“The Battle of the Forms” Under UCC § 2-207

Was there an exchange of written offer and acceptance or a written confirmation of a prior oral agreement?

- NO
  - No contract under §2-207(1)
  - Does the conduct of the parties "recognize the existence of an agreement"?
    - NO
      - §2-207(3) = no contract
    - YES
      - §2-207(3) = contract
      - Contract consists of agreed terms plus UCC "gap fillers"

- YES
  - §2-207(1) = contract
  - Does the acceptance/confirmation state terms that differ from or add to the offer/prior agreement?
    - NO
      - §2-207(1) = contract
      - Contract consists of agreed terms
    - YES
      - §2-207(1) = counter-offer
      - Did the offeror expressly assent?
        - NO
          - (1) agreed terms are included
          - (2) different terms are "knocked out"
        - YES
          - Are both parties merchants?
            - NO
              - (3) additional terms are merely proposals to modify
            - YES
              - Does the conduct of the parties "recognize the existence of an agreement"?
                - NO
                  - (3) additional terms are included unless
                    - (a) the offer was expressly limited to its terms
                    - (b) the additional term materially alters the contract
                    - (c) the offeror gives notice of its objection
                  - Contract consists of agreed terms