A Contract Management Response to COVID-19

21 April 2020

Identifying Your Key Contracts and Their Key Terms

Key contracts are those critical for keeping your organization operating. They can cover the acquisition of vital products and services from suppliers or the provision of valuable products and services to customers. Contracts that cover the conduct of other types of business with third parties might also be considered.

Force Majeure Scope

This clause can provide a party to a contract with a temporary or permanent release from its obligations and liabilities due to circumstances beyond its control.

Termination Options For Cause and Convenience

These clauses give contracted parties the right to end a contract under certain circumstances. The specific circumstances often determine how termination can be achieved, such as immediately, only after notice of default is provided and the default remans uncured after a set time, only on the anniversary of the contract commencement date, and so on.

Supplier Exclusivity

This clause limits the organization to obtaining whatever products and services are specified in the contract from only the third party named in the contract. Often this clause is used to obtain keener pricing from the third party than otherwise, at the expense of the organization not being able to take advantage of better pricing for similar products and services from other suppliers for the duration of the contract

Supplier Performance Requirements and Non-Performance

The details of what is to be measured, how, when, and by whom, plus what is to be reported, when and by whom, needs to be clearly specified in the contract in the form of (KPIs) or (SLA). Any self-reporting of performance statistics by the supplier should be periodically validated.

Minimum Order Quantities or Spend Thresh holds

Minimum commitment clauses, in terms of time- bound spend amount, product quantity, resources used and other measures, are often specified in contracts to enable a supplier to recoup upfront costs, conduct resource levelling or achieve other contract term benefits, often with the enticement of lower ongoing unit charges to the organization.

Price Changes

This clause specifies the circumstances where and when a price change might be required by the supplier, most often upwards but occasionally downwards. These circumstances might include inflation exceeding an agreed rate, exchange rate rises or falls, failure to meet any minimum commitments, exceeding or dropping below any volume tiers. Often, prices might be annually adjusted upwards as a matter of course, either by a fixed amount or a variable amount to account for inflation.

Payment Terms

This clause can specify various elements of the payment terms, such as how often billing takes place, how bills will be presented, the period during which payment must be remitted, the consequences of late payment, the right for the payer to dispute the invoice or amount, the right for the payee to charge a particular interest rate on any undisputed overdue amount or to suspend services until all outstanding amounts have been received, the currency of payment, the acceptable payment methods, any discounts available for early payment.

This clause should always be present in a contract.

Notice Requirements

This clause specifies how formal communication between contracted parties are to be conducted, why and by when, especially if providing valid notice is a prerequisite for exercising certain contractual rights. This clause should always be present in a contract.

Limitations or Exclusions

These clauses provide a method for a party to exclude or limit liability in certain circumstances, like potential breach of contract, the amount that be claimed for such a breach, or time limits for commencing action for claim. Many jurisdictions have enacted statutory controls to limit the effect of limitation and exclusion clauses, so use them with care.

ALWAYS INVOLVE A LEGAL PERSON WHEN DRAFTING A CONTRACT

Thank you

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