



UCC Corner: Do You Have A Contract? (Part 2)

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In our last installment of the UCC Corner, we questioned whether parties can form binding contracts if many of the terms of their written communications are inconsistent. We learned that the answer to that question is generally “yes.” The question in this installment is the opposite side of the same coin: Can parties form a binding contract where they have no written agreement at all?

The general rule, known as the Statute of Frauds, provides that any sale of goods for a price of \$1,000 or more requires a signed, written agreement. MCL 440.2201(1). Most businesses act as both buyers and sellers—buying raw materials or inventory from suppliers and selling goods to vendors or consumers. Rather than negotiating a new contract for each purchase or sale, a business will negotiate a single supply agreement or purchase agreement that governs all transactions between it and the other contracting party. Still, even a one-off transaction for at least \$1,000 should be documented by a signed contract.

Sometimes business situations do not make a traditional, written contract feasible. Maybe a customer calls and needs an emergency shipment of product. Fortunately, the statute of frauds provides several exceptions to the requirement of a signed, written contract. These exceptions are:

- 1. Missing Terms:** The UCC favors the formation of contracts and will find a contract to exist even if many terms are missing. In fact, a contract will be enforceable as long as it is signed and specifies a quantity of goods to be purchased. The gap-filling provisions of Article 2 will fill in the rest—even the price.
- 2. Payment:** Payment and acceptance of payment between the parties creates a binding contract. For example, if a customer calls to order \$1,000 of product, provides their credit card number, and you charge the credit card, a valid contract exists even if there is no writing.

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3. Order Confirmation: If both parties are “merchants” (generally, not a consumer), then the statute of frauds will be deemed satisfied if one party sends a written confirmation of a verbal contract and the other party does not object to the existence of a contract within 10 days. For example, imagine a vendor calls to place an order and after the call, you send an email to confirm you have the order correct. If your vendor does not object within 10 days, you have a valid contract.

Do you have signed, written agreements in place with the suppliers and vendors you use frequently? Are you sufficiently documenting one-off purchases or sales of more than \$1,000? Do you have procedures in place to ensure your agreements satisfy the statute of frauds or one of its exceptions? For more information on whether your purchase and sale procedures are legally enforceable, contact a Foster Swift business attorney today.