

Dealership Buy-Sells – Understanding the Words

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Everyday dealers enter into buy-sell agreements and have no idea what the words mean.

I recently worked with an “automotive” attorney that told me he used the same agreement for every deal, whether representing the buyer or the seller. He just changed the names and addresses in his template. Unbelievable.

Buy-sells are technical documents. One preposition and one verb could change the price a quarter million dollars or more. I have seen it. A comma here or there, or an adjective inserted in the right place could change the entire meaning of the document.

The dealer said the factory will pay for it. The dealer, said the factory, will pay for it. The words are identical, but the sentences have opposite meanings.

In one instance the factory pays, in the other the dealer pays. A simple example for sure, but illustrative.

There are dozens of instances in buy-sells where dealers left hundreds of thousands of dollars on the table, or paid hundreds of thousands they did not have to pay. And when they left the closing table, neither the parties nor their advisors ever knew the difference.

Definitions

OEM= original equipment manufacturer. It refers to parts used in the original assembly of a vehicle – vis-à-vis, aftermarket parts that can be installed after the car comes out of the factory.

The following example does not apply in all cases, but of the dozens of other technicalities in buy-sell agreements, a good number of those technicalities will occur in every sale.

The typical sentence in a buy-sell, regarding parts runs something along the line:

*“BUYER shall purchase all of SELLER'S inventory of current (listed in Manufacturer's current parts books and/or computer tapes), unused, undamaged, new and factory rebuilt parts and accessories for the General Motors vehicles it sells on hand at the Closing, excluding parts and accessories which are not returnable to the Manufacturer.”**

Suppose one is selling a General Motors dealership, how does the sentence apply to **Delco** parts?

To understand the distinction, one must understand the history of the various manufacturers' aftermarket parts distribution.

AC Delco Parts

Delco is an acronym for Dayton Engineering Lab Co.

AC stands for Albert Champion, the man who started Delco.

Just as the Vitamin manufacturers wanted to cash in on the bargain hunters by allowing grocery stores to sell their vitamins under a different label and at a lower price, General Motors wanted to cash in on aftermarket bargain hunters by selling their parts at lower prices, under a different name. The powers to be at GM thought using the Delco brand name would be a way to distinguish the parts and accessories from GM OEM parts and accessories, and to limit complaints from its dealers that GM was in direct competition with them.

AC Delco was and is owned by General Motors. GM manufactures Delco parts; and some of them used on GM vehicles (ball joints, struts, etc.) come with lifetime warranties if installed by an AC Delco garage.

Some GM dealers use Delco parts because they are cheaper and the factory allows them to be considered “genuine” insofar as the customer is concerned. **

But the fact is, Delco parts are “not returnable to General Motors” under the General Motors Sales and Service Agreement. Although they are produced by GM, they have different parts numbers and a different distributor.

Consequently, any GM dealer having AC Delco parts in inventory should address the issue and come to an agreement between the buyer and seller prior to signing the asset purchase agreement.

Getting to the closing table and protesting that AC Delco parts should be counted as “returnable” creates problems. A buyer has a right to assume that the seller knows what the words in the contract mean at the time the deal is made and if a seller did not include a manufacturer’s aftermarket parts*** that is the seller’s problem.

Which brings us to the topic at hand. ***Just because someone ran a dealership for 20-years, or handled dealership buy-sells for the factory for 20-years, does not make them students of the industry with respect to buy-sells.*** And, in the case of the attorney that used the same buy-sell in every deal – buying or selling, neither does being an “automotive” attorney for 20-years.

As mentioned above, there are dozens of technicalities in every dealership sale. There are, for example, five ways to value hard assets. Which definitions benefit the buyer and which benefit the seller?

If an advisor (broker, attorney, accountant, etc.) says they will represent both parties in a transaction, which definition do they choose? Is it the one that favors the buyer, or the one that favors the seller? If they represent one party, the choice is simple. If they represent both, even explaining the differences would hurt one of the parties. The same is true with respect to other definitions and exceptions.

But, as I began the article, “Everyday dealers enter into buy-sell agreements and have no idea what the words mean.” – And they are happy with the results, thus proving the old adage that “Ignorance is bliss.”

* *Manufacturers differ in their definition of returnable parts.*

** *The Magnuson-Moss Warranty Act of 1975 provides, in part, that does aftermarket parts do not void a manufacturer’s warranty, unless the warranty clearly states they would, or if it can be proven that the*

aftermarket device is the direct cause of the failure. Various state laws also protect consumers that use aftermarket parts.

*** Most factories have aftermarket parts. Ford has Motorcraft®, Chrysler has MOPAR, an acronym for “MOtorPARts.”

**** Note: Sometimes an aftermarket part can be both OEM and aftermarket. For example, if Ford uses Bosch fuel injectors when manufacturing a vehicle, then Bosch injectors could be considered OEM on one car model and aftermarket on a different model.