

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

\_\_\_\_\_  
No. 14-10412  
\_\_\_\_\_

United States Court of Appeals  
Fifth Circuit

**FILED**

January 8, 2015

Lyle W. Cayce  
Clerk

OPERATING TECHNICAL ELECTRONICS, INCORPORATED,

Plaintiff–Appellee,

versus

GENERAC POWER SYSTEMS, INCORPORATED,

Defendant–Appellant.

\_\_\_\_\_  
Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 4:12-CV-345  
\_\_\_\_\_

Before HIGGINBOTHAM, SMITH, and GRAVES, Circuit Judges.

PER CURIAM:\*

This is an ordinary contract dispute governed by the Texas version of the

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\* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

No. 14-10412

Uniform Commercial Code, brought to federal court via diversity jurisdiction. The issue, broadly stated, is which actions during the negotiations constituted the offer and acceptance that formed a binding contract.

We have reviewed the briefs, pertinent parts of the record, and the applicable law and have heard the helpful arguments of counsel. There is no error. The district court properly decided that the January 21, 2008, email from the plaintiff was the initial offer, so those terms applied, and that offer expressly limited acceptance to all of its terms. Defendant's purchase order, sent on February 1, served as an acceptance of those terms, which plaintiff confirmed on February 8. We therefore need not make an *Erie* guess as to whether Texas applies the "knockout rule" to such negotiations.

AFFIRMED.