

5 TIPS On How to Earn, Receive And Retain Your Contract Price

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A few basic inquiries ought to be made before signing any contract. This is true whether your business is involved in the sale of products or the sale of services; whether it involves a substantial contract sum or relatively small one; and whether the contract form is simple or complex.

TIP 1: Verify creditworthiness of the customer, particularly if it's a potential new customer.

You might request that the customer complete a standard credit application that provides essential background information and authorizes you, the vendor, to obtain credit reports. These reports provide tremendous insight into whether your customer is delinquent in payment of outstanding debt, has not paid taxes or is the subject of litigation for non-payment of legal obligations.

TIP 2: Consider security measures.

Depending upon what the financial background check discloses, various security measures should be considered. For example, if your customer is a corporation or limited liability company, you might consider asking for the personal guaranty of the owners or affiliated corporations. In some instances, taking a security interest against the assets of the customer or an affiliated corporation may be appropriate.

TIP 3: Payment structure is critical.

The contract ought to provide that you receive payment for the goods or services in a timely manner, while protecting you against manufacturing goods or providing services too far out in front of the payments received. A sufficient down payment should be made to cover the start-up costs of the production of goods or services to be provided, and a realistic and achievable installment payment schedule structured and keyed to thresholds of performance. (For example, in a product contract, one third of the contract price upon signing to cover costs of materials; one third of the contract price upon completion of 50 percent of the production lot; and one third of the contract price upon completion of production and inspection of the goods at seller's warehouse.) There are many variations on this basic theory and the example obviously will not apply to all situations. Whenever possible, final payment should be made before final delivery of goods or completion of services.

TIP 4: Limit your warranties and potential damages.

It is important to limit the seller's "warranties to merchantability," i.e., that the goods will perform those general functions for which goods of their nature are generally intended, rather than a warranty of "fitness for a particular purpose" where the goods are warranted to perform special functions that are specifically intended by the purchaser.

This is to limit the damages that the purchaser may attempt to recover from you in the event the warranties you made on products or services are breached, either because the goods are defective, the services not provided properly, or for some other contract deficiency. It is important to limit the damages that the purchaser can recover. Here, wherever possible, it is advisable to limit your damages, to the contract price only, and to specifically exclude any consequential damages (i.e., loss of profits, downtime, or other indirect damages that the purchaser might suffer as a result of your failure.)

TIP 5: Control potential disputes.

Shorten the time in which the purchaser will have been deemed to have "accepted" the goods or services (note that there are statutory provisions for the sale of goods which govern this issue which will apply unless the contract states otherwise); limit the time in which a purchaser can commence a legal action for a contract default; be certain that the place where an action can be commenced is the county and state in which the seller conducts its business; and provide that attorney's fees will be awarded to a prevailing party.

Contracts involve a host of other issues, both legal and business in nature, which must be addressed and tailored to the particular business situation, and should be addressed with your attorney. That said, if you attend to the basic points outlined here, you will have taken significant steps to protect yourself in getting and keeping the contract price for which you bargained. ♦



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