

MANUFACTURING CONTRACTS IN CHINA

Manufacturing in China is a decision taken by thousands of companies in recent years. China has become the "factory of the world". Hundreds of thousands of foreign companies have decided to move production to China and hire local companies that manufacture all kinds of products, at competitive prices, which are then sold on world markets.

But when a foreign company hires a Chinese manufacturer must ensure that the products they produce will meet the agreed quality criteria. Here are five keys to minimizing risks in relationships with Chinese manufacturers.

In this article, we discuss contract terms which foreign companies should consider when manufacturing in China and must negotiate Manufacturing Contracts with Chinese suppliers. we highlight 10 several major clauses which should be included in a manufacturing contract in China:

1. Products and Specifications: The products to be manufactured should be well-defined in the contract, along with product specifications which should be described in detail in a Appendix.

2. Forecasts and Binding Purchase/Supply Commitments: A Manufacturing Contract often require that firm orders are placed through Purchase Orders, in order to ensure that there is a binding supply/purchase commitment in the agreement itself, the parties will often designate a certain minimum commitment on both sides, to produce and purchase a certain amount of product within a given time period. Aside from the minimum requirement, the buyer will often provide a non-binding forecast to supplier, such that supplier can plan and allocate adequate resources (often 6-, 12-, 18-, 24- month terms).

3. Price: For those products designated as described previously, the parties should determine firm prices, which will either be effective throughout the term of the contract, or at least a portion thereof, subject to (we recommend) maximum periodic price increases. Further, it is beneficial to include for discounts upon meeting certain pre-determined purchase volumes.

4. Quality Control: Buyer and supplier will agree on certain terms afforded to buyer/required of seller for conducting product quality control. Typical terms include i) access (often on short or no notice) to production sites, and ii) random testing of each batch of products before dispatch to buyer. Further, the parties may, depending on the value of the contract, provide for a representative of the buyer to be on-site on a full-time/regular basis, for the purposes of assisting in quality control. (The buyer's representative may also monitor supplier's use of intellectual property and other improper dealings, though their effectiveness will invariably depend on his/her loyalty to the buyer.)

5. Raw Materials/Components: As part of the quality control process, buyer should require that supplier provide a list of its suppliers along with purchase orders over a pre-set period to ensure that the agreed upon raw materials/components are being used.

6. Intellectual Property: All intellectual property used to manufacture the product, including trademarks, patents, copyrights, and other business secrets should be licensed to supplier, for the limited purposes of complying with its obligations under the agreement. Further, buyer should carefully draft related terms so as to restrict supplier from exercising any rights of ownership to the licensed IP.

7. Term: The parties will determine an appropriate term for their contract, and may make the agreement renewable on request by buyer. This term should be sufficiently long so as to ensure that buyer's initial investment can be adequately recovered.

8. Termination: Termination events, as in most agreements, will include those events which give rise to immediate termination rights (for example, unauthorized use of buyer's intellectual property and violation of non-compete terms), and those which require a notice period and the breaching party's right to remedy the breach (failure to supply products meeting specifications).

9. Non-competition: As an OEM relationship necessarily involves substantial transfer of intellectual property and confidential information, buyer must not only be careful to ensure that additional products are not produced by the supplier, but also by its affiliated companies and directors and management. (Note that the implications of failing to adequately provide for such terms may result in not only the product being sold in China but more importantly in the same markets as buyer, and at significantly lower costs.)

10. Arbitration: As manufacturing tends to be concentrated in lesser-developed regions in China in addition to cost/time/reliability benefits often associated with arbitration, we advise clients to select arbitration for dispute resolution. Arbitration can be conducted in China or internationally (in any New York Convention signatory state), though domestic arbitration allows buyer access to Chinese courts for injunctive relief.

In conclusion, a well drafted Manufacturing Contract is essential for foreign companies that take the decision to manufacture in China. Chinese companies, like companies everywhere, do not relish being sued. A good contract means incorporates the key quality requirements and also sets up the Chinese company for liability for failing to meet those requirements.



To obtain the Manufacturing Contract Template for China, click [here](#).

CONTRACTS FOR THE INTERNATIONAL COMPANY

INTERNATIONAL CONTRACTS (ENGLISH, SPANISH, FRENCH & GERMAN)

- International Sale Contract
- International Distribution Contract
- International Commercial Agency Contract
- International Sales Representative Agreement
- Intermediary Contract for Trade Operations
- International Joint Venture Contract
- International Franchise Contract
- International Services Agreement
- International Consulting Agreement
- International License Contract
- International Supply Contract
- International Manufacturing Contract
- Expatriate Contract of Employment
- Pack 5 International Contracts English (Basic)
- Pack 12 International Contracts English (Premium)

COMMERCIAL CONTRACTS (ENGLISH, SPANISH, FRENCH & GERMAN)

- Distribution Contract
- Commercial Agency Contract
- Sales Representative Agreement
- Commission Contract
- Joint Venture Contract
- Services Contract
- Consulting Contract
- Technology Transfer Agreement
- Franchise Contract
- Supply Contract
- Manufacturing Contract
- Confidentiality Agreement
- Pack 5 Commercial Contract English (Basic)
- Pack 12 Commercial Contracts English (Premium)

CHINA CONTRACTS (ENGLISH-CHINESE DUAL VERSION)

- Distribution Contract China
- Agency Contract China
- Commission Contract China
- Supply Contract China
- OEM Manufacturing Contract China
- Confidentiality Contract China
- Memorandum of Understanding for Distribution Contract China
- Memorandum of Understanding for Joint Venture China

CONTRACTUAL LETTERS

- Letter Enclosing Contract for Signature
- Letter Proposing Amendments to Contract
- Letter Proposing Variation of Contract
- Letter Terminating Contract on Breach
- Letter Terminating Contract on Notice
- Letter Terminating Contract on Breach
- Pack 5 Contractual Letters

LETTERS OF INTENTS

- Letter of Intent for International Sale
- Letter of Intent for International Distribution
- Letter of Intent for International Joint Venture
- Pack 3 Letters of Intent