

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

PRESRITE CORPORATION,	:	
	:	
Plaintiff-Appellee,	:	
	:	No. 115895
v.	:	
	:	
BEST PUMP AND FLOW, LLC,	:	
	:	
Defendant-Appellant.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: REVERSED AND REMANDED
RELEASED AND JOURNALIZED: October 8, 2026

Civil Appeal from the Cuyahoga County Court of Common Pleas
Case No. CV-23-988238

Appearances:

Thrasher, Dinsmore & Dolan, LPA, Christopher A. Holecek, and Christopher R. Elko, *for appellee*.

Vorys, Sater, Seymoure and Pease LLP, Nathaniel Lampley, Jr., Joseph M. Brunner, and Wesley R. Adams, *for appellant*.

ON RECONSIDERATION¹

LISA B. FORBES, P.J.:

{¶ 1} Pursuant to App.R. 26(A)(1), appellant Best Pump and Flow, LLC (“Best Pump”) filed an application for reconsideration of this court’s opinion in *Presrite Corp. v. Best Pump & Flow, LLC*, 2026-Ohio-3231 (8th Dist.).

{¶ 2} The general test regarding whether to grant a motion for reconsideration under App.R. 26(A)(1)(a) “is whether the motion for reconsideration calls to the attention of the court an obvious error in its decision or raises an issue for our consideration that was either not considered at all or was not fully considered by us when it should have been.” *Caldwell v. Custom Craft Builders, Inc.*, 2026-Ohio-115 (8th Dist.), quoting *State v. Marriott*, 2021-Ohio-2845, ¶ 2 (8th Dist.).

{¶ 3} Best Pump's motion calls to the attention of this court a clerical error in its decision. Accordingly, we grant the motion for reconsideration, vacate the earlier opinion, and issue this opinion in its place. *See* App.R. 22(C); *see also* S.Ct.Prac.R. 7.01.

{¶ 4} Best Pump appeals following the grant of summary judgment in favor of Presrite Corporation (“Presrite”). After a thorough review of the facts and the law, we reverse and remand for further proceedings consistent with this opinion.

¹ The original decision in this appeal, *Presrite Corp. v. Best Pump & Flow, L.L.C.*, 2026-Ohio-3231 (8th Dist.), released on August 20, 2026, is hereby vacated. This opinion, issued upon reconsideration, is the court’s journalized decision in this appeal. *See* App.R. 22(C); *see also* S.Ct.Prac.R. 7.01.

I. Facts and Procedural History

A. Presrite Brings Suit

{¶ 5} Presrite sued Best Pump in the Cuyahoga County Court of Common Pleas, claiming breach of contract, fraudulent inducement, and promissory estoppel.² This appeal concerns Best Pump’s liability for breach of contract.³

{¶ 6} Presrite alleged that it entered a contract with Best Pump for the manufacture of valve seat forgings (“forgings”) via “Presrite’s Quotations, the Purchase Orders submitted by Defendant Best Pump to Presrite, and Presrite’s acknowledgment of the Purchase Orders.” According to Presrite, it performed its contractual obligations by purchasing steel and beginning production on the forgings. Best Pump breached its contractual obligations “by failing to pay Presrite the amount agreed upon in the Quotations and Purchase Orders without legal excuse.” Presrite alleged that it sent Best Pump a “demand for assurance,” to which Best Pump did not respond. Presrite then “properly mitigated its damages by reselling the Steel at a loss.” Presrite claimed that it suffered additional damages stemming from costs for freight, tooling, engineering, and “first article production runs.”

{¶ 7} To support these allegations, Presrite provided the following documents.

² Presrite initiated this case on November 8, 2023, and filed an amended complaint on February 23, 2024.

³ Presrite voluntarily dismissed, with prejudice, its claims of fraudulent inducement and promissory estoppel.

1. First Quotation

{¶ 8} Attached to the amended complaint, labeled Exhibit A, was a document titled “Quotation Presrite Corporation” (“First Quotation”). The First Quotation was dated November 1, 2022, and addressed to “Best Pump & Flow.” It listed per-unit prices for forgings at various purchase quantities.⁴ This included a notation for “300 PPAP,” alongside a \$13.75 per-unit price.⁵

{¶ 9} The First Quotation also set forth terms and conditions, including the following:

Acceptance: This quotation is not intended as an offer to sell and no contract of purchase and sale shall arise until the seller shall have acknowledged and accepted in writing, at its home office, a written purchase order from the purchaser for the material and on the terms and provisions herein quoted. This Quotation is expressly limited to and made conditional upon the terms and conditions of the face and reverse side hereof, and constitutes the entire agreement between Buyer and Seller. Any of Vendee’s terms in addition to or different from those contained herein, whether contained on an acknowledgment or other document, is hereby objected to and shall be of no effect. This quotation is subject to change without notice and shall be considered to have expired by lapse of time 30 days after date.

(Emphasis added.)

⁴ For example, the First Quotation provides \$9.12 and \$9.08 per-unit prices for production of 5,000 and 10,000 units, respectively.

⁵ Discussed throughout this opinion is a “first-article inspection” (“FAI”) or “production part approval process” (“PPAP”), whereby Presrite produced forgings for quality inspection.

2. First Purchase Order

{¶ 10} Labeled Exhibit B was a document on Best Pump letterhead titled “Purchase Order #PO3924” (“First Purchase Order”). The First Purchase Order was addressed to Presrite Corporation and dated December 6, 2022. It included a request for 300 forgings and a Best Pump shipping address. It also provided a per-unit price for forgings and prices for “Tooling” and “Container Charge.” The First Purchase Order also stated, “Please review Section 3.0, paragraph 3.1-3.13 in Supplier Quality Manual . . . For First Article submission requirements.”

{¶ 11} The First Purchase Order set forth terms and conditions, including the following:

ACCEPTANCE AND COMPLETE AGREEMENT. *This Purchase Order (“PO”) is Buyer’s offer to Seller to purchase the goods and/or services (“goods”) identified herein, subject to these Terms and Conditions. Acceptance of this offer by Seller shall be made upon (a) Seller acknowledging acceptance of the PO, or (b) Seller delivering any of the Goods ordered herein. Any additional or different terms proposed by Seller are rejected, unless expressly contained in the PO. This PO is the complete and exclusive statement of the terms and conditions of the agreement between Seller and Buyer and shall govern and control over all prior discussion and agreements.*

. . .

GOVERNING LAW. This PO shall be governed and construed by Texas law, excluding conflicts of law rules. *Harris County, Texas shall be the exclusive venue for the resolution of any claims or disputes relating to the PO or Goods.* Each party consents to personal jurisdiction in Harris County . . . and further waives any objection to venue, including forum non-conveniens.

(Emphasis added.)

3. Second Quotation

{¶ 12} Labeled Exhibit C was a document titled “Quotation Presrite Corporation” (“Second Quotation”), which was dated December 21, 2022, and addressed to Best Pump. Like the First Quotation, the Second Quotation listed multiple per-unit prices for forgings at different purchase quantities. It set forth terms and conditions, including an “Acceptance” provision that was identical to the language from the First Quotation, discussed above.

4. Second Purchase Orders

{¶ 13} Labeled Exhibit D were two documents on Best Pump letterhead titled “Purchase Order #PO3947” and “Purchase Order #PO3949” (collectively, “Second Purchase Orders”). The Second Purchase Orders were addressed to Presrite Corporation and dated December 27, 2022. They each included a request for 20,000 forgings (40,000 total) and provided a Best Pump shipping address. The Second Purchase Orders each included a per-unit price for forgings and prices for “Container Charges.” The Second Purchase Orders established terms and conditions, including “Acceptance” and “Governing Law” provisions identical to the language from the First Purchase Order discussed above.

5. Acknowledgment Email

{¶ 14} Labeled Exhibit E was a printout of an email sent from Presrite to Best Pump on January 24, 2023 (“Acknowledgment Email”). The email’s subject line provides “Best Pump and Flow Order Acknowledgments.” The body of the email states, “Please use this email as acknowledgment for the following order(s),”

including “PO3924,” “PO 3947,” “PO 3949,” that is, the First Purchase Order and the Second Purchase Orders.⁶ The email set out quantity amounts and due dates for each order. In the email, Presrite stated, “[W]e will review material and press availability and advise if we are unable to meet this date,” and sought guidance as to “shipping instructions.” The email further provided, “Presrite takes exception to the following item(s).”

Presrite Terms and Conditions Apply

Net Terms should read: Net 30

FOB should read: Origin, Shipping Point, or Cleveland, Ohio

Freight Terms should read: Collect

Shipping Instructions: Please advise shipping instructions.

Surcharges are not included in the prices and will be handled separately.

(Emphasis added.)

{¶ 15} The author of the email thanked Best Pump for its orders multiple times and stated, “I am looking forward to working with you.”

6. Emails Regarding Best Pump’s Business Troubles

{¶ 16} Labeled Exhibits F and G are printouts of emails between representatives of Presrite and Best Pump. Exhibit F includes an email sent to Bailey Archacki (“Archacki”) of Presrite on April 3, 2023, informing Archacki that “[w]e are hitting some bumps in the road” and that “upper management has put all production on hold” while “our seats and valves . . . go[] through extensive customer-

⁶ The email also lists additional purchase orders that are not part of Presrite’s breach-of-contract claim.

based testing.” The email noted that Best Pump was not canceling orders, but inquired, “If I needed to cancel POs, what can I cancel[?]”

{¶ 17} Exhibit G includes two emails exchanged on August 8, 2023, between a Best Pump representative and Bill Blake (“Blake”) of Presrite. Blake stated, “I have been trying to reach you” about “approval to ship these parts,” but “have not received any response . . . Please respond.” The Best Pump representative replied, “We have had an internal reduction in force. I will check into where this has left off and will keep you posted.”

7. Assurance Letter

{¶ 18} Exhibit H is a letter on a law firm’s letterhead, dated August 16, 2023, addressed to a Best Pump representative (“Assurance Letter”). The Assurance Letter provided that “this firm and the undersigned serve as legal counsel to Presrite Corporation” and that the letter was “in response to [Best Pump’s] anticipatory breach of contract” related to the First Purchase Order and the Second Purchase Orders. Presrite “demand[ed] that within five (5) days of the date of this letter, [Best Pump] provide written assurance that it intends to comply with all contract terms.” If Best Pump failed to provide such assurance, Presrite would “mitigate damages by reselling the Steel and thereafter recover breach of contract damages.”

B. Best Pump’s Response to Presrite’s Amended Complaint

{¶ 19} On February 26, 2024, Best Pump filed a motion to dismiss all of Presrite’s claims under Civ.R. 12(B)(6). Pertinent to this appeal, Best Pump asserted that Presrite had not stated a claim upon which relief could be granted because the

amended complaint did not set forth sufficient allegations to demonstrate that a contract existed, a necessary element of a breach-of-contract claim. That same day, Best Pump also filed a motion to stay the case, asserting that if the court found that a contract existed, Best Pump's terms and conditions governed. Best Pump argued that its terms and conditions included a forum-selection clause that required this case to proceed in Harris County, Texas, meaning that Presrite had sued in an improper venue, under Civ.R. 12(B)(3). The court denied the motions to dismiss and stay the case on July 10, 2024, via journal entry.

{¶ 20} On August 2, 2024, Best Pump sought an extension of time to respond to the allegations in Presrite's amended complaint, which the court granted. Best Pump's answer, attached to its extension request, admitted to the allegations in Presrite's amended complaint regarding the authenticity of the exhibits attached to it, which are discussed above.

C. Presrite's Motion for Summary Judgment

{¶ 21} Presrite filed a motion for summary judgment on April 11, 2024, asserting, under Civ.R. 56, that there was no dispute as to any material fact and that Presrite was entitled to judgment as a matter of law. Presrite argued that the First Quotation and Second Quotation were sufficiently detailed as to constitute offers to enter a contract, which Best Pump accepted via The First Purchase Order and the Second Purchase Orders. According to Presrite, Best Pump's terms and conditions, found in those purchase orders, did not become part of the contract. Best Pump had

not indicated that it was only willing to form an agreement if Presrite agreed to Best Pump's terms and conditions.

{¶ 22} Presrite posited that Best Pump had breached the contract. According to Presrite, Best Pump's emails to Presrite regarding "bumps in the road," production halts, and cancellation of orders gave Presrite reasonable grounds to believe that Best Pump would not fulfill its contractual obligations. Best Pump then failed to respond to Presrite's Assurance Letter, justifying Presrite's effort to mitigate damages by reselling the steel it had purchased to produce the forgings identified in the First Purchase Order and the Second Purchase Orders. Presrite claimed that it suffered damages resulting from Best Pump's breach, including from selling the steel for less than its purchase price, from uncompensated engineering and tooling costs, and from Best Pump's nonpayment for 300 forgings that Presrite produced pursuant to the First Purchase Order.

{¶ 23} Presrite attached to its motion for summary judgment Martha Vinyard's ("Vinyard") affidavit ("Vinyard Affidavit"). The Vinyard Affidavit provides that Vinyard was the executive vice President of Presrite. Following communications between Presrite and Best Pump concerning the manufacture of forgings, Presrite "purchased 876,976 pounds of . . . steel" and "incurred tooling, engineering, and sample production costs." On May 16, 2023, Best Pump sought to cancel all purchase orders. Vinyard responded that Presrite's purchase of steel could not be cancelled, nor could "Purchase Order #PO3949," for 20,000 forgings (one of the Second Purchase Orders). Vinyard attested that, on June 7, 2023, Best Pump

advised that it would not be taking shipments and insisted that Presrite perform a quality control inspection on all of the 300 FAI/PPAP parts, which was not previously specified and not the industry standard. After Best Pump failed to respond to the Assurance Letter, Presrite sold the steel for a loss.

D. Best Pump's Motion for Summary Judgment

{¶ 24} On April 11, 2024, Best Pump moved for summary judgment, asserting, under Civ.R. 56, that no material facts were in dispute and that it was entitled to judgment as a matter of law. Pertinent to this appeal, Best Pump raised the following arguments.

{¶ 25} According to Best Pump, the parties had not formed a contract. By their own terms, the First and Second Price Quotations were not offers to enter a contract and had expired after 30 days, within which time Best Pump never agreed to enter a contract with Presrite. Instead, the parties continued to discuss quality requirements beyond this timeframe. Best Pump also argued that the price quotations were not sufficiently detailed to constitute offers to purchase because they lacked key information, including due dates, a destination for shipping, and payment methods. Best Pump posited that neither the First Purchase Order nor the Second Purchase Orders constituted acceptance of a contract offer from Presrite, because they set forth Best Pump's own terms and conditions, which materially differed from those proposed by Presrite. Presrite rejected Best Pump's terms and conditions in the Acknowledgment Email, meaning no contract existed.

{¶ 26} Alternatively, Best Pump argued that any contract that had existed was limited to the 300 forgings that were the subject of the FAI. The Best Pump Supplier Quality Manual (“Manual”), which Presrite reviewed and signed, made clear that production could not begin until the FAI was complete. Presrite failed to ship the 300 forgings that were the subject of the FAI, absolving Best Pump of any payment obligation and meaning that no contractual obligations existed regarding additional forgings. Presrite also repudiated any contract by sending the Assurance Letter and subsequently reselling the steel that it had intended to use for Best Pump’s forgings. Because Presrite had repudiated the contract, it could not show that Best Pump breached.

{¶ 27} Best Pump proffered the following evidence to support its motion for summary judgment.

1. Archacki Deposition

{¶ 28} Archacki was a Presrite employee involved with sales to Best Pump. He had no knowledge of Best Pump’s Manual. He testified that an FAI did not always precede production and could occur simultaneously to production if a customer “was pushing for due dates and trying to expedite a process.” Archacki participated in a meeting with Best Pump on January 17, 2023, during which Best Pump “wanted to know how soon [Presrite] could get started, and if there was any way to improve on the quoted lead time.” In response, “[W]e let them know that we had multiple presses that could run these parts and that it would be no issue.”

2. Cindy Beale Deposition

{¶ 29} Cindy Beale (“Beale”) was employed by Presrite and involved with sales to Best Pump. She was not sure of the Manual’s significance to Presrite’s production of forgings for Best Pump. Beale attended the January 17, 2023 meeting between Presrite and Best Pump, but did not remember discussing FAI requirements during the meeting. She agreed that FAIs are normally done for new customers. She also attended at least one meeting involving Best Pump representatives in May 2023, concerning cancellation of Best Pump orders. “[T]hey were canceling purchase orders, and . . . we had steel that we had ordered and we couldn’t cancel certain purchase orders.” Beale discussed the Best Pump FAI with Blake, of Presrite, in June 2023. Beale’s position at the time was that the FAI would include the “standard number of samples,” that is, that Presrite would “submit a certain number of samples from [a] 300 piece run.”

3. Vinyard Deposition

{¶ 30} Vinyard, a Presrite employee, testified that she attended a meeting with Best Pump representatives on January 17, 2023. She did not recall whether the Manual was discussed, nor did she recall whether FAI requirements were discussed. According to Vinyard, Presrite ordered steel for Best Pump’s entire production run “for lead time purposes that Best Pump understood from the beginning based on their purchase orders and multiple requests to get parts delivered as soon as possible.” After the steel had been ordered, on May 9, 2023, Vinyard attended a meeting with Best Pump representatives, during which “[t]hey asked about

canceling and . . . what-if scenarios, but we never got any word that they were going to [cancel].” She agreed that, on May 15, 2023, she stated in an email to Best Pump representatives, “Presrite adheres to all quality manuals, which all clearly state that no production pieces shall be shipped without First Article approval.”

4. Blake Deposition

{¶ 31} Blake, a Presrite employee, testified that he reviewed the Manual and understood it. He signed an acknowledgement of the Manual on behalf of Presrite that was returned to Best Pump in November 2022. The initials “B.B.” are affixed to a “Supplier Acknowledgment of receipt and Agreement” form contained in the Manual. Section 3.1 of the Manual provides, in relevant part, “All FAI parts and equipment must have an approved FAI report by BEST Pump and Flow prior to shipping production parts to BEST Pump and Flow.”

{¶ 32} Blake received emails in June 2023 in which a Best Pump employee asserted that, regarding the FAI, Best Pump expected Presrite to supply 300 forgings. Blake replied that the Manual did not specify the number of forgings to be inspected and that Presrite had intended to sample an “industry standard” of “5-6 parts from the first production run.” In July 2023, the same Best Pump representative emailed Blake, claiming that the First Purchase Order required the FAI to include 300 pieces and reiterating, “I will only be accepting the 300 pcs as a first article submission.”

E. Grant of Summary Judgment and Appeal

{¶ 33} On May 22, 2025, the court issued a journal entry granting Presrite's motion for summary judgment and finding Best Pump liable for breach of contract. The court noted that damages related to Presrite's breach-of-contract claim would be determined by a jury. The court also denied Best Pump's motion for summary judgment and denied Best Pump's motion to compel discovery.

{¶ 34} Best Pump appealed, raising the following assignments of error:

1. The trial court erred by granting summary judgment to [Presrite] on its breach of contract claim.
2. The trial court erred by denying Best Pump's motion for summary judgment.
3. The trial court erred by denying Best Pump's motion to stay for improper venue based on a forum selection clause.
4. The trial court erred by denying Best Pump's motion to compel discovery.

II. Law and Analysis

A. Assignment of Error No. 3 — Motion to Stay for Improper Venue

{¶ 35} We begin and end our analysis with Best Pump's third assignment of error, in which Best Pump asserts that the trial court erred in denying its motion to stay this matter for improper venue. Best Pump argues that any contract existing in this case included a forum-selection clause that required Presrite to bring this action in Harris County, Texas. We agree.

{¶ 36} We note that the effect of the forum-selection clause turns largely on issues of contract formation, addressed by Best Pump's first and second assignments

of error concerning the parties' motions for summary judgment. Consequently, while we render no opinion about whether either party was entitled to summary judgment on Presrite's breach-of-contract claim, we engage with both party's arguments concerning the formation and content of the contract in ruling on Best Pump's third assignment of error.

1. Elements of a Breach-of-Contract Claim and Contract Formation Under the Uniform Commercial Code ("UCC")

{¶ 37} To establish a breach-of-contract claim, a plaintiff must show "(1) the existence of a binding contract, (2) the nonbreaching party performed his or her contractual obligations, (3) the other party failed to fulfill its contractual obligations without legal excuse, and (4) the nonbreaching party suffered damages as a result of the breach." Regarding the first element of this standard, "[c]ontract formation requires an offer acceptance, consideration, and mutual assent between two or more parties with the legal capacity to act." *Digitalight Sys. v. Cleveland Clinic Found.*, 2022-Ohio-1400, ¶ 32 (8th Dist.), quoting *Widok v. Estate of Wolf*, 2020-Ohio-5178, ¶ 52 (8th Dist.).

{¶ 38} In this case, determining whether an offer to form a contract exists involves analyzing a price quotation. "Generally, a price quotation is not an offer, but rather an invitation for an offer." (Cleaned up.) *H & M Landscaping Co. v. Abraxus Salt, L.L.C.*, 2010-Ohio-4138, ¶ 9 (8th Dist.), citing *Dyno Const. Co. v. McWane, Inc.*, 198 F.3d 567, 572. "However, a document labeled a quotation may constitute an offer if the quotation is sufficiently definite to require only the offeree's assent to create a binding contract." *Id.*, citing *id.*

{¶ 39} Also pertinent to this appeal is the question: if a contract existed, what are its terms? R.C. 1302.10, which corresponds with Section 2-207 of the U.C.C. sets forth rules on this issue, including:

A definite and seasonable expression of acceptance or a written confirmation that is sent within a reasonable time *operates as an acceptance even though it states terms additional or different from those offered or agreed upon, unless acceptance is expressly made conditional on assent to the additional or different terms.*

(Emphasis added.) R.C. 1302.10(A).⁷

{¶ 40} Additional terms in an acceptance are “construed as proposals for addition to the contract.” R.C. 1302.10(B). “Between merchants,” such proposals “become part of the contract unless one of the following applies:”

- (1) The offer expressly limits acceptance to the terms of the offer.
- (2) They materially alter it.
- (3) Notification of objection to them has already been given or is given within a reasonable time after notice of them is received.

*Id.*⁸

2. Analysis

{¶ 41} While Best Pump maintains that no contract existed between the parties, it argues alternatively that any contract that did exist was governed by the terms and conditions provided in Best Pump’s purchase orders, including the

⁷ Though neither party raises arguments applying Texas law, we note that Tex. Bus. & Com. Code 2.207 sets forth provisions concerning additional terms in an acceptance that are virtually identical to those in R.C. 1302.10.

⁸ The parties do not raise arguments disputing that the transaction for forgings at issue occurred “between merchants” under R.C. 1302.10(B) or Tex. Bus. & Com. Code 2.207(b).

forum-selection clause. We find that a contract existed and that Best Pump’s terms and conditions were controlling.

a. Offer and Acceptance

{¶ 42} As an initial matter, we do not find that Presrite’s First Quotation, sent to Best Pump on November 1, 2022, constituted an offer to enter a contract. In *H&M*, 2010-Ohio-4138 (8th Dist.), this court found that a price quotation did not constitute an offer to enter a contract where it contained information about “price, delivery terms, terms of payment, and product descriptions,” but did not specify the “quantity” of the product to be supplied.⁹ *Id.* at ¶ 12. Further, the price quotation in *H&M* “stated, ‘[e]ither party in regard to usage allocated above assumes no obligation,’” language that the court found “would preclude a finding that the parties intended to enter into” a contract. *Id.* at ¶ 18. The court concluded that the price “quotation [was] not sufficiently definite to constitute a contract between the parties.” *Id.* at ¶ 25.

{¶ 43} Similarly, we do not find that the information in the First Quotation was sufficiently detailed to invite acceptance, that is, to indicate that Best Pump’s assent was all that had yet to occur. Importantly, the First Quotation provided that it was “not intended as an offer to sell” and that “no contract . . . shall arise until the seller shall have acknowledged and accepted in writing . . . a written purchase order

⁹ Discussed in *H&M* are “requirements contracts,” which involve a promise to supply all of the goods or services that a buyer needs during a specified period and, which may not include a specific quantity term. *Id.* at ¶ 13. While neither party raises arguments about a requirements contract in this case, we find the discussion in *H&M* to be instructive.

from the purchaser for the material and on the terms and provisions herein quoted.” Like in *H&M*, where a price quotation provided that the parties “assume[d] no obligation” under the price quotation, the First Quotation stated that it was “not intended as an offer to sell.” Further, as in *H&M*, the First Quotation did not include a quantity term. The First Quotation set forth multiple per-unit prices and multiple production amounts. In light of the foregoing, we do not find that the First Quotation amounted to an offer to form a contract.

{¶ 44} We do, however, find that a contract existed between the parties, formed via the First Purchase Order and the Acknowledgment Email.¹⁰ Unlike the First Price Quotation, the First Purchase Order sent by Best Pump to Presrite included a quantity term, specifically, for 300 forgings, a per-unit price and a Best Pump shipping address. Also, unlike the First Price Quotation, which stated that it was not an offer, the First Purchase Order stated it was “Buyer’s offer to Seller to purchase the goods and/or services.”

{¶ 45} Presrite accepted the offer set forth in the First Purchase Order, in the manner specified therein. Regarding acceptance, the First Purchase Order provided, “Acceptance of this offer by Seller shall be made upon (a) Seller acknowledging acceptance of the PO” Presrite did so, via the Acknowledgment Email. Again, under the subject line “Best Pump and Flow Order Acknowledgments,” the email instructed Best Pump to “use this email as

¹⁰ The parties dispute whether any contract formed between them was limited to the 300-forging FAI. For reasons explained below, we make no finding on this issue.

acknowledgment for the following order(s),” which include the FAI. A row labeled “PO3924,” the order number associated with the First Purchase Order, called for 300 forgings, the item count sought in the First Purchase Order.

{¶ 46} We are not persuaded by Best Pump’s argument that the timing of the First Quotation, First Purchase Order, and Acknowledgement Email preclude a finding that a contract existed. We acknowledge that more than 30 days elapsed between the dates affixed to the First Quotation and the First Purchase Order. Also, the Acknowledgement Email is dated January 24, 2025, which is more than 30 days after the dates provided on the First Purchase Order or Second Purchase Orders. While the First Quotation states that it “shall be considered to have expired by lapse of time 30 days after date,” as we previously found, the First Quotation was not an offer to form a contract. The express, written agreements demonstrated by Best Pump’s First Purchase Order and Second Purchase Orders and Presrite’s Acknowledgement Email did not include the 30-day deadline.

{¶ 47} Moreover, the parties’ conduct indicates that the 30-day deadline was not part of the contract. *See* R.C. 1302.10(C) (“Conduct by both parties that recognizes the existence of a contract is sufficient to establish a contract for sale although the writings of the parties do not otherwise establish a contract.”). *See also* R.C. 1302.07(A) (“A contract for sale of goods may be made in any manner sufficient to show agreement, including conduct by both parties which recognizes the existence of such a contract.”). More than 30 days after Presrite sent its First Purchase Order and Second Purchase Orders, Presrite expressly accepted Best

Pump’s purchase offer when it sent its Acknowledgement Email. Presrite purchased steel for Best Pump’s orders in February 2023. Best Pump sought to cancel its orders nearly five months after it received the Second Quotation, which was nearly four months after any 30-day deadline that it contained would have passed. In light of the foregoing, we find that a contract existed between Best Pump and Presrite, formed by virtue of Best Pump’s purchase orders and Presrite’s Acknowledgement Email.

b. Proposals for Addition of Terms

{¶ 48} We turn next to Best Pump’s arguments that its terms and conditions were incorporated into any contract that existed in this case. We agree.

{¶ 49} Again, between merchants, in an acceptance of a contractual offer, additional terms are “construed as proposals for addition to the contract” and “become part of the contract” unless, pertinent here, the “offer expressly limits acceptance to the terms of the offer.” R.C. 1302.10(B)(1). This court has found that terms and conditions set forth in a buyer’s purchase order were controlling where the purchase order stated, “Any terms and conditions in any confirmation by Seller that states different or additional terms shall be null and void. Buyer hereby objects to and rejects such different or additional terms,” which “shall be deemed to be material alterations and notice of objection to such terms is hereby given.” *Digitalight*, 2022-Ohio-1400, at ¶ 42 (8th Dist.). In that case, the seller replied to the purchase order with a “revised proposal” that stated, in part, “Unless agreed upon in writing to the contrary, this Agreement shall govern the sale, delivery, and

distribution of all products,” and further provided, “Any conditions of Purchaser which are contradictory to the conditions contained herein are invalid.” *Id.* at ¶ 44. Nonetheless, the court found that the seller “did not expressly indicate that [Buyer’s] assent to the added terms set forth in the revised proposal . . . was necessary in order to create a valid contract.” *Id.* at ¶ 46.

{¶ 50} Similarly, we find that Presrite’s terms and conditions did not become part of the contract. It is undisputed that Presrite’s Acknowledgment Email set forth provisions that were not included in Best Pump’s First Purchase Order. Presrite informed Best Pump that it “t[ook] exception” to certain “item(s),” and asserted that “Presrite Terms and Conditions Apply.” However, Best Pump’s First Purchase Order and Second Purchase Orders expressly limited acceptance to the terms included in Best Pump’s purchase orders. They stated that “additional or different terms proposed by Seller are rejected, unless expressly contained in the PO,” which was “the complete and exclusive statement of the terms and conditions of the agreement between Seller and Buyer.” Because the First Purchase Order limited acceptance to its terms, additional terms proposed in Presrite’s Acknowledgement Email are not part of the contract under R.C. 1302.10(B)(1).

{¶ 51} Further, as in *Digitalight*, Presrite did not make its acceptance contingent on Best Pump’s assent to the new terms in the Acknowledgement Email, under R.C. 1302.10(A). Rather than demanding further assent to additional terms, Presrite stated, “We will review material and press availability and advise if we are unable to meet [the due dates enumerated in the email].” The author of the email,

a Presrite employee, thanked Best Pump for its orders multiple times and stated that she looked forward to working with Best Pump. Nothing in the Acknowledgement Email indicated that Presrite would only supply forgings if Best Pump communicated further agreement to the additional terms contained in the email.

{¶ 52} Given the foregoing, we find that the undisputed evidence demonstrates that a contract existed and that Best Pump's terms and conditions were controlling.

c. Forum-Selection Clause

{¶ 53} We next address Best Pump's assertion that the forum-selection clause contained in its terms and conditions required this case to be initiated in Harris County, Texas. We agree.

{¶ 54} "We review de novo the enforceability of a forum selection clause." *Klarfeld v. Vestige Group LLC*, 2025-Ohio-2678, ¶ 9 (8th Dist.), citing *Original Pizza Pan v. CWC Sports Group, Inc.*, 2011-Ohio-1684, ¶ 10 (8th Dist.). "De novo review encompasses an independent examination of the record and law without deference to the underlying decision." *Torres v. Concrete Designs, Inc.*, 2019-Ohio-1342, ¶ 48 (8th Dist.), quoting *Gateway Consultants Group, Inc. v. Premier Physicians Ctrs., Inc.*, 2017-Ohio-1443, ¶ 22 (8th Dist.).

{¶ 55} In Ohio, ""a forum selection clause in a commercial contract should control, absent a strong showing that it should be set aside."" *Klarfeld* at ¶ 11, quoting *Pizza Pan* at ¶ 12, quoting *Kennecorp Mtge. Brokers v. Country Club Convalescent Hosp.*, 66 Ohio St.3d 173, 175 (1993). "The party challenging the

forum selection clause bears a heavy burden of establishing that it should not be enforced.” *Klarfeld* at ¶ 10, quoting *Pizza Pan* at ¶ 10.¹¹

{¶ 56} There is no dispute that the forum-selection clause at issue arose in a commercial contract. The parties contracted in their capacities as business entities for the sale of goods. Presrite does not argue that the resulting forum-selection clause is unenforceable or that it should be set aside. Presrite argued only that the clause was not part of a contract. As discussed above, we find that it was.¹²

{¶ 57} Accordingly, we sustain Best Pump’s third assignment of error. As such, Best Pump’s first, second, and fourth assignments of error, relating to events that followed Presrite’s initiation of this case in an improper venue, are moot.

{¶ 58} Judgment reversed. Case remanded for further proceedings consistent with this opinion.

It is ordered that appellant recover from appellee costs herein taxed.

The court finds there were reasonable grounds for this appeal.

¹¹ Similarly, in Texas, the state in which Best Pump argues Presrite was required to bring this case, “[f]orum-selection clauses are generally enforceable and presumptively valid.” *In re Laibe Corp.* 307 S.W.3d 314, 316 (Tex. 2010). “The burden of proof is heavy for the party challenging enforcement.” *Id.*, quoting *ADM Investor Servs.*, 304 S.W.3d 371, 375 (Tex. 2010).

¹² Having found that Presrite brought its breach-of-contract claim in an improper forum, we do not opine on the parties’ contractual performance obligations or potential breaches thereof. We, therefore, do not address the parties’ arguments regarding the Manual or anticipatory repudiation under R.C. 1302.68, both of which relate to performance and breach.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

LISA B. FORBES, PRESIDING JUDGE

EMANUELLA D. GROVES, J., and
EILEEN A. GALLAGHER, J., CONCUR