

# TOP 10 PITFALLS IN CONTRACTING

## Pitfall # 10: Race Against the Clock

You receive a contract request 40 minutes before the Supplier's VP arrives to sign. What do you do?

- Most mistakes are made when contract reviews are done under time pressure. Don't rush or take shortcuts!
- A bad deal is worse than no deal. Push back the signing until you can complete your review.

Sometimes emergencies happen. But if you are proactive, you can avoid the majority of these races against the clock by establishing a timeline for contract reviews with the Legal team, then communicating it to your suppliers and internal stakeholders.

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## Pitfall # 9: Let's Be Friends

Your supplier is getting antsy about her new contract and says something like: *We've worked together for years so can't you skip the formal review?*

Supplier friendships are a normal, and even desired, outcome of business relations. They can be important to trust building and collaboration. But be wary of the subtle requests to deviate from policy.

Contracting is all about the details. Miss one or two and you could find your prices increasing or your service auto-renewing with no way out. Don't let your friendship with the supplier cause you to short-change your process!

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## Pitfall # 8: Oops, I Missed It!

The contract you've been working on for three weeks now has 63 exhibits, 19 annexes, a glossary and an appendix. The deadline for getting the contract signed is looming. But Exhibit AAA isn't ready yet. What do you do?

Don't move ahead with signing until all parts of the contract are in place and ready to go. Otherwise, the missing document may fall through the cracks.

If Exhibit AAA is important enough to reference, it should be available at the time the contract is signed.

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## Pitfall # 7: Redline Express

This is your fourth “I need it now” contract request of the week. You give a quick scan and nothing catches your eye, so you forward it to Legal for their review. Next thing you know, Legal emails you asking why you're letting this supplier deviate from policy. Both you and she are frustrated.

There is an easier way to conduct the Redline Express! Work with your Legal counterpart to identify the critical terms and ranges of acceptability, then create a checklist to accompany the contracts. Then, for new contracts, use this list to indicate whether or not each term falls within acceptable range so that Legal can focus on problem areas.

This will streamline the review process and your Legal counterpart will appreciate the clear communication. In those cases where you have to accept a term that doesn't meet company requirements, you have documentation as to the rationale for the deviation.

All Aboard!

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## Pitfall # 6: Double Take

After 4 solid weeks of back and forth on the new contract and multiple conference calls with lawyers from both sides, it seems like you have compromised on nearly every provision, but the deal is done. Contract # 982 is signed.

Do not, ever, under any circumstances, use Contract # 982 as a starting point for new negotiations!! After so much compromise, this version of the contract should be scrapped in lieu of your current standard Terms & Conditions as the starting point.

Remember, circumstances, leverage and even motivation can change. What was necessary to get a deal done initially may no longer be valid. Start fresh with your supplier. It may not be where you end up, but having a solid starting point is critical.

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## Pitfall # 5: Translation Please!

"The Supplier agrees that 4 TRA's will be shipped with every NCW that has a POL in the system. If no POL is indicated, Buyer will match with the unmatched portion."  
Makes total sense to you. And your supplier.

But, what will a new hire see? What will a judge understand? Alphabet soup at the very least.

The contract must include an extensive list of definitions for terms and acronyms. And, even with adequate definitions, there could still be problems. "Match the unmatched portion" begs the questions how? who pays? by when? Be sure to clarify the details or something will get lost in translation.

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## Pitfall # 4: The Naked P.O.

You have no contract with a supplier but need to order some replacement parts urgently. Your buyer sends an email that reads: Dear Acme, please send us 60 Gizmos for \$5/each, FOB our street in St. Louis, MO. We need them by Friday, September 17th. Thanks.

Friday comes and only 58 of the Gizmos arrive, with legend, "All Warranties Disclaimed". The enclosed invoice shows 60 Gizmos at \$5.75 each. Unless your company terms were included in the email - too bad, no warranties. And you're out of luck on the higher price or missed deadline for the 2 items, since the email did not require the supplier confirm pricing or availability.

When you have to buy without a contract, a P.O. offers some protection if it includes basic terms (such as warranties, limit of liability, order compliance) and requires supplier to confirm order quantities, price and delivery time. Whatever you do, avoid the Naked P.O.!



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## Pitfall # 3: Reduce, Recycle, Reuse

You are negotiating with the fourth supplier for Temp Labor this year. Each time you start from scratch because you must redline their contract to meet your requirements.

Not having your own standard set of Ts & Cs is causing lots of duplicative work and may even put you at risk for missing key elements.

There is a better way! If you have multiple suppliers for the same service or product, with the same requirements, such as service levels or quality standards, then it is probably better to develop the contract in-house. This will save time and effort, and assure that, at a minimum, the contract discussions begin with your company's required terms and performance expectations. Streamlined interactions come from reusing the same contract templates. Recycling works!



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## Pitfall # 2: "Kiss" Your Contract!

Your Company really honestly wishes that Supplier would maybe possibly consider to endeavor to make a product for us, pretty please. So nicely written. But what does it say?

To avoid confusion and streamline your contracts, keep it simple by following these rules for wording:

- When possible, use simple language and short sentences
- Use the word "shall" to express actions by the Supplier
- Use the word "will" to express actions by your company
- Use active verbs (design, manufacture, deliver) and avoid the passive voice
- Avoid the use of buzz words or in-house terminology that may not have a common meaning to all readers

Of course there will be some wording that your Legal team may require, but wherever possible, keep it simple!

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## Pitfall # 1: Lost in Transition

You've just completed lengthy supplier interactions and multiple joint sessions with Legal to get the new service contract signed. You are getting pressure to get the next contract signed. But what about the transition?

Research shows that much of the good work that was done to get to this point can be lost if the handoff to implementation is not made well. Poor transition can hurt the supplier relationship as well.

Be sure to develop an implementation plan with your stakeholders and the supplier, to define all the of the activities that must take place to implement the new supply arrangement and highlight any of the service levels or other key aspects of the contract that was just signed.