

Legal Pitfalls When Working With Contract Manufacturers

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Term Sheet

- Parties?
- Manufacturing Process?
- Technology Transfer?
- Specifications?
- Pricing and Payment Terms?
- Timelines?



Term Sheet

- Framework Agreement?
- Limitation of Liability?
- Warranties?
- Intellectual Property?
- (Early) Termination?



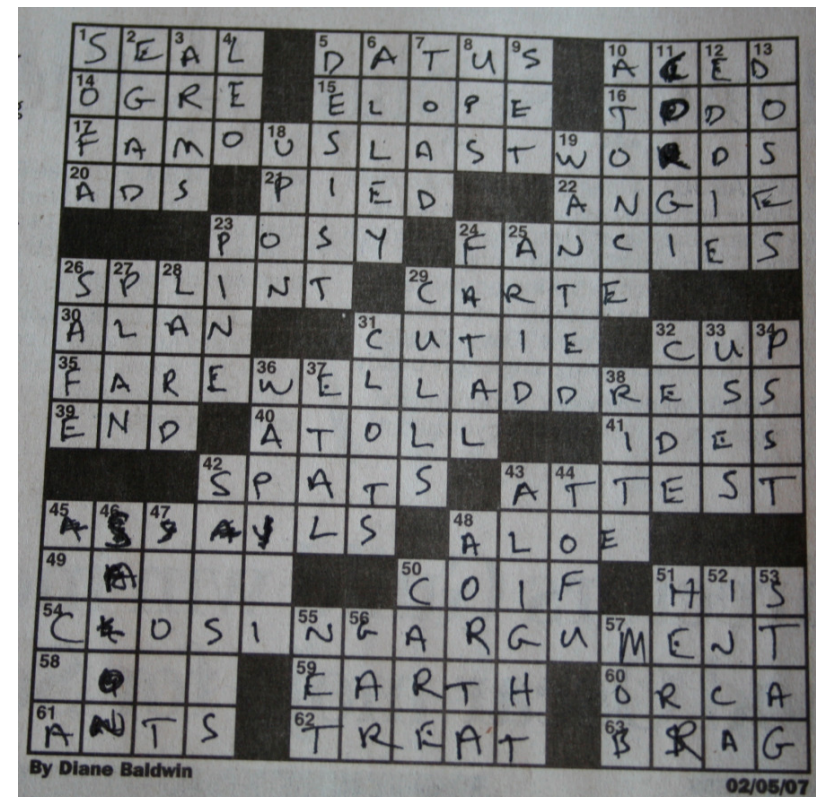
Term Sheet

Binding definition of the parties' rights and obligations during the negotiation phase:

- Obligation to negotiate in good faith
- Term
- Exclusivity
- Confidentiality
- Non-Solicitation
- Costs and expenses during negotiation phase
- Governing Law and jurisdiction

Drafting Manufacturing Agreements

- Choose the right template
- Fill in the blanks
- Delete what does not apply
- Reflect the term sheet



Master Service Agreement or Individual Contracts?

- Master Services Agreement
 - Long term relationship
 - More than one product
 - Not yet fully clear what the tasks will be
- Individual Contracts
 - One product, several purchase orders
 - Distant possibility of further business

Termination

- Termination for breach or bankruptcy
- Termination at will
- Termination for cause
 - Change of control
 - Price increases for components
 - Competition
- Minimum term and notice periods

Intellectual Property Rights and Know-how

- Improvements of manufacturing process
- Improvement of the product
- Licenses
- Joint inventions: Use, transfer, sub-licenses

Non-Conforming Product

- Warranty that the product will conform to the specifications
- Warranty period / latent defects
- Remedies:
 - Money back
 - Provide raw materials and manufacture new batch
 - Re-work or improve
 - Damages

Limitation of Liability

- Caps: consider volume of contract, margin and insurance coverage
- Loss of profits
- Incentives to avoid further damages must be maintained

Governing Law and Jurisdiction

- Cost issue if foreign counsel needed
- Templates are drafted under a specific law
- Common default rule: Laws of the country of the manufacturer, courts of the defending party

Further Issues

- Pricing and payment terms
- Forecasts and Stockholding
- Confidentiality

Monitoring Compliance

- Reports
- Forecasts
- Notices
- Parties' names and addresses
- Contact persons and project managers
- Cure and notice periods
- Patent filings

Due Diligence

- Parties
- Signatures
- Exclusivity and antitrust issues
- Provisions giving sole discretion to one party
- Termination possibilities
- Change of control and assignment
- Annexes

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