292328 - Selling an item that is not in his possession through profit-sharing (murabahah) or payment in advance (salam transaction) or by hiring someone to sell it in return for a fee

the question

We are a tech company. A customer (a company or an individual or someone else) comes to us and asks us to prepare something (a specific service, or equipment for a office, or something else), so we sit down and design a solution for him so that he can get this service, such as giving him the ability to communicate with others, or storing electronic archives, or transferring data files between employees, and so on. Then we say to him: This solution will require such and such of hardware and software, and we will install all of that for such and such a price, as payment for our work. With regard to hardware, which seems to be the focus of our question, the customer asks us to look for it ourselves in the market, and give him a quotation, or we will give him a quotation ourselves. We do that by getting in touch with our contacts, such as dealers and other companies who do similar work to us, in our country and overseas, so that they can give us a price, or we will negotiate to get a better price than others. Then we go back to our customer, after adding our own margin, but despite that our price is still better than the price of similar items if the customer had to go and look for them himself, except in rare cases. As that is the case, we do not stipulate that dealers and companies who give us quotations should not set aside for us any of the items. We present to the customer a list of what is required to do the job, with the price to which the margin is already added, showing the number, category and general description, if we want to do that, or the specifications can be more detailed, if we want to do that. After that, we give a quotation of fees for installing and programming separately, and we give the customer time to think, and he may negotiate with us, then if he agrees to go ahead, our quotation becomes an invoice and we ask him for a down payment, without specifying what it is for, whether it is for what we need to purchase or a fee for the work. Then we go ahead and use this down payment to buy what we need, in accordance with the quotations from dealers, and we prepare it, including delivery to the customer, whether he is in the same country as us or is overseas. Then we start to install it, and

we continue to request the remainder of the invoice in instalments, whilst we are working and purchasing, on the grounds that we are obliged, regarding what we do not find of any item for which we give a quotation (if it is sold out or the price has increased), to purchase it from any other supplier, or to purchase something similar to it, if that item is no longer available, that meets the same specifications as we mentioned in our quotation if we can; or else we will give a refund, and we will pay the difference if the price has gone up. However, it is most likely that the item will be available at the time we need it delivered, and we will be able to state the required specifications of the item if we need to do so, such as a transformer with a specific power. We choose what will do the same job, or we make sure to get the right item, with the same name and category number, on the grounds that the supplier knows that I am going to sell the item for which I requested a quotation to someone else, except in rare cases. The customer may realize that I do not have the item in my possession at the time of giving the quotation, or that I will get in touch with suppliers to get prices better than those that are available to him, and he will accept that. So the supplier is happy to sell to me and the customer is happy to buy these items through me, because I have knowledge and experience, and I offer him a guarantee and will give him a better price, without him having to put in the effort of buying and shipping it. Usually we do not have enough money to fully cover the invoice that we submit to the customer, which may be tens of thousands of dollars, and if we acquire the items and then the customer changes his mind, we will incur loss, because we do not sell these items to the public – as is the case for the supplier – and if the customer changes his mind, we will have to change the nature of our business completely and rent a store to display these products and start selling them on a retail basis. That is in addition to the great loss we incur for having bought expensive items that are specific to a certain customer, and were only chosen on the basis of the service that he wanted, according to the design we did for him. We feel uncomfortable about this way of doing business, and we wanted to ask people of knowledge about it. When we looked into the matter we became confused about this issue, because there is the salam transaction (payment in advance for goods to be delivered at a later date), fudooli, and delegating someone else to sell or purchase on one’s behalf. The fact that we compensate the customer if the item is not available, may make it a permissible transaction, because the possibility of loss is commensurate with the possibility of profits. Moreover, there are

rules on purchasing with a down payment, and so on. Can you tell us the ruling on the way in which we have been doing business? And what is the correct way of doing it if it is not correct?

Summary of answer

If the customer wants to buy hardware that you do not possess, you can make a deal with him in one of the following ways: 1. Acting as a proxy in return for a fee; 2. A profit-sharing transaction (murabahah); or 3. Payment in advance for items to be delivered at a later date (salam transaction). Each of these is explained in detail in the long answer.

Detailed answer

Praise be to Allah.

If the customer wants to buy hardware that you do not own, then you can deal with him in the following manner:

1. Acting as his proxy in return for a fee

That means telling him about the hardware and its specifications, and the real price for which it is sold, without adding any margin, then you can buy it for him in return for a percentage of the price or a defined fee.

In this case, the customer cannot change his mind so long as the hardware is as he requested. If he still insists on cancelling the deal, then you can act as his proxy and try to return it to the seller, if possible. You can stipulate that you are acting as his proxy in purchasing and in returning faulty goods, but not in returning it if the customer changes his mind, or cancelling the deal even though the item is in good condition.

The most correct scholarly view regarding the fee is that it is permissible for it to be a percentage of something known, such as the price of the product, whether a man is hired to buy or sell.

In *Kashshaf al-Qina`* (3/615), it says that what it is permissible on the basis of a comparison with musaqah (when trees are given to someone to tend and irrigate in return for a share of the harvest), or muzara`ah (where one person supplies land and another cultivates it) includes: selling someone else's goods in return for a portion of the profit. End quote.

It says in *Fatawa al-Lajnah ad-Da'imah* (13/125): I own a business service, and my work involves acting as a proxy and middleman for some companies overseas which manufacture ready-made clothing and foods. These companies send samples of what they manufacture, with the prices of each type, and I show these items to traders in the market, and sell them to them for the price stated by the company, in return for permission from the manufacturers according to the percentage agreed upon. Is there any sin in that, or will I incur any kind of sin? I hope that you can advise me; thank you.

Answer: If the situation is as described, it is permissible for you to accept that commission, and there is no sin on you.

`Abdullah ibn Ghadyan, `Abd ar-Razzaq `Afifi, `Abd al-`Aziz ibn `Abdillah ibn Baz. End quote.

When acting as a proxy, it is not permissible to guarantee anything to the customer [in other words, you are not liable], because you are acting as a proxy, and the proxy is entrusted to do something; he cannot be liable unless he deliberately causes damage or is neglectful.

2. Profit-sharing (murabahah)

In this scenario, you will buy the hardware that the customer wants, after making an agreement with him that you will sell it to him for a known profit, whether you sell it to him for payment by instalments or immediate payment.

But it is not permissible for you to take money from him before the agreed delivery date; rather you must buy the hardware with your money, for immediate or deferred payment, then when you take possession of the hardware, you can sell it to the customer.

See the answer to question no. 229091.

You should buy it with the option to cancel within a specific period, so that if the customer cancels his agreement after you buy the hardware for him, you will be able to return the hardware to the supplier, so long as you stipulate that you will have the option to cancel the deal, or you can sell it to other customers, if you like.

3. Payment in advance for something to be delivered at a later date (salam transaction)

This refers to selling hardware which meets particular specifications, with an agreement to deliver it at a later, known date, on condition that the purchaser pay the price in full immediately after reaching an agreement.

Salam is selling an item with known specifications, to be paid in full in advance immediately after reaching an agreement.

It says in *Hidayat ar-Raghib* (p. 338): In Islamic law, salam is a contract to sell an item with known specifications to be delivered later, for a price to be paid in full immediately after reaching an agreement. End quote.

If the customer refuses to pay the price in full, then the salam transaction is not valid, and that fact that you will compensate the customer if the item is lost does not matter, because the condition of the salam transaction is what we have mentioned. Ash-Shafa`i derived this ruling from the Prophet's words: "Whoever pays for dates in advance, let him pay in advance for a specified measure and a specified weight, to be delivered at a specified time." Narrated by al-Bukhari, 2240; Muslim, 1604.

The words "let him pay in advance" mean: Let him pay in full immediately after reaching an agreement, so that it will not be selling a debt for a debt, because the item is not yet ready to be delivered.

Ibn al-Qattan said in *Masa'il al-Ijma'* (2/239): The scholars were agreed that if the two parties to the salam transaction separate before the payment is made – whether this is stipulated in the sale contract or not – the salam transaction between them is rendered invalid, except for Malik, who

said: If that was not stipulated in the contract, and the exchange takes place one or two days later, there is nothing wrong with that. End quote.

So if the customer wants something to be made or manufactured, such as a program or hardware and so on, then this is a contract to have something made or done (`aqd istisna`), in which it is not stipulated that the price should be paid in full immediately, whether you manufacture it yourselves or you make a deal with a manufacturer.

See the answer to question no. 2146.

There is a difference between manufactured hardware that is sold and that which needs to be manufactured.

And Allah knows best.