

NEGOTIATING MANUFACTURING & VENDOR CONTRACTS

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Agenda for Today

1. Drafting with Purpose
2. Negotiating Manufacturing Agreements
3. Tech and AI in Manufacturing and Vendor Agreements
4. Specific Drafting Provisions
5. Periodic Review of your Templates



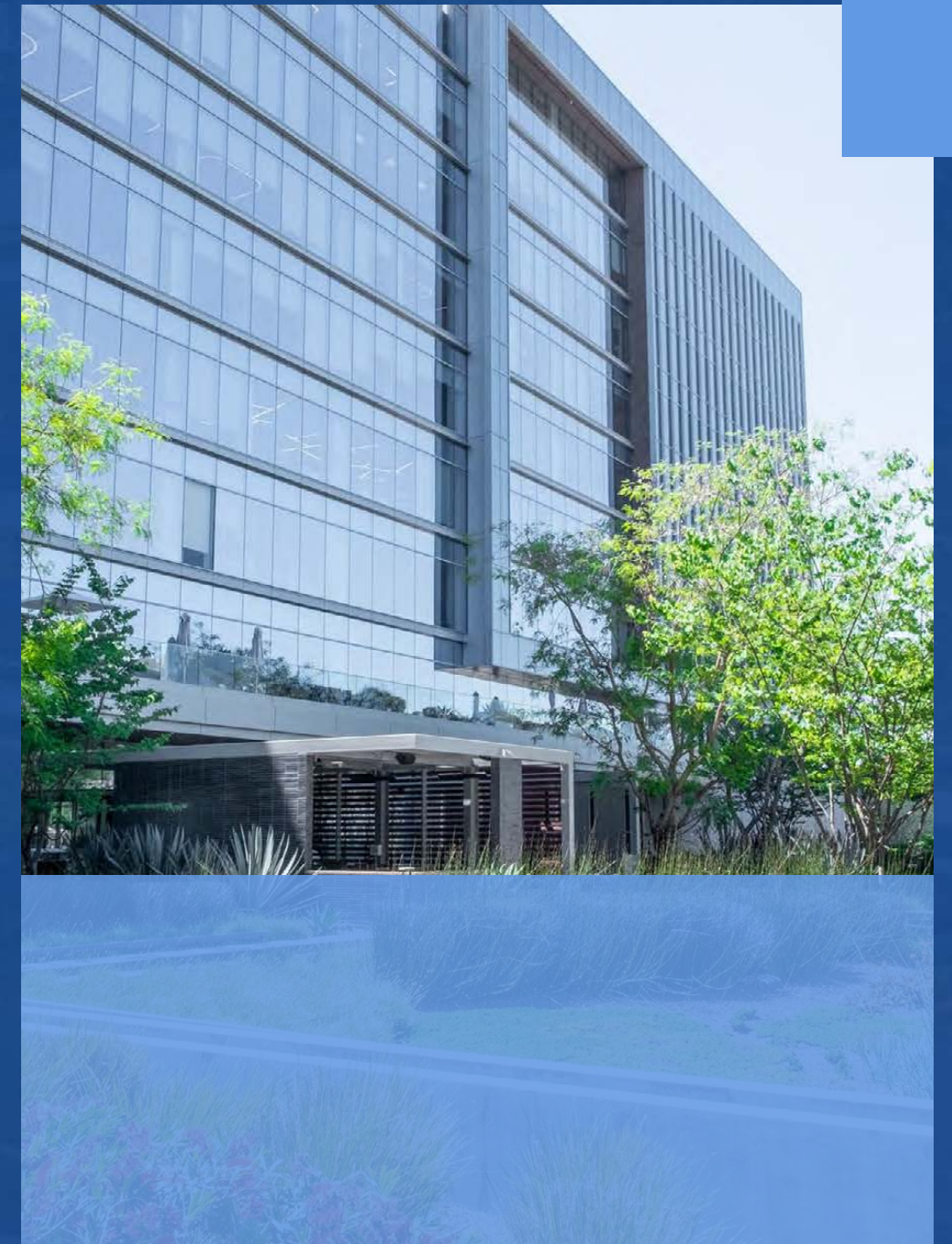
Drafting with Purpose

- What makes a contract good or bad?
- What makes a contract stand the test of time?
- What do you dread when you inherit a contract?
- What are your most common reasons for early termination?

What is the Purpose of the Contract?

Ask your team:

1. Why are you entering into this arrangement?
2. Why are you engaging with this particular third party?
 - Due diligence
 - Other options
3. What would make this relationship a success?
 - Objective metrics
 - Subjective metrics
4. What would make this relationship a failure?
 - Objective metrics
 - Subjective metrics
5. How does this deal fit into your short-term and long-term plans?



What is the Purpose of the Contract?



6. Who do you need on board to make this a success?

7. What fears do you have on the relationship?

- Legal
- Business / Financial
- Public relations

8. What is the range of value of this transaction?

- Financial value
- Non-monetary value

9. What does the other side get out of this relationship?

10. How do you plan to sell this transaction to your stakeholders?

Document your Goals and Communicate!

- Document your team's answers to the questions above. CYA!
- Periodically audit how the contract is performing to your expectations.
- Make sure to reevaluate the above anytime there is an opportunity to renew the contract.
- Note short-term and long-term goals of companies change over time.



Audience Survey

- How does your team audit contract successes?
- How do you pass on your company's goals to the next team members?
- What subjective goals do you have and how do you evaluate?



Negotiating Manufacturing Agreements

Manufacturing Agreements – Diligence on Manufacturer / Supplier

- History and reputation
- Treatment of intellectual property and confidentiality obligations
- Mission critical supplier
- Ease of alternative arrangements
- Supply chain concerns
- Exclusivity arrangements
- Jurisdiction of manufacturing and enforceability of contract and IP rights
- Financial situation of manufacturer
- What's your leverage if a breach?

Manufacturing Agreements – Contract Considerations

1. Exclusivity
2. Minimum or requirements contracts
 - Forecasts
3. Specificity of the products manufactured
 - Tooling provided,
 - Resources or employees assisting
4. Change of product specifications
5. Compliance with laws requirements
6. Use or resale ability (typically set by manufacturer)

Manufacturing Agreements – Contract Considerations

7. Ordering procedures:

- Purchase orders
- Inventory on hand
- Cancellations
- Modifications

8. Acceptance and rejection of goods

- Feasibility of inspections

9. Shipment, title and risk of loss



Manufacturing Agreements – Contract Considerations

10. Price and payment terms

- Most favored nation
- Annual increases

11. Product representations and warranties

12. Intellectual property rights and confidentiality obligations

13. Insurance, indemnification, and limitation of liability

Manufacturing Agreements – When to Bring in Specialists

- Ensure proper treatment of your intellectual property in the jurisdiction
- Data privacy analysis if data is provided or processed
- Use of artificial intelligence
- Customs brokers and other importing specialists
- Non-compete or non-solicit/no hire provisions
- FDA specialists
- Environmental concerns in manufacturing
- If employees on third party sites, proper insurance
- Private labelling

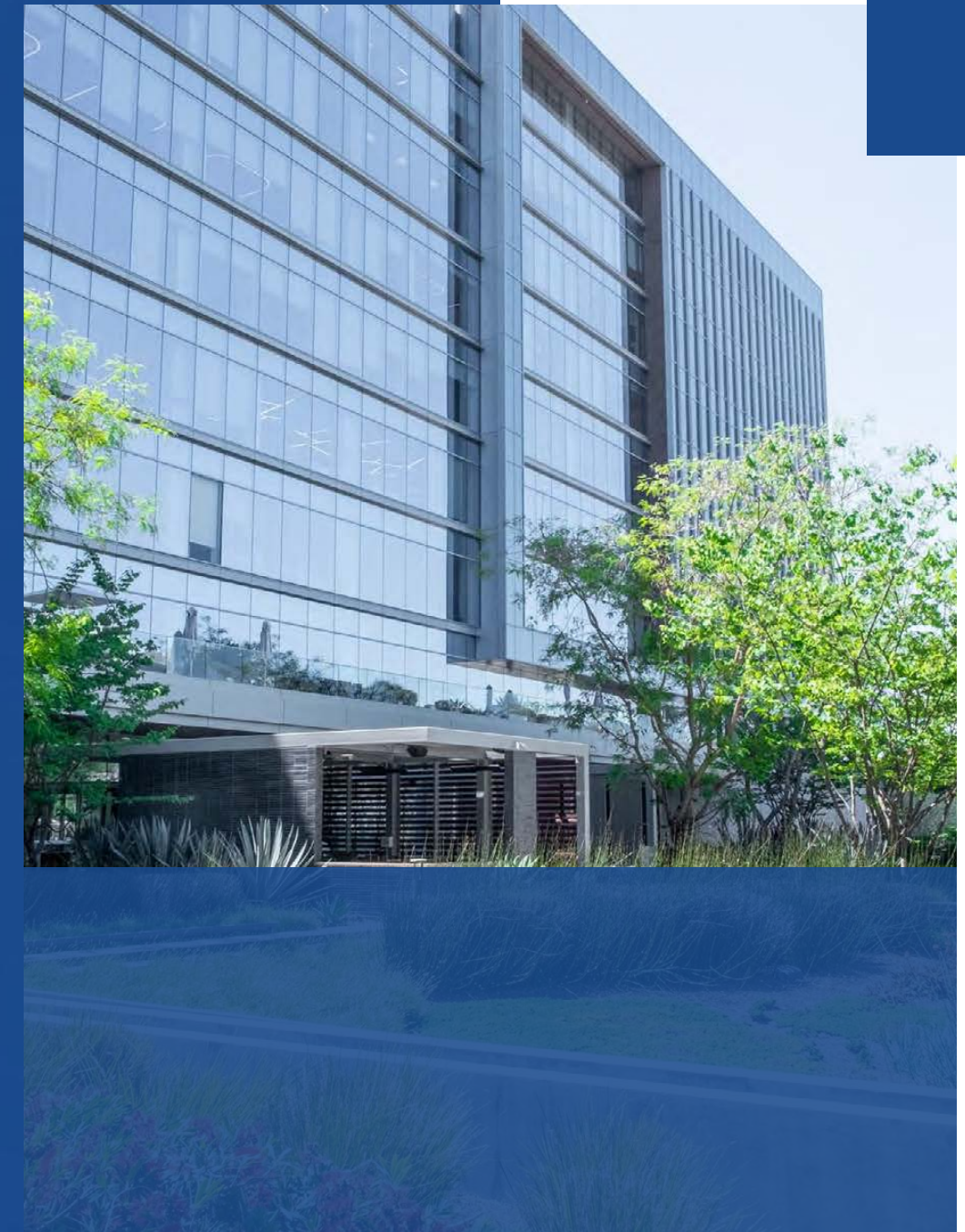
Tech and AI in Manufacturing and Vendor Agreements

Changing Focus in Contracts

- With rise of technology focus and artificial intelligence, these are increasingly impacting every area of business and should be a consideration in all contracts.
- No longer a clear separation between manufacturing of goods and use of tech and AI.
- Common Uses:
 - Content generation, marketing, code
 - Text analytics and generation
 - Language translation
 - Communication drafting
- Contract Management Uses:
 - Review of or categorization of contracts
 - Managing renewals and contract updates
 - Updating defined terms in contracts
 - Tracking variations to form contracts

Changing Focus in Contracts

- How are technology and AI in your manufacturing agreements?
 - Is software incorporated into your product?
 - Who owns the developed intellectual property?
 - Is supplier using software, know how, patents, or trade secrets in developing your products?
 - Is your supplier using AI to improve your designs, or to create original designs?
 - Generative AI
 - Smart manufacturing processes
 - Use of AI for compliance – legal, industry, contractual
 - Use of predictive capabilities



Tech and AI in Manufacturing and Vendor Agreements

Benefits

Your Manufacturer's Use of AI

- Enhanced efficiency
- Predicting market/customer changes
- Recommend product improvements and updates based on market dynamics
- Management and synthesis of customer feedback
- Management of supply chain and reporting of expected problems
- Quality control on manufacturing processes
- People management

Tech and AI in Manufacturing and Vendor Agreements

Concerns

Intellectual Property Ownership:

- As with all tech agreements, who owns the inputs, outputs, deliverables, etc.? Apply the same considerations to the AI created deliverables. Note that the AI outputs may be based on large datasets that you don't own.
- Is open-source or third-party software incorporated?
- Trade secret considerations - was AI used in the development of your products?
- How can the service or products be improved through AI? Who owns those improvements?

Service Level Agreements:

- What are the performance and service level requirements for the AI services? Quantitative metrics.
- Required reporting for incidents and support.
- If you were using AI for services or products you provide to customers, what are your industry or regulatory requirements for disclosure? Is that allowed under your contract.
- What level of support are your manufacturers providing?

Tech and AI in Manufacturing and Vendor Agreements

Concerns

Security:

- If processing data that may have personal information, trade secrets, customer information, or other confidential information, how does your vendor protect it?
- How do you monitor compliance with security requirements, as AI models are complex and learning?
- Pass thru security requirements from your customers. What are your confidentiality obligations?

Risk Allocation:

- Representations and warranties need to include the use of AI on the deliverables. Who is taking the risk?
- Indemnification. Who is ultimately responsible?
- Limitations on liability.
- Insurance requirements.

Tech and AI in Manufacturing and Vendor Agreements

Concerns

Quality Control:

- Data quality and bias in the AI systems is well documented, and it continues to change.
- How does this impact your use of the output?
- How do you protect your team and business from bad data?
- What disclaimers does the vendor have on the results, especially if relying on AI to produce them?
- Human oversight.



TECHNOLOGY
& ANALYTICS

For all the enthusiasm around generative AI, there's a hurdle that is limiting its adoption: the technology's tendency to make things up, leave things out, and create so many possibilities that it is hard to figure out which ones will be effective. For that reason, the vast majority of companies now employ human reviews and stand-alone testing tools or services to address generative AI's deficiencies. However, both of those quality-control methods are expensive, and they can handle only a fraction of generative AI's total output.

Harvard Business Review, September – October 2025 edition



Tech and AI in Manufacturing and Vendor Agreements

Your Use of AI in Drafting Manufacturing Agreements

- More efficient drafting and filling in of forms.
- Easier review of changes to template agreements.
- Analysis on market terms and provisions.
- Quick review of concerns in proposed contracts, including contradictory provisions.



Audience Survey: Do Your Vendors Use Artificial Intelligence?

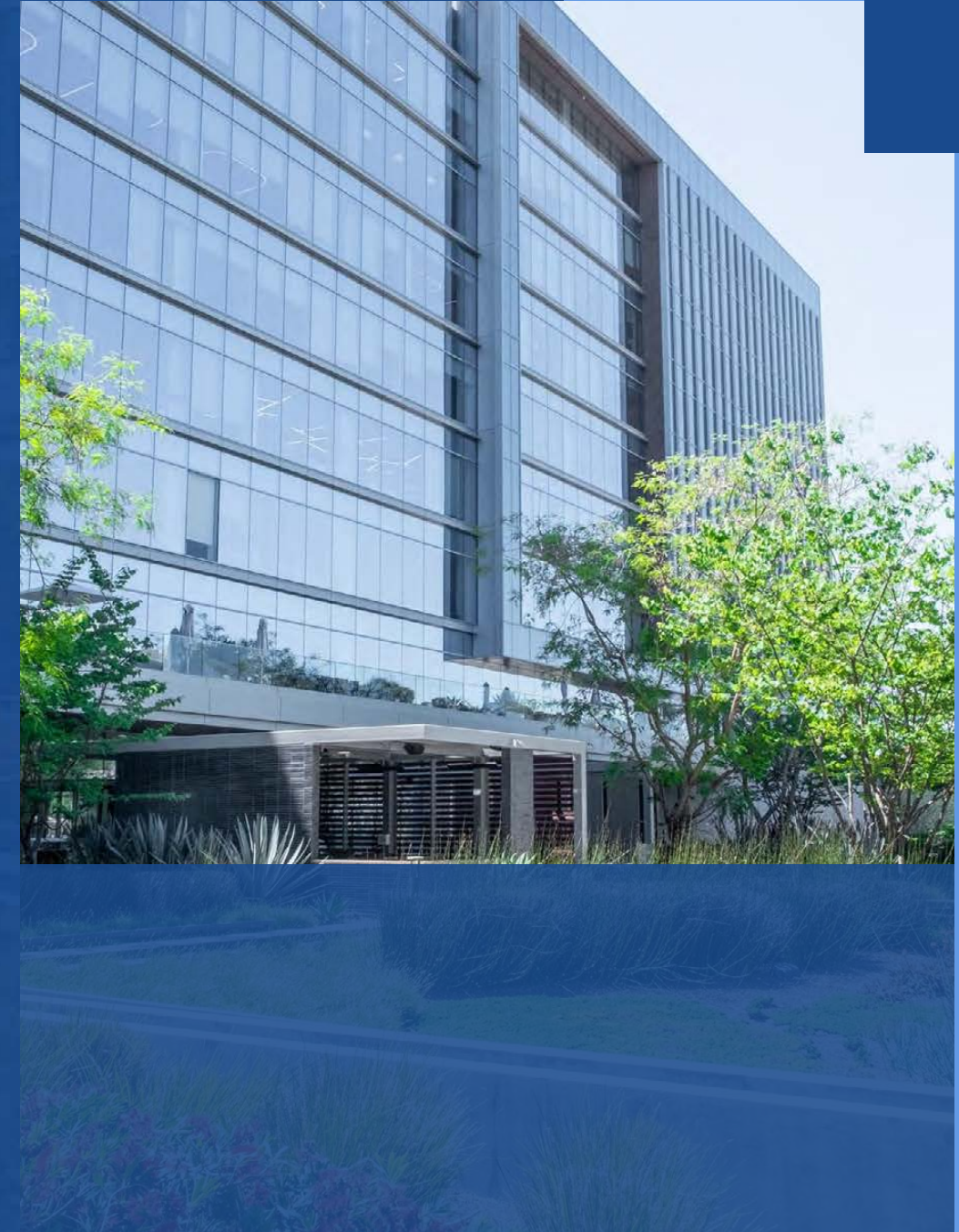
- Even if your contract isn't about AI, it doesn't mean that it isn't used.
- Ask how your vendor uses AI in their provision of the services or products.
- Are they able to alter their use of AI during the term of your agreement?
- How should your vendor be using AI to improve their services to you?



Specific Drafting Provisions

Representations

1. Intellectual property ownership
2. Quality of products or services
3. Quality of inputs
4. Regulatory compliance
5. Manufacturing capability - including employee access
6. Accuracy of information provided
7. Supply chain concerns



A vertical image on the left side of the slide shows a modern building with a glass facade and an outdoor seating area with plants and string lights.

AI Related Representations

- Disclosure of all AI used in the provisions of the services or products.
- License to all data, content, or materials used to train the AI.
- Disclose use of customer's data in AI.
- Vendor has not used any Generative AI in the development of any IP that is supposed to be proprietary.
- Has vendor complied with industry standard practices regarding the use of AI?
- Identification and mitigation of bias in results.
- Compliance with usage requirements and restrictions on any license or terms of use.

Warranties – Products and Services

- Analyze what risks are involved to the negotiating parties and their customers/suppliers.
- Courts apply Article 2 of UCC to services contracts as they do for a sale of goods. These should be negotiated similarly.
- Scope of your express warranties - including time period, original purchaser, usage restrictions, and liability cap.
- Disclaimer of all other warranties - including statements that may be on website or communicated by a sales agent.
- Any conditions precedent to remedies.
- Consider insurance coverage.
- Logistics of the warranty obligations – does the solution solve the customer's problem?

Indemnities

- Analyze if statutory indemnities are better in the context. Sometimes silence is better.
- Allocate risk appropriately between the parties considering all relevant factors.
- Predictability on recourse for damages.
- Limitation on recovery and certain exclusions.
- Increase odds of settlement if a dispute.
- Exclusive or non-exclusive recourse for a breach.
- Ensure enforceability in your jurisdiction.
- Allocation of fault.
- Identify which parties are indemnified.
- Payment for indemnity (where is the money coming from).

Periodic Review of Your Templates

Best Practices

- Know what template contracts you have and when they were last reviewed. What is your company policy on how often these should be reviewed?
- Times change fast. What has changed in the legal landscape since you last reviewed your contracts?
 - Data privacy / security
 - Insurance limits
 - Limits of liability
 - AI
 - IP ownership



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THANK YOU

Questions?