



KEY TAKEAWAYS

The Enforceability of Unsigned Purchase Orders and Legal Challenges in Commercial Transactions

Unsigned Purchase Orders Can Be Binding

Even without a signature, your purchase orders might still hold up in court if both parties' actions show a mutual agreement. Know how your conduct can create enforceability.

Risk of Conflicting Terms

The "battle of the forms" can lead to legal headaches. Be aware that discrepancies between purchase orders and invoices can complicate contract terms, potentially leaving you unprotected.

Action Speaks Louder Than Words

Partial performance—like delivering goods—can imply contract acceptance. If either party operates like a contract exists it can be binding.

Use Electronic Signatures Wisely

Embrace digital tools like electronic signatures to enhance the enforceability of your agreements, reducing the ambiguity of unsigned documents.

Mitigate Risk

Ensure consistency and avoid conflicts that weaken your position by incorporating standard terms and referring to Master Agreements in the purchase order.

The Enforceability of Unsigned Purchase Orders and Legal Challenges in Commercial Transactions

BY GREG GILBERT

Purchase orders (POs) are a cornerstone of commercial transactions, serving as written offers to buy goods or services under specified terms. Yet, in practice, purchase orders often go unsigned, leading to legal disputes when one party seeks to enforce the terms. This article examines the legal enforceability of unsigned purchase orders, identifies the pitfalls associated with their use, and analyzes the legal doctrines and case law that govern their treatment under U.S. commercial law, particularly under the Uniform Commercial Code (UCC).

The Legal Nature of a Purchase Order

DEFINITION AND FUNCTION

A purchase order is a commercial document issued by a buyer to a seller, indicating types, quantities, and agreed prices for products or services. When accepted by the seller, it becomes a binding contract. POs are typically used in business-to-business (B2B) transactions and serve as a formal offer to enter into a contract.

OFFER VS. CONTRACT

Under contract law, a purchase order is generally considered an offer. A binding contract forms when the seller accepts the offer by signing the PO, delivering the goods, or performing the service. However, issues arise when the PO remains unsigned or when acceptance is implied through conduct.

The Role of the Uniform Commercial Code (UCC)

APPLICABILITY

Article 2 of the UCC governs transactions involving the sale of goods and applies in most jurisdictions in the United States. It liberalizes contract formation compared to common law, allowing for contracts to be formed by conduct even if the writings are not formally executed.

UCC § 2-204: FORMATION IN GENERAL

Specifically, UCC § 2-204 provides that “A contract for sale of goods may be made in any manner sufficient to show agreement, including conduct by both parties which recognizes the existence of such a contract.”¹ This means that even if a PO is unsigned, a contract may exist if the conduct of the parties shows mutual agreement—such as the delivery and acceptance of goods.

UCC § 2-207: THE BATTLE OF THE FORMS

UCC § 2-207 governs situations where businesses exchange forms (e.g., a PO and an invoice or acknowledgment) with differing or additional terms. It states:

Even if a PO is unsigned, a contract may exist if the conduct of the parties shows mutual agreement—such as the delivery and acceptance of goods.

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

2. The additional terms are to be construed as proposals for addition to the contract. Between merchants such terms become part of the contract unless:
 - a) the offer expressly limits acceptance to the terms of the offer;
 - b) they materially alter it; or
 - c) notification of objection to them has already been given or is given within a reasonable time after notice of them is received.
3. Conduct by both parties which recognizes the existence of a contract is sufficient to establish a contract for sale although the writings of the parties do not otherwise establish a contract. In such case the terms of the particular contract consist of those terms on which the writings of the parties agree, together with any supplementary terms incorporated under any other provisions of this Act.²
4. This provision often results in contracts being formed despite the lack of formal signatures, provided the parties’ actions demonstrate agreement.

Enforceability of Unsigned Purchase Orders

ENFORCEABILITY THROUGH PERFORMANCE

If a buyer issues a PO and the seller ships the goods or begins performance without signing the PO, courts may find that the parties have entered into a binding contract through conduct. This is especially true when the buyer accepts and uses the goods or services.

¹ U.C.C. § 2-204(1).

² U.C.C. § 2-207.

PARTIAL PERFORMANCE

Partial performance, such as initiating production, delivering part of the goods, or making a payment, can also support enforceability. Courts will evaluate the totality of the circumstances to determine whether a contract was formed.

IMPLIED ACCEPTANCE

Acceptance can be implied when the seller acts in accordance with the PO terms—e.g., providing goods/services, billing the buyer, or communicating in ways that reference the PO. Courts are often willing to enforce unsigned POs if the parties operate as though a contract exists.

STATUTE OF FRAUDS (UCC § 2-201)

The Statute of Frauds requires that contracts for the sale of goods over \$500 be in writing and signed by the party to be charged.³ However, subsection 3 includes several exceptions:

- **Between merchants:** A written confirmation sent and not objected to within 10 days satisfies the requirement.
- **Partial performance:** Enforceability exists to the extent that payment has been made and accepted or goods have been received and accepted.
- **Admission in court:** If the party against whom enforcement is sought admits the contract in court, it becomes enforceable.⁴

Common Legal Problems with Purchase Orders

The enforceability of purchase orders may be questioned under certain circumstances. These situations include:

- **Lack of Mutual Assent:** Unsigned POs may not reflect mutual assent, especially where there is no clear acceptance. If both parties proceed without a clear meeting of the minds, courts may find no contract exists.
- **Discrepancies in Terms:** Purchase orders often contain boilerplate language that conflicts with the seller's terms in an acknowledgment or invoice. This "battle of the forms" can lead to ambiguity and disputes about which terms govern.
- **Conditions Precedent:** Some POs include language stating that no contract exists until signed. If such language is present and no signature is obtained, enforceability is undermined.
- **Authority of Signatories:** Even when signed, POs can be challenged if the signatory lacked authority. For unsigned POs, questions of agency and implied authority are even more acute.
- **Integration and Entire Agreement Clauses:** In cases where other agreements exist—such as a master service agreement or supply contract—the PO may be treated as a subordinate document. This can limit or nullify enforceability if the PO conflicts with or fails to comply with the parent contract.
- **Change Orders and Modifications:** If a PO is unsigned and then modified by informal means (e.g., email or phone), legal enforceability becomes even more complex. UCC § 2-209 allows for modification without consideration but typically requires a writing if the original contract demands it.

³ U.C.C. § 2-201(1).

⁴ U.C.C. § 2-201(3).

Case Law Analysis

Several court cases highlight the potential acceptance of an unsigned purchase order through the party's conduct.

In *Step-Saver Data Systems, Inc. v. Wyse Technology*, the court held that repeated conduct between the parties could establish a contract despite the presence of unsigned or conflicting terms.⁵ This emphasizes how consistent conduct can outweigh the lack of a formalized agreement. Similarly, in *Itoh & Co. v. Jordan International Co.*, the court found that a seller's shipment in response to a PO constituted acceptance, even where the acknowledgment form included materially different arbitration terms.⁶ The court refused to enforce the arbitration clause, illustrating that material variations can prevent new terms from becoming part of the contract.⁷

Although a quote for goods usually does not amount to an offer, a purchase order in response to a quote may constitute an offer. The court analyzed this issue in *Brown Machine, Inc. v. Hercules, Inc.*, where they emphasized that a quotation is not an offer, and a PO in response to a quotation could be considered the offer.⁸ This case illustrates how POs, even if unsigned, often form the core contract document.

An exchange of multiple purchase orders can constitute a contract when they are acknowledged by the other party. This was the case in *Roth Steel Products v. Sharon Steel Corp.*,

where the court held that a contract had been formed through a series of purchase orders and acknowledgments, even though the PO was unsigned.⁹ The court looked at the course of dealing and performance.

Risk Mitigation Strategies

- **Formal Execution:** Where practical, parties should insist on obtaining signatures on purchase orders or use electronic signature systems that comply with the federal E-SIGN Act and UETA (Uniform Electronic Transactions Act).
- **Standard Terms and Conditions:** Buyers and sellers should clearly incorporate their standard terms into the PO or

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acknowledgment, and reference them explicitly. Including a conspicuous notice of objection to additional or conflicting terms may provide protection under UCC § 2-207.

- **Integration with Master Agreements:** Purchase orders should be consistent with and refer to any overarching master agreement. This avoids conflict and reinforces enforceability.
- **Consistent Conduct:** Even without formal signatures, consistent and unambiguous conduct can support a claim that a contract exists. Parties should document performance, communications, and acceptance.

5 *Step-Saver Data Sys., Inc. v. Wyse Tech.*, 939 F.2d 91 (3d Cir. 1991).

6 *Itoh & Co. v. Jordan International Co.* 552 F.2d 1228 (7th Cir. 1977).

7 *Id.*

8 *Brown Machine, Inc. v. Hercules, Inc.* 770 S.W.2d 416 (Mo. Ct. App. 1989).

9 *Roth Steel Products v. Sharon Steel Corp.* 705 F.2d 134 (6th Cir. 1983).

Under UETA and the E-SIGN Act, electronic purchase orders and acceptances are enforceable if parties consent to electronic communications.

- **Written Confirmations:** In merchant-to-merchant transactions, sending a written confirmation and maintaining proof that it was not objected to within 10 days can satisfy the Statute of Frauds.
- **Legal Counsel Review:** Both buyers and sellers should consider legal review of PO templates and standard practices to ensure enforceability and minimize risk.

Emerging Issues

- **Electronic Purchase Orders:** Electronic transactions are increasingly common. Under UETA and the E-SIGN Act, electronic purchase orders and acceptances are enforceable if parties consent to electronic communications.¹⁰
- **Artificial Intelligence and Automated Contracting:** Some companies use AI systems to generate and respond to POs. Questions of agency, intent, and contract formation are becoming more complex, necessitating new legal frameworks and policies.

- **International Transactions:** When international parties are involved, the United Nations Convention on Contracts for the International Sale of Goods (CISG) may apply.¹¹ The CISG has different rules regarding offer and acceptance, and may affect the enforceability of unsigned POs.

Conclusion

Unsigned purchase orders occupy a legally precarious position in commercial law. While the UCC provides flexibility through doctrines like acceptance by conduct and the battle of the forms, relying on unsigned POs carries significant legal risks. Businesses must be proactive in mitigating these risks through clear documentation, formal execution practices, and a robust understanding of the applicable legal framework.

Understanding the enforceability of unsigned POs and the common pitfalls in their use allows businesses to reduce disputes, ensure clarity in commercial relationships, and protect themselves in litigation. As commerce evolves toward digital and AI-driven platforms, staying informed and adaptive is not only prudent—it is essential.

¹⁰ UETA, *Unif. Elec. Transactions Act* (Nat'l Conf. of Comm'rs on Unif. State Laws 1999); E-SIGN Act, *Electronic Signatures in Global and National Commerce Act*, 15 U.S.C. §§ 7001–7031 (2022).

¹¹ CISG, *United Nations Convention on Contracts for the International Sale of Goods*, Apr. 11, 1980, 1489 U.N.T.S.