

## The Battle of the Forms

Every business should have its own terms of sale (or terms of service) which spell out the “nitty gritty” details regarding how they conduct business. For instance, if you sell light bulbs, your terms might specify that “all orders must be submitted via fax and are not accepted until you receive a confirmation from us,” or “payment is due at the time you place your order,” or “all goods carry a 30 day warranty,” or “customer is responsible for freight from our facility to your door,” etc. Those terms of sale should be provided to customers before they place an order (e.g., in your promotional materials, or on your website). What happens if, after receiving or learning about your terms of sale, your customer submits its order on its own purchase order form, which contains different or additional terms of purchase? This very common scenario is known in legal circles as “The Battle of the Forms” and results in many, many lawsuits. It is critical that you become familiar with this concept before learning about it for the first time in a lawsuit.

The Uniform Commercial Code (codified in Ohio as Chapter 1300 of the Ohio Revised Code-- all 50 states have their own versions) addresses this situation in Section 1302.10 (“Additional terms in acceptance or confirmation - UCC 2-207”), which states that:

*(A) A definite and seasonable expression of acceptance or a written confirmation that is sent within a reasonable time operates as an acceptance even though it states terms additional or different from those offered or agreed upon, unless acceptance is expressly made conditional on assent to the additional or different terms.*

*(B) The additional terms are to be construed as proposals for addition to the contract. Between merchants, the terms become part of the contract unless one of the following applies:*

*(1) The offer expressly limits acceptance to the terms of the offer.*

*(2) They materially alter it.*

*(3) Notification of objection to them has already been given or is given within a reasonable time after notice of them is received.*

What does this mean in “Plain English,” you ask?

In our example, if the Seller’s terms of sale state that “all purchase orders must be placed using our standard purchase order, which customer may not modify,” then any effort by the Purchaser to add additional terms (by modifying your form or using its own) will be ineffective.

On the other hand, a purchaser who wishes to add its own terms to modify those first proposed by the Seller should simply include them in the Purchaser’s purchase order. If the additional terms do not “materially” modify the initial offer and if the Buyer does not object to the new terms, they become part of the contract.

The “takeaway”?

1. Know what your own terms of sale/purchase say.
2. Read whatever the other side submits to you as part of a purchase transaction.
3. Know the law.