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Deflect Serious Liabilities

With proper maintenance and care, your Web site can provide a valuable legal default for your supply management organization.

In a perfect world, parties fully negotiate and ultimately record, without ambiguity, their business and contractual relationships. Such is, after all, your lawyer's advice, and the unanimously preferred way to conduct business according to legal professionals.

Unfortunately, few of us live in a perfect world. In the reality of contracts, sales are rushed and purchases hurried, often in the effort to meet quarterly

ramifications of abbreviated, or perhaps nonexistent, contract language.

In our climate of quick turnaround, what are an organization's options? While full legal review is usually the best and safest route, there are alternatives to protect your company's interests where such review is forgotten, ignored or unavailable. To that end, most organizations possess one main asset that is often underutilized and rarely respected as the legal

both contracting parties on equal footing.

What To Include On Your Web Site

The key to successful Web site use is posting up-to-date and complete versions of a company's boilerplate legal documents. These documents should represent the ideal legal protections for your organization's specific needs. At a minimum, purchase order terms and conditions should include termination language (so the company can exit bad deals quickly), indemnification language (protecting the company against the other's wrongful conduct), and express and broad warranty language (protecting the functionality of a buyer's purchase). In contrast, terms acknowledging a sale ought to contain express and broad warranty disclaimers and liability limitations (disclaiming any implied statutory warranties and otherwise limiting the buyer's remedies for any warranty breach). Other provisions might include favorable payment terms and a company's choice of governing law.

In all cases, the terms should be tailored to meet

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and other deadlines; future liabilities associated with smaller deals are simply overlooked; and legal consequences are often ignored in favor of short-term profit potential. Because of the overwhelming urgency associated with most business dealings, it is all too easy to lose sight of the important legal

shield it is — their Web site. With proper maintenance and care, an organization's Web site can provide a legal default when speed or other business factors inhibit careful legal planning. Used properly and consistently, a Web site can, at its best, deflect significant liabilities, and, at worst, put

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your company's specific needs and address any common problems. They can, and should, be lengthy documents that cover any myriad of contracting issues and standard legal liabilities that surround your particular industry. Keep in mind that these should be your business' ideal terms — terms that fully reflect your business needs.

Finally, the legal portion of the Web site should be easily accessible to customers and suppliers. All this takes is one link on your home page to "legal" or "business terms" or some other similar concept, and customers, suppliers and your own employees will have fast, easy access to all of your best legal protections.

System-Wide Implementation

To fully enhance the benefits of your Web site postings, consider modifying paper quote documents, purchase order terms, and other sales or customer invoices to cite to your Web site, including a provision that, "All [purchases/sales, as applicable] shall be subject to the organization's terms and conditions located at [www.\[Web site name.com\]](http://www.[Web site name.com])." Train your supply management team members to use these boilerplate agreements as their starting point in any purchasing situation. Think big — system-wide implementation of these terms is the single best method by which organizations can protect themselves.

In addition, update posted documents regularly. Business conditions change, and so should your legal protections. Consistent review is best.

Finally, organizations should archive and monitor changes to their posted terms for use if, and when, disputes arise. Every customer or supplier who agrees to your terms will cite the version that was in effect on the date of their purchase, so be sure to maintain an archive of these changes for such purposes.

If Buyers And Suppliers Don't Agree

Posted Web site terms are designed as default terms. In some business dealings, the customer will not take the time to read your posted and incorporated terms, or will be in such a hurry that the terms are overlooked. In other business dealings, the posted terms will be scrutinized, and full contract negotiation will result. However, there is a third situation that is often the most confusing for contracting parties: What happens when a customer accepts your terms by purchasing products through your sales documents (which incorporate your Web site terms), but does so by submitting its own purchase order (which incorporates its own Web site terms)? What happens in this "battle of the

forms" scenario?

Generally, the Uniform Commercial Code looks to a time line of when the boilerplate documents were submitted. The first document, likely the sales quotation or other similar invitation to purchase, will be the document against which the rule is analyzed. Additional language in the accepting document (often the purchase order) will be treated as a proposal for additional language. Such additional language will be rejected if the additional language is "material," or if the other party rejects the proposed terms. Material language includes binding arbitration, rejection of warranties and other similar key contract provisions. In an attempt to avoid unwarranted inclusion of new terms, many organizations add statements in their terms such as, "[Party] expressly rejects any proposed or additional terms." This is a good idea, even if it does not always guarantee that your organization's terms will prevail.

Regardless, while there are specific legal rules that govern application of these boilerplate documents, the

key thing to remember is this: By posting your own set of terms and incorporating them into agreements, you have given your organization its best shot at protecting itself against unfavorable and unexpected customer or supplier terms. Imagine the worst-case scenario: Your organization has accepted a customer's purchase order with the customer's boilerplate terms, and without reference to your own terms — your organization is now stuck with someone else's contract in its entirety. While there is no way to win the battle of the forms in every business deal, having default terms covers the basic legal issues and avoids a situation where you are stuck with every term your customer or supplier suggests.

A well-negotiated, fully reviewed contract is best for any situation — there is no substitute for clear legal planning. Nevertheless, in the absence of such foresight, whether due to rushed timeframes, smaller spend items or an inability of the parties to agree, you should have a default plan. Implement a Web site system incorporating the best terms for your organization; reference these terms everywhere, and encourage employees to look to your Web site for their own use. This simple modification to an existing organization's asset can significantly decrease legal liability where you might otherwise be unprotected. **ISM**

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