



Does your business have an effective retention of title arrangement to the goods it supplies?

Are you confident that you will be able to retake possession of your goods if a customer has a liquidator, receiver or administrator appointed to it?

A retention of title provision seeks to prevent title to your goods passing to your customer until the customer has paid for the goods in full.

Effective retention of title arrangements are extremely important in the current economic climate. It can mean the difference between you being able to repossess your goods if a customer fails without paying your accounts in full and getting in the queue with other unsecured creditors.

Many businesses have a retention of title term in their trading terms and conditions. However such terms are either not effective at all or are not 'all monies' clauses and, consequently, difficult to enforce effectively.

Unless your retention of title provision is an 'all monies' clause, you will not be able to repossess your goods unless you are able to identify specific goods supplied under the unpaid invoice. Without, for example, a serial number on the invoice, this will be extremely difficult and in most cases is impossible. It will not be sufficient for example, to show that the goods were supplied by you and nobody else.

Likewise, without the protection of an 'all monies' clause, if you supply the same 'type of goods' on an ongoing

basis to a customer, without serial numbers or some similar identifier (this is not always practical or possible) so as to match the unpaid invoices to the unsold goods you have supplied, you will not be able to get your goods back.

Under an 'all monies' retention of title provision, identification of particular goods to a particular unpaid invoice is not necessary. All that you need to show is that the customer owes you money on an unpaid account; any unpaid account.

We frequently see businesses being unable to recover their goods because of an inadequate retention of title arrangement. In some cases, we have seen many thousands of dollars of unpaid goods not able to be recovered when a customer fails, because they did not make an 'all monies' retention of title clause.

The cost of reviewing, and if necessary, amending such terms is small compared to the exposure you may have to your biggest customer at the moment.

If you are an accountant or other financial advisor, you should as part of any review of your clients' business ensure that they are protected with an 'all monies' retention of title clause.

Madgwicks is a prominent legal adviser in insolvency and asset protection strategies and regularly advises insolvency practitioners, directors and creditors on various aspects of insolvency and litigation matters. We would be happy to review and advise clients on whether their trading terms and conditions are adequate. For further information please contact Angelo Conti on (03) 9242 4757 or via email angelo.conti@madgwicks.com.au

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