



## UCC Corner: Missing Contract Terms – Pricing

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Did you know you can form a valid contract for the sale of goods without ever discussing the price? In our introduction to Article 2, we mentioned “gap-fillers” that the UCC provides to encourage contract formation. One of those gap-fillers is pricing and payment terms. Gap-fillers can apply where the parties fail to address pricing and payment terms or where parties fail to agree on terms and the “knock-out rule” applies. Contracts with an open price term can be particularly useful where parties seek a long-term contractual arrangement, but the nature of the arrangement makes it difficult to establish a price for the entire term of the agreement.

The general rule is that the price is a “reasonable price” at the time of delivery. MCL 440.2305. Admittedly, this definition is not very helpful on its face. In practice, parties can determine a “reasonable” price from a variety of sources, such as the price the seller charges other customers for similar goods, or the price the seller’s competitors charge for similar goods. In any event, Article 2 requires parties to act in good will when setting a price after formation of the contract. MCL 440.2305(2).

Sellers may wish to use an open price term when entering into a supply agreement where the price of raw materials can fluctuate greatly. Sellers in this situation often seek a price escalation clause to ensure profitability (or, at the very least, avoid losses). Conversely, a buyer presented with a price escalation clause may seek a “cap” or “collar” on pricing, which fixes a maximum allowed price or range of prices that the seller may charge.

A related issue is payment terms. As a general rule, payment is “due at the time and place” the buyer receives the goods. MCL 440.2310(a). Importantly, under the gap-filler provisions, a buyer is not obligated to pay for goods before the buyer has had a chance to inspect the goods. MCL 440.2310(b). This creates a potential problem for sellers. If the terms of delivery require goods to be unloaded prior to inspection, the buyer will be in possession of the goods and will have a reasonable period of time to inspect the goods before payment is due. Accordingly,



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if the seller wants to be paid before inspection, it must put an appropriate term in the contract.

Importantly, parties are free to negotiate any type of pricing or payment terms they desire, which override any gap-fillers. When entering to contracts for the sale or purchase of goods, especially long-term contracts, it is important to review the pricing and payment terms and understand how Article 2 will impact any unaddressed issues. For more information about how Article 2 impacts your particular contracts, contact a Foster Swift business attorney today.