

Customers, employees, and suppliers are the lifeblood of any business. Alienate any group and it can take years to recover. Most organizations focus their most liberal devotions on customers, with employees wooed by generous benefits. Suppliers, however, are sometimes squeezed. This can be done effectively, with respect; or not.

Standard Terms to Rule Over Them

BY RONALD F. POL

Supplier Standard Terms

An important way for lawyers to add value is to help develop systems and processes for the smooth running of day-to-day operations. Standard terms—for example, with suppliers—can save countless hours of negotiations and conflicting obligations, yet overbearing legalistic conditions can be counterproductive. Here's an example, from a supplier's perspective.

"We've had a request to add your organization to our vendors list."

Great, they've ordered their first product from us, and need contact and bank details to facilitate payment.

"As part of our continuous improvement of business processes, our standard terms and conditions for the supply of goods and/or services were recently legally reviewed. We are convinced that the enhancements are to our

mutual benefit, and will improve the relationship we have with our valued suppliers."

Yep, being paid quickly will certainly help good relations.

"We prefer to deal only with suppliers who have accepted, signed, and returned our terms and conditions."

They want me to sign something; must be important. Best read it, I guess.

"These terms and conditions supersede any contrary provisions in the supplier's terms and conditions of supply, including those terms the supplier normally uses."

We already supplied the goods, so we have an existing contract on our usual terms, or other reasonably inferred terms. They now want to vary the contract. Actually, override it completely—and their contracts with every other supplier they use.

"The supplier is not entitled to claim expenses except as otherwise agreed in writing."

So if they want me urgently to get on a plane, with the usual inference that they'll reimburse reasonable expenses, it amounts to nought unless I get the agreement in writing. What a pain.

"All services must be performed within our business hours (8:30 AM to 5 PM, Monday to Friday)."

Fine, if I was an employee or contractor. Let's say you have 1,000 suppliers. Are you really trying to force them all to change their business hours? What about those who work overseas; do they have to work in the dark just because it happens to be daytime on your side of the world? This is silly. Surely no lawyer helped draft this.

"Where the supplier has the benefit of any warranties or covenants from a third party in respect of the services, the supplier shall disclose and assign the benefit of the warranties and covenants to us."

You want us to breach confidences or other contracts? Even so, we've got to admire a nice piece of freeloading; you get the benefit of third party warranties at no cost.

"We shall have the right to audit and inspect the supplier's records... These obligations cover us and any other party that has the use or benefit of the services."

So, we take the financial risk (by providing services and awaiting payment), yet you get to look at our books? And anyone else you happen to pass on our product to can also audit and inspect our records? This seems a tad intrusive.

"All intellectual property arising from the provision of the services is owned by us."

Sometimes this would be appropriate. Other times, not. A blanket clause transferring all intellectual property



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—and related requirements to sign documents transferring IP rights, naturally—is draconian, at best.

“The supplier shall maintain at its own cost at all times ... public liability insurance of not less than \$2 million, on such terms and with such insurers as we may require. Otherwise, we may pay the premiums and deduct the amount from any moneys payable.”

The local bookshop that supplies weekly magazines and the florist supplying reception now need \$2 million insurance coverage? For our business, however, I guess it’s fair enough you decide which insurer we use; it seems by now you pretty much already control our business anyway. Surely


it would be simpler to just assign our shares to you and hand over the keys?

This is to our “mutual benefit”? And will “improve our relationship”? Yeah, right. That’s a “relationship” some of the best suppliers might view somewhat differently.

“No one’s complained” you say; “others have signed, so it must be ok.” Or, you’re simply the biggest game in town. They might be afraid to rock the boat; and hope that your dictatorship will be benevolent.

Customizing Contracts Is Key

While customers and employees enjoy a relative abundance of loving, lawyers helping screw down suppliers can choose to be *legal technicians*—cramming in every onerous term possible—or *legal strategists*, combining

legal skills with a “whole of business” outlook. In this example, a single agreement which applies poorly to most suppliers might be replaced with several, each more closely matching key supplier groups. The terms might be viewed from a different perspective, such as by suppliers themselves, and the trade-off carefully balanced between “robust” terms and the ultimate organizational cost of resentment generated by suppliers inconvenienced by officiousness. 

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