

## Beware Troublesome T'c & C's

Boilerplate terms and conditions attached to the various purchase orders (POs) have become almost typical to find as a credit professional. These stock terms, however, not only don't always apply to the specific transaction or type of business they're involved in—terms and conditions are often geared for manufacturers or contractors—they can, if ignored, lead ultimately to disgruntled customers, delayed payments and legal ramifications,

Every credit team should create company policies and procedures for handling terms and conditions proposed by a customer, said Sam Smith said while speaking during NACM's 120th Credit Congress & Expo. Team leaders must ensure that department staffers, as well as the sales team, have been trained on them, including what to do if a term or condition from a customer needs to be stricken or should be added.

The following are among types of terms and conditions that Smith advises credit professionals to be particularly wary of:

- **Uncapped liability.** This can mean there would be no cap to what a crediting firm can be held liable for, through direct or indirect claims. It can tie into warranties, liquidated damages and charge backs for delayed shipments, faulty products and more. Make sure to limit this liability to a reasonably foreseeable amount related to the purchase price of the product or services on which such liability is based.
- **Extended warranties.** Such language could look like: "All warranties in the general conditions are incorporated herein..." or "Seller warrants..." These should be scratched from contract language, particularly if one's firm is not a manufacturer.
- **Firm ship dates.** "(Your firm) guarantees shipment by the following date certain:\_" Again, if the company of the creditor is not manufacturing the product, ask the manufacturer to provide such a date.
- **Retainage.** Typical boilerplate language resemble the following: "Electrical subcontractor will hold 10% of the amount of this purchase order until the job is complete..." In this case, the creditor may not be part of the original contract to which such language refers and should not bind itself to unknown terms held therein. And what if there is a dispute or the matter winds up impacting lien/bond deadlines? Crescent redlines this type of language if possible.
- **Unacceptable payment terms.** These should include "Pay when/if paid" clauses. It's best not to deviate from one's company's standard terms without some type of negotiation or discussion.
- **Waiver of rights.** If such waivers are not legal in the state in question, redline them out, Smith said. Pay close attention to waivers of lien, bond, breach of contract or other legal rights.
- **Nondisclosure or confidentiality agreements.** If you do agree to these, make sure the timeframe is well known and that everyone in your company is familiar with the agreement. For instance, even a truck driver delivering a product to a job site and the posting on Facebook about it could violate terms of an agreement.
- **Terms not received.** These refer to contracts that have, say, "one of two pages" at the bottom of the first page, but the second page of the contract is not included. The same goes for "See reverse side," when the reverse side is not there. Make sure to ask for the complete contract, at minimum.

- **Per plans and specs.** This type of language is too vague, as it could leave the crediting firm on the hook for extra supplies at no additional cost, for instance.