

## **Dealing With Customers: Tips on How to Be Safe, Not Sorry**

Disputes with customers continue to distract a wide range of businesses. Not surprisingly, obtaining customer orders and filling them usually get more priority than the game plan for managing customer relationships. However, even well-managed businesses can reduce their legal risks in this area. Here is an overview of preventive strategies to help avoid or minimize future problems with customers.

### **Suggestions Before Disputes Arise**

- *Always get and read written purchase orders before filling orders.*

Requiring a written purchase order from the customer as a first step is good practice. It shows professionalism and also helps prevent or clear up potential misunderstandings about the exact and complete contract terms. It also prevents a customer who gets buyer's remorse from later disavowing a purchase or denying an agent's authority.

- *Promptly confirm oral agreements in writing.*

Sometimes, additional terms, change orders, modifications or side agreements may become necessary after performance has started and new developments occur. However, vendors should be sure to put all oral agreements in writing promptly and send those documents to the customer. Over time, memories fade and employees move to other jobs. If a dispute arises later, having all terms of the contract documented reinforces the vendor's institutional memory about the transaction and places it in a much stronger position to enforce the deal.

- *Instruct sales and accounting personnel to share information about customer credit histories and receivables aging and monitor news about customers.*

Receivables aging can be an early warning sign about customers in financial distress and should be monitored regularly. It is risky to continue selling to a customer who is substantially past due on sizable amounts. At the least, one should only continue to sell to troubled customers on a well-informed, case-by-case basis. Also, pay attention to news reports about customers and their industries. To do this, sales personnel and accounting personnel must cooperate despite their differing perspectives.

- *Keep customers informed of important developments and avoid giving unfavorable surprises whenever possible.*

It is human nature not to volunteer bad news, particularly to a customer. However, keeping customers informed about problems that develop in handling their orders can help defuse their anger and give them a chance to make adjustments to mitigate adverse

effects on their own operations. Also, a disappointed customer is less likely to become intransigent with a vendor that has been candid all along, shows sympathy, and demonstrates that it is working hard to solve problems.

- ***Keep internal communications about customers limited to facts.***

Senior managers are paid to make judgment calls and conclusions, but everyone else should stick to the facts unless instructed otherwise. A disgruntled customer probably will try to obtain in litigation where discovery (mandatory information-sharing) is very broad and use (out of context, of course) any internal disagreements, self-criticisms, self-doubts, and contradictory opinions.

For example, a vendor creates a major problem for itself in future litigation if it tells a customer one version of the facts while the vendor's internal documents tell a much different story, since that invites a customer to accuse the vendor of lying or acting in bad faith. Reduce such risks by keeping internal communications about customers concise and factual, to the extent possible.

- ***Carefully train all employees about when and how to use e-mail for communication and documentation.***

E-mail is a powerful business tool when used properly, but when used carelessly, it can be dangerous. Also, some sensitive subjects are best discussed in face to face meetings (with legal counsel present) so that all nuances and ramifications can be thoroughly explored and a decision can be made without unnecessary disclosure or misunderstandings.

## **Suggestions After Disputes Arise**

- ***Chose a suitable person to get the facts and make recommendations about complaints.***

After a customer dispute arises, the vendor should quickly choose an appropriate person to get the facts and make recommendations for a well-informed decision about what to do. The investigator should have some knowledge about the subject but be sufficiently removed from the conflict to be able to objectively investigate the matter in order to determine the true and complete facts.

- ***Do an appropriate review and investigation before making a decision on complaints.***

A well-informed decision-maker who makes a carefully considered decision based on a detailed inquiry is likely to make a better decision. Moreover, it probably will be more defensible position if a lawsuit does result.

- *Don't discuss details of a dispute unnecessarily.*

Remember that casual internal comments, which often are made without considering all potential ramifications, can be discovered by an adversary and may unwittingly undercut the company's legal position. It is better to limit the discussions to the managers and employees who actually need to know about the dispute. Likewise, it is safer to discuss legal strategy or legal advice only in the presence of your legal counsel in order to protect privileged information such as attorney-client communications.

- *Determine whether an adequate paper trail supports the company's position.*

The investigation should determine how strong a paper/data trail supports the vendor's position and will guide the decision of how to resolve the dispute (e.g., settle early, fight aggressively, or take a middle course). A strong paper/data trail that backs up the vendor's contentions usually is more persuasive in court than oral testimony – other things being equal.

- *Consider whether any company practices should be changed to prevent future problems.*

All business can improve their processes by applying lessons learned from past experiences. Examples include: revising specific contract language or forms that have proven to be confusing or imprecise in practice and offering customers more options and educating them about the pros and cons of each in early discussions so customers understand better the trade-offs before contracting.

## **Conclusions**

Eventually, customer disputes are almost inevitable, but sound strategies and preventive steps can position vendors well to defuse them and solve them with the least legal risk.

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