

# MARKS & WEINBERG, P.C.

## VENDOR RELATIONS: WHEN DO YOU SHIP? (1993)

In many transactions, it is very common for the vendor to be prepared to ship the equipment even as the lessee is in the final stages of preparing documentation or the lessor is completing its credit review. A serious problem can arise when the vendor thinks that it has proper authority to ship the equipment but the lessee does not accept delivery or absconds with the equipment.

This problem can result from an honest misunderstanding of the parties. Often, the lessor will notify the vendor that the lessee's credit has been approved before the lessee has finished signing the documents. Sometimes, the parties are not clear as to what will happen in the event the lessee refuses to accept delivery, either where the lessee finds the equipment unsuitable or simply breaches its obligation.

Here are a few items which you may want to check in your documents and procedures:

- The purchase order or other documentation with the vendor should clearly indicate that, if the lessee rejects the equipment for any reason, the lessor will be released from any obligation whatsoever to purchase the equipment. In fact, the lessor may be requested to assign any right it has for breach of the lease to the vendor, or at least may be requested to cooperate with the vendor in any litigation against the lessee if the lessee wrongfully refuses to accept the equipment. This may cause friction between the lessor and a regular lessee/customer and should be carefully considered.



- The documentation between lessor and lessee should also make it clear that the lessee agrees to accept the equipment, subject to its inspection right only. The lessee should state that it has selected the equipment as to model and type and made its own decision as to suitability for its needs.
- Any written communication advising the vendor that the lessee's credit has been approved and the transaction can continue should clearly indicate that the vendor is not authorized to ship unless and until it is informed in writing by the lessor that all documentation has been completed and that the lessor is prepared to fund.
- Bear in mind that your regular course of dealing with the vendor may be admissible as evidence should you depart from the norm in the last of a series of transactions. Do not fall into the habit of giving oral approvals or sending non-standard, colloquial communications to the vendor (regardless of your relationship).
- Avoid any implication that the lessee is authorized to transmit a purchase order or otherwise authorize the vendor to ship equipment without the lessor's written approval.
- When beginning a long-term (hopefully) relationship with a vendor, it never hurts to send a letter describing your policies as to approvals and funding, including any necessary information as to timing and how communications should be delivered.

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