

QUESTION ONE – One Hour

Bob the Builder was under contract with Electronics, Inc. to build a new quality control testing laboratory for Electronics, Inc. On March 1, Bob called David the Distributor on the phone and asked for a price for the testing equipment that was required by his contract with Electronics, Inc. Shortly thereafter, Bob faxed David a three page the equipment list, which David in turn faxed to Mandrake the Manufacturer with a cover sheet asking for a quotation for David to be able to buy the equipment and re-sell it to Bob.

Unfortunately, Mandrake's employee misplaced the third page of the equipment list and therefore Mandrake calculated its quote on the first two pages only.

On March 2, Mandrake faxed back to David a form entitled "Quotation" which stated: "We quote you \$35,000 per equipment list previously submitted. This quotation is firm for ninety days and does not include installation. Your dealer discount is 10%." The fax include a cover sheet which stated: "Our quotation is based on the short list you provided. Please send us the complete drawings and specifications for our review at your earliest convenience."

On March 2, David faxed to Bob a photocopy of Mandrake's quotation with a cover sheet from David that said "I will call to discuss." The next day, David followed up with a voice mail message to Bob indicating to him that David would furnish the equipment for \$35,000 plus freight, and he would keep the dealer discount as his profit for the transaction.

On March 5, David received a voice mail message from Bob which stated: "Received your fax and voice mail. Great pricing!! We have a deal assuming you can provide the equipment within a reasonable time period."

As soon as he received this message, David sent an email to Mandrake stating: "Electronics Inc. and Bob the Builder have accepted your quotation of \$35,000 for equipment for Electronic's Lab. Please advise delivery dates. David."

The next morning, Mandrake received a copy of the full plans and specification, realized its computation error and faxed David a note stating that it that it withdrew its quotation and that its price should have been \$45,000 less 10%.

David then informed Bob that he would not be able to deliver the equipment for less than \$45,000 plus freight because of a mix up on Mandrake quotation. When Bob resisted, David threatened to take the position that there was no contract and pointed out that, if Bob did not agree to pay the \$45,000, then Bob was not likely to be able to get the equipment in time to comply with his contract with Electronics.

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

QUESTION TWO – One Hour

On May 1, School District (District) contacted Supplier by phone to arrange to buy supplies for the coming academic year as it had done in the past years. District's authorized representative indicated that District wanted Supplier to provide all of the erasable markers the District needed for new white boards which were to be installed throughout the district to replace chalk boards. Supplier's authorized representative replied: "Will do. We'll make sure you get whatever you need".

On May 5, Supplier sent District a "Confirmation of Order" form which listed the items ordered. In particular, the form stated that 1,000 markers would be delivered on the first day of September and, thereafter, on the first day of each month of the academic year, with payment due within thirty days of each shipment. The form mentioned nothing about the price, and on the back contained a disclaimer of express and implied warranties.

The form also contained the following statement on the bottom of the first page next to a signature line for District:

"This confirmation is intended to memorialize the entire agreement between the parties. Please sign and return this form to confirm our agreement. Your failure to do so will render our contract null and void."

District received the form, but did not respond, largely because its employees were busy handling a reorganization that had resulted from a merger of District with an small adjacent school district, and mistakenly lost the form before it was processed. As a result of the merger, District had 25% more schools than before.

Supplier makes its first delivery just before September 1, along with an invoice. Within a matter of days, District sent Supplier a certified letter stating:

"In reference to our prior agreement re school supplies, we hereby notify you that we are withholding payment until the following matters are addressed:

1. Your delivery of 1,000 markers is insufficient for its needs based on the expansion of our school district; please supply any additional 250 markers at once.
2. The price on the invoice of \$2 per marker, which you claim is your standard price, was never agreed to by us, and was a material change in the deal.
3. We never signed your confirmation form and therefore it is not binding on us.
3. Many of the markers do not work properly and needed to be immediately replaced."

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