

COIN WORLD

Meeting of the minds

By Armen Vartian | 12-09-11

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You don't have to be a lawyer to know that contracts require a meeting of the minds.

Without that, there's no contract.

So what happens when one party sends out an offer and the other party accepts, but with other terms not in the offer?

This is more complicated than the classic offer-counteroffer situation where parties disagree about price, delivery terms and other details, and go back and forth about them.

I have in mind a scenario where a buyer sends the seller \$5,000 for a coin, and then the coin arrives accompanied by an invoice for \$5,000 saying "no returns — no exceptions."

Right to return

Does the buyer have the right to return the coin?

At first glance, you might think the answer is no, because the parties never discussed return privileges when they agreed on the basic sale terms.

However, to understand the situation completely we would have to know whether the parties had done business many times in the past, with the seller always using the same invoice form.

If so, the parties might have engaged in a "course of performance" that limited the buyer's right to deny that the "no returns" term was part of this transaction as well.

It's also highly relevant whether the parties are individuals or dealers. Individuals are not presumed to accept terms imposed by the other party merely by their failure to object to them.

Uniform Commercial Code

Under the Uniform Commercial Code, such "additional terms" in an acceptance document constitute no more than "proposals for addition to a contract."

That means the original party is free to disregard them (if there's no "course of performance," of course).

So a seller could not impose a "no returns" provision unilaterally after the contract was entered into.

However, between "merchants," additional terms will be deemed to have been accepted unless they were excluded by the original offer, they "materially alter" the contract or the original party rejects them within a reasonable time after learning of them.

So if my \$5,000 coin sale scenario had involved two dealers, the "no returns" clause might be enforceable against the buyer if the buyer doesn't object in a reasonable time, unless the clause is deemed to materially alter the contract.

The latter would probably not be the case, because between coin dealers

generally no return privilege exists except for counterfeits.

What types of additional terms would materially alter a contract?

In a recent case, a Washington court found that a clause requiring suit to be brought in a court other than the court in which the buyer was domiciled was a material alteration and would not be enforced, whereas in other cases clauses that merely applied another state's law or require the parties to arbitrate were enforced under similar circumstances.

Illinois case

In an Illinois case involving the wholesale purchase of jalapeno peppers, the court found that a clause in the seller's agreement providing for 18 percent interest on late payments plus payment of the seller's attorney's fees was not part of the contract.

The reason: the seller sent the invoice after having signed the buyer's purchase order, making the invoice irrelevant to the transaction.

The court ruled also that the attorney's fees provision would materially alter the agreement.

The best advice is to review offer and acceptance documents carefully to avoid extraneous terms becoming part of your contract.

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