



The Importance of Standardized Contracts for Manufacturers

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The written contract is the foundation of any business relationship. However, after practicing law for many years, I am still surprised by the state of many of my clients' manufacturing contracts. It is not a rare occasion when a new client calls me to discuss a contract issue or to interpret a contract provision. Of course, the first thing I request is the contract. The client says – "Sure. I will send it right over." However, what I frequently receive is a simple purchase order or an unsigned summary of business terms that is full of more questions than answers. This is simply not good business practice, which promptly triggers my crusade to educate the client about the importance of developing a standardized contract that the client can use as a starting point for every transaction.

Developing a standard contract is important for many reasons, including the following:

- Using a standard contract can *save time*. It is much more efficient to modify a contract that you are intimately familiar with than reviewing and revising (or paying someone to review and revise) a contract that you have never seen before.
- Using a standard contract can *save money*. Not only does it cost less to modify (or pay someone to modify) because it is a contract that contains familiar terms, but a well-drafted contract can mitigate risk and save thousands of dollars with the inclusion of a number of common but essential provisions, which I will discuss briefly below.
- Using a standard contract can provide you with *more favorable terms*. In my experience, it is much more difficult to convince another party to make changes to their contract than to get them to agree to the provisions of a contract that is already prepared.
- Using a standard contract provides for *consistency among your contracts*, so there is no guesswork as to what they may contain.
- Using a standard contract *looks professional* and provides an immediate sense of credibility and reliability. The contract is one of the first points of contact with a customer. If the contract is poorly drafted, it may cause the potential customer to think the work product may also be poor.

It goes without saying that a standard contract is only as good as the terms it contains. If a contract is not well drafted, then it may cause more problems than it prevents. In addition to the standard provisions addressing issues such as pricing, terms of payment, shipping, etc., any standard manufacturing agreement should contain the following provisions:

- A warranty drafted as narrowly as possible, but in a way that is **commercially reasonable and fair** to the customer. For example, if the customer provides the specifications to which the product is manufactured, then the warranty shouldn't extend beyond the fact that the products will be manufactured in accordance with the specifications that were provided. The manufacturer shouldn't take the risk that the specifications are faulty in any way.
- A **limitation of liability** of the manufacturer, which should specifically exclude the ability of the customer to seek consequential damages, such as lost profits. Without such a provision, a small issue can become a big issue if a creative mind is involved.
- A **process** for addressing products that do not conform to the required specifications. The customers' remedy for such non-conforming products should be limited to either replacement at no additional cost or a refund of the purchase price. The provision should also provide for a limited amount of time during which customers may accept or reject a product as non-conforming.
- If customers provide **forecasts** of their anticipated quantity and delivery dates of a product, include language addressing whether the forecasts may be modified and, if they may be modified, by how much. This is especially important if the manufacturer is relying on the forecasts to secure materials that are required to manufacture the product subject to the forecasts.
- A provision providing a mechanism pursuant to which **changes** to the specifications or manufacturing process may be made. Typically, the party requesting the change pays for it. However, what if the change is required by law and affects other products being manufactured at the same facility?

Creating and implementing a standard contract is a good business practice and can save a lot of time and money in the end. Once a standard contract is created, it can be used for many years subject to periodic review and revision by legal counsel to reflect any changes in the applicable laws.

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