1)

======== Start of Answer #1 (2016 words) ========

A contract is a promise or set of promises that is enforceable by law. To form a contract you must have: Offer + Acceptance + Consideration.

In this fact pattern the contract is formed around services, therefore Common Law applies.

Legal significance of 4/15 call from Sally to Tech-

This maybe an invitation or it maybe an oral offer (the manifestation to be bound to the intended offeree) here she includes the subject matter (ind. consultant) the duration/quantity (12 months) the rate ($4k/mo) the start date for services, etc and it's to Tech to whom she assumes has the power to accept.

Legal significance of 4/16 email from Sally to Tech with same info -

This maybe the evidentiary writing to satisfy the statute of frauds for a contract that takes longer than a year to complete. - as it memorializes all the pertinent information of the offer (if the above is considered an offer) in writing, Since Sally's offer would be from April 16, 2015 to the following May 1, 2016 the contract would go longer than a year. However, no matter how small a statistical chance that Tech could drop dead before then, and perhaps the contract would not go the full 12 months - this may alleviate the SOF concern. Alternatively the email may be Sally's offer to Tech, if the phone call was only in invitation. ** note since this was received (and possibly sent) after Tech's sending of his confirmation, the terms discussed may serve as the terms established under the last shot rule (discussed later)

Legal significance of Tech's "confirmation" to Sally -

Given the discussion of statutes of frauds (supra) this could be the evidentary writing to memorialze the oral agreement to satisfy the SOF. However there are some issues with his confirmation: 1) the statement for so long as they both agree, is illusory, it doesn't offer any type of consideration (requiring the parties to do something.) 2) the term that if either party wishes to terminate before the end of 12 months they have to pay $10k in liquidated damages is pretty big, and would materially alter the contract between the parties from what Sally proposed, along with 3) the arbitration provision on the back, amount to adhesion, when a document contains non bargained for clauses and fine print.

These items may or may not matter, if Sally's email was sent/received after Tech sent his confirmation form to Sally, because the last shot rule would apply, and by such, Sally's email with the terms/conditions she outlined would be the last shot fired under common law, and those terms would be those abided by under the contract.

Legal significance of Sally not reading/signing Tech's confirmation form -

The facts further go on to state that Sally didn't fully read, nor did she sign the confirmation sheet from Tech, but Tech went to work on May 1st anyway. His action of going to work, shows that he chose to enter into the contract and be bound by the terms (although at this point, it's still unsure which contract he's entered into, his confirmation contract or her email contract). Therefore Tech accepted the contract by peformance.

There appears to be a valid contract between Sally and Tech for independant consulting services of Tech for $4k/month payment from Sally Beginning May 1, 2015 formed by the actions of the parties. The consideration is by the $4k payment/month for Tech's consulting. (Bargained for exchange of legal detriment)

Legal significance of Sally selling to E-Biz -

As part of this sale, Sally assigned her assets including all contracts. In doing so, E-Biz stands in the shoes of Sally, E-biz has the right under Sally/Tech's contract to Tech's performance, in exchange for his monthly payment of $4k. *note the facts are silent as to what contract for Tech's services was passed along to EBiz (i.e. the conformation form, or the email from Sally to Tech)

Legal significance of selling at loss to Ebiz -

Legal Significance of Sept 1 information to Tech from E-biz -

The change in philosophy may provide an out to Tech from the contract IF under the assignment of his contract to E-biz from sally there is a material change in his duties to perform, or that there is an increased material burden or risk to tech, or if this assignment impairs tech's performance. Those do not seem very viable excuses for Tech to cease working for E-biz because he is bothered by them selling non-environmentally friendly products as the facts are silent to any of those issues. Tech may be able to make an argument that his contract was with sally on the basis of working with sally specifically and therefore he is no longer obligated to fulfill the rest of the contract, as she is no longer in the picture. Tech makes this argument in his email, when he says he does not feel bound by Contract bc his contract was with Sally, but the argument as written is very weak that he intended the contract to be specifically with her, and not for her company as an internet business in general.

This statement might also be viewed as anticipatory repudiation by Tech not to fulfill his contract to Ebiz. Or it may just be viewed as grumbling. Tech may also try to make the argument that he does have an increased risk of not getting paid given the yelp reviews he's read about E-biz deliquent bill paying. There would be problems with his argument given that the reviews were a couple of years old, and that there were only 2 complaints, and that they were on Yelp. These facts combine to be potentially not a reliable source for information to base a $4k/month income generating business decisions, but may give rise to reason for Tech to ask for an assurance.

Also, there is no mention that Tech is worried that if he stops working for E-biz prior to the 12 months, that he will be obligated to pay the liquidated damages of $10k, that he put in the confirmation letter to Sally, which makes it probable that Tech is actually working off/from the contract formed by Sally's email offer rather than the terms indicated in his confirmation form.

Legal Significance of $25k loan to Guido based on assignment of AR's -
Tech has a duty to make his payments to Guido for his loan. Part of the reason Tech has the loan from Guido is because it's secured by the assignment of Tech's AR's to guido meaning that Guido gets the receivables of Tech's business. The $4k/month from Sally/Ebiz is a receivable that is due to Guido. Thereby making him a creditor 3PB to Tech's contract with Ebiz for monthly fees.

Legal Significance of Tech's request for assurance -
Tech requested in writing (email) assurance from Ebizs that they will pay him. He May have this right by the fact that when Sally sold to them, there was assignment and delegation and in delegation, Tech may demand an assurance from Ebiz. He most likely cannot demand an escrow account of a month in advance, because that would be a modification of the contract, by which Ebiz response clearly does not assent to.

Legal Significance of Guido's request for escrow account to be set up in his name.
Guido in essence is a 3rd Party Beneficiary (3PB) to Tech's contract with Ebiz because he is the intended beneficiary of the monthly fees, and as such the performance of Ebiz paying the monthy $4k satifisfys the obligation of Tech to pay his monthly loan abount. This makes him a credit beneficiary by the original restatement - as he is one to whom a party (tech) owes month that tech arranged to pay. The fact that Guido wants to enforce E-biz obligation to pay the monthly money on time to Tech(Guido) is to satisfy Tech's obligation of the loan payment to guido.

Sally v. Tech

Sally assigned all of her assests including contracts to Ebiz - therefore it does not appear that Sally has any rights at this point needing to be addressed against Tech. For the time that Sally owned her business, it appears that she paid Tech, for the services he performed.

Sally v. Ebiz

It does not appear that Sally has any rights at this point needing to be addressed against Ebiz. The facts state that she sold at a loss, however there is not enough information to decide if there was something excessively unfair in the bargaining between them giving rise to an action.

Sally v. Guido

There does not appear that Sally has any rights at this point needing to be addressed against Guido. The facts are silent if Sally knew of Guido, or his being the beneficiary of the monthly payment of the consultant fee.

Tech v. Sally

Tech may be able to use the defense of fraud or mis representation in inducement to contract, if Sally knew she was going to sell, but went forth with forming the original contract with Tech, however the facts to not support this defense. When Sally assigned her rights to Ebiz, Ebiz became liable for any contracts that Sally had preciously formed as the assignor. Had she only deligated her dutes to Ebiz, she may be liable for performance on the part of Ebiz, and any breaches to the contract by them. This however does not seem to be the case. Sally should have told Tech about the sale, which may point to a lack of good faith dealing on Sally's part with Tech.

Tech v. Ebiz - If Ebiz fails to make the monthy payments of Tech's fees in a timely manner Tech may have an action against Ebiz. for breach. Tech has a right to payment for his performance of his monthly duties. He also has a right to assign his earnings to another (guido. Tech may have a right to an assurance since Sally delegated her duties to Ebiz, and although perhaps unreasonable due lapse of time since Ebiz was

complained of, and the manner (yelp) which Tech learned of the problems in Ebiz bill paying.

Tech v. Guido -

Guido has already performed (loaning $25 k) unless there was an issue with the formation of their contract it is unlikely that Tech has any rights or remedies towards Guido.

Guido v. Sally

When she assigned her rights to Ebiz, Ebiz became liable for any contract issues/breachs arising from Contracts previously made by Sally as they stepped into the shoes of the Assignor. Any actions Guido would have towards Sally would now be towards Ebiz, and those actions could only be ones brought by a 3PB. If it was only a delegation, she would have liability to ensure that the monthly payments were made for Tech's work.

Guido v. Ebiz -

Guido may have an action as a 3PB under same issues outlined about under Tech v. Ebiz. Here the performance (payment of consulting fees) runs to him. It is unclear if an escrow account can be set up with a month's payment in advance of the actual performance. But if the monthly payments were not paid on time, he may be able to recover each month for the missed payment and there does not appear to be an acceleration clause in the original contract. If Ebiz doesn't pay Tech on time, Tech is still liable under his contract to Guido for the monthy loan amount.

Guido v. Tech -

Guido is entitled to his monthly payment of his loan, which was secured by assignment of Tech's AR. Tech would be in breach of his loan contract with Guido if he fails to pay on the terms provided by their contract (not supplied in fact pattern) Guido has a right to the peformance of Tech (repayment of his loan for the consideration of loaning him the $25k) Tech may freely deligate the duty to pay Guido to Ebiz, however if Ebiz does not

pay him, Tech is still held accountable for the loan payment.

======== End of Answer #1 ========

2)

======== Start of Answer #2 (891 words) ========

Question 2.

I - This is a contract for the sale of goods and is therfore governed by UCC principles. Additionally, both parties are merchants since they deal in goods of the kind.

II - Formation.

The president of Hitchco leaves a phone message for Bluebolt. This message was an inquiry as there is nothing to indicate a power of acceptance.

Bluebolt calls back and makes an offer to Hitchco. Bluebolt offers to supply all the bolts Hitchco needs, and species the amount, price, and delivery date for the first order. Hitchco (the identifiable offeree) has the power to form a contract by acceptance, which it does when the president states, "Fine, send me a confirmation." The confirmation Bluebolt immediately sends is what is known as a "merchants confirming memo." A contract has formed at this point.

Because this is a contract for the sale of goods over $500, the Statute of Frauds requires that there be a signed document sufficient to indicate that a contract has been formed. Normally, this document must be signed by the person being sued under the

contract. However, between merchants there is an exception. If there is a signed writing that is sufficient against the signor, it is also sufficient against the non-signor so long as it has been sent to the non-signor within a reasonable time and the non-signor has not objected to it in a timely manner. Since this occurred here, the Statute of Frauds will not be an issue for either party.

III - Parties

The parties are as follows:

Hitchco and Bluebolt are the parties to a contract.

Pullmore may be a third party beneficiary to this contract and is at the very least a foreseeable incidental beneficiary. Both parties
knew the bolts would be used to fill an order to Pullmore.

Hitchco and Pullmore are parties to their own, separate, contract.

GoPull is an assignee of Pullmore's rights under its contract with Hitchco.

IV - Terms and interpretation.

Because there is a writing here, the parol evidence may apply.

The writing here is a confirmation. It is an integrated document as it memorializes the prior oral agreement of the parties. However, it does not appear to be a total integration. The oral agreement was for Bluebolt to supply all the bolts Hitchco needed, including the 50,000 it needed for the first order. The writing only addresses this one order. This shows that the confirmation was not intended to be a total integration. As a result, additional terms that do not contradict the writing may come in.

There is obviously a bilateral mistake in the confirmation. The parties orally agreed on a price of $5 dollars per hundred. The confirmation says the price is to be "five dollars ($50.00) per hundred." The court will likely reform this term to match the intent of the parties. This would be true even if the confirmation was found to be a total integration

for the parol evidence rule. Evidence showing a mistake is admissible even in a total integration situation. It would also be admissible because it is clearly an ambiguous term.

V - Performance and breach.

Bluebolt's May 5 telegraph sounds like an anticipatory repudiation, but is probably not. The language is not direct enough as it only states that it is unlikely the deadline will be met. It would, however, be reasonable grounds for Hitchco to demand adequate assurances.

Bluebolt's claim that the price would be increased is not a breach of it's obligation.

VI - Hitchco obligations, rights and duties against Bluebolt.

Hitchco and Bluebolt are in a valid contract. The terms of the contract are clear. Bluebolt has promised to have 50,000 bolts at $5 per hundred for delivery no later than June 1. Bluebolt has not breached at this point, although it indicated it was unlikely it could meet the deadline. Because this is not enough to constitute an anticipatory repudiation, Hitchco does not have the right to immediately bring suit. However, it is sufficient to give Hitchco a right to demand adequate assurances. Since the deadline is less than thirty days away, Hitchco can insist on a quick response. If Bluebolt fails to provide this assurance, Hitchco can treat it as an anticipatory repudiation.

Hitchco can chose to do nothing and wait to see what Bluebolt does. If Bluebolt does not perform, Hitchco can sue for expectation, incidental and consequential (the amount it will owe Pullmore for being in breach) damages, minus any costs avoided. IF Hitchco does decide to treat this an anticipatory repudiation, Hitchco has a right to cover (in order to meets its obligation to Pullmore) and then sue for the difference between the contract price and the cover price and incidental costs incurred in covering. If Hitchco decides not to cover, and therfore breach Hitchco's contract with Pullmore, they can

sue Bluebolt for his expectation damages (lost profit) as well whatever damages it incurs from breaching its contract with Pullmore. This is because the losses incurred by any possible breach to Pullmore is absolutely foreseeable to Bluebolt - Hitchco made Bluebolt aware that it needed these bolts specifically to fill an order to Pullmore. Bluebolt may try to defend based on impracticability. However, a change in the market is not sufficient unless the change in price would result in an unconscionable loss to Bluebolt.

======== End of Answer #2 ========
END OF EXAM