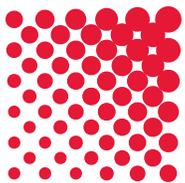


SALES CONTRACT RESOURCE GUIDE

March 2018



FPSA

Food Processing
Suppliers Association

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FOOD PROCESSING SUPPLIERS ASSOCIATION

SALES CONTRACT RESOURCE GUIDE

Introduction

The Food Processing Suppliers Association (FPSA) is the trade association for suppliers to the food processing and packaging industry and the host of the largest food and beverage processing and packaging trade show in the Americas: PROCESS EXPO.

FPSA's goal is to provide members with networking, marketing and educational opportunities and to help assure the future of the industry through charitable contributions and educational scholarships.

FPSA publishes this "Sales Contract Resource Guide" ("Guide") as a resource to the industry. The Guide does not cover all possible situations and alternatives. Rather, it is presented to highlight key considerations when negotiating and entering into sales contracts. This Guide should not be construed as a recommendation for how a sales contract must be written as every relationship between a supplier and a customer cannot be covered by a standard sales contract. Each contract should be individually negotiated and prepared, and an attorney should be consulted concerning negotiation issues and the formalization of a sales contract. In no event shall FPSA be held liable for any costs or damages arising out of or in any way related to this Guide.

Further, all FPSA members shall adhere to the FPSA Antitrust Policy which is attached to this Guide and are reminded not to discuss prices, terms, warranties, and other contract terms with each other.

SAMPLE CONTRACT PROVISIONS AND CONSIDERATIONS

This Guide is formatted such the name of the contract provision is shown in bold text. Then beneath the name in regular text is a sample provision. Below the sample provision in italicized text is the explanation of the purpose of the clause and examples of when/how it may be used.

Introductory Paragraph

THIS AGREEMENT (“Agreement”), is made on _____, 20__ by and between _____, a(n) _____ corporation, with a mailing address of _____ (“Seller”), and _____, a _____ corporation, with principal offices at _____ (“Buyer”).

It is important in the introductory paragraph to any contract to properly identify the parties by their legal name and corporate designation (e.g., LLC, INC., LLP). Often businesses have a different legal corporate name and then use a “fictitious business name” or “doing business as (d/b/a) name. While each party’s legal name should be used, it is recommended to list any “d/b/a” name(s) following the legal name. Also, it is helpful to indicate in which state the parties are incorporated in the introductory paragraph as well.

Recitals

WHEREAS, Seller has expertise with respect to the design, manufacture, assembly, and operation of various industrial products for use in _____ processing facilities and is engaged in the business of selling such products; and

WHEREAS, Buyer is engaged in the business of _____ processing at its facility located at _____ (the "Facility") and has a need for products of the type sold by Seller; and

WHEREAS, Seller desires to sell to Buyer and Buyer agrees to purchase from Seller certain products as set forth in this Agreement.

NOW, THEREFORE, for and in consideration of the foregoing and the terms, conditions, and covenants contained herein, the parties hereto agree as follows:

The recitals portion of the contract tells the “story” of the contract – i.e., why the parties are working together, what the Agreement is all about, etc. Note that it is not necessary to include recitals in contract. Some may find the recitals helpful in order to put the contract into context.

Sale and Purchase of Products

Buyer hereby agrees to purchase from Seller and Seller hereby agrees to sell to Buyer the Products and related accessories and services set forth in Exhibit A (_____) (“Products”) which is attached hereto and made a part hereof (collectively, the "Products").

The above provision should refer to an attachment which details the products by type, quantity, and other features.

Purchase Price and Payment

Subject to any adjustments as may be expressly set forth herein, Buyer agrees to pay to Seller the sum of US _____ for the Products as set forth on Exhibit A (_____) the "Purchase Price". Payment of the Purchase Price from Buyer to Seller shall be made as follows:

- (a) The sum of _____ shall be paid by Buyer to Seller within 10-days of Buyer's receipt of Seller's invoice for such amount, which invoice shall be submitted to Buyer upon the (i) execution of this Agreement by both parties, (ii) Buyer's issuance of its purchase order.
- (b) The sum of _____ shall be paid by Buyer to Seller within 10-days of Buyer's receipt of Seller's invoice for such amount, which invoice shall be submitted to Buyer upon the Seller's receipt of signed approval drawings allowing full release to manufacturing. Not to exceed 2-weeks from date of drawing issuance.
- (c) The sum of _____ shall be paid by Buyer to Seller within 10-days of Buyer's receipt of Seller's invoice for such amount, which invoice shall be submitted to Buyer upon readiness to ship Products.
- (d) The sum of _____ shall be paid by Buyer to Seller within 10-days of Buyer's receipt of Seller's invoice for such amount, but provided that the Products has been installed, tested and accepted by Buyer. Not to exceed 60-days from original shipment (if delay is not the fault of the Seller).

The contract should include a stated purchase price for the Products and provide for a payment schedule. Timelines, such as delivery of the Products, can be built into this provision as well.

Delivery and Shipping Instructions

Buyer shall provide to Seller written, detailed shipping instructions within a reasonable time prior to Delivery. Should Buyer fail to provide such shipping instructions, Seller shall deliver Products to Buyer's principal place of business shall constitute delivery to Buyer (“Delivery”), and regardless of shipping terms or freight payment, all risk of loss or damage in transit shall upon Delivery, shift to Buyer.

Buyer will be responsible for any increased costs or delays in Delivery resulting from Buyer's failure to supply such instructions in a timely manner. Buyer may not withhold payment in the event of delay caused by Buyer.

Delivery dates specified are approximate and are subject to revision at any time. Seller will use its commercially reasonable efforts to meet the approximate delivery date(s) provided that Buyer supplies all necessary information, but Seller shall not be held responsible for failure to do so, and shall not be liable for any damage or loss of whatever kind arising directly or indirectly out of any delay in such delivery. If Buyer is responsible for any shipment delay, Seller's written notification to Buyer that Products ordered hereunder are ready for shipping shall constitute Delivery to Buyer, and all further risk of loss or damage as well as all costs for handling, transportation and storage shall be borne by Buyer.

Seller shall not be liable for any damages as a result of any delay or failure to deliver due to any cause beyond Seller's reasonable control, including without limitation, any act of God, act or failure to act of Buyer, embargo or other governmental act, regulation or request, fire, accident, strike, slowdown, war, riot, act of terrorism, weather, delay in transportation or inability to obtain necessary labor, materials or manufacturing facilities. It is Buyer's sole responsibility to pay for and to obtain any governmental or other licenses, certificates or documentation as may be required.

The delivery and shipping instructions is an essential part of any sales contract. The burden should be on the Buyer to provide shipping instructions. The Seller should bear the risk of delivery until delivered and then such risk should shift to the Buyer. The contract should also provide for the contingency of a shipment delay – either caused by the Buyer or to circumstances beyond the parties' control.

Storage of Products

If the Products are not shipped within ____ days after notification to Buyer that they are ready for shipping, for any reason beyond Seller's reasonable control, including Buyer's failure to give shipping instruction, Seller may store such Products at Buyer's sole risk in a warehouse or other storage facility or upon Seller's premises and Buyer shall pay all handling, transportation and storage costs at the prevailing commercial rates upon submission of invoices therefore by Seller.

It is important that the contract address the storage of products after the Buyer makes the purchase but before the products are shipped. The cost and risk of such storage should be borne by the Buyer.

Default

In the event either party hereto should default in the performance of any of its obligations hereunder, the non-defaulting party may give notice to the defaulting party specifying the term or condition which is alleged as a basis of the default. If the defaulting party does not correct or cure the noticed default within ____ days after receipt of said notice, this Agreement may be terminated as of the day default occurred by the giving of another notice to the defaulting party.

In the event either party files or has filed against it a petition in bankruptcy, makes an assignment for the benefit of creditors, is insolvent, has a trustee or receiver appointed for some or all of its assets, or refuses or fails to pay its debts when they become due, the other party may immediately terminate this Agreement by giving notice to the defaulting party.

The right of either party to terminate this Agreement, as set forth in this Agreement, is in addition to and not in exhaustion of such other rights as may accrue to either party because of the other party's failure to perform the terms and conditions of this Agreement. The exercise of or pursuit by either party of any such rights shall not be in exhaustion of such other rights that such other party might have.

Every contract should have an “exit” – that is, a clause which permits for cancellation of the contract. Often such cancellation is triggered by breach or “default” when one or the other party fails to fulfill an obligation(s) under the contract. The concept of “curing” a breach is typically included in the language such that the breaching party is put on notice of the breach and given a chance to fix the breach. For example, the Buyer fails to make a payment for the Products, the Seller would give the Buyer written notice that the Buyer is in breach and has a certain number of days to cure the breach by providing the required payment to the Seller. In addition, if a party files for bankruptcy or other financial protection, the other party may terminate the contract. Note also that at the Buyer’s request, a contract may also include the right to termination without cause. This is often referred to as termination “for convenience” and typically requires advance notice and possible payment of fees to the Seller.

Indemnification

Seller agrees to defend, indemnify, and hold harmless Buyer against any and all liability, loss, and expense (including attorneys' fees) whether for personal injury, death, or damage to property by reason of any claim, action, or litigation arising out of (i) failure of the Products to meet specifications or warranties or to be otherwise defective and/or from any alleged or actual, direct or contributory infringement of patent, arising from the purchase or use of the Products, (ii) Seller's negligence or willful conduct, or (iii) Seller's breach of the terms of this Agreement.

Buyer agrees to defend, indemnify and hold harmless Seller against any and all liability, loss, and expense (including attorneys' fees) whether for personal injury, death, or damage to property by reason of any claim, action, or litigation arising out of (ii) Buyer's negligence or willful conduct, or (iii) Buyer’s breach of the terms of this Agreement.

The terms of this provision shall survive the termination or expiration of this Agreement.

Every contract for goods and services should include an indemnification provision because with the delivery of each good or service, there is the chance that the delivering party will do something wrong, someone will be hurt and both parties will be sued. Indemnification is a risk management technique in which one party “shifts” or “gives” the risk to the other party for things that party can manage, i.e., their equipment, their employees, etc. The final sentence regarding survival is also important as often a claim doesn’t arise until after a purchase occurs.

Successors and Assigns

The terms and conditions of this Agreement shall extend to and be binding upon and inure to the benefit of the parties hereto and their successors and permitted assigns. Seller shall not assign any of its rights, privileges, duties, or obligations hereunder, by operation of law or otherwise, without the prior written consent of Buyer.

It is important that all contracts include a successors and assigns clause as often, between the time of purchase and the time of delivery, a Seller or a Buyer is acquired by another party. The Buyer, however, wants assurance that they are purchasing products from this particular Seller so that is why this provision is often written such that the Buyer has to consent to the Seller assigning its rights/obligations under the contract to another party.

Force Majeure

Neither party shall be liable for any loss or damage incurred by the other party to the extent such loss or damages is caused by acts of God, war, acts of public enemy, civil disorder, riot, sabotage, government action or law or regulation, fire, flood, earthquake, severe weather, embargoes, or transportation shortages. The party whose performance is hindered or delayed due to an event of force majeure shall promptly notify the other party of such event and its expected duration, and shall work diligently to overcome such event and to timely perform its obligations hereunder. If any force majeure event persists for, or is reasonably expected to persist for more than 90 days, the party whose performance is not affected may terminate this Agreement.

A force majeure provision should be included in every contract. This provision addresses a situation in which something occurs beyond the parties' control which delays or prevents a party(s) from performing its obligations under the contract. It excuses the party from performing in such event and allows for termination if the condition will persist. For example, if the Seller's manufacturing plant is flooded by a hurricane and it cannot provide the contracted Products as a result, both parties are excused from performing the contract.

Security Interest

In consideration of Buyer's advance payment of a substantial portion of the Purchase Price, as set forth in this Agreement, Seller hereby grants to Buyer a first priority purchase money security interest in the Products and all materials that have been purchased and identified by Seller to become incorporated into the Products. Seller agrees to execute UCC-1 financing statements and similar or related documentation in order for Buyer to perfect or enforce its security interest. Seller agrees that it shall keep the Products and all materials that have been purchased and identified by Seller to become incorporated into the Products physically segregated from other inventory while in Seller's possession. Seller represents that the Products and the materials purchased and identified by Seller to become incorporated into the Products shall be otherwise free and clear of any and all liens, claims, security interests or encumbrances.

A security interest provision is important to include in the contract. Under the Uniform Commercial Code ("UCC"), a "secured transaction" is a loan or purchase that is secured by collateral. For example, a Buyer who pays some of the price of the Products is giving the Seller the legal right to take possession of collateral (typically the Products) in the event of the Buyer's failure to pay. In order to secure the transaction, a form (UCC-1) would be filed with the Secretary of State in the state in which the Buyer is incorporated.

Warranties

Seller warrants that the Products shall meet the descriptions and criteria and shall be as warranted as set forth in Exhibit __ which is attached to and made a part of this Agreement. Seller further warrants that all work shall be performed in a good, workmanlike and professional manner; and that the Products shall be of the highest grade and quality unless otherwise specified and shall conform to the specifications, drawings, samples, or other description furnished by Seller or specified by Buyer; shall be fit and sufficient for the purpose intended, and shall be merchantable, of good material and workmanship, and free from defect. Seller further warrants that if the Products furnished hereunder is subject to the federal "Occupational Safety and Health Act" of 1970, as amended ("OSHA"), or OSHA's state equivalent, or the rules and regulations thereunder; that, at the time of delivery, the Products will, to the reasonable knowledge of Seller, conform to all applicable standards and requirements set forth in said Act or rules and regulations in effect at the time of delivery; and that the use by Buyer of the Products will not cause it to be in violation of said Act or the rules and regulations. These warranties are in addition to those implied by or available at law and shall exist notwithstanding the exceptions and/or inspections by Buyer of all or part of the Products.

While this Guide does not provide any sample warranties or parameters for warranties of Products, it is recommended that the contract include a warranty provision, such as the one above, which allows the Seller to attach their particular warranty for the Products.

Insurance

Seller agrees that during the term of its performance hereunder, it shall maintain a policy or policies of insurance as set forth below:

- (a) Worker's compensation, employer's liability insurance and other legally required employer's insurance in accordance with and meeting all requirements of applicable State and Federal law.
- (b) General liability insurance (including contractual liability) in amounts not less than \$1,000,000.00 per occurrence, combined single limits. Buyer shall be named as additional insured with respect to such insurance.
- (c) Seller shall provide Buyer evidence of the above-required insurance in the form of certificates of insurance. These certificates of insurance shall contain a provision that thirty (30) days' prior written notice of cancellation or any material reduction in coverage will be provided to Buyer.

- (d) Seller's policies shall be primary, and Buyer shall be named as additional insured on all but the Worker's Compensation policies.

It is important for Buyers to understand that the Seller has insurance in place to provide the financial backing behind the Seller's commitment to indemnify the Buyer. The types of insurance and covered amounts can vary. In addition, many Buyers will seek to be named as an additional insured on the Seller's insurance policies as noted in (d) above. This would allow the Buyer to be a covered party under the Seller's insurance and potentially avoid filing a claim under its own insurance policy(ies).

Claims/Defects

Written notice of any alleged defect must be presented to Seller immediately upon Buyer's discovery of the defect, and Seller must be allowed to inspect the Products while they are in the alleged defective condition. Use of the Products must be suspended until written clearance is issued by Seller for continued use, provided that Seller, upon receipt of written notice of an alleged defect, proceeds without unreasonable delay to remedy any defect covered by the warranty.

Buyer shall inspect all Products immediately upon their arrival and shall immediately give written notice to Seller of any claim that the Products do not conform to the terms of the Contract. Seller shall have reasonable access to inspect any allegedly nonconforming Products.

Buyer waives any right to assert any claim against Seller arising from any non-conformity of Products sold hereunder which would have been observable on reasonable inspection or testing within ____ days after Delivery.

It is important to include a provision in the contract which addresses the circumstance in which the Buyer alleges that the Products have a defect(s). The provision sets forth a process and timeline for which defect(s) must be reported to the Seller and the corresponding rights of the Buyer to have the defect(s) remedied by the Seller.

Limitation of Liability

Except as otherwise agreed in writing, Seller's liability with respect to the Products is limited to the warranty provided in this Agreement, and in no event shall exceed the Agreement price of the Products.

SELLER SHALL NOT BE SUBJECT TO ANY OTHER OBLIGATIONS OR LIABILITIES, WHETHER ARISING OUT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), OR OTHER THEORIES OF LAW, WITH RESPECT TO PRODUCTS SOLD OR SERVICE RENDERED BY SELLER OR UNDERTAKINGS, ACTS OR OMISSIONS RELATING THERETO.

UNDER NO CIRCUMSTANCES WILL SELLER BE LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR FOR ANY OTHER LOSS, DAMAGE OR EXPENSE OF

ANY KIND, INCLUDING LOSS OF PROFITS, ARISING IN CONNECTION WITH THE CONTRACT OR WITH THE USE OR LIABILITY TO USE SELLER'S PRODUCTS FURNISHED UNDER THIS AGREEMENT.

SELLER'S SOLE LIABILITY AND BUYER'S SOLE REMEDY IS LIMITED TO EITHER (a) REPAIR OR REPLACEMENT OF DEFECTIVE PARTS OR PRODUCTS, OR (b) AT SELLER'S OPTION, RETURN OF THE GOODS TO SELLER AND REFUND OF PURCHASE PRICE.

Without limiting the generality of the foregoing Seller specifically disclaims any liability for property or personal injury damages, penalties, special or punitive damages, damages for lost profits or revenues, loss of use of Products, or any associated equipment, cost of capital, cost of repairs to Products subject to Seller's warranty performed by persons other than Seller without Seller's prior written consent, cost of substitute Products, facilities or services, down-time or slow-down costs or for any other types of economic loss, and for claims of Buyer's customers or any other third party for any such damages. Seller disclaims any liability for any claim, whether in contract or in tort, which arose more than ___ year(s) prior to the initiation of arbitration or litigation by Buyer against Seller. Buyer agrees to cause its customers and anybody in the chain of manufacturing supply and distribution including the end customer to be bound by limitations of liability substantially equal to those contained in this Agreement.

From the Seller's perspective, a limitation of liability provision serves as a risk management technique to "cap" or "limit" the Seller's exposure to monetary damages. In order to be enforceable, these types of limitation provisions must be "conspicuous" to the Buyer. As such, text in "all caps" serves to show that the provision was conspicuous. This can be used along with bold text and other means of making these limitations known to the Buyer. This Guide does not provide the specific terms of such limitation of liability as such determination must be made by the Seller and the Buyer during the negotiation of the contract and upon advice of their respective legal counsel.

Confidential/Proprietary Information

Both parties acknowledge that, in the course of performing their respective obligations under this Agreement, they may receive from the other party certain confidential and proprietary information, including data, specifications, processes, policies, technologies, methods, formulae, and performance and other information of the other party (collectively, "Confidential Information"). Both parties agree to limit disclosure and access to the Confidential Information to such of their employees as are directly involved with work required by this Agreement and then only to the extent as is necessary and essential to complete the work involved herewith. Such employees shall preserve the confidential nature of the Confidential Information. Neither party shall disclose any of the Confidential Information to any other party, in whole or in part, directly or indirectly, unless authorized in writing by the other party. The parties shall, at all times, take proper and appropriate steps to protect the Confidential Information. Confidential Information shall be used only in connection with performance of this Agreement. No other use of it will be made by the receiving party or its employees, it being recognized that the disclosing party has reserved all rights to the Confidential Information.

The term Confidential Information shall not include information which (i) is in the public domain prior to disclosure to the receiving party, (ii) is lawfully in the receiving party's possession prior to disclosure, (iii) becomes part of the public domain by publication or otherwise through no unauthorized act or omission on the part of the receiving party.

The receiving party will not duplicate the Confidential Information, in whole or in part, except to the extent necessary to perform its obligations under this Agreement. The Confidential Information shall remain the property of the disclosing party and shall be returned to the disclosing party upon termination of this Agreement.

Both parties are prohibited from disclosing, directly or indirectly, any terms or conditions of this Agreement, except that Buyer may disclose this Agreement and Confidential Information to any lender or potential joint venturer or potential purchaser of Buyer or its assets.

Most contracts for the sale of goods and services will include a provision regarding how the parties handle confidential and/or proprietary information. While the language varies, the key aspects are that the parties acknowledge that they may receive confidential information as part of their performance of the contract and that they will maintain the confidentiality of such information and not disclose it to other parties unless the owner consents to the disclosure. Common exceptions to what constitutes confidential information include information which is in the public domain prior to disclosure or that the receiving party already had prior to disclosure.

Dispute Resolution

In the event of any dispute, controversy or claim arising out of or relating to this Contract, or the breach, termination or validity of it, the parties shall first attempt to resolve the matter over a period of at least 30 days before resorting to formal dispute resolution, except that equitable remedies may be sought immediately.

All disputes arising under this Contract shall be settled by final and binding _____ in _____, _____. The laws of the State of _____ shall apply.

A dispute resolution may be included in the contract. The first paragraph above is a 30 day "cooling off" period in which the parties attempt to resolve the dispute without resorting to formal dispute resolution. Note that this paragraph can be included along with any form of dispute resolution.

The second paragraph is a placeholder for arbitration or mediation or another form of alternative dispute resolution. Note that this Guide does not recommend any method of dispute resolution. Rather, this is a determination which should be made by the parties upon the advice of their legal counsel. There are many types of arbitration, mediation, etc. and many entities which offer such services, e.g., American Arbitration Association, JAMS (formerly known as Judicial Arbitration and Mediation Services).

Choice of Law and Forum

The validity, operation, performance of this Agreement shall be governed and controlled by the laws of the State of _____ and any disputes arising out of or related to this Agreement shall be heard only in courts located in _____ County, _____, U.S.A.

The above provision is designed to have disputes resolved via the court system and to specify where disputes will be heard and which state's law will apply. Again, this provision should be negotiated between the Buyer and Seller with guidance from the respective legal counsel.

Waivers

The failure of either party to enforce, at any time, any of the provisions of this Agreement or to exercise its rights under any of the provisions or to require, at any time, a certain performance of the other party, shall in no way be construed as a waiver of such provision nor in any way affect the validity of this Agreement or the rights of such party thereafter to enforce each and every such provision.

A waiver provision is common in most contracts. The purpose of the clause is to say that if either party makes an exception to a term of the contract, e.g., accepts a payment late, agrees to a delay in the equipment delivery, that exception does not make the other parts of the contract void.

Severability

The invalidity of any part, term, condition, or provision of this Agreement shall not affect the validity of the remainder hereof.

A severability provision is another common contract provision. This provision serves to protect the remainder of the contract even if a provision(s) is deemed invalid.

Headings

The headings in this Agreement have been inserted for the purpose of convenience and shall not be deemed to define, limit, or extend the scope or intent of the provision to which they appertain.

The headings provision is also common to most contracts. It serves to express that while the parties use headings to denote paragraphs for ease of reading the contract, those headings do not serve to change the meaning of the actual text of the provision.

Entire Agreement

This Agreement, including Exhibits _____, attached hereto constitutes the entire agreement between the parties with respect to the purchase and sale of the Products. In the event of a conflict between the terms of this Agreement and any terms contained in Exhibits ____, the terms of this contract shall govern. There are no other terms or conditions other than those stated herein, and this contract supersedes any other agreement whether oral or written, between the parties with respect to the purchase and sale of the Products. This Agreement may only be added to, modified, superseded or otherwise altered by a written instrument signed by both parties.

This entire agreement provision is common to most contracts and its wording can vary. Of key importance is to reference any other documents, such as exhibits, attachments, terms and conditions, warranties, which are attached to the contract and to say that they are part of the contract as well. Also, the statement that the contract replaces all previous written and oral agreements is important as well. The parties must ensure that the substance of any previous negotiations, e.g., discounts, has been included in the contract as otherwise they will not be enforceable. The last sentence simply states the basic tenet of contract law: it takes two parties to make the contract; it takes two parties to change the contract.

Counterparts

This Agreement may be executed in counterparts, and though executed in such fashion, those counterparts shall be considered one and the same document.

The counterparts provision is often included such that there may be various versions of the contract signed, e.g., electronic version, pen to paper version, but that both are valid and are one and the same.

Mutual Negotiation

Both parties have contributed substantially to the drafting of this Agreement, the terms as set forth in this Agreement and all amendments thereto have been arrived at after mutual negotiation and, therefore, it is the intention of the parties that its terms may not be construed against any of the parties by reason of the fact that it was prepared by one of the parties.

The mutual negotiation provision above is also common to contracts as a basic tenet in contract law is that if there is a dispute arising out of the contract, the contract will be construed against or in the least favorable manner against the party who drafted the contract. So this provision serves to say that both parties negotiated and drafted the contract so that this contract tenet should not be applied in this case.

Facsimile/Electronic Execution

The exchange of copies of this contract and of signature pages by facsimile or electronic mail transmission shall constitute effective execution and delivery of this contract as to the parties and

may be used in lieu of the original contract for all purposes. Signatures transmitted by facsimile or electronic mail shall be deemed to be original signatures for any purpose whatsoever.

This provision regarding facsimile or electronic signatures to the document is important to include since often contracts are only signed via fax or email so that if an original (pen to paper) version of the contract is not received, a facsimile or electronic version will serve to be one and the same as the original

Signatures

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first set forth above.

[SELLER]: _____

By: _____

Title: _____

[BUYER]: _____

By: _____

Title: _____

The company names (and any d/b/a names) as listed in the introductory paragraph of the contract should be the same as those listed in the signature line. In addition to the signatures, the names of the parties signing on behalf of the company should be listed in typeface or print along with their title with the company.

FOOD PROCESSING SUPPLIERS ASSOCIATION ANTITRUST POLICY

Purpose

The purpose of this Antitrust Policy is to alert members and staff to the kinds of activities most likely to raise antitrust concerns and to the precautions that must be taken to avoid antitrust problems.

Trade Associations and Antitrust Agreements

Trade associations by their very nature must be particularly sensitive to avoiding antitrust violations. This is because, in bringing competitors together into an association, one element of a possible antitrust violation may already be present - a combination of competitors. Thus, all that may be needed to prove a violation is an action to restrain trade.

Trade association members and staff should refrain from any discussion that could provide the basis or an inference that the members agreed to take any action that might restrain trade. Remember that an "agreement" among trade association members need not be in writing. A "gentlemen's agreement" to "hold the line" on prices may be more than sufficient for a court to permit a jury to infer an unlawful conspiracy to fix prices. The "agreement" can also be inferred by the parallel actions of trade association members that happen to follow the discussion of the topic at an association gathering.

The basic principle to be followed in avoiding antitrust violations in connection with association activity is to see that no illegal agreements, express or implied, are reached or carried out through the association.

The Antitrust Laws

The antitrust laws are intended to ensure free and open competition. These laws - the Sherman Act, Clayton Act, and Federal Trade Commission Act at the federal level and similar laws in many states -- prohibit contracts, combinations, conspiracies, and other agreements in restraint of trade, as well as monopolization and attempted monopolization.

An "agreement" among trade association members in antitrust terms is a very broad concept: it may be oral or written, formal or informal, express or implied.

Joint Conduct That Is Automatically Unlawful

Certain kinds of joint conduct are presumed to be unreasonable and therefore unlawful. These so-called "per se" unlawful practices are joint activities that the courts have long found clearly restrain competition and lacking redeeming procompetitive benefits.

Examples include:

- **Setting Prices**

- Agreements with the purpose or effect of setting or maintaining either prices or factors relating to prices, such as credit, discounts, profit levels, or volume of production.

- **Allocating Markets**

- Agreements with the purpose or effect of allocating markets, such as an agreement not to provide service to a particular geographic area, industry, or group of customers in return for a reciprocal pledge from a competitor.

- **Tying**

- Agreements with the purpose or effect of requiring a customer to buy an unwanted product or service in order to obtain the product or service desired ("tying" agreements).

In addition, agreements with the purpose or effect of refusing to deal with competitors, customers, suppliers, or other third parties (often called "group boycotts") also have often been declared per se unlawful, and should be avoided.

Meeting Guidelines

To minimize the possibility of antitrust problems at association meetings and events, the following guidelines should be followed at all meetings of the Board of Directors and committees, as well as all association-sponsored conventions, trade shows, training seminars, conferences, and task force and working group sessions.

DO NOT

DO NOT discuss your prices or competitors' prices with a competitor (except when buying from or selling to that competitor) or anything which might affect prices such as costs, discounts, terms of sale, or profit margins.

DO NOT agree with competitors to uniform terms of sale, warranties, or contract provisions.

DO NOT agree with competitors to divide customers or territories.

DO NOT act jointly with one or more competitors to put another competitor at a disadvantage.

DO NOT try to prevent your supplier from selling to your competitor.

DO NOT discuss your future pricing, marketing, or policy plans with competitors.

DO NOT discuss your customers with your competitors.

DO NOT make any statements regarding prices or matters affecting prices at association meetings.

DO NOT make statements about your future plans regarding pricing, expansion, or other policies with competitive overtones. Do not participate in discussions where other members do.

DO NOT propose or agree to any standardization that will injure your competitor.

DO NOT attend or stay at any informal meeting where there is no agenda, no minutes are taken, and no association staff member is present.

DO NOT do anything before or after association meetings, or at social events, which would be improper at a formal association meeting.

DO

DO alert association staff and legal counsel to anything improper.

DO consult your own legal counsel or the association's legal counsel before raising any matter which you feel might be sensitive.

DO send copies to an association staff member of any communications or documents sent, received, or developed by you when acting for the association.

DO alert every employee in your company who deals with the association to these guidelines.

DO be conservative. If you feel an activity might be improper, do not do it.

Potentially Severe Penalties

It is essential for association members and staff to comply with all aspects of federal and state antitrust laws. Violation of these laws can result in severe penalties and significant litigation expenses for organizations and individuals.

For Example:

- The government can seek to have imposed fines per violation of up to \$10,000,000 for a corporation and \$350,000 for individuals.
- Individuals who are involved in activity that violates the antitrust laws can also be sentenced to jail for up to three years, and possibly more if mail or wire fraud are involved.
- The government can also seek other relief for violations, including cease and desist orders and dissolution of an association.

- Private companies and individuals who are injured by an antitrust violation can sue the association, its member companies, and individuals for three times their damages, plus reasonable attorneys' fees and injunctive relief.

Even if a government or private suit is successfully defended, the cost and disruption of the litigation can be overwhelming. Taking antitrust precautions, therefore, is not only advisable, but imperative.

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