

Presenting a live 90-minute webinar with interactive Q&A

Sourcing Transactions: Structuring Key Terms and Obligations

Drafting and Negotiating Purchasing Volume, Forecasting Methodology,
Pricing Discounts, and Contract Management Processes

THURSDAY, JULY 7, 2016

1pm Eastern | 12pm Central | 11am Mountain | 10am Pacific

Today's faculty features:

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Various Price Adjustment Clauses

NOTE: Price review clauses commonly contain the following features:

- *a trigger event,*
- *a procedure for arriving at the adjusted price,*
- *a description of the factors or guidelines to be taken into account when adjusting the price,*
- *the consequences if an agreement on price is not reached, and*
- *a description as to how the adjusted price is to apply under the contract.*

1. This Contract is concluded on the basis of a bunker price of USD _____ per metric ton for _____ oil* of _____ grade. If the bunker price per metric ton at _____** on the first day of loading is higher than USD _____ or lower than USD _____, any amount in excess of such increase or decrease shall be payable to Owners or Charterers as the case may be. The agreed bunker consumption for each voyage is as follows: _____

* Indicate whether gas oil, diesel or fuel oil.

** Port or place (supplier or published index) to be agreed between the parties.

2. The base price shall be reduced to an amount equal to the lowest price at which the buyer has a bona fide offer to purchase goods of like type, quality, and quantity under terms otherwise comparable to those provided here. As a condition to an adjustment of the base price, the buyer must furnish the seller with documentation of the offer upon which buyer bases his or her claim for an adjustment.

3. The base price reflects seller's current operating costs including prevailing costs of labor and materials necessary to produce [*type of goods*]. In the event seller's costs of producing [*type of goods*] increase for reasons beyond the seller's control, seller may, on [*number of days*] days' notice, increase the base price in an amount not to exceed the actual increase in seller's cost of production. On written request the seller shall furnish the buyer with documentation of the increased costs of production.

4. The parties agree that the contract price shall be \$_____ per unit. The parties further agree that the Seller shall have a limited right to adjust the price by giving the Buyer written notice of the contract price adjustment _____ days before the price adjustment becomes effective. Provided, however, that if the Seller's notice of a price adjustment provides for an adjusted price in excess of \$_____ per unit, the Buyer shall have the option of terminating the contract or performing the contract under the adjusted price. The Buyer must give the Seller written notice of a decision to terminate within _____ days after the date of the notice of price adjustment. A price adjusted under this paragraph shall apply to all goods delivered after the effective date of the price adjustment.

5. The price is based upon the freight rates in effect on the date this agreement is executed. In the event freight rates increase or decrease as of the dates of shipping and that change in the freight rate increases or decreases the seller's cost of shipping the goods, the price shall be increased or decreased to the extent of any increase or decrease in the seller's cost of shipping.

6. The parties agree that the contract price shall be \$_____ per unit. The parties further agree that the Seller shall have a limited right to adjust prospectively the contract price upon giving the Buyer written notice of a price adjustment _____ days before the adjustment becomes effective. The Seller is not authorized to adjust the price more frequently than once every _____ days. Furthermore, no adjustment shall increase the price in effect when the notice of adjustment is given by more than _____ percent. Finally, in no event shall the price as adjusted exceed \$_____ per unit. A price adjusted in compliance with this paragraph shall apply to all goods delivered after the effective date of the price adjustment.

7. General Price Reduction Program. Throughout the Term, Supplier shall conduct an ongoing Product price reduction program. Supplier shall target the reduction of the cost of specific components included in the Products, in addition to continuously improving the manufacturing, productivity, and/or operational processes used to manufacture Products to reduce prices charged to Buyer. Following implementation, and subject to Section ____, Supplier shall promptly convey the resulting materials, manufacturing, and/or operational cost savings through to Buyer in accordance with the following:

8. Prices shall not be subject to change during the initial contract year, thereafter, they may be price adjustments. All price adjustment requests, including suitable proof, shall be submitted, at least 30 calendar days in advance of Supplier's expectation of price increase commencement, to [Company], [Address]. Price increases shall not be retroactive. A price adjustment can only occur if Supplier has been notified in writing of Company's approval of the new Price(s). Only one written price adjustment request(s) will be accepted from the Supplier each year. The reference months/period and indices to be used to determine price adjustments will be the most recent published index between 14-16 months prior (using the final index) and 2-4 months prior

(using the first-published index) to the anniversary date of the Contract, using the price index specified below.

Consumer Price Index: (or Producer Price Index)

The Consumer Producer Price Index (CPI) (or PPI) – All Urban Consumers, U.S city average (Series ID = CUUR0000SA0). (Customize accordingly) The price adjustment per annual request will be no greater than the lesser of percent of CPI (or PPI) change for the 12 month period or 3 percent, whichever is less, for an increase or decrease.

Suitable Proof: Print-out of price index and calculated increase/decrease (or other)

Price Decrease: Company shall receive the benefit of a price decrease to any item during an annual period if the CPI (or PPI) decreases. If, at the point of exercising the price adjustment provision, market indicators and the CPI (or PPI) shows that the prices have decreased, and that the Supplier has not passed the decrease on to Company, Company reserves the right to place the Supplier in default, terminate the contract, and such actions will reflect adversely against the Supplier in determining the responsibility and non-responsibility of the Supplier in future opportunities.

9. ANNUAL ESCALATION ADJUSTMENT

(a) This clause applies to the labor category contract line items appearing in the Pricing Schedule. This clause shall be applied unilaterally by the Contracting Officer in order to arrive at the annual escalation rate to be incorporated at the time of option exercise.

(b) The Contractor warrants that the prices in this contract do not include any allowance for any contingency to cover increased costs for which adjustment is provided under this clause.

(c) The fixed hourly labor rates will be adjusted to reflect the actual market indicator increase or decrease in the U.S. Department of Labor Bureau of Labor Statistics (BLS) "Architectural, engineering and related services" Industry Index (Industry Code 5413) as it appears in the BLS publication *Producer Price Indexes for the Net Output of Selected Industries and Their Products, Not Seasonally Adjusted* which is available at <http://www.bls.gov/web/ppi/ppitable05.pdf>. In the event that the U.S. Department of Labor Bureau of Labor Statistics discontinues publication of this index an appropriate substitute index will be incorporated into the contract by mutual agreement of the parties.

(d) Any adjustment will be limited to increases or decreases in the index as described in paragraph (c) of this clause, but shall not otherwise include any other adjusted amounts for general and administrative costs, overhead, or profit.

(e) The Contracting Officer will include with the preliminary written intent to exercise the option period, the escalation adjustment rate based upon the percent index change from June of the previous year to June of the current year.

(f) During any contract period within which an adjustment to the contract line item prices, as either an increase or decrease, will be made under the authority of this clause, the increase or decrease shall not exceed seven (7) percent of the contract unit prices in effect during the preceding contract period.

10. Price Adjustment Provision: The contract price is subject to adjustment for changes in labor and/or material costs, such adjustment to be determined in accordance with the following method:

1. Labor:

(a) For the purpose of this adjustment the proportion of the contract price representing labor is accepted as ___ percent, or \$_____

(b) The above amount accepted as representing labor will be adjusted for changes in labor costs, such adjustment to be based on the index of average hourly earnings of All Manufacturing Industries under subtitle "Durable Goods" compiled monthly by the U.S. Department of Labor, Bureau of Labor Statistics. An average of the monthly labor index figures for the period from the date of acceptance of the *Company's* quotation to the date of completion of shipment under the contract will be computed, and the percentage increase or decrease will be obtained by comparison with the labor index for _____, 20__, during which month the *Company's* quotation was accepted. The adjustment for changes in labor costs will be obtained by applying such percentage of increase or decrease to the amount for labor determined in 1 (a), and the result will be accepted as an increase or decrease in the contract price.

2. Material:

(a) For the purpose of this adjustment the proportion of the contract price representing material is accepted as 30 percent, or \$_____

(b) The above amount accepted as representing material will be adjusted for changes in material costs, such adjustment to be based on the index of wholesale prices for "Group VI Metals and Metal Products," compiled by the U. S. Department of Labor. An average of the monthly material index figures for the period from the date of acceptance of the *Company's* quotation to the date of completion of shipment under the contract will be computed, and the percentage increase or decrease will be obtained by comparison with the material index for _____, 20__, during which month the *Company's* quotation was accepted. The adjustment for changes in material costs will be obtained by applying such percentage of increase or decrease to the

amount for material determined in 2 (a), and the result will be accepted as an increase or decrease in the contract price.

3. *General:*

(a) The adjustment to which the contract price is subject will be determined as provided for above, except—

1. If shipment under this contract is extended more than three months from the contract date due to Priorities or as a result of causes beyond the reasonable control of the *Company* or because of fire, strike, civil or military authority, etc., the adjustment in contract price for changes in labor and material costs may at the option of the *Company* be based on the period from date of acceptance of *Company's* quotation, to the date when complete shipment is made.

2. If the bill of material or service is modified, resulting in a change in contract price or contract date of shipment, the adjustment will be modified accordingly.

(b) In determining the adjustment in contract price, the percentage of increase or decrease in labor and material costs will be calculated to the nearest 1/10th of 1 percent.

(c) If for any reason the statistics compiled by the U. S. Department of Labor, and referred to above, are not available for use in connection with adjustment in the contract price, adjustment will then be made by means of similar indices. In such event, the selection of substitute indices will be made by mutual agreement of the parties to this contract.

(d) Payment for increase or credit for decrease in the contract price, resulting from the above, will be deferred until the time of final payment under the terms of the contract.