

Memo

To: Daniel Martinez, Manager of Risk Management Department
From: Erica Marcus, Supervisor, Sales Department
Date: February 20, 2006
Re: Burger Ranch

As you may remember, PINE Trees, Inc. ("Pine") has recently entered into one of our largest contracts yet with Burger Ranch (Burger), whereby Pine is to supply and decorate a Christmas tree in each of Burger's one hundred and thirty-seven fast food restaurants in Gould each year in December. The first year of the contract was 2005.

You undoubtedly remember the December 2, 2005 disaster. On that day one of the Christmas trees that we had delivered and decorated in early December to one of Burger's restaurants in Canoga Hills, Gould caught on fire. The fire then severely damaged the restaurant's premises, including the kitchen and dining areas. Earlier today, I received an angry call from Marc Washington, the president of Burger, updating me on the recent calculations of losses from the disaster.

Our records indicate that the Christmas tree was delivered to Burger's Canoga Hills site on time and in good order on the morning of Friday, December 2nd, 2005. As the manager on site requested our delivery crew, they placed the tree inside the restaurant in an area next to the ordering counter. The crew then spent the next two hours, as they routinely do, decorating the tree to the satisfaction of the on site manager, Richard Simon. Mr. Simon then initialed the receipt provided to him by our delivery crew, acknowledging receipt and full satisfaction from the decorated tree. Mr. Simon then fully paid for the tree and the services with a company check.

The fire broke out inside the Canoga Hills restaurant just as the last employee was leaving at approximately 11:37 p.m. on December 2nd. Fortunately, there were no customers in the restaurant at that time as the store generally closes at 11:00 p.m. on weekdays. Mr. Washington indicated to me during the phone conversation that a report he received yesterday from the local fire department tentatively concluded that the fire originated from the Christmas tree. He went on to say that the report indicates that the lights on the tree required too much power for the one outlet they were plugged into, causing an electrical

short. The spark from this instantly ignited the tree. The employee, who had been about to unplug the tree and turn off the lights in the restaurant, was so shocked that he instantly ran out of the restaurant. He then searched for a phone to call the fire department (in his haste he had left his cell phone inside). It took a few minutes to find a phone, giving the fire a chance to spread.

Mr. Washington also said that as a result of the fire, the restaurant has been completely shut down for the past three months and that he does not expect the restaurant to be open for at least another three months pending complete renovation of the damaged areas.

Mr. Washington then demanded compensation for the losses that Burger's restaurant sustained as a result of the fire. He faxed to me a copy of the construction bid Burger's restaurant accepted to reconstruct the premises, which came out to \$464,900. In addition to the reconstruction costs, he also demands compensation for the potential profits the restaurant could have generated during the downtime. I am attaching the documents I asked him to fax me, which include some of Burger's financial data regarding revenues and expenses during 2004 and 2005 (see Excel data file).

I told Mr. Washington that I sympathize with the lost profits sustained by the Canoga Hills Burger Ranch, but that according to the agreement we entered with Burger, Burger agreed to waive all claims against us for any consequential damages. After he quickly looked at the Purchase Order Acknowledgment, he said that while there was such a clause in the document, it was not part of the contract since Burger never agreed to it or signed it. I replied that I would look it over and get back to him soon.

Required

In addition to the financial data provided by Mr. Washington below, please read parts of the Gould Commercial Code and the cases attached in the legal library. Before Ms. Marcus replies to Mr. Washington, write a report to her (refer to the report guidelines on the Instructor's web site). (Assume that the applicable precedent is from the fictional jurisdiction of the state of Gould).

In preparing your report you may wish to review business law concepts 1, 2 and 10 and statistics concepts 1, 2, 3 and 9.

PURCHASE ORDER

Number: 865

Burger Ranch, Inc.
1990 Century City Boulevard
San Sur, Gould 93400
(874) 788-7000

Date: September 20, 2005

SELLER: PINE Trees, Inc.
18500 First Blvd.
Canoga Hills, Gould 75356

SHIP TO: See Instructions below

Per our discussion from earlier today, Burger Ranch orders one hundred thirty seven (137) PINE Christmas Trees - Evergreen style.

The trees are to be delivered before December 12, 2005 to each of Burger Ranch's 137 restaurants (attached please find a list). Pine delivery crew shall decorate each tree on the site per sample shown by your sales representative, Ms. Westbrook.

Price: \$150 per tree, all-inclusive, per quote from Jill Westbrook. Payable net upon delivery and decoration.

General Conditions

Seller warrants all goods are of merchantable quality and fit for the intended purpose. Seller warrants that all goods are free and clear of all liens and claims by third party and that Seller possesses all rights to sell said goods free and clear.

Authorized Signature: _____
Ruben Sanchez

PURCHASE ORDER ACKNOWLEDGMENT

PINE TREES, INC.

18500 First Blvd.

Canoga Hills, Gould 75356

(818) 995-6500

September 25, 2005

Buyer: Burger Ranch, Inc.
1990 Century City Boulevard
San Sur, Gould 93400
(874) 788-7000

Ship To: Per instructions

Contact: Ruben Sanchez

We have received your purchase order number 865 dated September 20, 2005.

- 137 Christmas trees-Evergreen style;
- Decorations to be added upon delivery;
- unit price \$150
- We will ship first unit to your store in Canoga Hills, Gould.
- Payable net upon delivery.

Alexa Rubin

Department of Procurement

CONDITIONS APPLICABLE TO ALL SALES:

Late charges at 10% per month for past due payments; minimum late charge \$10. Shipment travel at the risk and cost of Buyer. Risk of loss passes to Buyer at the time of identification. Seller warrants that all goods are of merchantable quality and fit for the intended purpose. To the extent defect is identified in any tree delivered, Seller shall promptly deliver a replacement tree to Buyer. Buyer waives any claims for consequential damages arising out of this purchase order, including, but not limited to lost profits.