

Implementing Important Dealer Protections

Without Creating a Negative Customer

Experience

Lawyers are always full of advice about how you should do this or that to protect you and your business. Inevitably, that advice seems to require 5 pages of small print in a contract. While your lawyer may have very good reasons for all the wording, you are thinking “how am I going to get my customer to sign this when all he wants to do is get a simple repair completed?” In a recent post, I wrote about the importance of adopting contract terms to limit potentially very significant liabilities in connection with the services you offer. To accomplish this effectively (from a legal standpoint), quite a few words are needed. But I also realize that the chances of you actually using this “legalese” are slim to none unless it can be accomplished without putting a strain on the relationship between your employees and your customers. The good news is that we can look to the way you conduct business with e-commerce companies for examples of how to efficiently gain customer acceptance of your contract terms without creating headaches in your customer relationships. How many times in the past year have you or your spouse ordered something from a website? When you placed the order, I'd bet a lot of money that you (a) had to check a box that said something to the effect of “I agree to the terms and conditions” and (b) didn't bother to click on the link and read the terms and conditions. How much did we bet again?

Understanding the Legal Concepts E-commerce companies rely on two legal concepts to make these terms and conditions enforceable. Each of these concepts is also available to you for use in your dealership. The first concept is “e-contracting”. It allows your customers to enter into contracts without manually signing the contract. Simply checking a box is usually enough to make a contract enforceable. The second concept is “incorporation”. This allows you to say in your contract that other “terms and conditions” apply even though the actual terms and conditions don't appear in the contract your customer is signing. As a result, you can effectively take a 5-page agreement and reduce it to a paragraph, making both you and your lawyer happy! **What's the Catch?** As with all things that seem too good to be true, there are some “catches” involved. A list of some of these “catches” appears below, but because this is an evolving area of the law, it will be important for you to consult with legal counsel to make sure you are applying these concepts in a way that will be enforceable.

- Certain states may limit the types of transactions covered by e-contracting. For example, e-contracting may be limited for certain types of consumer transactions (transactions with individuals for non-business purposes).
- If your customers sign agreements electronically, you should document your customer's agreement to conduct business electronically. Although the safest bet is to obtain this agreement with a manual signature, proof can also be established by e-mail or other electronic means.
- Tying your customer's electronic signature to the contract terms is important. One example of an appropriate method is allowing acceptance of terms through a password-secured account that can be traced back to an e-mail address your customer provided.
- Terms that you want to incorporate into your basic contract or invoice must be easily accessible to your customer before they sign the contract. This can be accomplished through a link or the web address where the document can be found on your website.
- Key topics included in the terms to be incorporated should be briefly referenced in the contract or invoice that the customer signs to alert the customer to the types of terms included. Examples of

these types of terms include warranty disclaimers, limitations on liability and arbitration clauses.

The planning involved to use these methods of contracting with your customers will take a little work on the front end. But if done right, the end result should involve very little disruption in your customer relationships with a big upside to your business by capping your exposure in individual customer transactions. **This article is intended to provide general recommendations and is not intended to be legal advice. You should always consult your attorney for advice unique to you and your business.*