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BATTLE OF FORMS – TACTICS AND RISKS THE IMPORTANCE OF TERMS AND CONDITIONS

This article describes the procedures to follow when purchase orders are received for your products. Essentially it deals with how the “battle of the forms” may be won (at least most of the time) and, if it cannot be won, what are the risks and consequences of losing that battle. The battle of the forms is the conflict which arises when buyer and seller exchange their standard and usually inconsistent printed terms and conditions of sale. In sum, unless seller takes certain specific steps described below, seller usually loses this battle and the consequences can be very, very serious. The article borrows heavily from Chicago attorney Carter Klein.

Discussed below are: (a) a list of defensive measures you can take to minimize your exposure as seller, (b) a discussion of the most important limitations and protections your forms should contain, and (c) a discussion of the fourteen most common circumstances in which purchase orders are received for the sale of goods, whether a legally enforceable contract is formed, and, if so, on what terms.

A. Defensive Measures and Procedures:

Even the best drafted terms and sales forms will not protect you if they do not become part of the contract between you and buyer due to deficiencies in your contracting procedures. Here are some procedures you should undertake - to the extent feasible - to help you win the battle of the forms.

1. Have a well-drafted quotation form, order form, acknowledgment or confirmation form and invoice prepared or reviewed by your attorneys; avoid makeshift, store-bought or largely blank forms.
2. Do not print your terms and conditions in small type size type or in print too light or hard to read. Check the actual forms as printed, not just the printers proof. Does the ink fade over time and become illegible?
3. Encourage or require buyers to use your preprinted order forms with your standard terms and conditions of sale printed on the reverse (and referred to in block letters on the front).
4. Use your printed quotation and acknowledgment forms containing your standard protective terms and conditions at every other opportunity: in your catalogues, quotations, Websites, confirmation and acknowledgment forms, and on the back of all invoices (with reference on the front). The same is true of your limited warranty and limitation of damages.
5. NEVER sign a copy of buyer’s purchase order or similar form.
6. Try to get buyer to accept your standard terms by requesting buyer to sign and return your quotation, order or acknowledgment form or contract.

7. Think of ways to obtain buyer's express agreement to your standard terms and conditions of sale, such as including agreement to them as part of your credit approval process, as a condition to your warranty coverage, as part of your internet website or electronic procedure for placing orders, placing company order forms in the company catalogue and supplying your forms to buyers and your sales force to use in placing orders.
8. Use your quotation form with your standard terms as part of it as an offer. Even if buyer does not sign and return a copy of it, you may receive a "clean" purchase order or telephone order which (i) refers to it, and (ii) does not object to your standard quotation terms and is consistent with the negotiated terms. Make sure, however, that the quoted terms are terms you can live with. Do not allow your salesmen to understate price, quote unrealistic delivery dates, or make impossible or impractical warranty and performance claims.
9. Promptly acknowledge in writing all oral or written orders you intend to accept with a well-drafted, conditional acknowledgment form. Promptly object to those terms which are unacceptable. Oral agreements not confirmed in writing with your standard terms do not provide you the protections you need. They will favor the buyer.
10. If buyer orders by phone, obtain buyer's oral acknowledgment and agreement to your standard terms as part of the order. For large ticket or commodity phone orders, with buyer's permission, record the telephone conversation. Train your sales personnel to obtain buyer's agreement to your standard terms and conditions of sale. Have your sales people and order takers use a telephone script designed to obtain buyer's agreement to your terms of sale.
11. If buyer objects to your terms and conditions, either expressly or by its inconsistent or conditional order or confirmation form, do not proceed with the order until you resolve the objection or decide you can accept the resultant risks.
12. Flag all conditional purchase orders and notify buyer promptly in writing that its order is not accepted and that it must sign and return the order on your form or otherwise agree to terms acceptable to you.
13. On large orders or orders with undue risks in which buyer's order form is well-drafted, conditional, and/or inconsistent with your terms of sale, negotiate compromise terms which will provide you basic liability protections such as limiting warranties to your standard warranty, limiting remedies to repair or replacement, disclaiming implied warranties, avoiding consequential damages, allowing reasonable delays in delivery, allowing cure of defects, and reducing the claims period to one year, among others. If buyer refuses to negotiate reasonably, consider rejecting the business or be prepared for the risks.

14. For a repeat buyer, try to enter into a long term supply agreement; if properly drafted, it will take precedence over the printed terms on buyer's standard form. This will eliminate the need to negotiate terms and obtain signatures on each individual order. Of course buyer may then pay closer attention to the supply agreement and require some terms which provide it greater protection.
15. When in doubt about the conditional nature of a purchase order or confirmation form, treat it as conditional or get legal advice.
16. Avoid making unintended warranties. Anything you say about your product, especially in writing, and especially to buyers and potential buyers and their customers (if buyer resells your product), can and will be used against you if a claim arises. Catalogues, advertising, packaging and product descriptions can be interpreted as express warranties and be a basis for damage claims.
17. Make a quality product.
18. Give buyer good, prompt service, especially warranty service.
19. Identify and remedy problems early on, before they become major disputes and lawsuits.
20. When making adjustments, issuing credits or effecting repairs or replacements, attempt to get a release of claims or acknowledgment of satisfaction.
21. If the problem is serious or widespread or the claim is large, notify and involve your lawyer early on. An ounce of prevention....
22. If personal injury, property damage or health or safety issues are involved, in addition to your lawyer, notify your insurance carrier.

A final note on procedures: obtaining this protection may not be possible if buyer refuses to sign-off on your terms. This could arise either because the order flow does not lend itself to stoppage while the parties negotiate terms or because buyer is particularly valued or a major corporation which simply will not agree to provisions which reduce its rights as a purchaser. In these uncomfortable cases, you must simply evaluate the risks of liability against the loss of the business and decide accordingly. The greater risk may justify a higher price. It certainly creates a higher cost.

B. Important Terms and Conditions:

Although well-drafted standard terms and conditions of sale in quotations, order forms, order confirmations and other forms are not sufficient in all situations to protect you, they are necessary. Set forth below is a discussion of the more important terms that usually should be included in your standard terms and conditions of sale.

1. Conditional Nature of Form. If your terms and not buyer's are to apply to an order, your confirmation form must clearly state that (i) your standard terms and conditions of sale printed on the reverse side [or attached] apply to and are an integral part of the order, (ii) the order is not accepted unless buyer agrees to your standard terms and conditions of sale, and (iii) any additional or different terms and conditions of sale contained in buyer's order, confirmation or other form or communication are expressly rejected and do not become part of the order or contract of sale. You must properly condition acceptance of the order on acceptance of your standard terms and conditions sale.
2. Reverse Side Reference. To make clear that your standard terms and conditions of sale apply as printed on the reverse of your order confirmation, print in bold face type on the front of the form in a prominent location words such as:

**“THIS ORDER IS SUBJECT TO SELLER’S TERMS AND
CONDITIONS OF SALE PRINTED ON THE REVERSE SIDE,
WHICH TERMS ARE AN INTEGRAL PART OF THIS ORDER.”**

3. Integration Clause. Make sure that the order consists only of terms you have bargained for, and does not include alleged oral communications, sales person's statements, warranties or statements contained in miscellaneous literature or your advertisements. Do this by including an “integration” clause in your terms. An integration clause will state that (i) the entire agreement consists only of the terms on the front and reverse of the order confirmation [and any referenced attachments], (ii) those terms are intended to be a complete and final statement of the agreement, (iii) all other prior or contemporaneous agreements, statements and communications are superseded by the terms contained in the confirmation, (iv) no one has any authority to make representations and warranties on your behalf that contradict or add to the terms of the confirmation, and (v) the order can be modified only in a writing signed by buyer and you.
4. Implied Warranties. Disclaim implied warranties of merchantability and fitness for a particular purpose. A warranty of fitness for a particular purpose is particularly dangerous. To be effective, the disclaimer must be conspicuous and express (not implied) and the disclaimer language must mention the words “merchantability” and “fitness for a particular purpose” (unless the words “AS-IS” are used). Conspicuous means larger type size, bold face type, all capital letters, underlined, in another, bright color, or some other device to cause the disclaimer to be more noticeable than the rest of the preprinted terms.
5. Limited Warranty. If you provided a warranty and a remedy, draft them precisely, make them exclusive and spell out the conditions which pertain to them, such as prompt notice, return of the item for inspection, proper installation, use and maintenance, and a time limit. If the remedies are not expressly made exclusive, then the Uniform Commercial Code also gives buyer a right to any remedy provided him by the Commercial Code or other law. Allow a safety valve

- remedy of return of the purchase price paid, if the goods sold cannot be repaired or replaced; otherwise you may find yourself liable for all damages when the limited remedy of repair or replacement is not feasible or fails. In the case of consumer products (for personal, family or household use), be aware of the requirements of the Federal Trade Commission's warranty disclosure rules under the Magnuson-Moss Warranty Act. They greatly limit the seller's ability to reduce the customer's rights.
6. Consequential Damages. Always disclaim or at least limit consequential damages. Do so conspicuously and in a paragraph separate from the warranty paragraph. Consequential damages include buyer's lost sales or revenues, lost profits, increased overhead and costs, loss of goodwill and other relatively open-ended items of economic damage. In some cases, you are risking substantial liability out of all proportion to the cost (let alone the profit) of the goods you sell. As an example, suppose you make filters for electric power plants installed in lubrication systems for turbine generators. You sell the filters for \$500 apiece. If the turbine has to be shut down for three days, dismantled, flushed out and reassembled to replace a defective filter you sold, and the shutdown costs the power company \$400,000 per day in lost electricity revenues, you are in serious trouble unless you have effectively disclaimed incidental and consequential damages. Note that consequential damages are not unlimited and buyer may indeed suffer real losses if your product fails to perform.
 7. Incidental Damages. Incidental damages are the costs of removal, reinstallation, transportation and the like that necessarily attend repair and replacement of defective products or parts. Incidental damages should also be disclaimed except to the extent you expressly agree, as part of its warranty, to accept them.
 8. Delivery. Delivery dates should be desired or target dates, not promised dates. Unless you and buyer expressly agree to late delivery penalties, the contract should not penalize you if, notwithstanding your good faith efforts, you cannot deliver on time. In addition, a "force majeure" provision should be included to excuse performance in the event of unforeseen difficulties such as Acts of God, fire, labor troubles, criminal acts, war, civil disturbances, governmental interventions, transportation difficulties, failure of your suppliers and subcontractors to timely perform. The precise language of such clauses is important. If the event that prevents or delays performance is not listed, it will not be implied by a judge.
 9. Statute of Limitations/Claims Cutoff. The Uniform Commercial Code allows you to reduce to the time period in which suit must be filed for a claim so buyer will be barred thereafter from suing. [The UCC varies slightly from state to state, so this statement should be checked under applicable law. And *which* state's version of the UCC applies may itself not be so clear.] Normally, the time begins to run from the date of delivery. You should also expressly require prompt written notice of claims upon buyer's discovery of the defect and require buyer to specify

details, cooperate in the investigation, and preserve and provide access to physical evidence, reports, employees and witnesses. If buyer refuses to do so, the terms should state that buyer will be barred from any remedy.

10. Waiver of Jury Trial. Whether a pre-dispute waiver of trial by jury is effective depends on the law of the state where the claim arises. Nevertheless, try to obtain such a waiver. Juries are known to favor the “little guy” and local plaintiffs over distant, large defendants.
11. Other terms. The above terms are key protections against open-ended, disproportionate or unexpected liability. Listed below are other terms which are frequently included in a seller’s standard terms and conditions of sale:
 - a. Terms of payment
 - b. Late payment and returned check charges, collection charges generally
 - c. Taxes – who pays which ones
 - d. Packing, shipping, insurance and risk of loss
 - e. Quantity variations and right to ship partial amounts
 - f. Cancellation and returns
 - g. Intellectual property protections/confidentiality
 - h. Applicable law/jurisdiction/arbitration
 - i. Non-waiver and severability
 - j. Assignment
 - k. Retention of security interest (a complicated provision by itself)
 - l. Indemnity against 3rd party claims arising out of seller’s compliance with buyer’s specifications

In preparing your standard terms, you should consult your attorneys and sales, manufacturing and finance personnel, and then tailor your forms to the particular needs of your business. For example, cancellation rights will be different for specially manufactured goods than for off-the-shelf products. Warranties and remedies will of necessity be product category specific. Some industries have special practices and customs. For example, in the medical supply business, it is not uncommon for seller to bear the cost of shipment. If seller is involved in government contracting or supply, substantial additional terms should be included to satisfy government users and subcontractors.

C. How Contracts for Sale Are Formed:

As noted at the outset, even the best drafted sales confirmation terms and conditions will not protect you if they do not become part of the contract of sale. You need to recognize whether or not your terms will apply and when they will not in various purchase order situations that may arise in the battle of the forms. Here are fourteen scenarios in the battle of the forms addressing when contracts of sale are formed and on what terms.

As used in the discussion below, a “conditional” quotation, purchase order, acknowledgment or acceptance means one that expressly requires the other party to accept as part of the order all the terms and conditions contained in the document, including standard or ‘boilerplate’ terms, usually preprinted on the reverse of the form, and precludes any of the other party’s inconsistent or additional terms from applying to or becoming part of the order.

1. Clean Order/Clean Acknowledgment. Buyer submits an unconditional or clean purchase order for the shipment of goods described in its order. A “clean” form is one with no boilerplate or preprinted standard terms and conditions of sale; it contains only the negotiated or core order terms such as price, designation of goods, delivery and quantity. Seller accepts by sending a written confirmation which is also clean and agrees with buyer’s terms, such as price, quantity, type of goods sold and delivery date. A contract is formed based on the terms the parties agree upon, plus terms implied by the Uniform Commercial Code as supplemented by trade usage, custom and course of dealing.
2. Conditional Order/Clean Acknowledgment. Buyer submits a written conditional purchase order. The purchase order’s acceptance is conditioned specifically on seller’s acceptance of *all* the boilerplate terms and conditions printed on the reverse of the purchase order. These terms are extensive and generally favor buyer. Seller responds by sending an unconditional or clean acknowledgment, i.e., an acknowledgment that agrees with the negotiated terms such as price, quantity, type of goods and delivery date and contains no preprinted standard terms and conditions of sale. Because the acknowledgment contains no boilerplate terms of its own and does not object to buyer’s purchase order standard terms and conditions, a contract is formed based upon buyer’s purchase order terms and conditions including its boiler plate terms printed on the reverse. Those terms may contain extensive warranties, indemnities, damage and remedy rights, and other onerous terms.
3. Clean Order/Conditional Acknowledgment. Buyer sends a clean purchase offer. Seller responds with a written acknowledgment and acceptance subject to and conditioned on acceptance of its terms and conditions printed on the reverse, which include extensive disclaimers of warranties, limitations of liability, and a shortened statute of limitations, among others. Unless seller can prove these terms are well-known to buyer and standard practice in the industry, no contract is formed because the acceptance contains additional material terms beyond those contained in the offer and the acceptance is conditioned on buyer’s acceptance of the additional terms.
4. Conditional Order/Conditional Acknowledgment. Buyer sends a conditional purchase order. Seller acknowledges with a conditional acceptance. The conditions are the acceptance of each other’s inconsistent boilerplate terms and no others. No contract is formed at this point.

5. Conditional Order/Poorly Drafted Acknowledgment. Buyer sends a conditional purchase order. Seller responds with an acceptance that agrees with the negotiated terms of the order such as the price, quantity, description, and shipment date. Seller's acceptance or acknowledgment form also contains additional terms printed on the reverse but does not expressly condition acceptance of buyer's purchase order on buyer's acceptance of the additional reverse side terms. In other words, seller's acknowledgment form is poorly drafted. A contract is formed based upon buyer's terms. Seller's terms do not become part of the contract.
6. Conditional Order/Conditional Acknowledgment/Performance. Buyer submits a written conditional purchase order. Seller acknowledges with a conditional acknowledgment. The boilerplate terms do not agree. Seller then proceeds to manufacture and ship the goods. Buyer accepts the goods. A contract is formed notwithstanding the disagreement or inconsistency between the terms of the purchase order and the acknowledgment.

The contract consists of those terms upon which the forms agree and any other terms supplied by the Uniform Commercial Code. Unless modified or disclaimed, terms supplied by the Uniform Commercial Code terms include implied warranties of merchantability, consequential damage liability, shipment on time, tender of goods which comply exactly with the contract specifications (except for trade usage tolerances), and a four-year statute of limitations. These terms favor buyer and in some cases can expose seller to substantial liability.

7. Conditional Order/Conditional Acknowledgment/Part Performance. The same facts as in paragraph 6 above except that seller only begins manufacture of the goods called for by buyer's order and buyer is aware of that fact and does not object. Many courts would rule that seller's conduct is sufficient to recognize the existence of a contract even though the goods have not been delivered and accepted and even though the writings of the parties otherwise do not establish a contract. At what point short of delivery and acceptance of the goods conduct by either side which is referable to a purchase order is sufficient to give rise to a contract is unclear. Whenever such conduct is present the question is one of fact for a jury and accordingly the result uncertain. To avoid being bound by a contract with substantial liability risks, seller should not begin performance on the purchase order while negotiating with buyer, or such performance should be undertaken only after effectively communicating to buyer that performance does not mean acceptance of buyer's order and seller reserves all its rights, including the right to withhold shipment.
8. Telephone Order/Conditional Confirmations. Buyer telephones a purchase order to Seller which Seller accepts on the telephone without qualification. The parties then immediately send written confirmations. Even though the confirmations are subject to and conditioned on the acceptance of each other's boilerplate terms and those terms between buyer and seller are inconsistent, a contract has still been

formed by the oral agreement of the parties reached on the telephone. The contract consists of those terms upon which the parties agree, and terms supplied by the Uniform Commercial Code, course of dealing and trade usage.

9. Telephone Order Agreeing to Seller's Standard Terms/Subsequent Confirmation. Buyer telephones a purchase order to Seller. Seller accepts the order subject to and on the terms of its written confirmation. The written confirmation is conditioned on acceptance of seller's boilerplate terms. Buyer does not promptly object to the boilerplate. A contract is formed based upon the oral terms and seller's boilerplate terms contained in its confirmation sent to buyer. Even if buyer does promptly object to the written confirmation terms, as long as those terms are not inconsistent with the oral terms, a contract is still formed based on seller's terms because of buyer's oral acceptance of the applicability of those terms.

Of course, it is always a matter of proof whether (i) seller actually did condition the telephone order on buyer's acceptance of seller's written confirmation terms and conditions and (ii) buyer orally agreed to accept those terms and conditions. Unless seller has taped the telephone conversation (with buyer's permission) and is sure of its position or is willing to risk the expense and vicissitudes of litigation, whenever seller receives objection to its written confirmation or acknowledgment, the objection should be resolved before proceeding with the telephone order. Buyer's objection can explicitly refer to the acknowledgment or it can be implied from buyer's submission of an inconsistent confirmation form.

10. Seller's Quotation/Conditional Order. Seller submits a written quotation to buyer stating that any orders arising out of the quotation are based solely on seller's terms and conditions printed in the quotation. Buyer submits a conditional purchase order based on acceptance of its terms and conditions only, which are inconsistent with those of seller.

Seller then sends a conditional acknowledgment of buyer's purchase order which requires acceptance of seller's own terms and conditions as stated in its quotation. No contract is formed unless the goods are actually manufactured, delivered and accepted or the conduct of parties otherwise creates a contract. If a contract is manifested by the conduct of the parties, its terms will be the terms upon which the parties agree and those supplied by the Uniform Commercial Code, course of dealing and trade usage and custom.

11. Seller's Conditional Quotation Offer/Order Acceptance. Seller submits a written quotation to buyer stating that any orders arising out of the quotation are based solely on seller's terms and conditions printed in the quotation. The quotation does not require further action by seller to approve or confirm any resulting orders. Buyer submits a purchase order which agrees with the non-boilerplate terms on the quotation such as price, quantity, description and delivery date, but which does not condition the order on seller's acceptance of buyer's standard or

preprinted terms and conditions. A contract is formed based on the quotation terms, including seller's standard printed terms and conditions of sale printed on the quotation. The quotation was an offer which was accepted by buyer's purchase order. Additional terms stated or printed on buyer's order do not become part of the contract because buyer's order did not require them to be part of the contract. In other words, buyer's purchase order was poorly drafted. A word of caution: when a purchase order contains additional terms, it may be difficult to determine whether or not the order is conditioned on acceptance of those additional terms. When in doubt, either consult your lawyer or clarify terms with buyer before proceeding with the order.

12. Quotation Not an Offer/Buyer Order/Seller's Conditional Confirmation. Same facts as in paragraph 11 above except the quotation requires further action by seller – such as written confirmation of buyer's order by an authorized officer of seller at seller's home office – before buyer's order becomes binding. The quotation is no longer an offer, buyer's order becomes the offer, and seller's confirmation, which is conditional, in order to create a contract, must agree with buyer's terms and conditions. Because it does not, no contract is formed unless the conduct of the parties otherwise creates or manifests the existence of a contract.
13. Clean Order/Additional Terms in Seller's Confirmation. In response to a written purchase order which is not conditional, seller accepts the order with an acceptance which contains terms in addition to those specified in buyer's purchase order. If seller's additional terms do not materially alter or conflict with the terms of buyer's purchase order, they become part of the contract unless there is prompt objection to them by buyer. To become part of the contract, these additional terms must not materially alter or contradict any of buyer's purchase order terms. There are very few terms worth putting in an acknowledgment which would not be deemed to materially alter or add to the contract. For example, addition of an arbitration requirement, the disclaimer of warranties, the shifting of risk of loss, or a shortened statute of limitations materially alters the contract. A few recent cases have allowed evidence as to whether a disclaimer of consequential damages or cap on damages can become part of the contract in the above scenario. Seller must prove that buyer was well aware of seller's disclaimer or limitation and that such a disclaimer is standard in the industry.
14. Statute of Frauds. Under Section 2-201 of the Uniform Commercial Code, an oral contract for the purchase of goods for \$500 or more may not be enforceable unless there is some writing sufficient to indicate that a contract for sale has been made which is signed by the party against whom enforcement is sought. The writing must specify the quantity. However, between merchants, a purchase order confirmation sent promptly after an alleged oral purchase will satisfy the statute of frauds unless written notice objecting to its contents is given within ten days after it is received by the party against whom enforcement is sought. In other words, seller should promptly confirm in writing oral contracts of \$500 or more

that it has entered into and should immediately object in writing to a written confirmation it receives of an alleged oral contract if seller believes no such contract was entered into and seller does not want to be bound by it.

SUMMARY OF SCENARIOS AND RESULTS

	BUYER	SELLER	CONTRACT	COMMENTS
1.	Unconditional/clean PO	Clean OA	Contract on terms agreed upon plus UCC, usage	This result is usually bad for Seller.
2.	Conditional PO, conditioned on S's acceptance	Clean OA	Contract on B's terms	This result is usually bad for Seller.
3.	Unconditional/ clean PO	Conditional OA, conditioned on B's acceptance	NO Contract. OC has additional terms. Acceptance is conditional.	
4.	Conditional PO	Conditional OA	NO Contract	
5.	Conditional PO	OA with additional terms but not conditional	Contract on B's PO; not S's OA.	This result is usually bad for Seller.
6.	Conditional PO	Conditional OA; Seller mfgs. and ships.	Contract on terms upon which the forms agree and UCC supplied terms.	This result is usually bad for Seller.
7.	Conditional PO	Conditional OA; Seller begins to mfg. Buyer knows and does not object.	Results uncertain. Could be contract on B's terms.	S should not begin performance while negotiating with B, or performance should be undertaken only after telling B that performance does not mean acceptance of B's order and S reserves rights, including right to withhold shipment.
8.	Oral PO followed by written CPO	Oral acceptance followed by written conditional OA	Contract formed by the oral phone agreement; terms are phone terms, UCC and course of dealing.	This is usually a bad result for S because of warranty and damages.

	BUYER	SELLER	CONTRACT	COMMENTS
9.	Oral PO	Conditional OA; B does not object	Contract on oral terms and S's COA	Even if B <u>does</u> promptly object to the written CO, as long as those terms are not inconsistent with B's oral terms, a contract is formed based on S's terms because of B's oral acceptance of applicability of S's terms.
10.	Conditional PO	Conditional OA; but B sends conditional OA	No contract unless goods manufactured, delivered and accepted or conduct otherwise shows contract; contract is terms parties agreed to and UCC terms, custom.	This is usually a bad result for S because of warranty and damages.
11.	No initial action; PO response to CQ, not conditional.	Conditional quotation, no additional S action (so it is offer)	Contract based on S's quote. B accepted it. B's terms not accepted.	If PO contains additional terms, hard to determine whether is order conditioned on their acceptance
12.	No initial action; PO response to CQ (becomes offer)	Conditional quotation, additional S action required (so not offer)	Since no agreement, no contract unless conduct of parties shows contract.	This is usually a bad result for S because of warranty and damages.
13.	Unconditional PO	Acceptance with immaterial, non contradictory terms	S terms part of contract unless B timely objects.	
14.	Oral PO; no objection to S OA	Written OA	Contract on S's terms since no B objection.	The written confirmation applies either way following the oral transaction.

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