Signing on the dotted line: making sure you bind your customer to a contract.

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We all know the importance of getting a customer "signed up". But how do you know that the person signing a supply agreement on behalf of a potential customer has authority to do so, and does it even matter if that person does not have authority?

This issue commonly arises when we advise clients on credit collection policies and when we work with sales teams on how to cut down on errors at the point where a sales lead becomes a customer. These errors can have catastrophic effects when seeking to chase a customer who has become a bad debt.

In some cases a customer will be able to escape liability completely if they can establish that the person who executed a contract on their behalf had no authority to do so, and it was not reasonable for the supplier to assume that the person had authority.

Here are some ways to minimise the chances of that happening:

1. Where the customer that is a company, conduct a company search to ensure that the person signing on behalf of the company is a director. This should remove any prospect of the customer later seeking to deny that they signed on with you.

2. Consider including a term in your supply agreement that the person signing the document on behalf of the company warrants that they have authority to do so. This might at least remove the argument that the person who signs did not understand that they had to have authority to bind the customer.

3. If it is not possible to conduct a company search prior to signing up a customer, ask the person signing the agreement to produce identification and, if applicable, a business card which sets out their job description. If the job description is of a type where you could reasonably expect they would be able to bind the company (for example, chief financial officer) it will assist if the customer later seeks to assert that that person had no authority to bind the company.

4. Give your sales team a standard checklist to complete when a new customer is signed on. Items to be included in the checklist might include: whether they have requested identification, whether the person on behalf of the creditor is apparently over the age of 18 years, and whether that person has, as well as signing the contract, also provided their full name, and if they has asked the signatory if they have authority and what the source of that authority is. Such authority might arise out of their position in the company, the board of the company may have resolved to provide that authority to the person, or they may even have a power of attorney.

There are many other ways to ensure that your credit collection policy starts off on the right foot. At Matthews Folbigg we are regularly advising corporate and other clients on improving their credit collection policies.

If you would like more information or advice in relation to insolvency, restructuring or debt recovery law, contact a Principal of the Matthews Folbigg Insolvency, Restructuring & Debt Recovery Group:

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