

Negotiating Tips

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Contract Document Control

In contract development, the party that controls the physical production of the contract document and the wording changes during negotiations generally has a distinct advantage. This is particularly true in long or complex contracts.

Subtle or undetected changes can possibly be introduced into the document by the “controller”, but without the other party’s knowledge. Sometimes seemingly innocuous, but subsequently important terms and conditions on someone else’s paper can escape notice. To the extent that one party’s language is used, subsequent legal interpretation of precedent, meaning, or industry practice may favor that party.

The party that controls the contract document has a leg up in the negotiations.

Controlling Terms and Condition

Similarly, both the Buyer and the Seller have to be careful that they are not inadvertently accepting unknown or non-negotiated terms and conditions that may exist on the other party’s standard paper, contract documents, invoices, or purchase orders. Often terms and conditions on a Seller’s standard invoice are different than those on the Buyer’s standard purchase order, and both may differ from specific contract language. Often, simply paying an invoice means the buyer has “accepted” the Seller’s terms. In a more recent complication, agreements may refer to Terms and Conditions that reside on the Seller’s website. This is sometimes difficult to

manage because the website can be readily changed, enabling the Seller to change prices and terms at their discretion.

Often the Buyer firm, or the larger firm, or the firm that has better legal representation wins this negotiating element without the other party even realizing the issues involved.

Some things Buyer's can do:

Buyer's can generally insist that contracts be written on their paper, that they control and modify the physical document during negotiations, and that their terms and conditions prevail. Include terms and conditions early in the RFX process to identify and address these issues at the point of greatest leverage. Vendor invoices should always be reviewed, matched against purchase orders and/or contracts, and checked for inappropriate terms or conditions. Suspect invoices can be referred to properly trained Accounts Payable personnel or legal counsel for resolution.

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