

Turning Profits into Loss: Changes in Industry and Dealership Business Model Create Risks for Dealers

Turning profits into loss? Why would I do that? No dealer is in business to lose money. But what if the types of products and services you sell lead to a situation where losses from one bad transaction wipe out profits on 100+ customer transactions? The world in which you operate is rapidly changing. Are you selling precision ag products? Are you (or are you thinking about) providing consulting services through agronomists? Are you providing repair services for customers that have grown in size tremendously over the last couple of decades? The good news is that dealers and manufacturers have been rapidly evolving their business models and product/service offerings to meet changing customer expectations and the agricultural equipment industry is on the forefront of driving technological change in our world. This focus has both pleased customers and helped the bottom lines of dealers and manufacturers. But there is a downside to these changes. The services you provide expose you to risks different than those you face when you simply sell iron. When you sell new equipment to a customer, it comes with a standard warranty and if there are issues with the equipment, the manufacturer is generally willing to stand behind its warranty and you are compensated for helping fix the problem. In addition, if someone is injured or property is damaged when using new equipment (and usually used equipment), our product liability laws typically put the liability onto the manufacturer. Unfortunately, this ability to look to your manufacturer for accountability will most likely not come into play when you face customer issues relating to the changes outlined above:

- *Repair Services:* All dealers repair equipment and you generally receive a pretty good profit margin for these services. But what happens if your \$2,000 repair job was done incorrectly for one of your large corporate farming customers, causing your customer's equipment to malfunction and creating yield losses of \$200,000 due to the misapplication of seed, fertilizer, pesticides, etc.?
- *Consulting Services:* If you have an agronomist on staff, your agronomist will be giving advice to your customers, including "prescriptions" relating to the application of seed, fertilizer, water and other products to maximize yields. What happens if the agronomist gives the wrong advice, yield results disappoint and your customer misses out on several hundred thousand dollars of profits?
- *Precision Ag Software Malfunction:* When you sell precision ag products, the products heavily rely on software for proper operation or transmission of data. If you are selling these products, what you may not realize is that the software is often not covered by a warranty or the warranty may be very limited (either by its terms or the remedies). What happens if it turns out that a software malfunction results in significant crop loss and your purchase order form doesn't address software warranties?

Managing Risk In Your Customer Contracts In each of these examples, your dealership could be exposed to damages at levels that eat up a very large percentage of your profits. The good news is that two key steps can be taken through language in your customer contracts that should significantly reduce your risk in these areas:

- Apply warranty disclaimer language to software products and services that you offer.
- Limit the maximum amount of damages that you will owe to customers if there are problems with software or your services.

As with all “legalese”, the words needed to put these concepts in place aren’t as simple as what I describe above. The language also might not cure all of your issues as some restrictions in consumer protection laws may limit its effectiveness. But it will help reduce your exposure and protect profits. Many of you have been rapidly evolving your businesses and business models over the last several years to keep up with customer demand and changing technology. To help keep the fruits of that evolution going your way, my recommendation for you is that it is also time for your contract language to evolve in the same way.