



The Importance Of Terms And Conditions Of Sale

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The Uniform Commercial Code is the source for commercial laws.

Today's quality systems mandate contract review as an integral part of an enterprise's critical business system. Terms and conditions are seldom given the critical examination that they deserve. While they are often thought of as mere contingency details, the day may come when the contingency has arrived. How has your organization implemented contract review?

The Uniform Commercial Code (UCC) is a single source of commercial law governing all sales contracts. Typically, the sale of products is accompanied by terms and conditions of sale. As a producer or seller, you must be able to spot issues that may have a detrimental affect on your business.

Warranty exclusions, remedy limitations and indemnification language are only a few possible points of concern. After a contract is formed—regardless of whether it's written or oral—a "battle of the forms" can ensue when two

companies trade purchase orders and sales proposals or confirmations with preprinted terms and conditions. Each company's form will contain terms and conditions, many of which are contradictory to those of the other party.

In today's world, you may have already lost the battle of the forms if your electronic means of confirmation does not provide your customers with your terms and conditions. What is your company's policy and practice to provide terms and conditions to customers? What is your policy to review and negotiate terms and conditions from your suppliers?

An offer to make a contract can be accepted by any method that is reasonable under the circumstances.

An offer to buy goods can be accepted by a prompt promise to ship or by the current shipment of conforming goods. Any acceptance or written confirmation that indicates an intention to enter into a contract will be effective as an acceptance, as long as



it is sent within reasonable time.

This is true even if the acceptance states different terms for the contract unless the acceptance is expressly conditional on assent to the acceptance terms.

If different terms and conditions are sent in return, additional terms will be added to the contract unless they have a material adverse affect on it. In the event of a conflict, both terms will be eliminated and the terms of the UCC will be applied.

If you are a seller, here are some strategies to help you avoid the battle of the forms:

- Insist on written agreements, either in the form of a formal contract or a purchase order.
- Use a process that ensures that the other party acknowledges in writing that your terms and conditions supersede their terms and conditions.
- If you are the buyer, use a process that ensures that you know what terms and conditions are governing your agreement to buy.

The UCC is still a relevant source for understanding and resolving sales contract law. Your company's contract review process is an important business practice designed to help keep you from having to learn too much about the UCC.

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