

Supply Chain Agreements–Key Clauses To Be Aware Of.

Well-drafted supply chain agreements, covering key clauses such as scope of work, liability caps, termination, force majeure, indemnity, warranties, and confidentiality, are essential for managing risk, clarifying responsibilities, and protecting the interests of all parties involved.

Supply chain agreements are essential for setting out clear expectations between parties involved in the procurement and delivery of goods or services. These agreements manage risk, outline responsibilities, and ensure smooth operations. When reviewing a supply chain contract, it's important to focus on specific clauses that can significantly impact the parties involved. Here are key clauses to be aware of:

1. Scope Of Work And Pricing Terms

The scope of work and pricing terms define what goods or services will be provided and at what cost. These are critical for ensuring clarity around deliverables, payment schedules, and pricing structures. Both parties should agree on detailed descriptions of the work or products to avoid disputes.

Key Considerations: Ensure the scope of work is comprehensive and pricing terms are clear, including payment milestones, currency, and any potential adjustments for unforeseen costs.

2. Standing Time (Idle Time) Clause

This clause compensates the supplier if delays occur due to factors beyond their control, causing them to be on-site but unable to work. It typically includes hourly or daily rates for idle time and defines when the standing time applies.

Key Considerations: Ensure the clause clearly specifies conditions and rates for standing time to avoid misunderstandings.

3. Liquidated Damages Clause

Liquidated damages provide pre-agreed compensation for delays or other breaches. This clause ensures timely performance by imposing financial penalties if obligations are not met as scheduled.

Key Considerations: The amount specified should be reasonable and reflect potential losses due to non-performance.

4. Maximum Liability Cap Clause

The scope of work and pricing terms define what goods or services will be provided and at what cost. These are critical for ensuring clarity around deliverables, payment schedules, and pricing structures. Both parties should agree on detailed descriptions of the work or products to avoid disputes.

Key Considerations: Review the cap to ensure it aligns with the level of risk and exposure for both parties.

5. Termination For Convenience Clause

This clause allows one party to end the contract without cause, usually requiring advance notice. It provides flexibility but can pose risks if terminated prematurely.

Key Considerations: Ensure the notice period is fair and that the terminating party compensates the supplier for any costs incurred.

6. Force Majeure Clause

A force major clause protects both parties from liability when unexpected, uncontrollable events (such as natural disasters or pandemics) prevent them from fulfilling their obligations.

Key Considerations: Ensure the definition of force majeure includes relevant risks and clearly outlines procedures for notifying the other party.

7. Consequential Damages Clause

Consequential damages refer to indirect losses, such as lost profits, that may result from a breach. Most agreements exclude liability for consequential damages to avoid unpredictable financial claims.

Key Considerations: Ensure the exclusion of consequential damages is clearly stated and fair to both parties.

8. Indemnity Clause

Indemnity clauses transfer certain risks, typically requiring one party to cover specific losses or claims.

This clause is key for handling third-party claims or damage resulting from performance issues.

Key Considerations: Clearly define the risks covered and ensure that the indemnity is well-balanced between the parties.

9. Warranties And Allocation Of Risk Clause

Warranties set out the obligations regarding the quality and performance of goods or services, while the allocation of risk clause ensures a balanced distribution of responsibility between the parties. This helps manage expectations around performance and provides protection if things go wrong.

Key Considerations: Ensure that warranties are comprehensive and reasonable, and that the allocation of risk is fair and proportional to each party's role in the supply chain.

10. Confidentiality Clause

This clause protects sensitive information shared during the contract, such as trade secrets or pricing details. It typically remains in force after the contract ends.

Key Considerations: Review the duration and scope of the confidentiality obligations to protect business interests.

A well-drafted supply chain agreement establishes clear expectations and protects both parties from unnecessary risk. The above key clauses are crucial for managing liability and ensuring a fair distribution of responsibilities. By carefully negotiating these clauses, both parties can safeguard their interests and create a stable, well-balanced contract.

