



SIX ESSENTIAL STEPS: UNDERSTANDING SUPPLY CONTRACT ISSUES



Understanding Supply Contract Issues

As a business owner or manager, one of the critical decisions you'll face is procuring machinery and goods from suppliers. Whether you're establishing or expanding your operations, or replacing and updating machinery, these transactions play a pivotal role in your business's success. However, navigating supply contracts can be intricate, and overlooking crucial details may lead to costly repercussions.

To safeguard your interests, we review six essential steps to consider when entering into supply contracts:

1.	Thoroughly Review Contract Terms
	<p>Before committing to any supply contract, it's imperative to meticulously review the terms and conditions outlined within the contract. Pay close attention to key elements such as pricing, delivery schedules, warranties, and payment terms. Ensure that all specifications align with your business requirements and that there are no ambiguities or discrepancies that could lead to misunderstandings later on. If necessary, seek legal counsel and talk with your financial institution to clarify complex clauses and negotiate terms favourable to your business.</p>
2.	Clarify Deposit and Payment terms
	<p>In many supply contracts, suppliers may request a deposit or advance payment to initiate production or secure materials and equipment. While this is common practice, it's essential to establish clear guidelines regarding the amount of the deposit, the timing of payments, and the conditions under which deposits are refundable, along with the security of the deposit. Further, and unlike property purchasing laws in certain states, deposits paid in relation to a supply contract may not be held in trust or escrow type arrangements. Ensure related payment terms are understood and explicitly documented in the contract to avoid disputes or potential losses in the event of supplier default or non-performance.</p>



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3. Deposits and the Personal Property Security Register

Ordinarily a search of the PPSR may evidence security interests over property or goods that are being purchased. However, this will not likely be effective where a deposit is required by an agent or broker who will then source those goods or equipment. Effectively, they will not have the title over the goods or equipment, as this will remain with the manufacturer or current owner of the goods or equipment. To better protect your deposit, consider requiring the equipment manufacturer or owner to provide a confirmation (via the agent) that the deposit has been received and the purchase order is being honoured.

4. Verify Supplier Reliability and Quality Assurance

Before engaging with any supplier, conduct thorough due diligence to assess their reliability, reputation, and track record. Request references from past clients, inquire about their manufacturing or supply processes, and assess their quality control measures. It's crucial to partner with suppliers who prioritise quality assurance and can consistently deliver goods or machinery that meet your specifications and standards. Additionally, consider including provisions in the contract for quality inspections and acceptance criteria to mitigate risks associated with substandard products.

5. Address Intellectual Property and Confidentiality Concerns

When purchasing machinery or goods from suppliers, intellectual property (IP) rights and confidentiality are paramount considerations. Ensure the contract clearly delineates ownership of any proprietary technology, designs, or innovations developed during the manufacturing process. Implement confidentiality provisions to safeguard sensitive information and trade secrets shared with the supplier.



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6.

Anticipate Contingencies and Mitigate Risks

Despite meticulous planning, unforeseen circumstances may arise that disrupt supply chains or impact production schedules. To mitigate these risks, include provisions in the contract for force majeure events, such as natural disasters, industrial strikes, or regulatory changes, which may excuse performance obligations or provide remedies in the event of delays or disruptions. Consider implementing contingency plans, such as alternative suppliers or production facilities, to minimize the impact of unforeseen events on your business operations.

By following these essential steps and exercising due diligence throughout the contracting process, business owners can mitigate risks, protect their interests, and establish mutually beneficial relationships with suppliers. Remember, investing time and resources upfront to negotiate favourable contract terms and mitigate potential risks can yield substantial long-term benefits for your business's success and sustainability. I strongly advise business owners to seek professional guidance when negotiating supply contracts to ensure compliance with applicable laws and regulations and to effectively safeguard your interests effectively.

This information is of a general nature and guidance only and does not constitute legal advice.

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