

Get the Goods – Replace Standard Terms & Conditions with an MSA to Mitigate Risk

Insight

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Bryan Rose

Stinson LLP for Association of Corporate Counsel

For more than 20 years, the supply chain issues were relatively minor, and problems with obtaining goods using Just in Time logistics and lowest price models were few. Supply was ample and demand steady. The last two years have up ended the relative stability in the supply chain. Covid, tariffs, and war have had enormous and widespread impacts on the supply chain. This turmoil has led to many questioning their long-standing reliance on standard terms and conditions in their supply chain contracts. Standard Terms and Conditions haven't provided the certainty or security needed to respond to today's challenges.

Drafting and negotiating any contract can be time-consuming and resource-intensive. To compensate, companies will resort to utilizing standard Terms and Conditions for each transaction. This can seem like a solid strategy, it reduces time and added legal costs, but when issues arise, that time and cost saved upfront can lead to lost business and increased legal costs and risk.

A Master Service Agreement is an excellent option for any business relationship that will or could last longer than a one-time purchase of goods. An MSA can provide your company with the certainty of terms, mitigate and define risks and damages and provide flexibility where needed. Need certainty on deliverables – an MSA can not only deal with standard delivery terms but also outline the notice requirements if a delivery cannot be made as planned. An MSA can address exclusivity and help deal with single supplier issues; it can address warranty provisions, liquidated damages, and place limitations on type and amount of damages; it can address intellectual property rights, and indemnification issues. In sum, an MSA can detail and address any potential question or problem that could arise in the relationship before things go sideways.

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Watch your T's and C's – Relying on standard Terms and Conditions for each transaction can save time and money. But when there is a problem with a transaction, the ease and speed of using Terms and Conditions can turn into a business and legal quagmire. Terms and Conditions are rarely negotiated, let alone analyzed in a comprehensive manner. At the first sign of a problem, you will find yourself analyzing the true risks after the fact. What are the actual Terms and Conditions that apply? Do you have a hard copy of the T's and C's in effect at the time of the transaction? Were the T and C's acknowledged and signed? Did they change over time? When were they sent or received? Even when adequately drafted, sent, and accepted by both parties, they often do not cover the issue at hand – leaving both parties with competing terms and a murky path to finding a business or legal resolution.

A well-drafted MSA sets the foundation for which all future transactions between the parties are based. Constructed correctly, an MSA can strengthen the business relationship between the parties by allowing for more streamlined negotiations and faster transactions; it can reduce costs, and lessens the need for additional legal and risk management resources. An MSA can also bring internal harmony to a company's corporate and legal departments.

A properly crafted MSA can free up the business people to negotiate terms while ensuring the legal risks and ramifications are already taken care of – giving the legal department piece of mind.

CONTACT

Bryan P. Rose

STINSON

STINSON LLP \ STINSON.COM