

A retailer sent a purchase order to a computer manufacturer requesting the shipment of a specified quantity of laptops. The purchase order stated: "In the event of a breach, the retailer may pursue all remedies available to it under the UCC." The manufacturer received the purchase order and promptly shipped the laptops to the retailer. The manufacturer sent an acknowledgment form to the retailer four days later.

Two days after accepting delivery of the laptops, the retailer received the manufacturer's acknowledgment form, which excluded consequential damages. The same day, the retailer discovered that the laptops were defective.

If the retailer sues the manufacturer for breach of contract, will the retailer be entitled to pursue a claim for consequential damages?

- A. No, because the retailer and the manufacturer did not enter into a contract. (0%)
- B. No, because a contract was created that included the manufacturer's term excluding consequential damages. (8%)
- C. Yes, because the manufacturer's shipment of the laptops constituted an acceptance of the retailer's offer. (57%)
- D. Yes, because terms supplied by the UCC will govern the contract formed by the conduct of the parties. (33%)

Incorrect

Correct answer C

57% Answered correctly

03 mins, 57 secs Time Spent

2023 Version

## Explanation:

### Seller's acceptance of buyer's offer

(UCC § 2-206)

Method	Effective	Contract terms
<b>Promise to ship</b>	When oral promise made OR When written promise sent	All parties are merchants terms of offer + terms added by battle-of-forms rule ≥1 party is nonmerchant terms of offer new terms are merely <i>proposed</i> additions
<b>Shipment of goods</b>	When goods shipped	Terms of offer

UCC = Uniform Commercial Code.

Contracts for the **sale of goods** (eg, laptops) are governed by Article 2 of the UCC. Under the **UCC**, a seller can accept an offer (eg, purchase order) by shipping or promising to ship the ordered goods. **Acceptance by shipment is effective immediately** and creates a contract with terms identical to those of the offer. Once created, the contract **cannot be modified** unless both parties agree to the modification. And if either party **breaches**, the other party can recover consequential damages (eg, lost profits).

Here, the computer manufacturer received the retailer's purchase order and shipped the laptops. That shipment—sent before the acknowledgment form—constituted an acceptance of the retailer's offer and created a contract on the purchase order's terms **(Choice A)**. And since the retailer did not agree to modify its right to pursue all available remedies, the acknowledgment did not alter the terms of the existing contract. Therefore, the retailer will be entitled to pursue a claim for consequential damages if it sues the computer manufacturer for breach of contract.

**(Choice B)** The parties' contract is governed by the terms in the retailer's purchase order, which permits claims for consequential damages—not by the terms in the manufacturer's acknowledgment form, which excludes such damages. The exclusion would be part of the parties' agreement had the retailer assented to it (not seen here).

**(Choice D)** When an offer and purported acceptance differ to such a degree that there is no contract, the UCC provides that there will be a contract if the parties have begun to perform anyway. In such a situation, the terms will be supplied by the parties' writings, together

with any [gap-fillers](#) available under the UCC. However, this rule is irrelevant here since the parties formed a valid contract governed by the purchase order.

**Educational objective:**

Under the UCC, a seller can accept an offer to buy goods by shipping *or* promising to ship the goods. Acceptance by shipment is effective immediately and creates a contract with terms identical to those of the offer.

**References**

U.C.C. § 2-206 (explaining that an offer to buy goods can be accepted by shipping or promising to ship the goods).

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