

Marketing Contracts

A QUICK PRIMER ON PRACTICES FOR MARKETING CRUDE OIL AND
NATURAL GAS

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1

1

Do I need a written contract?

- Produced hydrocarbons constitute “goods” under the TX UCC*
- A contract for the sale of goods > \$500 must be in writing (TX UCC Section 2.201(a) – known as the “Statute of Frauds”)

* As used herein, “TX UCC” refers to the Texas Business and Commerce Code. Article 2 of the TX UCC covers sales of goods.

2

2

Written contract “essentials”

- TX UCC Section 2.201(a) requires only “some writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought...”
- The written contract must specify a **quantity** of goods. (See TX UCC Section 2.201(a))
- Other missing terms can be provided by the “gap fillers” in the TX UCC.

3

3

TX UCC Article 2 provides “gap fillers”

- Price – reasonable price at the time of delivery (2.305(a))
- Delivery location -- Seller’s place, or where the goods are located (2.308)
- Delivery date – a “reasonable time” (2.309)
- Quantity limitations – where quantity has been specified as seller’s “output” or buyer’s “requirements”, 2.306 provides that the actual quantity shall not be “unreasonably disproportionate to any stated estimate, or ... to normal or otherwise comparable prior output or requirements.”
- Title – typically passes upon Seller’s completion of delivery (2.401(b))
- Risk of Loss – typically passes upon Buyer’s receipt of goods at the designated location; some exceptions (2.509, 2.510)

4

4

... and more “gap fillers”

- Payment Terms – payment on delivery? (2.507(a) and 2.511(a))
- Adequate Assurance of Performance – “if reasonable grounds for insecurity” regarding future performance (2.609)
- Breach – for failure of goods/tender to conform/comply with contract terms (2.601); for Buyer’s wrongful rejection of goods or non-payment (2.703)
- Remedies for Breach – e.g., suspend performance, terminate, “cover” and get damages (2.601, 2.703)

5

5

So why shouldn’t I just rely on the UCC?

- The “gap fillers” are not very specific
- There’s more you need to cover
- Having more certainty is good

6

6

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