

QUESTION ONE

Joanne Jones wants to buy some specialized software for the computer she uses for her home-based business (an internet consulting business). She telephones several companies, one of which is Interworld Computer & Machine (ICM). The ICM representative she speaks to tells her that they have the newest and best software for her needs. The representative describes the software in detail and tells Jones that ICM can send it to her and if she doesn't like it, she can return it without any obligation at the end of 30 days. Jones agrees.

Since the software is only sent on trial, ICM does not send out any sales acknowledgment form when it sends the software. ICM does, however, send along a catalogue with the software. The catalogue lists the price of various software (including the software sent to Jones) and, on the last page, (which Jones never bothered to read) has 18 paragraphs of fine print, including the following paragraphs:

11. The terms stated herein are the standard terms that apply to any and all software purchases from ICM. Any contrary terms are expressly rejected and have no force and effect.
12. ICM reserves the right to approve the creditworthiness of any purchaser prior to consummation of any sale.
13. In the event of any alleged defect in any ICM software, ICM shall promptly, and at its own expense replace such software or refund Buyer's money, which remedies, in the discretion of ICM shall be the sole remedy available to Buyer for any alleged defects in the software.

At the end of the 30 day period, Jones tells ICM that she wants to purchase the software, not only for her own use, but also on behalf of 5 other business associates. She sends ICM a form she found in a business self-help book called "Order confirmation". On the front of the form she stated she was ordering 6 copies of the software and was "requesting a discount from standard list price for volume purchase." The back of the form states, among other things, that (a) "this contract is binding on receipt of this Order confirmation form by Seller for 48 hours without objection," and (b) "seller warrants the merchantability and fitness of the goods purchased to the extent otherwise provided by law."

The day that ICM receives the order confirmation form, ICM calls Jones, only to learn that the software delivered to Jones has a defect which has caused Jones to lose all of her records stored on her computer, which will devastate her business and cause her to lose more than \$25,000 in profits.

Please discuss the rights and remedies, if any, of the parties.

QUESTION TWO

Ted plays lead guitar in a rock 'n roll band. On November 17, he receives the following email from Copia Concert Company:

“We would like to hire your band to play a concert on December 20 at 8pm at our new facility in Napa. Price is your standard price. Please let us know by November 20 if you are interested.”

On November 20, Ted sends the following email to Copia:

“We accept your gracious offer, however, if possible, we would like to start with an opening act at 8pm, and then we’ll play at 9:30pm.”

On the same day, Ted leaves the following voice mail message for his nephew, Noah.

“If you can act as “roadie” to help us move our gear at Copia in Napa on 12/20 at 8pm, I’ll pay you \$25 per hour, which is twice your normal wage. Consider this a Christmas gift.”

Later that day, Noah faxes Ted a note saying “I accept” – but Ted’s staff inadvertently discards the fax without giving it to Ted.

On November 21, Copia emails telling Ted that there is not enough time for an opening act, and also asks for confirmation of what the band’s “standard price” is. The next day, Ted calls Copia to say that an 8pm start is fine, and the standard price for the band is \$600.

On December 10, Ted learns that Copia personnel will move the band’s gear and he doesn’t need a roadie. Betty, Ted’s wife, calls Noah to tell him Copia is providing roadies, but not to worry, she’ll honor Ted’s commitment to pay him for the roadie work. Noah says he was counting on having that money to buy better Christmas gifts than normal, so he’ll work “extra hard” that night in exchange for Betty’s kindness.

On December 19, Copia calls Ted to tell him there is only \$300 in the budget for the show the next night, and that they will have to call off the show if he doesn’t take this lower amount. He has already told all friends about the show, so he reluctantly agrees.

Noah shows up at Copia the next night on time, but Ted denies they have a contract and Betty tells him that, because of the reduction in the pay from Copia, she doesn’t feel she can afford to pay him anything.

Please discuss the rights and remedies, if any, of the parties.