

A distributor of industrial products was unhappy with the quality of its previous supplier's heavy-duty electric wall sockets. On April 7, the distributor reached out to a new supplier in an email that stated in its entirety: "Offer to purchase as many industrial straight-blade sockets as you can supply for delivery by May 6." That same day, the supplier responded to the distributor, "Order received. Delivery by May 7."

The supplier sent the distributor 200 of the only industrial straight-blade sockets it carried, at \$1 over market price per unit, payment due on delivery. The distributor took delivery of the sockets on May 7 but rejected them without stating any basis for doing so.

If the new supplier sues the distributor for breach of contract, will the supplier be likely to prevail?

- A. No, because the quantity of sockets was not specified.
- B. No, because the supplier's response contained a different delivery date than the offer.
- C. Yes, because the court will apply UCC gap-fillers when the quantity of goods is not specified.
- D. Yes, because the offer included a means for determining the quantity of sockets to be sold.

Explanation:

Contract terms must be sufficiently **certain and definite** for the court to determine the existence of a breach and give an appropriate remedy. While the common law requires that all **essential terms** be covered in the agreement,* the **UCC**—which governs contracts for the sale of goods (eg, sockets)—is more liberal. It encourages contract formation by providing "gap-fillers" for many **missing terms**, but **not** the:

identity of the contracting parties

subject matter of the contract *or*

quantity of goods to be sold (**Choice C**).

A contract must therefore specify a quantity that is **certain or determinable by reference to objective facts**, such as the buyer's actual requirements or the seller's actual output in a **requirements or output contract**. If it does not, the contract fails for indefiniteness.

Here, the parties did not specify the exact quantity of sockets to be sold (**Choice A**). However, the distributor offered to purchase as many straight-blade sockets as the supplier could supply by May 6. This provides a quantity term that is determinable by reference to objective facts, such as the supplier's inventory between the date the offer was received and May 6. Therefore, the supplier is likely to prevail in a breach-of-contract suit.

*The omission of an essential term is not necessarily fatal if it appears that the parties intended to form a binding agreement. When this occurs, the court can look to the surrounding circumstances and the parties' conduct to fill in the term.

(Choice B) Under the UCC, parties can form a contract even if the offer and the acceptance include different terms. When both parties are merchants (as seen here), most jurisdictions will "knock out" the differing terms and replace them with UCC gap-fillers as needed. Therefore, the differing delivery dates will be knocked out and delivery will be required within a reasonable time.

Educational objective:

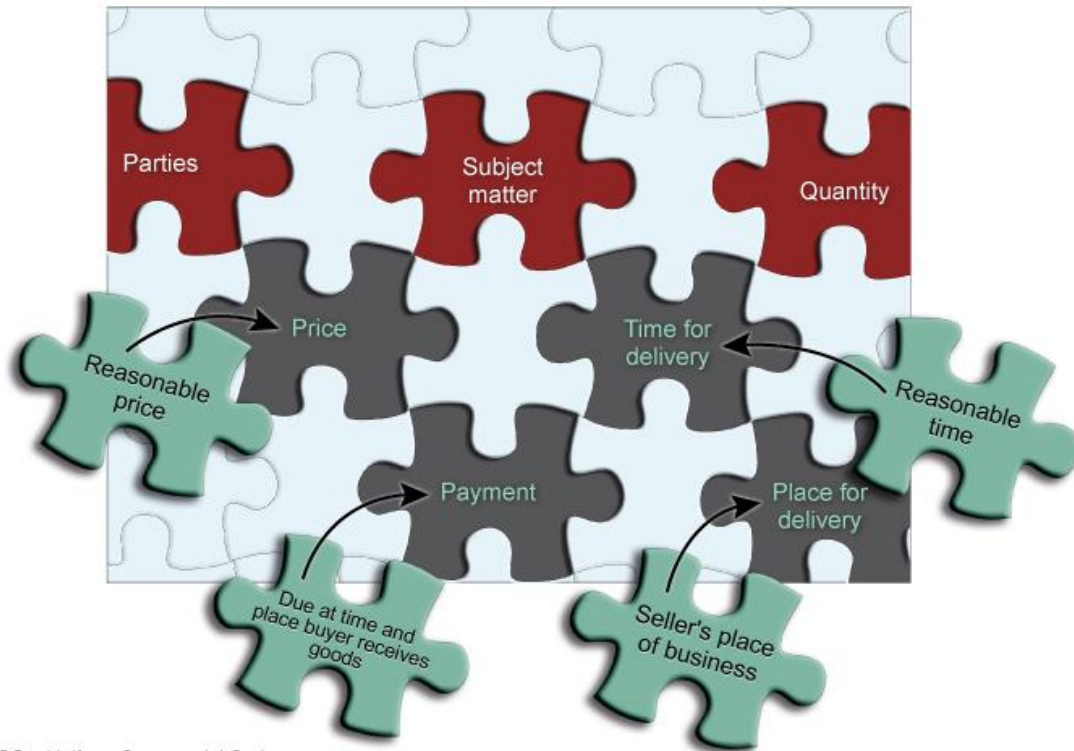
The UCC "fills the gap" for missing contract terms other than the parties, subject matter, and quantity. The quantity term must specify an amount that is certain or capable of being made certain by reference to objective facts.

References

U.C.C. § 2-201 cmt. 1 (Am. Law Inst. & Unif. Law Comm'n 2020) (required terms for contracts for sale of goods).

U.C.C. §§ 2-305–2-310 (Am. Law Inst. & Unif. Law Comm'n 2020) (UCC gap-fillers).

Fillable gaps under the UCC



UCC = Uniform Commercial Code

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