

Supply Chain: Are Your Standard Terms and Conditions Up-to-Date?

Article

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Haribo and Foxconn are coming to Wisconsin, and this announcement has created much excitement among suppliers and vendors seeking to become part of the supply chain. As these companies join the likes of other key manufacturing companies establishing production facilities in Wisconsin, approximately 200 companies are vying to provide supply chain services. Haribo and Foxconn, like most large customers, will have their own well-established terms and conditions of purchase. However, if you are a company that is eager to be selected as a supplier or service provider for a manufacturing company in Wisconsin, now is an opportune time for you to review your own terms and conditions of sale.

Supply chain contracts result from an exchange of documents between the supplier and the purchaser. The terms and conditions of sale are an opportunity for a supplier to ensure their contract terms and conditions reflect their individual circumstances. At the very least, suppliers must be sure the terms and conditions of their own contracts are equitable to minimize the unfavorable outcomes that may arise should a dispute occur.

Many key terms and conditions can be tailored to reflect supplier-specific nuisances and should be tailored for that purpose. For example, provided below are three examples of when tailored terms and conditions are necessary to provide equitable results for the supplier or service provider.

- A supplier made customized parts for a customer, as dictated by the customer's specifications. The terms and conditions required the supplier to indemnify the customer for any infringement on third-party intellectual property rights for products made by the supplier to be sold by the customer. To protect the supplier from any liability that resulted from the customer's specifications, the supplier should not have indemnified the customer for any designs or specifications not actually created by the supplier because intellectual property infringement liability should rest with the party that is designing the product, which is not always the supplier.
- A customer's standard terms and conditions required the supplier to comply with all laws where the product was ultimately supplied and sold. The supplier was a company located in Milwaukee, and they had no knowledge or control over the sale of their product making it nearly impossible to comply with all

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the laws of possible locations where the product was sold. To limit their compliance requirements, the supplier should have limited the terms and conditions to only require legal compliance with the United States domestic laws to protect them from liability should the product not comply with the laws of any other country.

- Most customers reserve the right to reject non-conforming products, or rather products that differ from the specifications in supply agreements. This is intended to be an objective standard, or, so many suppliers think. However, dominant customers may reserve the right for the customer, in its sole discretion, to reject products it believes to be non-conforming. The right to reject should not be based on the customer's definition of non-conforming, rather than an objective standard, as it allows the customer to essentially reject products for any reason the customer provides, which can be unpredictable and unfair to the supplier.

As you can see, tailored terms and conditions assist the supplier's ability to protect itself should a need arise under the supply agreement.

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