

## Long Term Supply Agreements and Price Reviews, Gillian Harding

Many businesses have felt the impact of the rising cost of fuel, energy and raw materials directly. It is also important to consider the indirect effect of such increases. In long term supply agreements price reviews are crucial. Unless your agreement clearly states how pricing will be dealt with, either party could find itself in an uncomfortable position. On the one hand, a seller might find that rising external costs result in an increasingly unprofitable contract if it can't increase its prices. On the other hand, a buyer might find itself trapped in an agreement with a long notice period and a seller who can increase prices at any time and for any reason. It all comes down to negotiation and the desire of the parties to find a mutually acceptable solution. Some issues to consider when entering into a long term supply arrangement include:-

Is there a mechanism for annual price reviews and, if so, how will it operate? Can the seller impose new prices or will they be negotiated? If they will be negotiated, when will negotiations begin and what factors do you both agree will be relevant? Examples might include increases in the retail price index, the cost of raw materials, increases in the minimum wage, new regulatory requirements etc.

What will happen if you can't agree? E.g, will you accept an independent expert's decision? Can either of you terminate on shorter notice than normal if you're unable to reach agreement?

How will the review mechanism used affect (or be affected by) other areas of the contract, e.g. exclusivity and other restrictions? Are purchase targets increasing at the same time as the annual review? Will the buyer's having met or not met the target for the previous year be relevant to the discussion on pricing? Are any discounts being offered to the buyer for bulk ordering or for early payment?

Is the seller required to attempt to reduce its prices, e.g. by improving manufacturing efficiency or negotiating new deals with its own suppliers?

Will the seller be able to increase prices at times other than the annual review? If so, for what reasons, e.g. rising transport costs.

For more advice on negotiating the terms of your supply agreements, contact Gillian Harding at our Hitchin office on 01462 628888.



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