

When the Project Manager *helps*....

We've all been there before. The project manager or engineer negotiates a purchase directly with a vendor. The first time procurement hears about it is when a piece-of-garbage-order agreement (like the example below) shows up on the desk. Usually with a note from the boss to hurry up and sign it so we can expedite delivery, prevent further project delays, avoid imminent price increases, mitigate global warming, absolve ourselves of past sins, protect baby seals, etc.

So what can you do? It's obvious, the boss is going to get procurement (either you or your replacement) to purchase the darn thing - quickly. Here are some ideas:

1. Try to get the vendor to accept the order on your standard purchase order form.

I'm going to write this up on one of our standard forms and send to you so we can document all of the order details and not miss anything important. {Jeez does it hurt to be that nice or what?}

2. Get clarification, ask questions, and get details before agreeing to anything.

*What specific pieces or parts are custom and what part of the price do they represent?
How many pieces and parts are included? Rafters? Feet? How much do the parts weigh?
Are we buying a building (assembled) or just a pile of parts?
What is the delivery date? Where? What is the critical path for manufacturing?*

3. Document the Full agreement, including all of the details, price breakdown, delivery and etc.

What schedule? Obviously 30 minutes after I place the order you haven't done any customized work yet

What are "associated expenses"?

I understand that the building I'm ordering is a custom product and as such, cannot be returned or exchanged. In addition, I understand that once the order is placed and in production, it cannot be cancelled or changed and that I am responsible for all associated expenses.

What is being produced vs pulled off the shelf?

The building that I am ordering has the following components included. I agree to purchase this building based upon the following criteria and upon the quoted purchase price as stated below.

Building Width x Height x Length = 27'6"x15x84
Freestanding or Pony wall Building = Ponywall
Rafter Spacing of Building = 4 foot rafter
Color of Cover = 22oz white
Skylight Included (Yes or No) = no
Anchoring Device (Feet or Ground Posts) = Feet included
Number of End walls = none
IF Including End Walls
- Type of covering (Fabric, Polycarb, Polycor, None) = N/A
- Number of Steel Roll Up Doors (Include Size) = N/A
- Number of Man Doors (Include Size) = N/A

Obviously we're missing some description or typical product example (eg square, round roof, inside frame, ?)

Additional Custom Options = 22oz white cover

What does this price consist of? Delivery, Packaging?

Merchandise Amount of Custom Building \$7075.00

Good Grief! Who in his/her right mind would ever even think about agreeing to something that sounds like this? Don't be embarrassed – we all have worked with people who wanted to.

O.K., so now we have an order – and predictably, the boss realizes it's a mistake, or the vendor can't deliver as promised or everyone finds out there is a costly piece missing from the "quote". Now we want to get out of the order and/or cancel. Good idea, but maybe not quite so easy.

Notwithstanding all of the disclaimers in the agreement about a "customized" product and "no cancellation", we might still be able to make a case. If, for example, the vendor misses the delivery deadline. The vendor has essentially failed to perform his portion of the contract as required and therefore has breached the contract. Thus based on the failure on the part of the vendor to perform per contract he loses his right to perform and we are cancelling the agreement. This as opposed to suing the vendor for breach of contract (which we might have to do anyhow)

We might prevail. At the least we might be able to bring the vendor to the table for negotiations about mitigating the impact. This negotiation is where all of the details you learned about pricing and components are essential. Here are some examples of how you might use that information in the negotiation:

1. The buyer should only have to pay for the parts that were custom made – the standard parts should be restocked.
2. If the vendor has already done that custom work and wants the buyer to pay for it, then he should be able to ship the custom piece tomorrow. If you can't ship it, then it's not done and I don't have to pay.
3. The customized work may have some residual value for building a similar product so I should only have to pay for the part that is unusable.

Of course all of that high-and-mighty talk from the buyer will only stand up if there aren't any mitigating circumstances on the vendor's side. I recommend checking out these issues before initiating the cancellation discussion.

1. Was there a firm agreement on the delivery date or just some vague words about lead times?
2. Was the final delivery date specifically written into the contract and acknowledged by the vendor?
3. Did the vendor previously inform us of the delay and we failed to act decisively at that time?
4. Have we purchased from this vendor before and allowed delivery dates to slide?
5. Can we reasonably make a case that the delivery schedule is meaningful and important in this situation?
6. Were there extenuating circumstances beyond the vendor's control which lead to the delay (e.g. a hurricane)
7. Did the buyer cause the delay by being late or changing specifications?
8. Is the product something that typically can't be precisely scheduled (e.g. ripe cherries)

Of course you and the vendor can amicably agree that it would be more trouble than it's worth to fight about it... but that sets a bad precedent for next time.... and so the story goes.