

# UCC Tip of the Month: Don't Forget the Price

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When goods are changing hands, make sure an agreement exists as to the price. Most contracts for the sale of goods include an agreed upon price term, but that is not always true.

Surprising to some, the determination of a price for goods bought and sold while necessary to complete an enforceable contract, is not needed when the goods are delivered and accepted. Parties can, and often do, omit a price either intentionally, by oversight, or through a disagreement yet wish, nonetheless, to complete the deal. In such a case, Michigan law, specifically MCL 440.2305, provides the gap filler to complete an enforceable transaction.

Indeed, when the price of goods has been omitted, the ultimate price will be “a reasonable price at the time of delivery” if: (a) nothing is said as to price, (b) the price is left to be agreed upon by the parties and they fail to agree; or (c) the price is to be fixed by some agreed upon method and that does not occur. Of course, what is a “reasonable price” is not always clear. When the parties differ as to what is reasonable it may be necessary for lawyers and judges to get involved.

To avoid this, the better practice is to ensure that goods are not shipped or accepted without an agreed upon price that is documented by a signed writing. However, when that does not happen § 2305 will be there to fill the gap and help to preserve the enforcement of the parties' agreement even if, and in many cases when, a dispute arises.

This business tip is part of an ongoing series of Uniform Commercial Code (UCC) updates provided by Plunkett Cooney's Commercial Litigation Practice Group, which helps clients avoid liability and aggressively defend litigation when it does arise during the normal course of business.

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