

**Contracts II**  
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**Spring 2003**

**Sample Exam Question #7**

After negotiations, Buyer mailed to Seller a written order for the purchase of 281,000 “spade bit blanks,” for use in the manufacture of spade bits. The goods were to be delivered in installments by the dates stipulated in the purchase order. In addition, the purchase order contained the following “condition” of purchase: “No modification of this contract shall be binding upon Buyer unless made in writing and signed by Buyer’s authorized representative. Buyer shall have the right to make changes in the Order by a notice, in writing, to Seller.” Seller accepted the purchase order in a written acknowledgment and commenced to manufacture the bits.

Seller was consistently late in tendering delivery. Buyer, however, accepted the late deliveries without declaring a breach or invoking the written modification condition. After accepting 144,000 blanks, however, Buyer, invoking the delivery schedule in the purchase order, cancelled the contract for breach and sued the Seller for damages. (There was some evidence that Buyer cancelled because of a dispute with a sub-purchaser of the completed spade bit rather than Seller’s delays).

Assuming the “no modification” condition is valid, did Buyer’s conduct of accepting Seller’s late deliveries “waive” either the contract delivery schedule or the “no modification” condition?