

FAQs

Contract Management - What if My Contract Does Not Include Force Majeure?

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There is significant variance among contracts; many, for example, include terms such as “acts of God”, “unforeseen circumstances” and “force majeure” to cover disruption to business. But where there is no mention of force majeure or any of its equivalents, businesses may be able to exercise clauses covering “frustration” or “impossibility”. These enable the termination of a contract where a supplier cannot supply and there is no available alternative, making it impossible to fulfil an agreement.

If this clause is successful, neither party can sue for breach of contract. However, if a claim of frustration is taken to court, it will be highly scrutinised and difficult to prove. For instance, if a supplier is located in a region locked down due to coronavirus and cannot fulfil an agreement, the contract may not be automatically terminated under frustration if it cites a time period or other specific limitations. Also, frustration is not applicable where there is a guarantee of supply. Frustration is recognised in the UK, Australia, the Philippines and other countries; however, in some territories interpretation of frustration can differ, including in the US where it varies by state. It is strongly recommended that organisations seek legal advice regarding contract law at the earliest opportunity.

Read more

[Coronavirus is it an act of God](#) (CIPS)

Contract Management - How Do I Use Smart Contracts to Keep My Business Running in the Short Term?

CIPS 22 April 2020

When reviewing existing contracts and fast-tracking new or temporary ones, it may be beneficial to consider “smart” contracts which offer greater flexibility than a traditional agreement. Rather than locking both parties into strict deliverables at a time of widespread and unpredictable disruption, smart contracts include broader parameters that preempt likely problematic scenarios. This is particularly useful when onboarding new suppliers during coronavirus.

For instance, a supplier using a smart contract might set flexible delivery timescales to account for freight issues, or seek approval for alternative product sourcing in case a second-tier supplier incurs a problem. Buyers might utilise a changeable payment plan or a broader selection of depots to increase the chance of receiving goods. Setting more flexible terms will support each party, ensuring goods and services can be supplied and payments received, while lowering the risk of a breach of contract. Smart contracts also contribute to positive supply chain relationships and can be integrated with technologies such as blockchain, cybersecurity and algorithm-based real-time data management which, while not mandatory, can directly link contract parameters to business software tools to help streamline operations.

Read more

[Coronavirus Covid-19: Guidance for procurement and supply chain managers](#) (CIPS)
[Risk and resilience assessment tools](#) (CIPS)

Contract Management - What Part is the Force Majeure Clause Playing in the Coronavirus Crisis?

CIPS 22 April 2020

Force majeure is likely to play a significant role in the procurement and supply chain profession for the foreseeable future, with some experts predicting years of litigation ahead to determine the legitimacy of claims made during the coronavirus outbreak. Whether you have received or issued a declaration of force majeure, a simple way to support and verify your response is to thoroughly document the process.

If you cannot fulfil a contract you should identify precisely why this is the case and gather sufficient evidence to prove this. In the event that your supplier cannot supply, request specific evidence of why before accepting or responding. This also applies to the steps you take to mitigate damage and continue operations; a successful force majeure claim will require you to prove that reasonable efforts had been made to overcome the problems, and how these proved unsuccessful.

Depending on the guidance in your location, you may be required to invoke force majeure at the earliest sign of financial difficulty - perhaps before you are fully prepared - or may be obliged to issue a notice to your customers as soon as your own supplier submits a claim to you. Therefore, it is important to consider different scenarios and to use broad terms when drafting a declaration of force majeure if the situation is still evolving.

Governing law and contract law differ greatly across countries and regions, and some countries do not recognise force majeure at all. Therefore, it is recommended to obtain legal guidance on any contracts under question to understand the variances before taking action. This applies to your suppliers and all individual contracts you may be unable to fulfil as a result.

Read more:

- [Coronavirus: What You Need to Know About Force Majeure](#) (Supply Management)
- [Coronavirus: Be Cautious Around Citing Force Majeure](#) (Supply Management)
- [Coronavirus: Ending Contracts Without Force Majeure](#) (Supply Management)
- [Coronavirus and Force Majeure, Five Steps to Take](#) (Supply Management)

Operations Management - Can I Use Technology to Maintain Business Continuity?

CIPS 22 April 2020

While the coronavirus outbreak has increased financial pressure on most businesses, for those considering investing in technology to improve supply chain and procurement processes, now may be the time to expedite these projects. Despite current challenges, better tools may provide greater visibility of supply chains in order to monitor them more acutely and respond more quickly.

In addition to database and cost management tasks, software that includes real-time tracking of inventories – orders and cancellations, as well as warehouse and carrier logistics – could help businesses run with greater agility thanks to the provision of up-to-date information. Elsewhere, risk management and analytical tools can provide a better understanding of multiple stakeholders along the supply chain. This may be particularly useful for businesses opting to source new suppliers quickly, particularly if they are unable to carry out rigorous due diligence.

Introducing tools that offer greater visibility of second-tier suppliers and beyond may avoid establishing relationships with high risk or problematic companies. However, while automated systems can take over many standard tasks, heavy reliance on tools may not always be sensible during these unusual times, when procurement expertise will be an invaluable asset for creative decision-making.

Read more

[Coronavirus Covid-19: Guidance for procurement and supply chain managers](#) (CIPS)

[Using AI in risk management](#) (CIPS)

[Expanding supply chain visibility](#)

Public Sector Procurement - Have the Rules for Public Sector Buyers Changed?

CIPS 22 April 2020

There have been few major changes to the guidelines covering public sector buyers worldwide, however, most governments and authorities are relaxing rules to support the movement of goods and healthy cash flow.

In the UK, the Cabinet Office issued a series of policy notices for contracting authorities: these included ensuring immediate payment of invoices, and to consider forward ordering, advance payments, interim payments and payment on order. The government also recommended public buyers extend their use of [procurement cards](#) to simplify purchasing processes and relieve pressure on finance departments. It suggested authorities increase single and monthly transaction limits to “ensure appropriate limits” as well as the number of workers and categories authorised to use the cards.

Certain [contractual requirements](#) have been amended for cases of demonstrable “extreme urgency” where buyers can enter into contracts without competing or advertising or directly award a contract in the absence of competition. It also allows authorities to call off an existing framework agreement, use standard procedures with accelerated timescales, or extend or modify a contract during its term.

The European Commission announced [contractual “flexibilities”](#), allowing direct awarding of contracts in certain circumstances and expediting procurement processes in the case of medical and protective equipment.

In the US, a [presidential memorandum](#) authorised executive agencies to initiate emergency procurement rules including raising the threshold of micro-purchases and adopting more “simplified procedures” for key commercially sourced items.

Australia is also easing processes, including [Queensland’s guidance](#) to allow “verbal approval” for procurement of category 1 (immediate response) medical supplies, and encouraging more use of digital signatures and approval sign off.

Read more:

- [Coronavirus Tips for Public Procurement](#) (Supply Management)
- [Coronavirus: What You Need to Know About Force Majeure](#) (Supply Management)

Supplier Relationships - How Should I React to a Supplier Facing Financial Difficulties?

CIPS 22 April 2020

If a supplier is experiencing financial challenges or is at risk of going out of business, it is sensible to seek alternatives to secure your supply – but you should also consider the longer term benefits of helping suppliers deliver on their commitments. This could take several forms, such as payment in advance, upfront payment for raw materials, or agreeing new terms. Shorter payment periods may particularly help SMEs and independent suppliers secure necessary resources, while extended payment periods for larger or more robust organisations will give you more financial flexibility.

CIPS group CEO Malcolm Harrison says the key to resolving supplier problems is “regular and clear lines of communication” to maintain business continuity and keep supplies moving. When the Covid-19 crisis passes, supply chains built on stronger relationships will find it easier to scale up and adapt.

Although there are contractual obligations to bear in mind, one of the most important considerations is to jointly manage the relationships and to avoid exploiting capacity to place companies into a supply auction, or damage relationships that may later compromise your ability to recover.

Logistics & Supply Chain Strategy Professor at Cranfield School of Management, Richard Wilding, says: “Keeping these supply chains functioning is really important - everyone is going to need to be supportive. I think the only way we’re going to be able to get through it is to be collaborative.”

Supplier Relationships - How Can I Remain Customer of Choice?

CIPS 22 April 2020

Just as adhering to inflexible contract terms or taking legal action can irreparably damage supplier relationships, so proactive engagement and collaborative working can position you as customer of choice. For this, there are three core principles: prioritisation, communication and organisation. Firstly, using your procurement strategy, prioritise your supply chain to identify areas that you can and cannot control. For those you cannot control or where you are unable to negotiate terms, relay this to the company at the earliest opportunity. All organisations are experiencing issues in the current climate, and you will stand a greater chance of reconnecting and repairing the relationship if the business felt the situation was handled with respect and honesty.

From here, focus on supplier relationships you can control and establish regular and honest communications. Communication will help to maintain and protect relationships, to increase your business's chance of staying or even becoming customer of choice when markets stabilise. These channels will enable you to manage changing situations such as stock, logistics, payments, workforce etc. and to set up realistic solutions that work for both parties.

Finally, organisation. Firms still operating are likely to be experiencing high levels of pressure and reduced workforces, which could lead to poor or zero communications and a lack of organisation that could impact relationships. However challenging, it is recommended that companies allocate time and resources for speaking with customers and suppliers to ensure they are acknowledged and to scout for problems. This is especially important if a business is overwhelmed, so you can work together to find solutions.

Read more

[Knowledge on supplier relationships](#) (CIPS)

Managing Risk - How Do I Ensure Labour Rights are Upheld in the Supply Chain?

CIPS 22 April 2020

Factory closures, order cancellations, workforce reductions and sudden changes to supply chain structures can disproportionately affect some workers and increase their risk of exposure to modern slavery and other forms of exploitation, such as non-payment of wages. This risk becomes higher when businesses fast-track agreements with new suppliers, as may be the case during the coronavirus pandemic. Guidance for firms produced by the Australian Border Force, which is responsible for implementing the country's criminal justice response to modern slavery, says maintaining supplier relationships and fostering open communication about coronavirus risks is critical to minimise this risk.

Firms are advised to honour current contracts where possible and recognise that short production windows and last-minute or short-term orders increase slavery risks in the supply chain. While it is sensible to avoid varying contracts unreasonably or seeking discounts from suppliers, firms can pay for work completed and extend orders over time to help ensure ongoing cash flow for suppliers.

Greater visibility of working conditions can be gained by asking suppliers for information on steps they have taken to protect staff from Covid-19, such as providing them with protective equipment, providing sick or carer's leave, and increasing cleaning in factories. To maintain good relationships, firms may seek ways to work with the supplier to support affected workers.

For business continuity, it is recommended to continue with existing supplier due diligence and remediation processes, and adjust these where necessary to ensure new risks linked to evolving supply chains are identified and addressed. Further, to collaborate with suppliers, workers, business peers, investors, civil society and trade bodies to identify best-practice approaches; and review key international resources and implement, where applicable, guidance to support decent work in supply chains.

Read more

[Firms warned of coronavirus slavery risk](#) (Supply Management)

[Key risk areas to tackle slavery](#) (Supply Management)

[Modern slavery information and resources](#) (CIPS)

Managing Risk - What Should I Do If My Business is at Risk of Insolvency?

CIPS 22 April 2020

Companies in danger of running out of cash should start considering their options in terms of payments and debts. Many businesses have been hit by price hikes from suppliers, while others are operating at severely reduced capacity or are unable to operate at all – however, they may still have obligations to maintain staffing levels or meet rental agreements.

In the UK, the government has enforced temporary changes to insolvency rules intended to prevent firms filing for bankruptcy and help them recover after the pandemic. Under the new guidance, wrongful trading law is suspended, enabling organisations to keep paying their staff and suppliers, and even delay tax payments, despite the risk this could cause them to go into administration. This insolvency protection also applies to companies restructuring their operations in order to adapt to new materials sourcing, supply arrangements or product provision.

While the relaxing of wrongful trading law will support businesses in the short term, companies choosing to take this lifeline are advised to monitor and record all relevant financial decisions during this period, to prevent any issues in the future.

In Australia, company directors will not be liable for insolvent trading by paying costs in the normal course of business for the next six months. For the same period, the government also increased the debt threshold for taking statutory legal proceedings, from A\$5,000 to A\$20,000, and extended the period for a business to respond to a bankruptcy notice from 21 days to six months.

The US has eased its Chapter 11 bankruptcy rules under the Coronavirus Aid, Relief and Economic Security Act (“CARES Act”) which offers greater debt accumulation and timescale limits, and provides stimulus relief packages where applicable.

For Europe, many countries including Italy, Spain, France, Germany and Switzerland have suspended both voluntary and involuntary bankruptcy proceedings, with cases to be reviewed after the lockdown periods end. However, the limitations and exceptions to temporary insolvency rules are different in each country, so it is recommended to check the terms for your region.

Read more

[Insolvency US](#) (US Government)

[Insolvency Australia](#) (Australian Government)

[Insolvency Asia](#) (Mayer Brown)

[Insolvency UK](#) (UK Government)

Managing Risk - How do I Mitigate Risk and Prioritise My Supply Chain?

CIPS 22 April 2020

A thorough analysis of your whole supply chain beyond tier 1 is essential to gain an accurate view of its current health and identify areas of concern. CIPS recommends firms map the locations of suppliers to pinpoint those in areas most affected by Covid-19. This can be done using regions or postcode searches but the greater the detail, the easier it is to estimate where problems may be encountered, such as delays or cancellations affecting ports or air freight. This geographical data should be compared against the level of risk for each source so you can prioritise those sources at highest risk to the business. From here, it will be possible to build scenarios to develop rapid demand shock response plans.

Risk profile assessments can help understand which individual suppliers may be more susceptible to disruption. For instance, if you use a warehouse that runs entirely manual operations, you can assume that facility will be seriously impacted and can consider how potentially disruptive that could be to your business. Whereas if a facility is highly automated, it may be more resilient.

Re-assessing your inventory processes is particularly important for firms operating lean inventories. The Hackett Group is among those recommending [increasing in-house stock of critical items](#) to protect against delivery delays and monitor flow to ensure cash is allocated to the most urgent inventory.

Read more

- [10 ways to mitigate the impact of coronavirus on your business](#) (Supply Management)

Operations Risk - How Can I Use Data to Support Business Continuity?

CIPS 22 April 2020

Data can help procurement professionals to monitor and manage risks within their supply chains, which is especially important at a time when many are experiencing supply chain disruption. The first step to setting up a data analysis programme is to ensure you are working with clean data, as this will put you in the best position to interpret the information and make appropriate decisions. Once you have a clean data set, procurement professionals can develop a risk-based assessment process for onboarding and monitoring your supply chain.

Data analysis also allows for a greater level of supply chain visibility, which informs decision-making and management of risk. Firms should seek to establish a view of their supply chains across as many tiers as possible. As it is unrealistic to obtain a complete view of every tier in the supply chain, it is common for the task to be cascaded downward - so suppliers take responsibility of risk lower down from their tier. However, firms should ensure they still have overall visibility and therefore management of this. During a pandemic such as Covid-19, data can also help firms diversify their supply chains and identify alternative suppliers in less high-risk areas. It can be used to identify alternative streams of revenue for organisations where demand is low, which could include selling products directly to consumers when businesses are not operating or diverting your supply chain to provide a new product or service that is in high demand.

Read more

[How data can help firms navigate coronavirus](#) (Supply Management)
[Risk tools](#) (CIPS)