Output and Requirements Contracts An **output contract** is an agreement of a buyer to purchase a seller's entire output for a stated period. In comparison, a **requirements contract** is an agreement of a seller to supply a buyer with all his requirements for certain goods. Even though the exact quantity of goods is not specified and the seller may have some degree of control over his output and the buyer over his requirements, under the Code and the Restatement, such agreements are enforceable by the application of an objective standard based on the good faith of both parties. Thus, a seller who operated a factory only eight hours a day before the agreement was made cannot operate the factory twenty-four hours a day and insist that the buyer take all of the output. Nor can the buyer expand his business abnormally and insist that the seller still supply all of his requirements.

Duration of Offers

An offer confers upon the offeree a power of acceptance, which continues until the offer terminates. The ways in which an offer may be terminated, other than by acceptance, are through (1) lapse of time; (2) revocation; (3) rejection; (4) counteroffer; (5) death or incompetency of the offeror or offeree; (6) destruction of the subject matter to which the offer relates; and (7) subsequent illegality of the type of contract the offer proposes.

Lapse of Time

The offeror may specify the time within which the offer is to be accepted, just as he may specify any other term or condition in the offer. Unless otherwise terminated, the offer remains open for the *specified* time. Upon the expiration of that time, the offer no longer exists and cannot be accepted. Any purported acceptance of an expired offer will serve only as a new offer.

If the offer does not state the time within which the offeree may accept, the offer will terminate after a *reasonable* time. Determining a "reasonable" time is a question of fact, depending on the nature of the contract proposed, the usages of business, and other circumstances of the case (including whether the offer was communicated by electronic means). For instance, an offer to sell a perishable good would be open for a far shorter period of time than an offer to sell undeveloped real estate.

Practical Advice

Because of the uncertainty as to what is a "reasonable time," it is advisable to specify clearly the duration of offers you make.

Sherrod v. Kidd

COURT OF APPEALS OF WASHINGTON, DIVISION 3, 2007
155 P.3D 976

http://www.courts.wa.gov/opinions/index.cfm?fa=opinions.showOpinionTextOnly&filename=254984MAJ&printOnly=y

FACTS David and Elizabeth Kidd's dog bit Mikaila Sherrod. Mikaila through her guardian *ad litem* (GAL) made a claim for damages against the Kidds (defendants). On June 14, 2005, the Kidds offered to settle the claim for \$31,837. On July 12, Mikaila through her GAL sued the Kidds. On July 20, the Kidds raised their settlement offer to \$32,843. The suit was subject to mandatory arbitration. The parties proceeded to arbitration on April 28, 2006. On May 5, the arbitrator awarded Mikaila \$25,069.47. On May 9, the GAL wrote to the Kidds and purported to accept their last offer of \$32,843, made the year before. The GAL on Mikaila's behalf moved to enforce the settlement agreement. The court concluded the offer was properly accepted because it had not been withdrawn and it entered judgment in the amount of the first written offer.

DECISION The decision of the trial judge is reversed.

OPINION Sweeney, C. J. An offer to form a contract is open only for a reasonable time, unless the offer specifically states how long it is open for acceptance. [Citations.] "[I]n the absence of an acceptance of an offer ... within a reasonable time (where no time limit is specified), there is no contract." [Citation.]

How much time is reasonable is usually a question of fact. [Citation.] But we can decide the limits of a reasonable time if the facts are undisputed. [Citation.] And here the essential facts are not disputed.

A reasonable time "is the time that a reasonable person in the exact position of the offeree would believe to be satisfactory to the offeror." [Citation.] "The purpose of the offeror, to be attained by the making and performance of the contract, will affect the time allowed for acceptance, if it is or should be known to the offeree. In such case there is no power to accept after it is too late to attain that purpose." [Citation.] A reasonable time for an offeree to

Promissory Estoppel As discussed in the previous chapter, a noncontractual promise may be enforced when it is made under circumstances that should lead the promisor reasonably to expect that the promise will induce the promisee to take action in reliance on it. This doctrine has been used in some cases to prevent an offeror from revoking an offer prior to its acceptance.

Thus, Ramanan Plumbing Co. submits a written offer for plumbing work to be used by Resolute Building Co. as part of Resolute's bid as a general contractor. Ramanan knows that Resolute is relying on Ramanan's bid, and in fact Resolute submits Ramanan's name as the plumbing subcontractor in the bid. Ramanan's offer is irrevocable until Resolute has a reasonable opportunity to notify Ramanan that Resolute's bid has been accepted.

REJECTION

An offeree is at liberty to accept or reject the offer as he sees fit. If he decides not to accept it, he is not required to reject it formally but may simply wait until the offer terminates by lapse of time. A **rejection** of an offer is a manifestation by the offeree of his unwillingness to accept. A communicated rejection terminates the power of acceptance. From the effective moment of rejection, which is the receipt of the rejection by the offeror, the offeree may no longer accept the offer. Rejection by the offeree may consist of express language or may be implied from language or conduct.

COUNTEROFFER

A **counteroffer** is a counterproposal from the offeree to the offeror that indicates a willingness to contract but on terms or conditions different from those contained in the original offer. It is not an unequivocal acceptance of the original offer, and by indicating an unwillingness to agree to the terms of the offer, it generally operates as a rejection. It also operates as a new offer. To illustrate further, assume that Worthy writes Joanne a letter stating that he will sell to Joanne a secondhand color television set for $300. Joanne replies that she will pay Worthy $250 for the set. This is a counteroffer that, on *receipt* by Worthy, terminates the original offer. Worthy may, if he wishes, accept the counteroffer and thereby create a contract for $250. If, on the other hand, Joanne in her reply states that she wishes to consider the $300 offer but is willing to pay $250 at once for the set, she is making a counteroffer that does *not* terminate Worthy's original offer. In the first instance, after making the $250 counteroffer, Joanne may not accept the $300 offer. In the second instance, she may do so, because the counteroffer was stated in such a manner as not to indicate an unwillingness to accept the original offer; Joanne therefore did not terminate it. In addition, a mere inquiry about the possibility of obtaining different or new terms is not a counteroffer and does not terminate the original offer.

Another common type of counteroffer is the **conditional acceptance**, which claims to accept the offer but expressly makes the acceptance contingent on the offeror's assent to additional or different terms. Nonetheless, it is a counteroffer and generally terminates the original offer. The Code's treatment of acceptances containing terms that vary from the offer is discussed later in this chapter.

> **Practical Advice**
>
> Consider whether you want to make a counterproposal that terminates the original offer or whether you merely wish to discuss alternative possibilities.

GIANNETTI V. CORNILLIE

COURT OF APPEALS OF MICHIGAN, 1994
204 MICH. APP. 234, 514 N.W.2D 221

FACTS Defendants listed with a real estate agent a home for sale. Plaintiffs, Patrick and Anne Giannetti, offered $155,000 for the home and submitted a deposit in the amount of $2,500. The defendants countered the offer with an offer to sell the house for $160,000. The plaintiffs then inquired whether certain equipment and items of furniture could be included with the sale of the house. The defendants refused to include the questioned items in the sale. The plaintiffs then accepted the $160,000 offer, but changed the mortgage amount from $124,000 to $128,000. The agent failed to show this change to the defendants but instead told the defendants that the plaintiffs had accepted their counteroffer. Defendants then signed all papers, but before the closing sought to invalidate the agreement. The plaintiffs brought this action for specific performance to enforce the sale. The trial court granted plaintiffs' motion and the defendants appealed.

DECISION Judgment for the defendants.

OPINION Hood, J. Defendants' main argument is that the trial court clearly erred in finding that there was a