

## TIME TO RETHINK TERMS OF TRADE

Do you supply goods to clients on credit? If so, will you be able to get those goods back if the client fails to make payment on time or goes under?

The answer to that question could very well be no if you do not have adequate terms and conditions of trade.

The economic downturn is hitting businesses hard. Many businesses are fighting for their survival. Bad debts and disputes are on the rise. With the recession picked to continue throughout this year, now is an opportune time to review your terms of trade to make sure you are adequately protected.

The *Personal Property Securities Act 1999* introduced a raft of

new concepts and rules relating to security over personal property in New Zealand. Those concepts and rules are in place to protect businesses supplying goods on credit. By understanding and using the tools provided by the Act effectively you can safeguard your business against costly losses in the future.

If you don't use those tools to your advantage you may find yourself not being paid for goods which you have already supplied and then having to deal with a liquidator or receiver and lining up with a long list of unsecured creditors.

So how can you protect yourself?

### 1. Review your terms of trade

The cost of reviewing your terms of trade now is likely to be far less than the cost later if the terms of trade are found to be inadequate.

It is no longer sufficient for suppliers to rely on a traditional retention of title clause if a customer goes into liquidation or receivership or if a third party claims an interest in the goods.

### 2. Review your engagement processes

In order to enforce your terms of trade you must ensure that your customers have signed and agreed to be bound by them. You may have terms and conditions which meet all the requirements of the Personal Property Securities Act but unless you can show that the purchaser has signed or agreed to them they will offer you no protection.

### 3. Register your interest in the goods on the Personal Property Securities Register

If you supply goods on credit and register a financing statement on the Personal Property Securities Register within the strict time frames set out in the Act you will have priority for your security interest in those goods. The Personal Property Securities Register is accessed online and registration is a relatively straight forward process.

There are a number of ways to minimise bad debt and in today's current climate this is more important than ever. Complying with the Personal Property Securities Act is just one of these.

Having the right systems and procedures in place can, of course, never guarantee payment but it will minimise the risk of costly disputes and losses at a later date.

Duncan Cotterill's commercial team is here to assist you in protecting your business during the economic downturn. Please contact us if you wish to discuss further.