

How to manage retail sector supply contracts and avoid disputes

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Supply chains continue to be impacted by a variety of factors including inflation, the vulnerability of global logistics chains, and the growing need to enhance sustainability. In the retail sector, supply chains can be complex. Therefore, careful management of supply chain risks is essential given that disruption can resonate throughout the supply chain, leading to significant time, cost, operational and liability implications. By taking pre-emptive steps like undertaking a review of the supply chains, businesses can identify and take steps to mitigate areas of risk.

Based upon our significant experience advising retail clients on supplier disputes, we have set out our top tips to help minimise potential supply chain risks/disputes.

Undertake an audit of the supply chain

This will identify any risks and allow a business to put measures in place to reduce exposure.

Review the contract terms

Ensure that key clauses (such as force majeure, retention of title, representations and warranties, exclusivity, payment rights, schedule and delivery terms, limitations of liability and termination rights) are reviewed to ensure that they are comprehensive. All contractual documentation needs to be readily accessible.

Consider the viability of the contract

If contracts are no longer operationally or financially viable, businesses should try to re-negotiate or vary the terms. Given supply contracts are often long in length, it would be wise to see whether the parties can work together to find a workable solution. A negotiated solution could take a variety of different forms, depending upon the commercial strategies of the parties. This could include, for example, amending the length of the contract, decreasing the committed volume, and/or changing the pricing structure. Reaching a negotiated solution is often the best scenario for both parties. If the parties do agree to vary the contract, then ensure that any variation is carried out in accordance with the contract and properly documented. If either is not feasible then businesses could consider assignment or termination.

Undertake reviews of the suppliers

Regularly reviewing the financial and business performance of the suppliers is essential. Looking solely at the service/products they provide will not give businesses the full picture of their resilience to external factors. Financial issues are often the root cause of deteriorating supplier performance. 1st tier suppliers may also be taking the brunt of problems lower down the supply chain, with buyers only able to see late deliveries and decreasing quality from tier 1. This lack of supply chain visibility is a key driver of risk, hampering a buyer's ability to anticipate and mitigate disruption.

Communicate

It's important that the parties keep communicating even if there has been disruption. Continuing to talk might just avoid a dispute later down the line and preserve the commercial relationship.

Have a business continuity plan

Creating and implementing a business continuity plan will help to identify risks (in advance) and minimise disruption/impact. Such a plan might include implementing a dual sourcing strategy; using both regional and global suppliers; and/or pursuing 1st and 2nd tier supplier collaboration.

It is also important that businesses give their team training so that they can anticipate supply chain risks, voice their concerns, and embrace risk management processes (including the business continuity plan) which will be beneficial in dealing with disruptions.

Take steps to preserve the supply chain

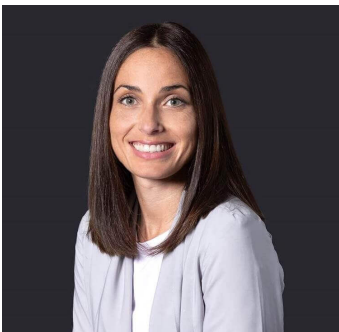
Businesses should also consider steps to preserve the supply chain if the other party refuses to cooperate. This could range from seeking provisional measures to compel performance of the contract through to securing alternative supply to mitigate losses.

Consider the dispute resolution procedure

If there is a dispute, then businesses should check any dispute resolution clause within the contract and invoke the prescribed procedure. Most contracts contain a dispute resolution clause, which is often found towards the end of the contract (and forgotten about!). The dispute resolution clause usually specifies how disputes are to be resolved and this may include: (1) a series of escalating stages through which the parties will attempt to resolve the dispute, i.e. a meeting with the manager and then escalation to a senior manager; (2) negotiation; (3) mediation (optional or compulsory); and (4) expert determination, arbitration or litigation. Generally, whichever procedure is specified in the contract, the parties are required to follow it to save time and avoid incurring unnecessary legal costs. It can often be possible to reach a resolution with a supplier through the dispute resolution procedure without matters escalating.

Ultimately, taking a pro-active approach to supply chain risk is important to minimise disruption and avoid disputes (and maintain commercial relationships).

Key contact



Chloe Poskitt

Legal Director

chloe.poskitt@brownejacobson.com

+44 (0)115 934 2058

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