



PRODUCT SUPPLY AGREEMENT & GUIDE

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1. Overview

Globalization has had a tremendous impact on trade and business all over the world. New products flood the market every year, and before a product reaches the public, it may pass through the hands of international manufacturers, distributors, retailers, or buyers. It has thus become increasingly important to make sure each party's rights and responsibilities are established in the beginning of a business relationship, so any items transported can move smoothly through the process.

A product supply agreement establishes the terms on which a seller will supply products to a buyer. The agreement must be clearly written to ensure that products will reach the hands of the consumers quickly and with little complication. A well-drafted agreement will help ensure that all parties' business requirements are satisfied on a timely and complete basis.

This package contains everything you'll need to customize and complete your product supply agreement. Successful business deals begin with good documentation, and the enclosed document ensures that both parties understand their rights and obligations. With careful drafting, your product supply agreement will lay the foundation for a profitable (and long-lasting) relationship between supplier and buyer.

2. Dos & Don'ts Checklist

- Before sitting down to sign, both parties should determine exactly what the goals of the agreement are. If you are the supplier, decide how much product you can realistically provide to the buyer within the designated time. If you are the buyer, decide how much of the product you realistically need for your business within the designated time. A good agreement is one that captures the intentions of the parties accurately. Clarify the terms and conditions of the agreement before memorializing them in writing.
- A supply agreement is usually effective for a specific period of time. Sometimes, however, it can be drafted to go on indefinitely (i.e., no specific end date). An agreement for a specific time frame can usually only be ended early for a good reason, unless there is a provision that says otherwise. On the other hand, unless the parties have settled on a different arrangement, an agreement that has an indefinite term can usually be ended by either party with or without a reason.
- A product supply agreement should include both price and payment terms. For short-term agreements, it is often better to agree to a set price. For long-term agreements, it may be better to provide for a changing price. For example, a long-term contract could specify a discount from the supplier's list prices, or refer to a published commodity price. Alternatively, the parties could set out a price in a schedule to the agreement, and agree that it may be changed at any time.
- Before entering into an agreement in which a supplier agrees to deal with a buyer exclusively (i.e., not to give products to any other company for sale), make sure both parties understand the supplier's business. If the supplier is offering a unique product or service, and the buyer's competitors need that unique product or service to compete in the market, the parties may not be able to have an exclusive deal. This may be considered illegal if it restricts competition.

- Allow each party to spend time reviewing the agreement. This will reduce the likelihood, or at least the efficacy, of claims that a party did not understand any terms or know what their obligations were under the document.
- Both parties should review the agreement carefully to ensure that all relevant points have been included. Do not assume that certain expectations or terms are agreed to if they are not stated expressly in the document.
- Sign at least two copies of the agreement, one for you and one for the other party.
- It's a good idea to have your agreement notarized. This will limit later challenges to the validity of a party's signature.
- If your agreement is complicated, do not use the enclosed form. Contact an attorney to help you draft a document that will meet your specific needs.

3. Product Supply Agreement Instructions

The following provision-by-provision instructions will help you understand the terms of your product supply agreement.

The numbers and letters below (e.g., Section 1, Section 2, etc.) correspond to the provisions in the form. Please review the entire document before starting your step-by-step process.

- **Introduction of Parties.** Identifies the document as a product supply agreement. Write in the date on which the document is effective (usually the date that it is signed). Identify the parties and, if applicable, what type of organization(s) they are. Note that each party is given a name (e.g., "Supplier") that will be used throughout the Agreement. As you probably guessed, the Supplier is the party who is agreeing to supply the Products and the Buyer is the party agreeing to purchase them. When the Agreement refers to one or the other of the individuals (i.e., no one specifically), the term "Parties" is used.
- **Recitals.** The "whereas" clauses, referred to as recitals, define the world of the agreement and offer key information about the Parties. In this form, it states the Parties' agreement to enter into a product supply agreement. Describe the Supplier's business in general terms in the space provided. Note too that the recitals refer to [Exhibit A](#), which lists the products involved in this transaction. [Exhibit A](#) is discussed in greater detail below.
- **Section 1: Term.** The time period during which the Products are supplied is called the "Term." The Term starts on the date the Agreement is effective (the Effective Date). Enter the number of years you want the initial Term to run. There is an optional clause providing that the Agreement will renew automatically after the Term ends. If you include this clause, consider how long you want additional terms to be. This can be the same as the initial Term, longer, or shorter, depending on your arrangement. Enter the length of the applicable renewal terms and how much notice needs to be given to stop a renewal term from taking effect.

- **Section 2: Agreement of Purchase and Sale.** The Supplier's promise to sell, and the Buyer's promise to buy, the Products.
- **Section 3: Minimum Quantities.** The Buyer's promise to buy at least a certain amount of Products within a given time frame. Enter this number or quantity, and the time within which the Buyer must buy them. This can be days, months, or years depending on your agreement. You can also designate how this supply of Products will be measured (e.g., in units, in pounds, in volume, in cost, etc.).
- **Section 4: Failure to Purchase Minimum Quantities.** If the Buyer doesn't buy the Minimum Quantities and those amounts are available, it must pay a certain amount of money to the Supplier. Enter this amount, and the time frame in which it must be paid.

This provision is for "liquidated damages," which is simply an agreement by the Parties to set a specific damages amount in case of a breach. This can be any reasonable amount.

- **Section 5: Failure to Supply Minimum Quantities.** If the Supplier doesn't supply the Minimum Quantities it must pay a certain amount of money to the Buyer. Enter this amount, and the time frame in which it must be paid.

This provision is for "liquidated damages," which is simply an agreement by the Parties to set a specific damages amount in case of a breach. This can be any reasonable amount.

- **(Optional) Section 6: Exceptions to Purchase Requirements.** An optional provision that provides certain exceptions to the Buyer's requirement to buy from the Supplier. These are (a) emergencies, (b) if the Buyer's customer requests different items, and (c) if the Supplier can't or won't supply the items. If any of these events occur, the Buyer's purchases from a third party will count towards the Minimum Quantities it was supposed to buy from the Supplier. If you remove this section, correct the section numbers and the references in the document
- **Section 7: Inspection and Acceptance.** Gives the Buyer the opportunity to look at the Products it's receiving and determine whether they are acceptable. Enter the amount of time the Buyer has to perform this review. Under this section, the Supplier agrees to either replace the Products or to refund the cost of the Products if the Buyer finds them unacceptable.
- **Section 8: Warranty and Limitation of Remedies; Disclaimer.** The Supplier's promise that the Products will not be defective. If the Products are discovered to have defects within a certain period of time after their shipment, the Supplier promises to repair or replace them.
- **(Optional) Section 9: Issuance of Purchase Order.** An optional provision requiring the Buyer to make written requests before the Products will be supplied. If this is a long-term contract that requires multiple deliveries, you may want to include this provision. If your arrangement will include only a small number of deliveries that can be outlined in the Agreement itself, this provision may be unnecessary. If you remove this section, correct the section numbers and the references in the document.
- **(Optional) Section 10: Cancellation and Amendment of Purchase Order.** If you do decide to require Purchase Orders (i.e., include the optional Section 9), this provision will allow the Buyer to cancel or change such orders if it provides a certain amount of notice. Enter the number of days'

notice that the Buyer must give. If you remove this section, correct the section numbers and the references in the document.

- **Section 11: Delivery of Products / Shipping.** Designates the time, date, and place at which the Supplier will deliver the Products. Until the Products get to the Delivery Point, the Supplier will be responsible for any damage to, loss of, or delay in providing the Products. Once the Products are at the Delivery Point, this responsibility is transferred to the Buyer.
- **Section 12: Pricing.** Indicates that the price list is attached to the Agreement as [Exhibit B](#). According to the terms of this section, the prices include all taxes and fees: keep that in mind as you are negotiating the prices for the Products. Note, too, that the Buyer won't be charged for insurance or for the Supplier's storing of the Products. The Supplier will have to pay these costs (or include them as part of the overall price of the Products).
- **Section 13: Payment Terms.** Specifies how many days after receipt of the Supplier's invoice the Buyer has to pay the amounts owed. Enter the amount of days you and the other Party have agreed to.
- **(Optional) Section 14: Intellectual Property.** If the Supplier owns any intellectual property (e.g., trademarks, copyrights, designs, drawings, etc.), it's a good idea to include provisions spelling out ownership rights in that property. This provision requires the Buyer to use the Supplier's intellectual property on the Products, and the Supplier to help the Buyer's staff in its use of the Supplier's trademarks or name. Note, however, that the Buyer is not given any ownership rights in the Supplier's intellectual property – it is only given the right to use this property. If you remove this section, correct the section numbers and the references in the document.
- **(Optional) Section 15: Confidentiality.** An optional provision allowing the Supplier to require the Buyer to keep information revealed pursuant to this Agreement private. Both Parties are required to keep information about the Products confidential as well. If you remove this section, correct the section numbers and the references in the document.
- **Section 16: Termination.** Explains that certain actions or events, including written notice or material breach, will cause the Agreement to end out of time (i.e., before the end of the Term). Write in the amount of notice a Party must give of its intent to terminate or to notify the other of a breach.
- **Section 17: Default and Remedies.** If either Party defaults, the other Party can exercise all of its rights under this Agreement (e.g., termination under Section 13 or damages under Section 4 or 5) or any other legal remedy. Even if a Party picks one remedy, it doesn't mean that it can't pick another as well. In other words, they're not mutually exclusive.
- **Section 18: Force Majeure.** A "force majeure" clause excuses both Parties from completing an obligation under the Agreement if an unusual event prevents them from completing that obligation. The Parties can make a list of such events, and can include things like fires, war, or strikes. If a force majeure event happens and one Party can't do what it's supposed to under the Agreement, it must give written notice to the other Party as soon as possible. That Party should also give notice when the problem is resolved and work to meet its obligations as soon as possible.
- **Section 19: Indemnification.** This provision allocates responsibilities between the Parties if problems arise in the future and protects each Party from the financial consequences of the other's illegal or harmful conduct. Specifically, here the Buyer is protected from Supplier negligence in

creating the Products, or false claim of ownership in the Products. The Supplier is protected if the Buyer doesn't meet its obligations under the Agreement.

- **(Optional) Section 20: Arbitration.** A commonly used optional provision that requires the Parties to resolve any disputes in arbitration (rather than in the courts). There may be local restrictions (or limitations in your industry) about using these clauses, so it's a good idea to review laws governing arbitration in your area and in your field. If you remove this section, correct the section numbers and the references in the document.
- **Section 21: Successors and Assigns.** States that the Parties' rights and obligations will be passed on to successor organizations or organizations to which rights and obligations have been permissibly assigned.
- **Section 22: Entire Agreement.** The Parties' agreement that the document they're signing (together with the exhibits) is "the agreement" about the issues involved. Unfortunately, the inclusion of this provision will not prevent a Party from arguing that other enforceable promises exist, but it will provide you some protection from these claims.
- **Section 23: Modification.** Indicates that any changes to the document are ineffective unless they are in writing and signed by both Parties.
- **Section 24: Notice.** Lists the addresses to which all official or legal correspondence should be delivered. Write in a mailing address for both the Supplier and the Buyer.
- **Section 25: Governing Law.** Allows the Parties to choose the state laws that will be used to interpret the document. Note that this is not a venue provision. The included language will not impact where a potential claim can be brought. Write the applicable state in the blank provided.
- **Section 26: Severability.** Protects the terms of the Agreement as a whole, even if one part is later invalidated. For example, if a state law is passed prohibiting arbitration clauses, it will not undo the entire Agreement. Instead, only the section dealing with arbitration would be invalidated, leaving the remainder of the document enforceable.
- **Section 27: Counterparts/Electronic Signatures.** The title of this provision sounds complicated, but it is simple to explain: it says that even if the Parties sign the Agreement in different locations, or use electronic devices to transmit signatures (e.g., fax machines or computers), all of the separate pieces will be considered part of the same agreement. In a modern world, where signing parties are often not in the same city - much less the same room - this provision ensures that business can be transacted efficiently, without sacrificing the validity of the Agreement as a whole.
- **Section 28: Affirmation of the Parties.** The Parties' statement that they have entered into the Agreement voluntarily, without relying on any promises not in the Agreement itself, and that they understand its contents.
- **Section 29: Headings.** Notes that the headings at the beginning of each section are meant to organize the document. Any interpretation of the Agreement should not be based on the headings.
- **Exhibit A: Product List.** Provide a list of all of the items that are to be supplied by the Supplier to the Buyer under this Agreement. Be specific - if there are serial number or titles to the items, include those as well.

- **Exhibit B: Price List.** Enter the applicable prices for the Products that will be sold (and supplied) under this Agreement. Be sure to indicate if these prices may change over the Term. If the prices are determined according to a formula (e.g., depending on the Supplier's costs), make that clear in this exhibit.

DISCLAIMER

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PRODUCT SUPPLY AGREEMENT

This Product Supply Agreement (the "Agreement") is entered into as of _____, 20____ (the "Effective Date") by and between _____, a _____ [corporation] [limited liability company] [etc.], with its principal offices at _____ [enter address] (the "Supplier") and _____, a _____ [corporation] [limited liability company] [etc.], with its principal offices at _____ [enter address] (the "Buyer"). The Supplier and the Buyer may be referred to individually as a "Party" or collectively as the "Parties."

RECITALS

WHEREAS, the Supplier is engaged in the business of _____; and

WHEREAS, the Supplier manufactures and wishes to supply to the Buyer those certain products more particularly set forth in Exhibit A attached hereto and made a part hereof (the "Products") on the terms and conditions set forth below; and

WHEREAS, the Buyer wishes to purchase the Products supplied by the Supplier with the terms of this Agreement; and

WHEREAS, the Buyer and the Supplier have entered into this Agreement