

Askee: Gasket, Packing, and Sealing Device Manufacturing

QUESTION: What is your opinion if we have blanket PO's in place? The customer is refusing to "allow" me to put them on cash in advance and says we cannot change credit terms because we have accepted the PO's. They are threatening to take us to court if we do not continue to ship according to the PO's because they are paying us according to the PO's. We are not a critical supplier. My experience tells me that I can change the terms and I am okay doing so because I have just cause. Can I have your opinion on this?

RESPONSE: Blanket PO's are estimates based upon a general purchase agreement the two parties sign. There must be issues related to price, delivery, frequency etc....If the agreement is for more than a year, one would think there would be conditions favorable (or remedies) to both parties. This follows or occurs when there are "performance issues". I do not know your contracts so I am not able to comment on if they are voidable or not. If that goes to your comment of having just cause to change the terms below, you would know best.

It seems that their threat to take you to court means they have been advised or you have told them already about terms and credit limit changes. Based on their response it does not bode well for material continuing business. That may be moot if a bankruptcy is filed. However, that has not happened yet. If it becomes a reality that they do file a bankruptcy petition, the blanket PO's and other agreements put in place pre-petition are void and need to be re-negotiated or confirmed post-petition. I.e... issuance of DIP Blanket PO's. When that occurs, all bets are off. A company does not need to honor pre-petition agreements, especially if they were one-sided.

Lastly, if your not a critical supplier to the company and you take action to demand payments while reducing risk, my gut feel tells me they may not waste their time and resources trying to enforce vendor agreements and blanket PO's for credit terms. You never know but it certainly would not be a good way to make friends and influence relationships. I suspect with those comments being made already the relationship may already be pretty fractured and they will divert purchases to other suppliers unless they can only get the product you supply them from you.

I try to tell debtors that open account credit and payment terms are a privilege not an entitlement. To keep those privileges the debtor needs to perform. If the debtor does perform then the creditor must be careful and aware to not act arbitrarily without cause or because of rumors, take those privileges away either. That might otherwise be labeled discrimination, which can lead to issues connected to anti-trust laws. It is important to understand the many sides of issues.