Does Your Contract Protect Against Increased Costs due to Tariffs?



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Tariff wars or other unforeseen events can wreak havoc on a company that has signed a contract for the sale of goods or services, and then must cope with the resulting unanticipated price increases. Manufacturers, suppliers, and distributors alike may experience devastating consequences when tariffs impact the cost of supplies or even when a subcontractor presents you unexpectedly with a price change demand.

But there *are* contract provisions that can protect your business from these types of price increases or fluctuations.

While some companies try to use *force majeure* clauses to modify or even get out of a contract, these clauses offer no protection against such increases. *Force majeure* provisions are more commonly used to protect against acts of God or other significant natural and unavoidable catastrophes.

However, one effective mode of protection against drastic price fluctuations due to tariffs or other unforeseen events is to include a price adjustment clause in the contract. More commonly known as an "escalator" clause, this mechanism can effectively protect against unpredictable or unforeseen cost increases and is generally enforceable in most states and commonly used in commercial contracts.

Here are some important considerations:

Adding an escalator clause in a contract alone may not get you the increase you want. A party to a contract who wants to adjust the contract prices using escalator clauses may have to prove actual cost increases and provide evidence of the following:

- The cost at the time the contract was signed,
- The cost increase after the contract was signed, and/or
- Why there was an increase in costs after the parties signed the contract

An escalator clause may be drafted in such a way as to permit cancellation of the contract if one of the parties does not agree to the increase in price or it may require that both parties agree to the price increase or adjustment. The key is to negotiate the escalator clause before the contract is signed and specify as clearly as possible how to calculate the increase and when it will kick in.

Make sure the contract is written in a way that adequately protects your interests from the onset and prevents a situation where the contract may become null and void. Mistakes occur when parties sign an agreement under a mistaken fact or where one or both parties are mistaken about critical contract terms. These types of mistakes may require the contract to be reformed or even terminated where the mistake is so material that to enforce the contract would be unconscionable.
With tariff wars now the norm and delays in production more commonplace, an escalator clause may be the best protection against unexpected price increases. Negotiating an escalator clause at the inception of the contract can be beneficial to both parties and protects against litigation, a default, or the unexpected termination of a contract. Perhaps most importantly, it also helps protect against a complete breakdown in the overall business relationship.

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