Drafting contracts in times of crisis in the automotive supply industry

Supply relationships in the automotive supply industry are under increasing pressure - geopolitical crises, ESG requirements and volatile markets are just some of the causes leading to that pressure. In this environment, missing, unclear or imbalanced contracts significantly increase the legal and economic risks for those involved in the supply chain. Unilateral general terms and conditions, as well as unbalanced responsibilities, often lead to disputes in crisis situations. Clearly structured, legally compliant clauses are therefore essential, not a luxury. This article highlights the contractual areas that pose some of the main risks and explains how companies can protect themselves legally and practically.

Introduction

The automotive supply industry has been facing massive challenges for years: Supply bottlenecks, volatile prices, geopolitical uncertainties, strongly fluctuating volumes, ESG requirements and liability risks are all increasing at the same time. In this climate of uncertainty, supply contracts are becoming a risk factor, both economically and legally.

In practice, many supply contracts are based on unilateral general terms and conditions (often of the OEM's terms and conditions of purchase). These terms and conditions usually favor the customer considerably. However, especially in difficult times, clauses in such terms and conditions can reveal considerable weaknesses, particularly if they are ineffective or incomplete. Daily practice shows that missing, unclear, outdated or overly general clauses regularly often lead to major conflicts, which usually disadvantage the suppliers.

Precise and balanced clause drafting is therefore not just legal fine-tuning, but a central component of economic crisis prevention. Well-structured clauses ensure clarity, prevent disputes and allow companies to respond flexibly and with legal certainty to exceptional situations.

The following clause types cover some of the riskiest — and, at the same time, most strategically important — areas of regulation in supply contracts. In practice, they regularly form the basis of disputes and, in the event of a crisis, can determine whether a company is liable to pay, can exonerate itself, or is still able to deliver.

In the complex environment of the automotive industry, with its intricate supply and liability chains, it is crucial to draft these clauses in a manner that is both legally compliant and practical.

Individual clauses

Delivery & purchase obligations

Many framework contracts contain provisions on acceptance predictions, forecasts, capacity provision, just-in-time obligations and minimum delivery and/or acceptance quantities. Depending on the wording, it is often unclear whether the quantities are rough estimates or binding purchase obligations. This can lead to considerable uncertainty for suppliers, especially in crisis situations, such as if a project is stopped by the OEM.

In practice, volatile quantities and requested capacities, as well as unclear call-off behavior, also pose a significant

economic risk to suppliers, particularly if they have to make advance payments.

Clear regulations are therefore important: It must be clearly defined when and to what extent deliveries must be made or held in stock and accepted - and what applies if call-offs are reduced or cancelled. The contract should also include possible consequences for parts that have already been produced or ordered. This is because reliable planning is essential for suppliers to manage capacity, material usage and production processes efficiently, including during crises.

Price adjustment

Contracts in the automotive supply industry often span many years or even decades. In practice, it is evident that, in the absence of (price) adjustment mechanisms, such long-term agreements can swiftly become burdensome, particularly for suppliers, when markets, costs or framework conditions change. This is particularly true in times of volatile prices for raw material, transport and energy. Contractual adjustment mechanisms are a solution here.

Price adjustment clauses should be based on the needs and capabilities of the parties involved and should clearly define the conditions under which a price change is possible. This could be achieved by linking to market indices, fixed thresholds, or specific events such as a shortage of raw materials or legal changes.

The regulation of the procedure is equally important: Is there a mutual right to adjustment? What deadlines and steps apply in the event of price negotiations? (How long) do the agreed prices continue to apply if negotiations fail? At what point is it permissible to terminate the contract if no agreement is reached?

Price adjustment clauses in general terms and conditions are subject to strict standards. For example, unilateral price adjustment clauses favoring only one party in GTCs are often ineffective. Therefore, attention should be paid to balanced mechanisms that provide security for both parties. Obligations to negotiate, clear deadlines and comprehensible verification requirements - for example for the partial disclosure of cost developments - increase transparency, promote acceptance of the clause and reduce the potential for conflict in the event of an emergency.

Tooling, ownership & IP clauses

Tools, molds and equipment (tooling) play a central role in series production and are often provided or co-financed by the customer. The clauses regarding ownership, rights of use and return obligations must be clearly defined.

In addition, intellectual property rights, in particular relating to developed components, know-how and drawings, should be protected by contract. Such clauses are crucial for reclaiming tools or preventing or enabling their further use in the event of disruptions (e.g. insolvency, termination of contract).

Useful regulations also cover maintenance, insurance and tolerated access in the event of a dispute. If designed well, they help to avoid operational downtime and ensure a smooth production process.

Force majeure

Due to recent events such as the pandemic, war and energy crisis, force majeure clauses have become considerably more important. It is essential that the relevant events are precisely and comprehensively defined so that it is clear when the clause applies. The definition should cover not only classic cases such as natural disasters, strikes or storms, but also risks such as geopolitical sanctions, shortages of raw materials, supply chain disruptions and government intervention.

In addition, the contract must stipulate clear notification obligations: the affected party should inform the other party immediately if an event occurs that affects the fulfillment of the contract.

Clear regulations on the legal consequences are also important. These include, for example, a temporary exemption from the obligation to pay benefits, deadline extensions and, if necessary, termination options if the disruption persists for a prolonged period.

Without such clear agreements, there is a risk of legal uncertainties and disputes, especially if the OEM invokes contractual penalties, damages or replacement deliveries. A well-formulated force majeure clause therefore protects both sides from unforeseeable burdens and ensures legal certainty.

Fundamental disruption to the basis of the contract / Hardship

In exceptional situations - such as drastic price increases, supply chain disruptions or unforeseeable economic changes - attempts are often made to invoke an adjustment in accordance with Section 313 of the German Civil Code (BGB) ("Fundamental disruption to the basis of the contract"). However, the requirements for such an adjustment are very high and such assertions are rarely successful in (court) practice.

This is precisely why a hardship clause anchored in the contract is particularly important. In exceptional economic situations, such a clause enables suppliers to push for adjustments - before escalation or termination of the contract occurs. It allows for structured renegotiations and helps to maintain stable business relationships.

It is important that the clause contains specific criteria as to when an adjustment is necessary and how the procedure should proceed. The preferred method is often a graduated escalation - for example negotiations first, then mediation, and termination as a final step.

This creates a flexible framework for action that avoids a loss of control while stabilizing long-term business relationships, even in difficult times.

Liability & indemnification

Liability clauses are one of the core elements of contractual risk management. In the complex and liability-intensive automotive supply chain in particular, suppliers are often required to accept extensive liability, including for consequential damage, recall costs and downtime. Such broad liability clauses pose a significant risk and must be carefully examined and negotiated from legal and economic perspectives. Failure to do so may result in the loss of insurance cover.

Many terms and conditions of purchase contain blanket indemnifications or unlimited assumption of damages, but these often do not stand up to legal review and are frequently invalid under Section 307 of the German Civil Code (BGB). However, this only provides limited relief for suppliers: in practice, many clauses are 'lived' despite legal doubts, so a mere reference to their invalidity often achieves nothing in the event of a dispute unless legal action is taken.

Companies should therefore take a proactive approach. The type and scope of liability must be clearly and comprehensively regulated, especially in the case of third-party damage, consequences of delay, warranty, and product liability. Appropriate liability limits should be agreed to fairly distribute the risk. Without clear liability limits, there is a risk of considerable financial burdens in the event of damage, potentially threatening the company's existence. The company's own scope of services (e.g. in the case of contract manufacturers) and customer contributions (e.g. technical specifications, pre-selection of materials or subcontractors) should also be reflected in liability clauses.

Strategically considered liability regulation is therefore not a detail, but a central component of a sustainable supply relationship.

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Recall costs & compulsory insurance

As in many other industries where there is the potential for major losses and complex supply chains, it is essential to have suitable insurance policies in place in the automotive supply sector to cover insurable risks relating to liability and delivery failures.

Recall cost liability insurance is now one of the more common types of insurance, particularly for series supply contracts with OEMs or system suppliers. However, companies often misjudge its scope. The interface between contractual liability and insurance cover is critical, yet often overlooked. For example, not every "recall" is automatically an insured event.

Suppliers are also often contractually obliged to provide 'appropriate insurance cover' (including recalls caused by third parties) or certain policies. Proof of insurance and the right to information in the event of damage are also often required. Suppliers can quickly find themselves in a "sandwich position": on the one hand, they are legally liable; on the other hand, they may face additional contractual liability due to a lack of insurance cover.

Particular attention should therefore be paid to contractual arrangements with customers, as well as to a sensitive review of policies. While it is rarely possible to achieve complete synchronisation between liability and cover, the aim should be to coordinate them as closely as possible. After all, the closer liability and cover are to each other, the better the risk management will be.

Our recommendations / conclusion

In times of multiple crises, contract design becomes a central component of active risk management. For suppliers, this means that those who assess their contracts for crisis resistance at an early stage and adapt them accordingly not only provide themselves with legal protection, but also gain the capacity to act entrepreneurially.

Clearly structured and flexibly designed clauses often enable companies to respond appropriately and quickly to exceptional situations without immediately encountering conflicts that threaten their existence. Rather than negotiating reactively and under pressure, companies with solid contract structures can proactively mitigate economic burdens more effectively.

Robust contracts also strengthen the negotiating position with customers, insurers, and financing partners because transparent risk management is perceived as a sign of reliability and professionalism.

Our conclusion: contract work is not a formality. It is a strategic tool for ensuring delivery capability, avoiding conflicts and stabilizing long-term customer relationships. The time to revise existing contract templates is “now”, not just during a crisis.

Next Step: Making contact

We will be happy to assist you in reviewing your contracts and your insurance cover.
We will be happy to explain
explain our approach in detail in a
personal meeting. Contact us
contact us now without obligation!

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