

What Constitutes Acceptance of a Contract Offer?

No contract exists until an offer is accepted. So what does "acceptance" mean?

When you click the "Place Your Order" button at Amazon.com, tell the cab driver where you want to go, or hand a \$20 bill to the cashier at the movies, you are accepting an offer to enter into a contract. All of these actions--despite the lack of fanfare--communicate acceptance: an unconditional willingness to be bound by the other party's offer. An acceptance is a necessary part of a legally binding contract: If there's no acceptance, there's no deal.

There Is No Acceptance If

Occasionally, one party disputes whether the other accepted an offer. In general, acceptance has not occurred if any of the following are true.

- One party's response to an offer doesn't communicate a readiness to be bound. ("Sounds good, let me think about it.")
- The response has strings attached. ("I'm willing to do it if you'll pay me \$10,000 more.")
- The offer is based on lies. ("You said you had title to the car.")

Also, if the person making the offer indicates how the other party must accept it--"Call me with your response before Saturday"--then the other party must accept under those conditions to create a contract. In this example, accepting on Sunday will not create a contract.

Conditional Acceptance and Counteroffers

When one party responds to an offer with additional conditions or qualifications, the response is generally considered to be a counteroffer, not an acceptance. A counteroffer isn't an acceptance because it materially changes the terms of the proposed contract. Legally, a counteroffer is considered a rejection of the original offer and the proposal of a new offer in its place.

EXAMPLE

A customer asks a carpenter to build a cabinet for \$1,000 and the carpenter replies, "OK, if you also pay for my supplies." The carpenter has made a counteroffer. The customer must accept the counteroffer in order for an agreement to be formed.

However, under the Uniform Commercial Code--legal rules governing the sale of goods--the rules are sometimes more liberal. Under these rules, an acceptance that's qualified might create a binding contract, despite adding new conditions, unless the modifications cause surprise or hardship. For example, "I accept your offer to sell your car, but you'll have to arrange to deliver it to California, instead of New York."

Acceptance by Actions

Acceptance isn't always communicated by words; sometimes actions suffice. For example, if a buyer places an order to buy goods at a certain price, and the seller responds by shipping the goods, the seller's actions signal acceptance of the offer. However, silence by itself--that is, if one party doesn't say or do anything--rarely constitutes acceptance. That principle is derived from a 19th century English contract case in which a man offered to buy a horse and stated that unless he heard otherwise from the seller, "I consider the horse mine." The British court ruled that his assumption didn't create a contract; the other party's acceptance had to be clearly expressed.

Acceptance of goods that weren't ordered may also create a binding contract except when a consumer receives unsolicited merchandise. For example, in California, the receipt of unsolicited merchandise is an unconditional gift, which the recipient need not return or pay for.

Open Offers and Options

Parties that want some time to consider an offer--for example, for a home purchase--can enter into an option agreement. In an option agreement, one party pays for the exclusive right to accept an offer during a fixed period. This gives the potential buyer an opportunity to consider the deal without having to worry that someone else will snap it up--or that the terms of the deal will change--in the meantime.

Similar to open offers or options, "cooling-off rules" allow consumers to back out of certain kinds of contracts within three days of entering the agreement. To