Question 2

GrainCo, a regional grain distributor, sent an offer to sell ten railroad cars of wheat to Processor. The entire offer is contained on a signed form. The front side of the form contains GrainCo’s name and address, along with blank spaces for the description of the goods, quantity, price, and delivery date. The blanks were filled in with the desired information. The following statement appears at the bottom of the front side of the form:

“Any contract resulting from acceptance of this offer shall consist only of those terms appearing on the front and reverse sides of this document.”

The reverse side of GrainCo’s form has six paragraphs. Paragraph five reads as follows:

“Any disputes arising under this agreement shall be resolved through binding arbitration under the rules of the Commercial Arbitration Association.”

Processor responded to GrainCo’s offer with its standard acceptance form. Processor’s form contains its name, address, and company logo embossed at the top of the page with the words “Purchase Order” just below. It has blank spaces for the description of the goods, quantity, price, and delivery date, which Processor filled in with information matching the information on GrainCo’s offer. Processor’s Purchase Order form has five paragraphs on the back. Paragraph five states:

“The laws of the State of California shall govern this agreement and any claims or controversies arising during performance shall be resolved through proceedings in the courts of the State of California.”

Processor’s Purchase Order form has a signature line at the bottom of the front side, but due to a clerical error the form sent to GrainCo was not signed. Soon after receiving Processor’s Purchase Order form, GrainCo purchased ten railroad cars of wheat from local suppliers for shipment to Processor.

1. Assume that before any wheat is shipped to Processor, the price of wheat falls sharply. If Processor informs GrainCo that it will not accept the ten railroad cars of wheat, will Processor be liable to GrainCo for breach of contract? Discuss.

2. Assume instead that GrainCo delivers the ten railroad cars of wheat to Processor, and Processor pays to GrainCo the full contract price. If Processor has a complaint about the quality of the wheat it received, must Processor submit its claim to the Commercial Arbitration Association? Discuss.
ANSWER A TO QUESTION 2

2) 

**GrainCo v. Processor**

**UCC governs**

Under contract law, the UCC governs the sale of goods, moveable property identified at contract formation. Here, the contract was for the sale of ten railroad cars of wheat and therefore the contract was for the sale of goods and the UCC applies.

**Merchants**

Under the UCC, a merchant is one who trades in or otherwise holds himself out as knowledgeable about the goods. Here, GrainCo is a regional grain distributor, and Processor processing the goods. Therefore, both parties are merchants.

**Writing required**

Under the Statute of Frauds, a writing is required for the sale of goods over $500. Here, if the sale of 10 railroad cars of grain exceeds $500, a writing is required.

**Formation**

Under contract law, the rights and remedies of the parties depend on whether a valid contract has been formed. A valid contract consists of mutual assent (offer and acceptance) and consideration.

**Offer**

An offer is an outward manifestation of a present intent to be contractually bound, creating a power of acceptance in the offeree, and containing certain and definite terms. Here, GrainCo sent a written offer and the entire agreement was contained on a signed form. Therefore, the form was an outward manifestation with intend[sic] to be bound creating a power of acceptance in the offeree which did in fact create a power of acceptance in the offeree.

At common law, the offer had to contain quantity, time for performance, parties, price, and subject matter. Modernly under the UCC, quantity is sufficient[;] all other terms can be ascertained by course of dealings, course of performance, trade usage or gap fillers. Here, the offer contained goods, quantity, price and delivery date. Since quantity is sufficient, we have certain and definite terms.

**Acceptance**
Acceptance is the unequivocal assent to the terms of the offer. At common law, the acceptance had to be the mirror image of the offer. Under UCC 2-201, additional or different terms may be included unless the offeror expressly limits the contract to the terms in the offer, the offeree objects within 10 days, or the acceptance alters a material term. Here, the offer stated that "any contract resulting from acceptance...shall consist only of those terms appearing on the front and reverse sides of this document". Under the UCC, and since the parties are both merchants, this state expressly limits the terms to the terms of the offeror and hence GrainCo’s arbitration clause would prevail. Without the terms clause, any terms that are not the same as the original offer would be knocked out. Processor’s acceptance was printed on a standard form and mirrored GrainCo’s offer with the exception that Processor’s Purchase order also had a controversies paragraph on the back stating that “The law of the State of California shall govern this agreement and any claims or controversies arising during performance shall be resolved through proceedings in the courts of the State of California”. Processor’s different terms regarding disputes will not become part of the contract since the offeror expressly limited the contract to offeror’s terms.

**Consideration**

Consideration is that which is bargained for and given in exchange for a current exchange. It can be an act, forbearance to act, or return promise resulting in legal benefit or legal detriment. Here, GrainCo’s receiving the grain is his legal detriment and Processor receiving the grain is Processor’s legal benefit. GrainCo’s receipt of money for the grain is his legal benefit and Processor’s promise to pay for the grain is Processor’s legal detriment. Therefore, we have a valid consideration and a valid contract.

**Statute of Frauds Defense**

Statute of frauds requires a writing for a contract for the sale of goods for $500 or more. The facts don’t state a specific amount. Here, if the contract was for less than $500, no writing is required. Assuming the contract was for more than $500, then a writing is required. Under the UCC, a writing requires a signing by the party to be charged and quantity. Processor’s acceptance form included a quantity term but due to a clerical error did not contain a signature. The form[,] however, did contain its name, address and company logo on the top of the page with the words “Purchase Order”. Courts have held that this is sufficient since it can be implied that there was a meeting of the minds and an acceptance by Processor since their Purchase Order contained the name of the party to be charge [sic], Processor filled out the form and sent it. Additionally, since the lack of signature was a clerical error, courts will tend to allow reformation for a unilateral mistake on behalf of the non-mistaking party. Here, processor’s mistake to not sign the form was unilateral so the courts will tend to enforce the contract against the non-mistaking party which is GrainCo. Therefore, the Statue [sic] of Frauds will be no defense and the contract will be enforceable.
If the courts were to allow the status [sic] of frauds as a defense, GrainCo could collect damages from Processor since GrainCo detrimentally relied on Processor's acceptance and purchased 10 carloads of wheat.

**Anticipatory repudiation (Question 1)**

Anticipatory repudiation occurs when a party communicates that they unequivocally will not perform. Here, the price of wheat fell and Processor informed GrainCo that it would not accept the ten railroad cars of wheat. Under the UCC, the terms of a contract can be modified in for [sic] a good faith reason. Here, both parties assumed the risk of the price of wheat fluctuating. An increase of price is no defense to contract formation. Both parties are merchants and deal in the product and know or should know that there is a probability of price fluctuations. When Processor stated that is[sic] would not accept the wheat, GrainCo has the right to immediately stop performance, mitigate his damages and try to sell the wheat to another party, and sue Processor because Processor has breached his absolute duty. Processor may assert the Statute of Frauds Defense (supra), but will not prevail.

**Performance (Question 2)**

Under the UCC, a buyer that receives nonconforming goods may reject the shipment, or accept the shipment and collect damages for the difference between the goods if they had been of the quality specified by the contract minus the price of the goods as accepted. A writing[,] however, can specify terms different from the UCC. Here, GrainCo had an arbitration clause that required disputes to be settled through the rules of the Commercial Arbitration Association (see Offer supra). Processor’s form indicated resolution through the courts of California. Since GrainCo’s form expressly limited the contract to the terms in the original offer[,] Processor must submit its claim to the Commercial Arbitration Associations.

**Breach**

Failure to perform a duty that has become absolute through satisfaction, excuse or discharge. Here, Processor’s duty became absolute upon offer, acceptance and consideration absent any defenses. When Processor antipatorily [sic] repudiated the contract, he breached his duty and is liable to GrainCo for damages consisting of the cost of the contract minus any monies GrainCo would receive from mitigating.
ANSWER B TO QUESTION 2

Grainco v. Processor

Which law governs?

The sale of goods are governed by Uniform Commercial Code. Here the subject matter is wheat[,] which is a tangible item. Hence UCC will be governing law.

Are Parties Merchants?

Merchants are parties who are regularly engaged in the dealing of a good or who hold themselves out as having special knowledge in the subject matter of the contract.

It appears from the fact that Grainco and Processor are in regular business of dealing in wheat and as such will be considered merchants.

Is there a contract?

In order to find a legally enforceable agreement, there should be certain elements present[;] namely, a valid offer, a valid and timely acceptance and consideration. We will discuss these items one by one as follows:

Offer:

An offer is an outward manifestation of the desire of a party to enter into a contractual relationship. An offer should have three components[,] i.e.

Intent - The party making an offer should demonstrate an intent to enter into a present contractual relationship in such a way that the person to whom such offer is made should reasonably understand that power of acceptance has been bestowed upon them.

Content - The offer should contain essential items of the offer[,] namely identification of the parties, price, subject matter and time of performance.

Communication - Such intent and contents should be clearly communicated to the offeree so as to make a reasonable person understand that an offer has been extended giving him power of acceptance.

In the instant case, we are told that Grainco sent a written offer to sell ten carloads of wheat to Processor. This offer was written on a signed form which identified parties, subject matter quantity, price and delivery date. It clearly communicated an intent to commit should such offer be retur[n]ed with due acceptance by Processor.

Hence we can conclude that there was a valid offer made.
Acceptance:

Acceptance is the clear and unequivocal assent to each and every term of the offer, given by the offeree in the manner & time prescribed by the offer or in absence of such stipulations conveyed in a reasonable manner within a reasonable time or until the offer does not lapse or is not revoked.

Here we see that Processor returned Grainco’s offer with their acceptance using their standard acceptance form. The offer had not been revoked up to the time they accepted. The acceptance identified the parties, the price, the subject matter and also stated the terms.

Hence we can conclude that their [sic] was a timely acceptance.

Additional/Conflicting Terms:

Since the governing law is UCC, “Mirror Image Rule” of common law is not applicable.

UCC allows acceptance in any reasonable form with any additional terms not being fatal to contract formation as long as those additional terms do not fall in one of the following categories:

1. Materially change the contract
2. Make the formation entirely contingent upon the acceptance of the terms of the acceptance
3. Are objected to by the offeror within reasonable time.

Under the UCC, additional terms which do not materially alter the terms of the offeree [sic] become part of the contract if not objected to by the offeror. However, the terms which materially alter the terms of the contract are to be expressly consented to by the offeror in order to become part of the contract.

UCC handles conflicting terms in the following manner:

**Knock Out Rule:** Conflicting terms are self-[c]ancelling and the contract is reduced to the terms which are not conflicting each other.

**UCC Gap fillers:** UCC provide gab [sic] fillers which will replace the conflicting terms with the standard terms provided by UCC.

In the instant case, we see that GrianCo [sic] had made it a condition that the acceptance will be only on the terms printed on their offer/sale form. Paintco’s form,
though[, ] contained a conflicting terms [sic] concerning issues of dispute which may arise later on, did not stipulate that the formation of contract will be conditional on acceptance of their terms.

However, since there is conflict, a court may find the conflicting terms self[-]cancelling and may insert standard UCC gap fillers.

**Consideration:**

Consideration is defined as bargained for exchange of legal detriment. In [sic] can be in two forms:

1. Promise by each party to do what they were not obligated to do absent the contract.

2. Forbearance to act which they were entitled to act absent the contract.

Here, we see that GrainCo has agreed to supply grain and Processor has agreed to pay the money.

Hence proper consideration is available and is not fatal to contract formation.

**Absence of Signature:**

The formation of contract is dependent on valid Offer, Acceptance & Consideration as well as parties’['] intent to enter into the contract.

Absence of signature will not be fatal to the formation of the contract as long as parties desired to enter into the contract and met the essential elemental requirement to form the contract.

**Statutes of Fraud:**

Concerning sale of goods contract, if the value of goods is over $500.00, such contract is required to be in writing.

Here we see that parties made the offer and acceptance in writing on their standard stationery. Such stationery clearly identified the parties involved, subject matter of the contract, price, date and place of delivery[, ] etc.

Hence we may conclude that the SOF requirement was met.

**Anticipatory Repudiation:**

While the contract is executory on both sides, i.e.[,] neither party has rendered
performance under the contract, anticipatory repudiation is said to have occurred if one of the parties, unequivocally and clearly express intention that they will not perform their duties, the aggrieve[d] party is faced with anticipatory repudiation.

Here we see that GrainCo has not yet shipped when Processor notified G that they will not pay for the grain. This refusal to pay was due to the changed market conditions. Since G has not yet performed, i.e., they have not yet shipped the grain, we may conclude that the contract is still executory on both sides. Hence, G is not faced with AR from P.

UCC offers following options to the party faced with AR:

1. Consider this a present breach and sue immediately.
2. Wait for the due date and sue if performance not rendered when due.
3. Disregard AR and demand assurances.

G has an option to consider P in breach and sue for damages immediately. His obligations under the contract will be immediately discharged.

**Is there a Breach:**

Breach occurs when the performance is not rendered when due.

Here, we are faced with the situation of AR per discussion above. If G elects that they will considered [sic] AR as breach, P will be found to have breached his duties.

We are faced with the breach of contract by P.

**Defenses by P:**

P may try to raise following defenses:

**No Contract Formed:**

P may try to establish that there was no contract formed because of the following:

1. Purchase Order not signed -

P may argue that since the purchase order required signature and was not signed, there was no contract formed.

This argument will not hold since it was P who failed to singed [sic] and cannot claim the benefit of his own mistake. Moreover, it was clear from P’s actions that they had accepted G’s offer when P filled out their standard form with what they were offered on G’s offer form. Courts look at the intent of the parties. Here the SOF requirements were met and parties clearly intended to enter into a contract.
This defense will fail.

2. **Conflicting Terms:**

   P may argue that due to conflicting terms in the purchase and sale order, no contract was formed.

   Under UCC additional terms do become part of the contract unless they materially change the contract. Such conflicting terms may either be accepted by the offeror and become part of the contract or they may self-cancel each other and UCC’s standard gap fillers come into play.

   This defense will also fail.

3. **Impracticability:**

   P may argue that due to market fluctuation, it is commercially unconscionable to hold him to the agreement he made. It will be commercially fatal for him to purchase the grain at such a high price.

   **Equitable Estoppel:** The courts may use the doctrine of equitable estoppel, where it can be shown that P’s acceptance was foreseeable to cause justified reliance by G and it would render G impoverished due to the steps he took to fulfil his contractual duties.

   We are told that as soon as G received P acceptance form, G purchased the grains. If P now refuses to accept and pay for them, G will be unjustly impoverished and the court may find that the only way injustice can be avoided would be to hold P for the promise he made.

   The court may find P in breach and will allow recovery to G.

**What can be recovered:**

In cases of breach, following interests can be recovered;

**Expectation Damages:**

Where both parties have not performed, the aggrieved party may be able to recover the benefit of the bargain and may be put in the situation as if the contract would have been carried out.

Here G may be able [to] recover the contract price minus what they save by not having to perform.
Reliance Damages:

Where aggrieved party has partly performed and the other party breached, they may be able to recover the expense incurred and losses sustained by letting other opportunities pass by.

Here G may be able to recover the expenses they incurred and any lost sales due to commitment from P.

Restitution Damages:

It is applicable where aggrieved party has fully performed and the other party breaches.

The aggrieved party may be able to recover the full value of his performance not limited by the cost.

Since here, G had not performed when P repudiated, restitution damage will not be applicable.

Processor v. Grainco

Additional or Contradictory Terms:

Please see discussion concerning UCC rules on additional or contradictory terms in the offer v. acceptance supra.

In the instant case, we know that G had made it clear that conditions stated on their forms will govern. P sent their own acceptance form which contained contradictory term. From the facts given to us, we see that G never expressly consented to the additional or conflicting term.

A court may rule in following manner:

1. It may consider that the additional or contradictory term did not become part of the contract since it was never expressly consented to. In that case P will have to submit to Commercial Arbitration Association.

2. The court may consider both terms self[-]cancelling and will apply UCC Provision. In that case UCC provision will hold and P may not be bound by the provision in G’s form.