



## DO YOU HAVE A CONTRACT?

Producers, purchasers, and users commonly negotiate contracts involving the sale of goods. These negotiations are regulated by the Texas Business and Commerce Code, particularly sections 2.201(a) and (b).

Under this statute, in order for a contract for the sale of goods with a price of Five Hundred and No/100 Dollars (\$500.00) or more to be enforceable, there must be some writing, signed by the party against whom enforcement is sought, sufficient to demonstrate that a contract for sale was made between the parties. Texas Business and Commerce Code, section 2.201(a). This provision is commonly referred to as the "*Statute of Frauds*". However, there is an exception ... commonly known as the "*Merchant Exception*." If the sale falls within the *Merchant Exception*, the requirements of section 2.201(a) do not apply and you may be faced with an enforceable agreement.

"*The Merchant Exception*," contained in section 2.201(b) of the Texas Business and Commerce Code, states:

"Between merchants if within a reasonable time a writing in confirmation of the contract and sufficient against the sender is received and the party receiving it has reason to know its contents, it satisfies the requirements of Subsection (a) against such party unless written notice of objection to its contents is given within ten days after it was received."

In order to establish the *Merchant Exception* the party claiming the exception must establish that:

- (1) ...the dealings are between merchants who commonly deal with the goods made the subject of the dispute;
- (2) the writing used to demonstrate confirmation of the alleged contract must be shown to have been generated within a reasonable time after the original negotiations;

- (3) the writing must have been actually received by the party to whom it was sent;
- (4) the writing must be enforceable against the sender;  
and
- (5) the party who receives the writing has to have reason to know the writings contents.

This confirmation then acts to satisfy the requirements of the Statue of Frauds, and you have a contract – *UNLESS* – within ten (10) days of receipt the recipient notifies the party sending the confirmation, in writing, of his objection.

**CONSIDER:** When in negotiations, watch your emails, faxes, and postal mail to make sure you are not being sent a confirmation. If you are sent a confirmation and you disagree, you have ten (10) days to object in writing if you want to avoid the potential liability of a contract.

**DISCLAIMER:** The content in this article is intended for general information purposes only, and *is not* legal advice. Legal advice depends on the specific facts and circumstances of each individual's situation. Those seeking specific legal advice or assistance should contact an attorney.

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