

MARKETING FOR JOB SHOPS: NEGOTIATING CONTRACTS

SUMMARY

Serving the needs of your market by providing excellent quality and outstanding delivery and competitive pricing certainly will keep your shop busy. Profit should also be attainable under these conditions. But you must also be sure you are protecting yourself and your company in the relationship with your customers. That's why we deal with contracts, and why the job shop business is often called the "contract manufacturing" or "contract machining" business.

It is vitally important that the owner and/or manager of a job shop have a thorough understanding of negotiating techniques and terms and conditions of sale. Numerous books about developing negotiating skills are available at your library; "Negotiate Your Way To Success," "Fail-Safe Business Negotiating," "You Can Negotiate Anything," "Getting To Yes," "The Art and Skill of Successful Negotiating" and many others. Several magazines, especially in the purchasing field, carry articles about the subject quite regularly.

Seminars on negotiating techniques are offered by several organizations, and negotiating consultants are available in major cities. Tapes are also available. It's a subject that can be studied almost any way you wish. But, what is it, and why does the average job shop need it?

In daily life, dealing with anyone and everyone, negotiating is simply the way we settle our differences. It's how we get what we want from others. In business, negotiating is the way we come to agreements on specifics of the business relationship without having to have our differences settled in a court of law. Buyers typically like to avoid negotiating terms and conditions with suppliers, because it takes up their time and because they fear that they will lose something in the process. Sellers typically also like to avoid it, not only because it takes time and effort, but also because the know the buyer doesn't want to.

DANGERS

Buyers, therefore, will almost always provide a copy of something called "Terms and Conditions of Purchase" with a request for quote or with a purchase order. These terms are written by the buyer's lawyer with the specific intent of protecting the interests of the buyer's company. When you, as the job shop selling something to the buyer's company, simply accept the purchase order, you are also accepting the terms which protect your customer.

Some sellers try to also protect themselves, by sending the customer a copy of something called "Terms and Conditions of Sale" along with the quote or with the order acknowledgment. This is typically written by the seller's lawyer with the intent of protecting the interests of the seller's company. Generally speaking, there are certain paragraphs, or clauses, in each of these two documents (the buyer's and the seller's) that conflict, or state opposite points of view.

Certain buyers have no terms printed on their orders at all. In such situations, the terms and conditions which apply to

the purchase are those defined in the "Uniform Commercial Code," which, it is probably fair to say, tends to favor the buyer. These "U.C.C." terms will also apply if there is conflict between terms used by the buyer and those used by the seller. Again, they seem to protect the buyer very well indeed.

INNOCUOUS SOUNDING TERMS

Sometimes the clauses sound quite innocent, and usually the buyer really intends them to be quite innocent. For example, a common clause found on the back of most orders starts out with the words "Time is of the essence for this order." Many job shops, and perhaps most buyers, would think that simply means that it is important to meet a delivery commitment. Unfortunately, these words can have more specific meaning, which can cause the seller a problem if he has trouble making the promised delivery.

If late delivery should occur, and this clause applies to the order, the seller might be found liable for costs the buyer can show he incurred as a result of the late delivery. This could

include such things as lost profits on sales that would have been made if the parts were in on time, or even the extra costs incurred to buy an emergency supply of parts from some other shop.

Other clauses may state that the parts are to be "fit for the purpose intended - or some such wording." Since you are probably only machining parts to a customer's print, and are most likely using the material he specifies, are you willing to accept the responsibility for making them "fit for the purpose intended?" Probably not.

"TRUST ME"

Aside from the printed forms that cover orders, there are often little statements on the face of orders that can also lead to serious trouble for the job shop. For example, an order might cover something that the buyer wishes to keep confidential, so as part of the order he'll say so. Things you may wish to agree about with such a request would include: who will define, what is confidential, how long does the confidentiality apply and what if information marked confidential, is already known to me or others?

The best way to settle these questions, or others that arise from reading the terms on the back of the order, is to negotiate

the agreement before accepting the order. And the agreement that is finally reached should be in writing and signed by the buyer. No, he won't want to do that. Can you take a chance on not doing it? Do you trust the buyer's lawyer enough to accept terms that were written on behalf of the buyer?

If not, learn to negotiate, and get agreement. Many of the negotiation techniques taught today concentrate on coming to agreements that benefit both parties. Most competent buyers will take the time to discuss terms that are fair for the contract under consideration. And when the discussion leads to agreement, you have successfully negotiated something that will satisfy the needs of the relationship with that customer, probably for all future orders.

Talk with your lawyer about the terms you see on some of your recent purchase orders, and see what he says about the risks you are taking. Perhaps he can provide some general guidelines for future agreements. And learn about negotiating; the knowledge could save your company.

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