ten days after delivery. Encountering unexpected expenses in the purchase of special alloy steel required for the dies, the tool maker advised the widget manufacturer that production costs would exceed the contract price. On July 1 the widget manufacturer and the tool maker signed a modification to the June 1 agreement increasing the contract price to $60,000. After timely receipt of 12 sets of dies conforming to the contract specifications, the widget manufacturer paid the tool maker $50,000 but refused to pay more.

Which of the following concepts of the Uniform Commercial Code, dealing expressly with the sale of goods, best supports an action by the tool maker to recover $10,000 for breach of the widget manufacturer's July 1 promise?

A. Bargained-for exchange.

B. Modification of contracts without consideration.

C. Promissory estoppel.

D. Unconscionability in the formation of contracts.

Explanation:

Modifying existing contracts

Governing law		**Requirements**
Common law	Traditional view	Parties' agreement New consideration
	Modern view	Parties' agreement New consideration *unless* modification is fair & equitable due to unanticipated circumstances
UCC		Parties' agreement Good faith (ie, honesty & observance of reasonable commercial standards of fair dealing) New consideration *not* required

UCC = Uniform Commercial Code.

At common law, contract modification generally requires a new bargained-for exchange that alters the duties of *both* parties in some way (ie, new consideration). But the **UCC**, which deals expressly with the sale of goods, **allows modifications *without* consideration** so long as they are **sought in good faith**. Good faith requires **honesty** and observance of reasonable **commercial standards of fair dealing**. And if either party fails to perform his/her obligations under the modified contract, then the other party can recover for breach.

Here, the widget manufacturer entered a contract to buy dies (ie, cutting tools) from the tool maker. Due to unexpected expenses in purchasing the steel required for the dies, the parties signed a modification agreement increasing the contract price by $10,000. This modification was *not* a bargained-for exchange since the tool maker's duties were unaltered **(Choice A)**. But since dies are goods, the UCC rule applies and allows modification without consideration, which supports the tool maker's action to recover the unpaid $10,000.

(Choice C) Had the tool maker's action been for promissory estoppel instead of breach, the tool maker might have been able to recover damages for its reliance on the widget manufacturer's promise to pay the increased price. However, promissory estoppel is a common law doctrine, not a UCC concept.

(Choice D) A court can refuse to enforce a contract if there was unconscionability in its formation—ie, unfairness due to surprise or unequal bargaining power. But even if the formation of the contract was unconscionable, the court's likely response (ie, refusing to enforce the contract) would mean that neither party could recover for breach.

Educational objective:

Under the UCC, contracts for the sale of goods can be modified without consideration provided that the modification is sought in good faith. Good faith entails honesty and observance of reasonable commercial standards of fair dealing.

References

U.C.C. § 2-209 (Am. Law Inst. & Unif. Law Comm'n 2020) (explaining that an agreement modifying a sale-of-goods contract needs no consideration to be binding).