

Leveraging Your Power as an IT Buyer

by Joseph Marion

Whether you obtain your new IT hardware directly from a manufacturer or from an authorized reseller (who is really the manufacturer's agent), negotiations 101 teaches us that the time to press your seller for items you want is BEFORE you sign that purchase agreement. While all IT buyers focus on getting the best price and best delivery schedule, it is the savvy ones who think ahead. And I am here to make you a savvy buyer!

DEMAND RESALE RIGHTS

No manufacturer will prohibit the sale of your hardware to a secondary end user, but some manufacturers do prohibit the sale of the operating system. Hardware without the operating system is worthless.

When you negotiate your original purchase agreement, that is the time to press your manufacturer on the fact that you believe the software furnished by them is an integral part of the machine. As such, you should demand an "unlimited license to use the software for the life of the equipment." I am not saying that end users should be permitted to copy and resell the operating system. However, the original and all subsequent owners of the machine should be granted the rights to freely use the software.

DEMAND MAINTENANCE RIGHTS

Most manufacturers look at hardware maintenance revenue as an important source of income, especially when an end user is buying a used system. You might find that you are unable to sell your used system because the cost to place it under the manufacturer's maintenance at a new user location is too high.

Some manufacturers make a practice of charging excessive recertification costs and upgrade charges to place the equipment under the manufacturer's maintenance at the second user's location. Some require that machines which have been under their maintenance agreement be sent "back to the plant" for recertification when selling to a second user.

The time to protect against this is BEFORE you sign your original Purchase Agreement. End users must demand that if a machine is kept under manufacturer's maintenance it should automatically qualify to be field re-certified at the new user's location. Further, manufacturers should accept for maintenance, any machine (kept under manufacturer's maintenance *or not*) that can satisfactorily run the manufacturer diagnostic tests, has not been physically altered and contains manufacturer parts only. Any costs that may be incurred to place the equipment under manufacturer's maintenance at a second end user

location (for equipment reinspection or otherwise) should be spelled out when equipment is first purchased.

SELF MAINTENANCE

If you are a buyer who self maintains your hardware, or contracts with a third party maintenance organization, you will want to make sure that your manufacturer makes available the equipment diagnostics when you purchase your hardware and gives you written permission to use it. There are some recent court cases in which a manufacturer claimed that a company who loaded their diagnostic software for the purpose of repairing a system violated the intellectual property rights of that manufacturer.

End users must demand that all diagnostic software necessary to maintain a machine in accordance with manufacturer standards should be included with the machine and should be transferable to a new owner when a machine is sold. In addition end users should have written into their purchase agreement a guarantee that maintenance parts will be made available to them at “fair and reasonable prices” and be delivered when needed within 24 hours.

HELP YOUR LESSOR HELP YOU

Leasing companies should have the same ownership rights as users. Make sure your rights are passed on to your Lessor. These rights will result in higher expected equipment resale values, which in turn will result in lower lease rates for you. Even if you do not plan to lease your hardware, you will want to have this one written into your agreement in the event that you sell your hardware to a leasing company when you are done using it.

A QUICK GUIDE

Remember, before you sign that original Purchase Agreement, go on record with the fact that you:

- Demand an unlimited license to use and transfer the operating software for the life of the equipment
- Demand that as long as your equipment is kept under the manufacturer’s maintenance it should automatically qualify to be field re-certified at any new end user’s location
- Demand that all costs that may be incurred to place the equipment under maintenance at subsequent end user locations be spelled out when equipment is first purchased

→Demand that all diagnostic software necessary to maintain a machine in accordance with manufacturer's standards be included with the machine and transferable to a new owner when a machine is sold

→Demand that maintenance parts be made available at "fair and reasonable prices" and be delivered in a timely fashion

→Demand that leasing companies be given the same ownership rights as users

As a buyer, the best time to exercise your rights is BEFORE you sign that purchase agreement. So do it!