

# Read the fine print

How to protect your company in purchase and sale transactions **Interviewed by Sue Ostrowski**

**W**hen buying or selling goods, most businesses are focused on the primary terms of the transaction, including the identification, quantity and cost of the goods. These terms are usually contained in a purchase order sent by the buyer or quotation sent by the seller.

However, many companies overlook other terms and conditions of the transaction, which exposes the company to added risk. Doing so can be a dangerous practice that can ultimately cost a business a lot of money. Does your company include terms and conditions when transmitting purchase orders or quotations?

"You're only one dispute away from wishing you had them," says Michael George, a partner at Stark & Knoll L.P.A. "Even if you've never had a problem before, if you run into a big enough dispute, your terms and conditions can be very valuable and without them, you could end up paying for a shipment that never arrived or not receiving payment for a product shipped from your warehouse."

*Smart Business* spoke with George about how to ensure you have terms and conditions that will protect your company in a dispute.

## What should be included in a company's terms and conditions?

Terms and conditions are often considered the fine print on the back or bottom of purchase orders and quotations. They address issues in a transaction that would likely be seen in a negotiated contract but are overlooked in ordinary purchases and sales. Nonetheless, as with terms in a contract, these terms and conditions can determine the liability of the parties in a transaction.

To illustrate this point, our client was involved in a dispute where they manufactured goods for a customer and included terms and conditions on its quotation that stated that the risk of loss transferred to buyer when the goods left our client's warehouse. The small trucking company transporting the goods was involved in an accident in which all of the goods were destroyed. Because our client's terms and conditions shifted the risk of loss to the buyer upon leaving the warehouse, the buyer was required to pay seller for the goods, while having no recourse against the trucking company, which had gone out of business.



**Michael George**  
Partner  
Stark & Knoll L.P.A.

## What other issues should be addressed in terms and conditions?

Terms and conditions will vary depending upon the business and industry. One possible provision would limit the liability of the seller to the purchase price of the goods. This provision can become valuable if the buyer tries to say that the seller's goods caused consequential damages to the buyer's business. Another provision would identify the state's laws that would apply in a dispute and limit the courts in which a dispute can be heard. This provision could determine whether you are bringing or defending a lawsuit in Ohio, where your company is located, or in another area of the country.

## Can a company put together terms and conditions on its own?

It is never a good idea to go it alone or copy the terms and conditions of a competitor. If a company does and a dispute arises, they will often find that they failed to address critical issues and account for risks in a transaction.

I always advise my clients to think proactively and minimize risk before a problem arises rather than react to a situation and assume the consequences. For instance, when buying goods, a dispute may arise as to whether the delivered goods meet the buy-

er's specifications. Terms and conditions in the buyer's purchase order can often expand the representations and warranties given by the vendor and allow the buyer to return the goods without paying the purchase price.

You need counsel that specializes in this area so that the terms and conditions can be tailored to best address legal issues and account for risks in a transaction. One approach is not the best way for every company. You need to conduct an audit that assesses how you conduct business and determines issues and risks particular to your business. If you don't, you will often overlook areas where you have liability.

## Do most companies already have terms and conditions?

It's a commonly overlooked area. Most businesses view it as the fine print or boilerplate language that is rarely reviewed and not important to their business. However, I have seen these terms and conditions literally save a company from a bankruptcy that would have resulted from losing a dispute. They are especially relevant in our current economy. Whether due to the inability of a buyer to pay in a timely manner or the failure of a vendor to supply product, businesses are now frequently having problems with their vendors and customers.

In addition, technology has changed the way we conduct business. Most companies now use fax or e-mail in order to communicate with their vendors and customers. However, they forget to fax their terms and conditions along with the purchase order or quotation. Likewise, many companies fail to incorporate standard practices to include terms and conditions in their e-mails.

The demands on a closely held business owner are as great as ever. In normal transactions, they simply don't have the time to address every issue or risk. By acting proactively to prepare terms and conditions and implementing them into their operation, businesses can address many of these issues at one time and protect the company in future transactions.

The issues addressed in terms and conditions, while often overlooked, can become critical if a dispute arises. Having well drafted terms and conditions that are properly implemented into your business can be the determining factor in whether you will win or lose a dispute. <<

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