



Pricing Disputes in an Inflationary Environment

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Meet Our Speakers



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Our Locations



Why are we only talking about pricing disputes in an "inflationary environment"?

Avoiding Pricing Disputes



Avoiding Pricing Disputes

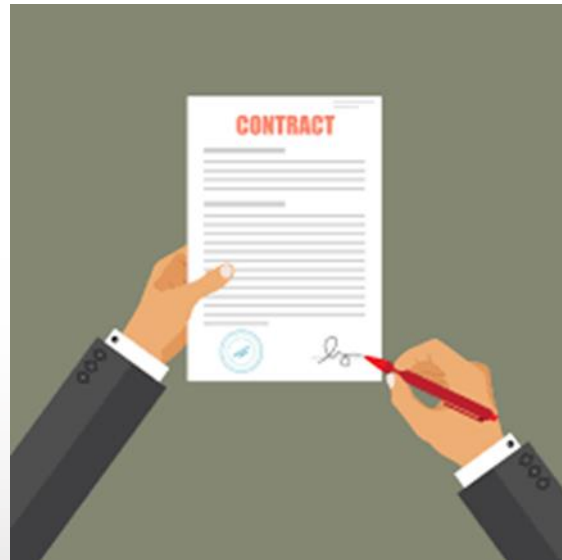
Suppliers Need Clear Quotations, and Customers Need Clear POs

- List any assumptions
- Describe price adjustments
- Set deadline for acceptance

Avoiding Pricing Disputes

Sign a Contract

- One of the best ways to avoid a dispute
- Everyone knows what they signed up for
- Avoid a “battle of the forms”



Avoiding Pricing Disputes

Match Your Customer Contracts to Your Vendor Contracts

- When can your suppliers raise their prices?
- When can you raise prices to your customers?
- Don't get stuck footing the bill

Avoiding Pricing Disputes

Be Thoughtful About Pricing Terms

- Fixed pricing throughout the term
 - *The price for Products shall be as set forth on Exhibit A and shall remain unchanged throughout the Term.*
- Open pricing throughout the term
 - *The price for Products shall be the price shown on Seller's website on the date Seller accepts Buyer's PO.*
- Auto-Increases
 - *Initial prices for Products are set forth on Exhibit A. Prices shall automatically increase by 3% each calendar year, effective January 1st of such year. No other price changes will be permitted during the Term without the mutual agreement of the Parties.*

Avoiding Pricing Disputes

Pricing Terms (Continued)

- Pricing adjusted annually, without a cap
 - *Prices may be increased at the start of each calendar year by Seller providing written notice to Buyer of such price increase at least ninety (90) days prior to the start of such calendar year.*
- Pricing adjusted annually, with a cap
 - *...provided that any such annual price increase shall in no event exceed 5%.*
- Economy-Based Index
- Raw Material Index
- Cost-Plus

Avoiding Pricing Disputes

Related Terms

- Price Match Option/Requirement
- Term/Termination
- Right to Reject Orders
- Renewal Process
- Post-Term Transition Period

Related Terms – Force Majeure

- Does it cover cost increases?
 - *Supplier shall not be liable to Buyer for any failure or delay in fulfilling or performing any term of this Agreement, and Supplier may implement price increases due to increased costs, when and to the extent such failure, delay or cost increase is caused by...*
- What is the standard?
 - *The performance of this Agreement is subject to termination without liability upon the occurrence of any circumstance beyond the control of either party ... to the extent that such circumstance makes it illegal or impossible for the Hotel to provide, or for groups in general to use, the Hotel facilities.*

Managing and Resolving Disputes

Pricing Disputes – Contract Hygiene

- Terms and Conditions – you actually have to send them
- Requote when quotes lapse
- Managing contract renewals and notices
- Price adjustments can lead to waiver or modification
- Course of performance
- Documentation is key

Managing a Typical Pricing Dispute

- Suppliers “notice” of price increases
- Effective date?
- Accepted surprisingly often
- Appropriately frame the message

Determine Your Options

- Know what “contract” governs
- Who is responsible for evaluating?
- Initial response: what message do you want to send?

Threats to Cease Shipping or Purchasing

- Common when companies dig in on pricing dispute
- Demand for adequate assurances
- Anticipatory repudiation – don't accidentally repudiate

Positioning for Litigation

- Payment or performance under protest
- Substantial compliance
- Venue and declaratory judgment actions
- Grounds for an injunction?
- The uncollectable seller

Exploring Other Options for Favorable Outcomes

- What should you be considering if you are the customer vs. if you are the supplier?
- What negotiations can happen at the margins?
 - Increased quantities
 - Exclusivity
 - Additional services or value adds
 - Cost reduction opportunities and spec changes
 - Lower cost replacement products

Finding Commercial Solutions

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Questions?
Thank you!



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