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Legally Speaking



Commercial contracts

Keeping an eye on the fundamentals

The commercial trading environment in North Canterbury, much like the rest of New Zealand, is experiencing a reasonably high level of uncertainty arising from increased demand on limited supply. Supply chain blockages, a lack of skilled human resources and increased inflation is forcing business owners to be nimble and adapt to these economic challenges.

A key aspect in “weathering the storm” is for business owners to ensure that their terms of trade are up-to-date and contain sufficient provisions to eliminate risk wherever possible.

The essence of business risk outside of profitability relates to cash flow. The ability of a company to sustain itself is predicated on the payment of accounts by customers in accordance with the payment terms. This is particularly true in situations where business owners add products or services to existing offerings and are required to advance cash and make investments before they in turn, are able to

render their services or provide products to customers.

Secondly, it is important for suppliers to retain title to their products until such time as payment has been received in full from the customer.

Suppliers should retain a security interest in their products until this payment has been fully discharged. In the event that the Supplier is providing goods on credit, it will be important to ensure that a recent due diligence has been conducted into the financial affairs of the customer to ensure that they have a good credit history. In addition, it would be prudent for Suppliers to ensure that the directors of the customer, by way of guarantee, underwrite the obligations of the customer to ensure that payment is made in a timeous fashion. Payment terms should not be considered in isolation of delivery terms as both go hand-in-hand.

It may be in the past that business could easily have been conducted “on a handshake”, but unfortunately it

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is becoming more prevalent in North Canterbury where the provision of products and/or services is occasioned by delays and non-performance. Retaining title to products and having the ability to recover same in the event of a default by customer, is becoming more important in the trading environment. It is important for businesses to ensure that their terms and conditions of trade are up-to-date and that these terms and conditions have sufficient mechanisms to protect against non-payment and other business risks.

As an additional safety mechanism, directors should revisit the company’s insurance cover to ensure that it has adequate insurance in place to provide an extra blanket of protection. Holistically, the directors should on a regular basis ensure that contract management is a regular feature on their agenda.