



OESA Model Terms and Conditions: Making Them Work for You

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OESA Model Terms

Overview:

- Current industry practice reflects the ability of the party with bargaining power (the buyer) to impose one-sided terms on the party without (the seller)
- OESA Model Terms designed to foster more collaborative supply chain relationships by leveling the playing field between buyer and seller
- More balanced than current industry terms
- Each supplier must decide individually whether and how much of the Model Terms to adopt



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- **The Ultimate Goal:** Balanced terms and conditions throughout the supply chain
- **The Reality:** Until the customer adopts balanced terms, suppliers (as buyers) must weigh desire for more collaborative approach against risk of being caught in the middle
- **A Step in the Right Direction:** Consider adopting as much of the OESA Model Terms as possible



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The Good News:

Most of the Model Terms
can be adopted with
little risk



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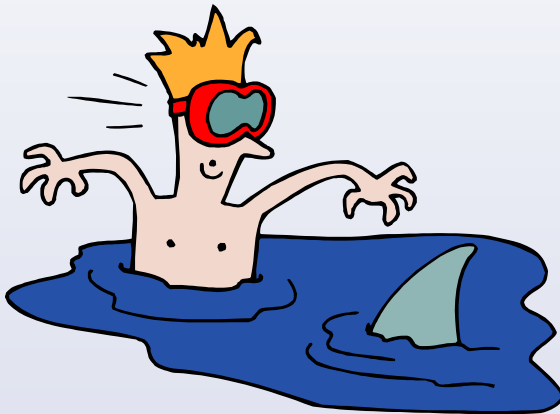
- Many sections of the Model Terms can be adopted with little or no modification
 - Offer and acceptance (§ 1.1)
 - Compliance with laws (§ 9)
 - Confidential information (§ 14)
 - Customs (§ 18)
 - Insurance (§ 19)
 - Dispute resolution (§ 20)



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The Challenge:

Don't get caught
in the middle!





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The Solution:

- Identify gaps between the Model Terms and current customer contracts
 - **Financial Gaps**—you agree to pay your supplier something that you cannot recover from your customer, or vice versa
 - **Legal Gaps**—you accept a legal obligation to your customer or supplier that you cannot pass on
- Evaluate the risk to your business
- Eliminate gaps with unacceptable level of risk



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Examples of Gaps:

- Example #1—Past-Model Service Parts
 - *OESA Model Terms* (§ 2.3): Supplier must provide service parts for 10 years at prices to be negotiated
 - *GM* (§ 20): Supplier must provide service parts for 15 years at the production part prices for the first 3 years, thereafter at prices to be negotiated
 - *Nissan* (§ 19): Supplier must provide service parts for 15 years at the production part prices for entire 15 years



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- Example #2—Setoff
 - *OESA Model Terms* (§ 6): Buyer may setoff only for agreed amounts owed by supplier or as determined through dispute resolution
 - *Hyundai* (§ 7): Hyundai may setoff without notice any amounts that it decides are due from supplier
 - *Ford* (§ 11): Ford may setoff without notice any amounts that it decides are due from supplier or its affiliates, and may setoff against supplier's affiliates



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- Example #3—Price Warranty
 - *OESA Model Terms*: No price warranty (most-favored-nation) clause
 - *DaimlerChrysler* (§ 9): Supplier must charge DCX the lowest price that supplier charges to others for the same or similar parts in similar quantities
 - *Toyota* (§ 2.2(a)): Similar, but only applies to parts being provided on an “interim price basis”



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- Other potential gaps
 - Warranty and recall
 - Product liability
 - Intellectual property (ownership, use & infringement)
 - Default and remedies
 - Termination and termination claims



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Some Techniques to Eliminate Unacceptable Gaps:

- Mirror customer language
- Mirror customer language, but only where needed and only to extent of customer involvement (example: setoff)
- Global provision that applies more restrictive customer language only when applicable



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Summary:

- ✓ OESA Model Terms intended to help promote more collaborative supply chain relationships
- ✓ Consider adopting as much of the Model Terms as possible
- ✓ Evaluate your current PO terms & conditions annually or whenever customer changes occur
 - Are your PO terms aligned with those from your customer?
 - Have you eliminated unacceptable gaps?