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AN INTRODUCTION TO MANAGING COMMERCIAL RISK



How to improve margins, reduce liabilities, and minimise
future risks and costs.

Excellent Business Opportunities & Networks, Industry Training and Technical Authority

Foreword:

The British Valve & Actuator Association (BVAA) was formed in 1939 and represents over 185 companies engaged in the manufacture or supply of valves, actuators, and related products and services. We provide our members with excellent business support, development and networking opportunities. We are also the industry's training and technical authority.

This *Introduction to Managing Commercial Risk*, was prepared by BVAA's Commercial Risk expert, Mr Brian Joseph.

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1. INTRODUCTION

Engineering companies in today's market place are faced with many challenges, including national and international competition, rapidly changing technologies, legislation and safety standards, and economic volatility with its knock-on impacts on raw material costs and exchange rates. In addition, customer expectations on their suppliers are ever more demanding, on product specifications and performance, service levels, warranty and liabilities, pricing and cost downs. There is also a growing trend towards more formal contracts and agreements being required.

Clearly these pressures vary by company and market sector, and all customers and projects are unique to some degree. However, there are a series of common commercial threads running through them all, and how well these are managed impacts directly on margins and profit.

Budget pressures are a constant challenge, but engineering companies have continued to invest in training. Sales techniques, Key Account Management, product and technical knowledge, legislation and standards, logistics and purchasing all feature prominently.

Dedicated commercial training has generally been overlooked, and as a result good potentially profitable business is won but in too many instances forecast margins are not achieved and future liabilities and costs arise, creating damaging hits on profit.

There is no substitute for good local management, and where necessary the advice of good commercial law firms. This booklet is intended as an operational aid, giving an introduction to some of the common commercial issues, and some simple practical steps that can help your business to improve and protect its profitability. It is based on many years hands-on commercial experience across a wide range of customer sectors, coupled with inputs from commercial and intellectual property lawyers and insurance specialists.

A dedicated Commercial Training course is now available through the BVAA. It is run three times a year at Banbury, Oxfordshire UK, and is also available to run in-house for individual companies. For further details see section 7, and appendix D.

2. COMMERCIAL ISSUES, CONTRACTS AND AGREEMENTS - AN OVERVIEW

The key commercial issues are relevant in all types of business, from day-to day orders flowing through the sales office with minimal intervention, to major projects involving product development, and large value or long-term deals requiring formal written agreements with senior management sign-off.

For a quick assessment of how your business may be affected, consider the questions set out below. Every reader's answers will be different, but recent surveys suggest that there are always some questions worth a further more detailed operational check.

COMMERCIAL RISKS. IS YOUR BUSINESS EXPOSED?

1. What terms and conditions of sale apply to your major projects and contracts, and to your day-to-day business? Where necessary have the terms been reviewed and approved by senior management?
2. Is the business working within the relevant corporate and legal guidelines, e.g. in respect of competition law, export compliance and the July 2011 Bribery Act?
3. Is your confidential information and intellectual property adequately protected?
4. Are commercial risks in your major projects and contracts being fully assessed before order acceptance and contract signatures?
5. Are you suffering drawn-out warranty or contract performance disputes? Are your product specs for OEM'S, and KPI'S for MRO clearly enough defined?
6. Are your margins being eroded by fluctuations in volumes, exchange rates, material costs or supplier prices?
7. Are your customers pushing you to engage in formal contracts with them?
8. Are you getting the most out of spare parts pricing?
9. Are your liabilities defined and capped? Are they in sync with your liability insurance policies? What steps can you take to limit/reduce your liability exposure?
10. Are you exposed to costs/risks if a project or contract is terminated? Are you locked into contracts/projects which are no longer attractive financially?
11. Are you exposed to product development costs without guaranteed payback through product volumes?
12. In negotiations, are your teams focussed on key drivers/issues for your business, as well as the customers? Are they getting the best out of the negotiations?

In the following sections the term "Contract" is applicable to all types of arrangement between customer and supplier, from the simple order to the full-blown written agreement. A selection of commercial topics are covered, from pre-contract stage through negotiations to post-contract.

3. PRE-CONTRACT CONSIDERATIONS

Factors to be taken into account include:

- a. *Strategic Overview*
- b. *Commercial Risk Assessment*
- c. *Stages in the Customer's and Business Cycles*
- d. *Objectives and Motives behind Contracts*
- e. *The "Battle of the Forms"*

a. Strategic Overview

Higher technologies, demanding customers, complex products and systems, and international markets are common factors facing engineering companies. Environmental issues, safety standards, export controls, and competition law are external influences on how business must be conducted.

Internally, "Corporate Governance" policies are increasingly common, not only to ensure compliance with the external factors, but also to ensure sound business controls are in place so that;

- Business risks are managed and contained
- Operational limits of authority are in place and adhered to, (e.g. who has the authority to sign what level of Contract)

Managing commercial risk, given its impact on margins, profit and liabilities, lies at the heart of sound business controls, and the strategy is simple.

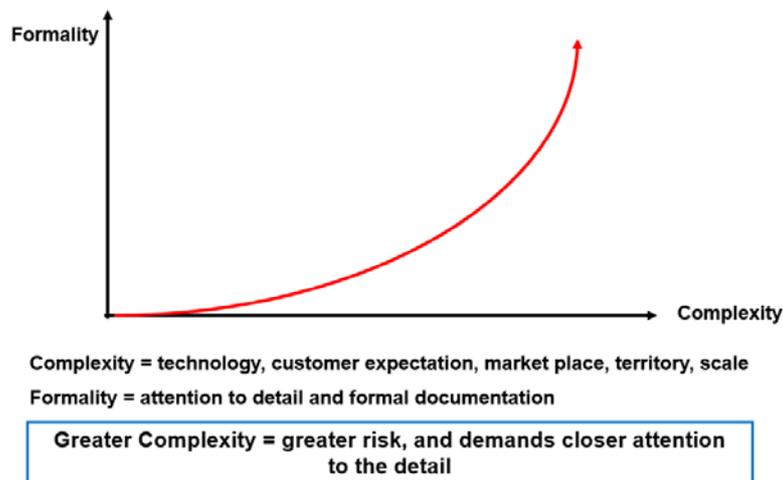
As the norm, we trade on our terms and conditions of sale with customers, and our terms and conditions of purchase with suppliers.

Where circumstances dictate exceptions to the norm, any variations to our terms and conditions must be assessed, negotiated and authorised.

b. Commercial Risk Assessment

It is totally impractical for any company to apply comprehensive risk assessment on every sales order before it is processed. It is however essential and practical to isolate out those orders and projects that need detailed review, and some of which will require non-standard, negotiated terms and conditions. The process outlined below is quick and easy to operate.

A SIMPLISTIC BUT EFFECTIVE MODEL



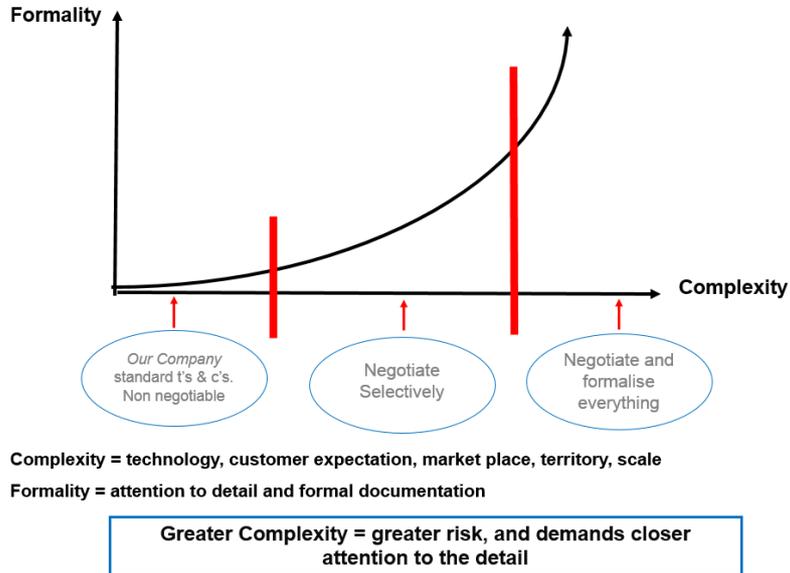
You will know the factors in your business that drive complexity and hence risk, and can apply them to suit, but typical examples are:

- OEM or end user customer
- National or international
- Customer's business sector
- Sales value
- Standard or special product and application
- Product development
- Safety criticality of your product and its application
- Worst case failure mode
- Payment terms
- Time period
- Forecast accuracy/volume commitment
- Warranty and liabilities

NOTE: Sales and Technical personnel are typically very uncomfortable with the concept of "worst case failure mode" but for risk management it is essential. What could happen in practice if your product fails?

Returning to the model, and remembering the strategy and practicalities of trading on your terms and conditions wherever possible, three zones can be established as shown below. How and where the dividing lines are set will vary company by company.

POSITIONING ON THE MODEL



Where business falls into the high complexity/high formality zone, other detailed tools can be applied, such as Project Opportunity Briefs, Dashboards and Contract Review. Director level involvement and sign-off will also be needed.

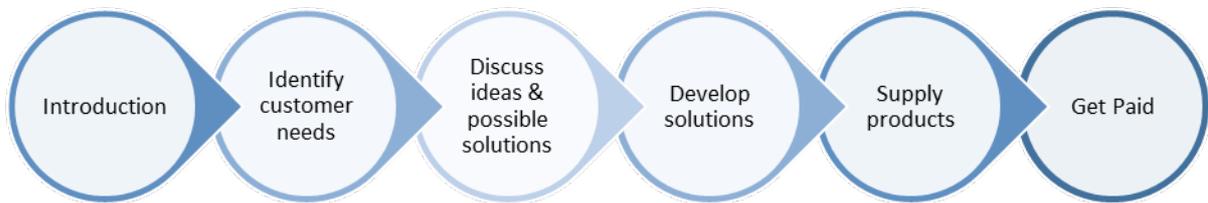
c. Customers and Business Cycle

The issue here is not about macro-economic business cycles, but focussing on the stages in the relationship with individual customers.

Where we have multiple business streams with one customer, the stages in the cycle need to be applied to the individual pieces of business. Equally, not all stages will apply to every business stream, for example supplying existing standard products will not have the development stage for new or bespoke products.

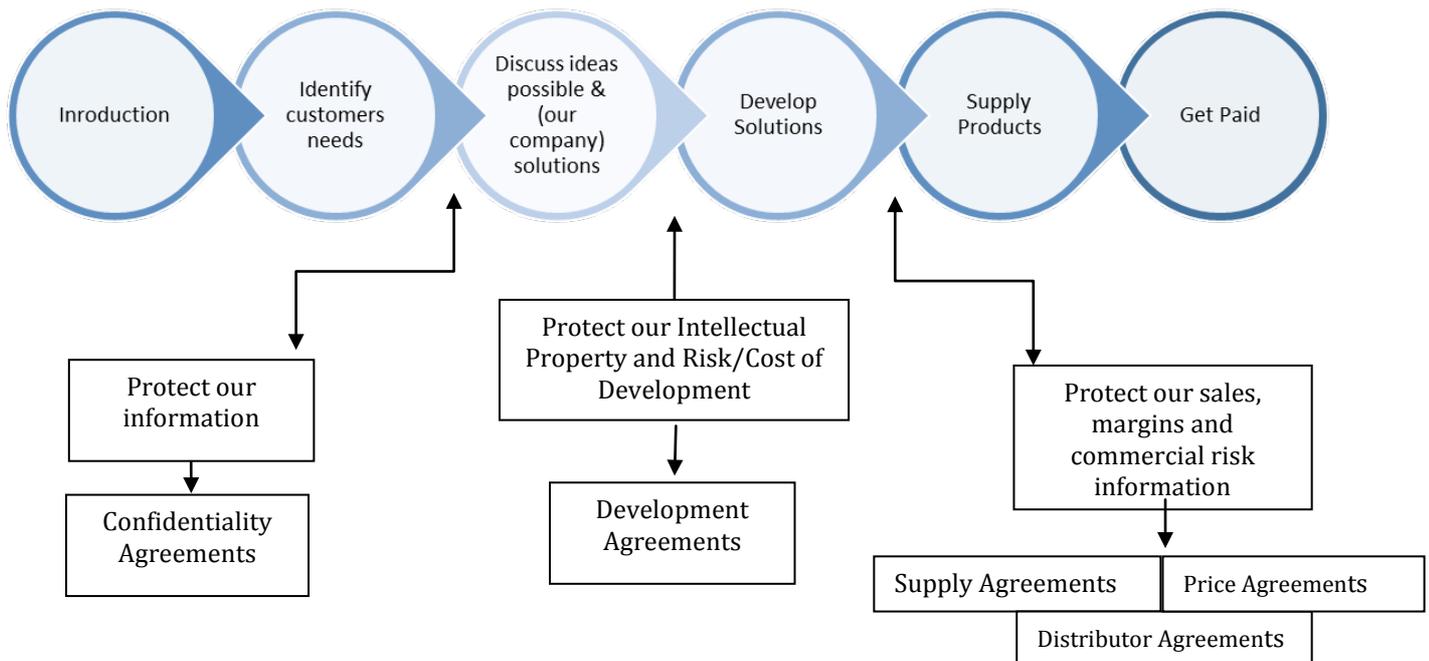
The stages are outlined below:

STAGES IN CUSTOMERS AND BUSINESS CYCLE I



We need to consider for each business stream, where we are in the business cycle and ensure we are fully protected commercially. This may require one or all of Confidentiality Agreements, Development Agreements, Supply Agreements, Distributor Agreements, and their timing in the cycle is crucial.

STAGES IN CUSTOMERS AND BUSINESS CYCLE II



d. Objectives and Motives behind Contracts and Agreements

Whatever type of contract or agreement is being considered, you need to be clear on why does your company want it, and why does your customer want it. In all cases there are three aspects:

1. Defining the terms of partnership/trading
2. A reference point if the relationship or business stream breaks down
3. Protecting both parties' interests

Typical objectives are set out below:

Contracts and Agreements

The Key Objectives

- Define and contain our commercial risks and liabilities
- Lock our customers into Our Company
- Protect our intellectual property
- Protect sales and margins
- Meet our insurers requirements
 - Liability
 - Recall

If we don't bother, or fail to get good contracts in place on our higher complexity/higher risk business streams, we are missing an opportunity to really understand the customer's business, and to escalate to and involve their senior management. But above all, the level of retained risk is increased, and we are vulnerable to margin erosion and future cost hits.

We also need to understand the customer's motives for wanting a contract, as this will significantly influence how negotiations develop.

Contracts and Agreements

The Customer's Motives for them?

- Supplier rationalisation
- Locking in important suppliers
- “Get your top 10 suppliers signed up by the end of the year” – A KPI
- Major contracts, backing off liabilities
- New product programs
- Increasing payment terms
- Cost downs

The Customer's Motives

- Can impact on negotiating positions
- Impacts on timetable and prioritization
- Impacts on DMU

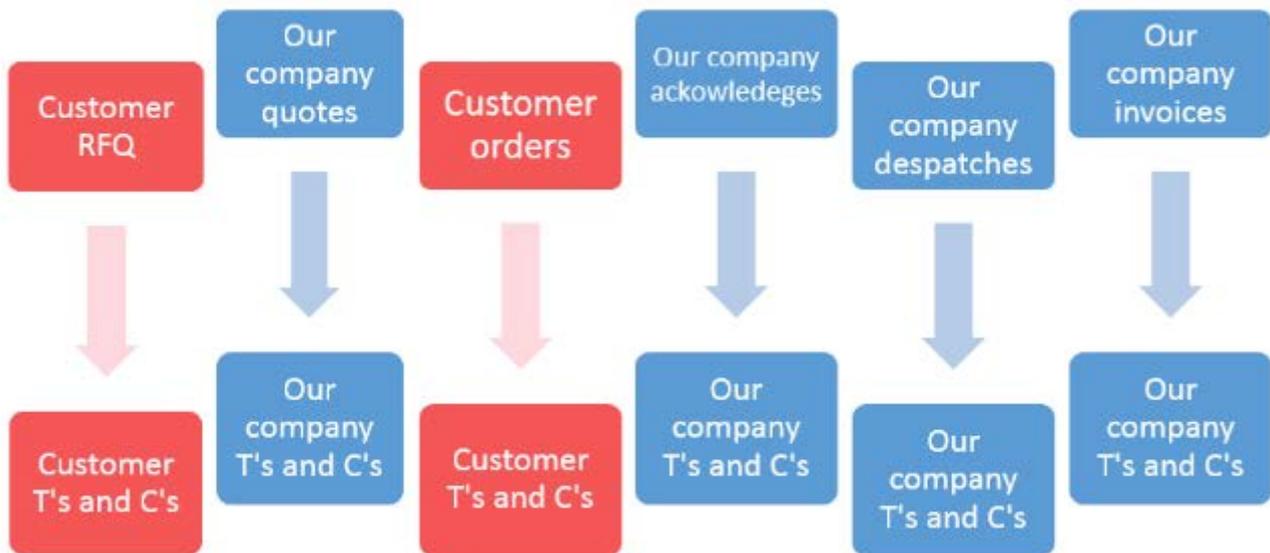


You must establish what the real motives are.

e. Contract Basis and the “Battle of the Forms”

For every piece of business, whether routine order or major contract, the core commercial issue is what or whose terms and conditions apply? This is commonly referred to as the battle of the forms, and as shown below the transaction chain from enquiry to invoice will involve documents from both parties each with their own terms attached.

The Battle of the Forms



So whose terms and conditions apply? There is no single answer as the legal interpretation varies country by country! Three examples are set out, for the UK, USA, and Germany, each having their own practical implications.

Battle of the Forms

- **In UK law:** Contract is formed by the last document

 **Order acknowledgment is key**

- **In US law:** First document prevails

 **If customer sends RFQ with their T's and C's,
need written agreement to change terms,
or have supply agreement**

 **If customer does not send RFQ quoting on
our T's and C's is key**

- **In Germany**
 - Only conformable parts of mutual standard T's and C's can become an integral part of a contractual relationship
 - Liability caps have to be fairly related to the potential foreseeable losses and typical to the type of contract

 **Individual written agreements are needed**

In practice, we need to ensure a robust process is in place to trade on our own terms and conditions wherever possible, and to ensure that no orders or contracts on any other terms are accepted without detailed review, negotiation and senior management authorisation. The process needs to capture all forms of transactions including web and EDI.

We also need to take legal advice where necessary.

4. COMMON COMMERCIAL ISSUES AND KEY WATCH POINTS

As already noted, every business, customer, order, project, contract or agreement will be unique in some respects. However, there are a series of generic commercial issues that will run through them all, and we must address and contain the risks they create for our business.

A small selection of these issues is set out below, covering:

- a. *Warranty and Specification*
- b. *Pricing and Margins*
- c. *Liabilities*
- d. *Intellectual Property*
- e. *Term and Termination*
- f. *Tooling and Development Costs*

For delegates attending the BVAA Commercial Training course the full range of issues forms a core part of the day, and delegates also receive a very comprehensive check-list and reference document, with suggested practical solutions based on real customer experience over many years.

a. **Warranty and Specification**

Warranty disputes can easily become very time-consuming, damaging to the business relationship, and above all hugely costly to resolve. The key points to manage are the warranty definitions, and the product specification.

The following notes give an overview of warranties, and some practical steps to **ensuring that warranty commitments are explicitly spelled out, and in turn linked to an objective specification.**

Commercial Agreements:

Key watch points

Warranties

- What is a warranty?
 - An assurance that some product or service will be provided or will meet certain specifications
- What are the types of warranties?
 - Express
 - Implied

Express warranties - Sales

- An express sales warranty is created by any:
 - Statement of fact or promise made by the seller that relates to the goods and becomes a basis of the bargain and the goods will conform to the statement
 - Description of the goods which is made a basis of the bargain and the goods will conform to such description
 - Sample or model which is made a basis of the bargain and the goods will conform to such sample or model

Implied Warranties - Sales

- Unless they are specifically disclaimed there are certain implied warranties written into all sales contracts for goods
- Types of implied warranties
 - Merchantability
 - Fitness for a particular purpose
 - Title and infringement

In practice, we need to disclaim all warranties we do not want to provide, and limit those we do provide. The example wording below is an extract from a UK company's terms and conditions of sale, and is a typical approach to removing/containing the risks of implied warranties.

Warranty disclaimers

- **Disclaim all warranties we do not want to provide and limit those we do provide.**
 - Insofar as is permitted by law, Our Company excludes all terms and conditions that may otherwise be implied by statute, common law or otherwise. (Extract from UK terms and conditions of sale.)

That in turn ensures that product specification becomes the crux of managing warranty. A good specification will be:

- Objective not subjective
- Clearly defined in writing or technical documents
- Signed-off by both parties
- Frozen, and only changed with the written agreement of both parties.

Such a specification will ensure that for any future warranty claim or dispute, we can easily determine did our product perform to specification, yes, or no?

If yes, we have no warranty liability. If no, we have a warranty liability.

In practice, generalities in specification must be avoided, and turned into hard specifics as detailed in the example below.

Warranty and Specification

Be very wary of generalities

- A recent customer request
 - “A guarantee that all valves are safe and fit for purpose”
- The solution
 - Valves conform to safety standards as defined in the Code of Practice for Dispense of Beer by Pressure Systems in Licensed Premises 2005
 - Fit for designated purpose to ensure pressure in kegs and downstream equipment cannot exceed 45psi +/- 10%
 - + Detailed technical spec

b. Pricing and Margins

In this section three key drivers on costs and margins are addressed, together with ways to manage pricing in practice to ensure margins are protected. The drivers are:

- Material costs
- Exchange rates
- Sales volumes

Margins can be seriously affected by factors outside our control, such as economic growth or recession in China or India, international banking crises, and OPEC oil production levels, **which create volatility in exchange rates and material costs. Manufacturing volumes are another driver on costs, and customer demand levels are also outside our normal control.**

We must be aware of these issues and focus internally on how they affect us. What currency are we manufacturing in and what currency are we selling in? What are the key components in the products, plastic, metals etc.? What are the impacts of volume changes? The scale of risk and potential impacts will also depend on the time period from quotation through supply and to getting paid. For major value and for long-term supply transactions, these risks must be managed right from quotation stage.

Setting selling prices on the other hand is within our own control, and the risks of margin erosion can be avoided by good management of pricing. The solution is to establish with the customer, benchmarks for exchange rates and relevant material costs, and volumes, on which our prices are based.

For exchange rates and material costs, agree mutually acceptable data sources as the benchmarks, and contract on the basis that prices will change if any of the indicators moves by more than +/- 5% from the benchmark. This may result in selling price increases or decreases, but either way our margins are protected. Sample wording to include in quotations and contracts is shown in appendix A.

For volumes, we also need to be aware of the over-optimistic sales forecast, but a similar approach can be adopted to protect our margins against volume change.

Pricing and Margins (continued)

- Customer and sales teams typically overestimate expected volumes
- Serious impact on manufacturing costs and margins (and sales vs forecast)



Ensure pricing is linked to volumes

- Options
 - a) Price increase if target volumes not achieved
or
 - b) Rebate scheme, pay only when targets achieved.
Must notify and reserve in accounts
or
 - c) Price reduction when targets achieved

Option a) is the most likely proposal from the customer, but the least attractive option for the supplier who will have already taken margin hits from lower than expected volumes.

c. Liabilities

Because of their potential scale and complexity, addressing the risks arising from liabilities is **a top priority for commercial management, and liability clauses are often the most contentious in negotiating major contracts.**

Customers will look to pass every possible liability and related costs back to the supplier, late deliveries, lost production, transport and labour costs for warranty replacements, loss of profit, damage to property, recall costs, loss of goodwill and so on.

Another common problem is a “disjoint” in scale and expectations between supplier and customer. For example, we may have a customer that is very major to us in turnover terms, but for whom we are a small-scale supplier. Equally, our product may have a selling price of £100.00, but it becomes part of our customer’s plant which is valued in £millions.

Further complexity may arise from our Parent company or Group requirements, and we will need to operate within the terms of our liability insurance policies. They all have the same driver, that risks (potential liabilities) must be quantifiable.

The solution, in our terms and conditions of sale and in negotiated contracts, is to:

- **Define what liabilities are included, and what liabilities are excluded**
- **Establish a maximum value, the cap or limitation of liability**

Insurance and legal wording can get complex, but it is important to cut through the language barrier and see the commercial issues in practice, as in the example below which is a typical approach to defining exclusions.

Liabilities .../continued

- Under no circumstances whatsoever shall the Seller be liable in contract, tort or otherwise howsoever arising for any claim, damage, loss or costs in respect of:-
- Any direct loss of profit; or
- Any direct loss of anticipated savings; or
- Any indirect or consequential loss or damage howsoever caused including, without limitation:-
 - (a) any loss of profit; (b) loss of use of money; (c) loss of anticipated savings; (d) loss of business; (e) loss of opportunity; (f) loss of goodwill; (g) loss of reputation; (h) loss of data; and/or (i) any wasted expenditure and/or (j) any necessary product recall

In setting the cap, note that in law liabilities for death and personal injury cannot be capped, but all other liabilities and their costs can be. Typical wording for terms and conditions of sale or for inclusion in contracts is set out below,

“The Seller does not exclude liability arising for death or personal injury caused by its negligence.

The Seller’s maximum aggregate liability for all claims made by the Buyer shall not exceed £xxx.”

The £xxx figure is commonly set to be the value of the contract or a negotiated figure, but where negotiated it must remain in keeping with the cover provided by your own liability insurance policy.

Companies operating **in the nuclear sector** need to be aware that **liabilities are the subject of industry specific arrangements** and should take specialist legal and insurance advice. Third party liabilities are covered by International Conventions in some countries, and generally liability insurance policies will not provide cover for nuclear applications.

This does not preclude companies from doing business in the nuclear sector, but does mean special care and attention is needed. For example, sector specific terms and conditions of sale are recommended, for use in quotations, order acknowledgements and contracts.

d. Intellectual Property

For any company manufacturing or developing products, or creating bespoke system solutions for customers, intellectual property is another key commercial watch point. The **strategic goal is typically to develop, own and protect that intellectual property**, which can include inventions, designs, drawings, patents, documents, trademarks, software, database etc. **The commercial point is to gain a competitive edge in both winning new business, and protecting existing business.**

Managing intellectual property requires a mix of good internal processes and practical advice from IP lawyers and patent specialists.

In-house, engineers and sales teams need to be aware of the potential value of their ideas, and ensure nothing is “given away”, be that in pricing too low, or in passing unprotected technical drawings to a customer which a competitor could get hold of and copy. The process needs to include assessment of potential IP in a product or system, and conscious decisions to protect it or not.

Where the decision is that protection is worthwhile and where we are negotiating with customers and briefing lawyers or drafting contracts, the language and complexity of IP issues can quickly become a problem. Cutting through to clear, easily understood bite-sized pieces is key, and the notes below set out some useful terminology and an approach that works in practice.

Commercial Agreements: Key watch points

Intellectual Property

Some key terms:

- Background IP - All existing at start of project or contract, owned by Our Company or customer, necessary for use in the project.
- Foreground IP - Created by either or both Our Company and customer during the course of the project
- Product - The item to be developed and manufactured by Our Company
- Equipment - The customers product/system/ technology into which Our Company product incorporated

More key watch points...

A practical approach

- Our Company background IP remains Our Company
- Customers background IP remains customers
- Foreground IP in the product belongs to Our Company
- Foreground IP in the equipment belongs to the customer

In addition, IP discussions are a classic example of a picture telling the story better than words. By taking the technical drawing of a product or system, and detailing for which item who owns the IP, a clear specific reference point is available for all concerned. See the example at Appendix B.

e. Term and Termination

In setting up any agreement, there are two related commercial issues to address:

- How long is the agreement to be valid for, the term.
- What happens if one or both parties want to end the agreement early, termination

These are **not hypothetical issues. In practice a piece of business can become unattractive, and business relationships can and do break down. Equally, projects, contracts and product life spans come to an end.**

Termination clauses typically cover “convenience” and “cause”, the former where it suits one or both parties to end the business, the latter where one party has failed to fulfil its side of the bargain.

It is essential to have an exit strategy, and protect your position when the business ceases. A classic example is when making special products for a customer, the risk being at the end of term or on termination you are left with components/WIP/finished products that are only useable for that customer and product. Writing-off stock is a painful financial hit to avoid.

Another example is holding consignment stock, a good selling point for the customer, but another risk unless you have clarified that the customer will pay for unused product at term or on termination.

f. Tooling and Development Costs

For business involving manufacture or product development, new tooling and test equipment may be required. The key commercial issue is **who pays for and who owns it - the manufacturer or the customer and what are the implications?**

If the manufacturer pays, they need to ensure the costs are recouped, for example spread across sales volumes and built into costs/selling price calculations. Tooling ownership should also leave the manufacturer free to use the tooling for making product for other customers.

If the customer pays, they will feel entitled to the view that the tooling should only be used for making products for them. That in turn restricts the manufacturer’s potential customer base and markets.

There is no single answer, but each business deal must be assessed case by case.

Along similar lines to tooling above, the wider range of development costs incurred by a manufacturer must also be managed commercially. Typical practical issues and steps to avoid potentially damaging outcomes are set out below.

**Supply and development:
Key watch points**

- We are a manufacturing company
- Product Development is a means to generating revenue through sales of the new product
- Product Development costs are high and must be recovered from customer
- Product Development costs typically increase against original forecast/expectations (for reasons other than spec change)
- Sales volumes forecast may not be achieved, or may take longer than planned.

	Establish early with customer what development costs he is paying for
	Do not commit early to target costs, nor target prices
	Link sales price to volumes and timescales

5. SOME GENERAL PRACTICAL POINTERS

Negotiating with customers or suppliers, working with lawyers and other specialists, and drafting and management approval of contracts, are common issues in major pieces of business.

a. Negotiations

Awareness of all the key issues involved, as seen through your company's eyes, and your awareness of and interpretation of the key issues as seen through the other party's eyes, form the crux of successful negotiations. Both parties need to recognise that negotiation is a two-way street and expectations on both sides should be reasonable.

Good preparation is essential. Identify the key issues and map out your company position and motives on each issue, plus the other party's position and motives. Then for your company, decide the level of importance attached to each issue, and possible fall-back positions. Which points are you prepared to concede, which points are "must haves" with no room for negotiation, and which points are you looking to "trade", i.e. give some ground in return for gaining something else back from the other party.

All of this can be incorporated into a simple "**Negotiating Matrix**", an example is at Appendix C.

Ensure your teams across all functions, sales/technical/manufacturing/purchasing are involved in and aware of the key issues and company position on them. You must also be crystal clear on who in your company or negotiating team has the authority to make the final decision on each issue.

Finally, ensure that all your key issues are raised, addressed and negotiated pro-actively, none should be settled by default through lack of discussion.

b. Working with lawyers and other 3rd party specialists

Engaging commercial and intellectual property lawyers does not come cheap, and specialist insurance advice often comes with a premium attached! **For best effect, and to contain costs:-**

- Where possible engage just one law firm that has both commercial and intellectual property capabilities.
- Ensure that the lawyers and insurers have a good general understanding of your business, your strategies and commercial drivers, and your key customer sectors. Where needed, take their advice early.
- On specific business streams, ensure they are fully briefed on your commercial positions on the key issues, and don't allow them to do any contract drafting before this briefing. Where both parties' lawyers are involved in negotiating meetings and drafting, be very wary of the lawyers on either side getting into legalistic point-scoring debate! They need to stick to the commercial issues and your briefing on them, and find drafting solutions to match.

c. Drafting and Management Approvals

A few summary points are set out below, aimed at **keeping the process to final signatures smooth and surprise-free.**

Drafting approvals and signatures

- Drafting is time-consuming
- Don't rush, don't cut corners
- Resolve commercial issues first
- Give thorough briefings to directors, commercial team and lawyers
- Follow authorisation levels and process
- Directors will not sign contracts that leave Our Company exposed, or are not in line with Our Company policies

6. POST CONTRACT CONSIDERATIONS

Once negotiation and drafting is successfully concluded, don't stop there. Much is still to be done to ensure the business is a commercial success, and two stages are summarised below.

Some Practical Issues

We've signed the agreement. Well done!

But...

- Agreement itself does nothing to generate sales
- Communicate, internally and with customer. Especially important if multi-country or multi-site
- Get your action plans in place
- Add the expected sales to your forecasts

Also get a sharp focus in place on the documentary process needed to ensure your invoices get paid. It is often overlooked as huge effort goes e.g. into delivering on time, but too often payment gets delayed because our paperwork does not conform precisely to the customer requirements. A little effort early can save a lot of effort and intense frustration later, and for high value business preparing a full invoice/documentary set in draft or dummy format and walking them through your customer's offices will quickly highlight potential problems.

And finally, don't just stick the contract in a drawer and forget it. To achieve the expected commercial results you need to regularly keep on top of the key issues. (See below)

Monitor the contract and performance

- Notice provisions
- Contract compliance
- Amendments
- KPI's and performance reviews
- Personnel changes
- Payments

Periodic meetings with the customer are essential to discuss and review both parties' performance under the contract. Where problems are anticipated, or already arising, address them early and proactively.

7. COMMERCIAL TRAINING

The BVAA has been providing high quality product and technical training for many years, and added Commercial Training into the program in 2011.

“Managing Commercial Risk” courses are run three times a year in the BVAA’s purpose built training facility at Banbury, and are also available to run in-house.

The course is summarised at Appendix D.

For further information on dates and availability, contact BVAA at:

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9 Manor Park, Banbury,
Oxfordshire, UK

- Website: www.bvaa.org.uk
- E-mail: enquiry@bvaa.org.uk
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APPENDIX A

Sample wording for pricing against exchange rate and material cost fluctuations

PRICE ADJUSTMENTS

Prices in the contract schedules will be subject to annual review on the anniversary of this agreement after reasonable consultation between the Buyer and Seller and ninety days notice in writing.

All increases and decreases in Purchase Price shall be immediately effective as to all outstanding Purchase Orders for Products not yet shipped to XXXX and all future Purchase Orders.

In addition to the foregoing however, variations in prices may be made during the initial term and throughout the life of this Agreement in accordance with the following agreed procedures relating to exchange rate, and material costs.

- a) Exchange Rates
 In the event of fluctuation in exchange rates of more than +/- 5% from agreed base levels, prices may be reviewed and amended on a quarterly basis.

1 Euro = 1.36 US dollars

1 pound sterling = 1.47 Euros

1 pound sterling = 2.00 US dollars

NB: Rates

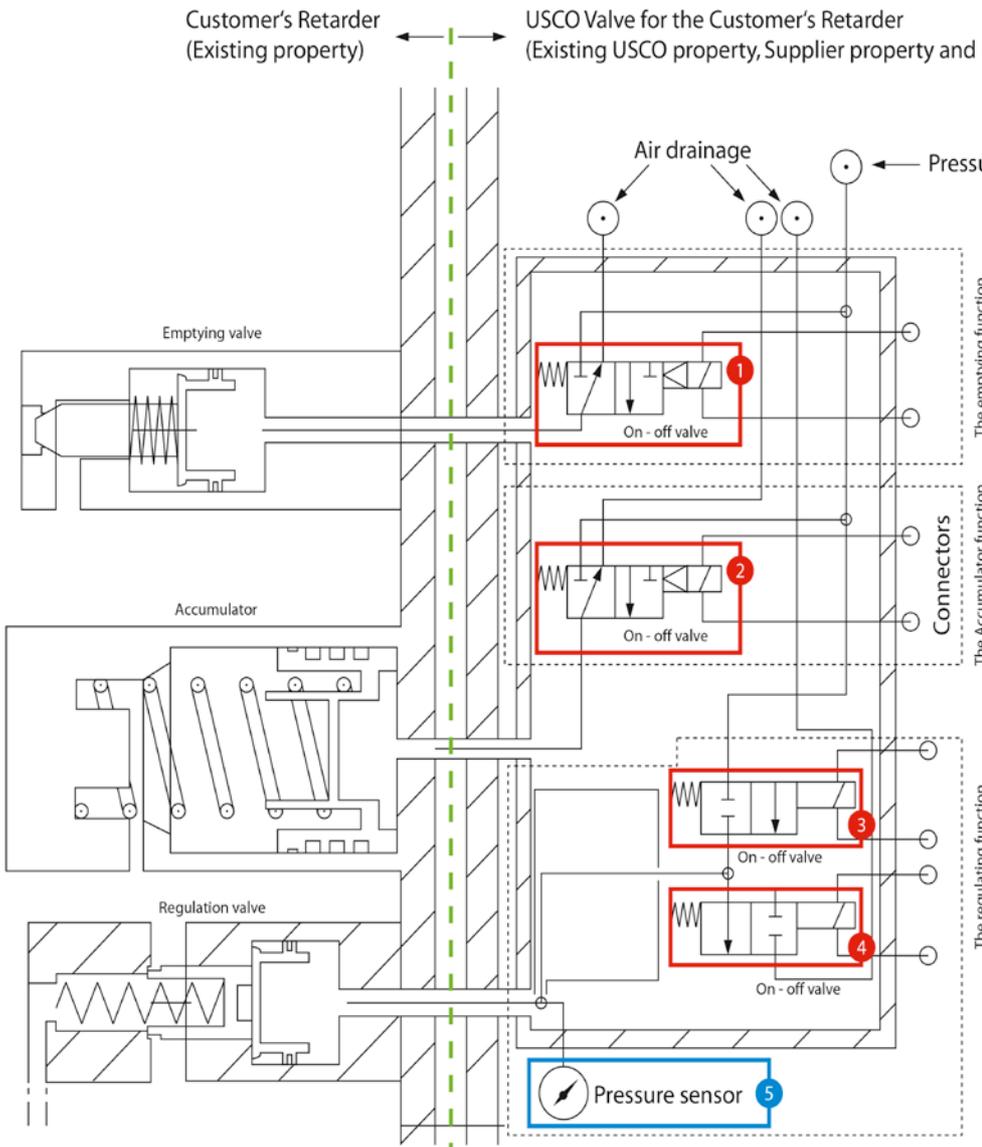
shown are out of date

and for example only

- b) Material Costs
 In the event of fluctuations in material costs of more than +/- 5% from agreed base levels, prices may be reviewed and amended on a quarterly basis. All such reviews will take into account raw material content/proportions in the products under review. LME and Metals Bulletin material indices will be used as benchmarks for base levels of Nickel, copper, aluminium and stainless steel, supported as necessary by documentary evidence of purchase costs.

APPENDIX B

Example Technical Drawing Marked-up for Intellectual Property purposes



USCO retains all rights in its valves (items 1-4, marked red) and related control technology, and all alternative designs in which they are incorporated. The chosen USCO supplier shall retain all rights in its pressure sensor (item 5, marked blue).

"Private and Confidential. Not to be copied without USCO's approval. All intellectual Property Rights in the product/ design depicted and arising in this document (including copyright) vest in USCO."

APPENDIX C

Negotiating Matrix Example

ZZZZ Co Purchase Agreement: Summary of the Main Contract Issues

Issue	Document References	ZZZZ Start Position	USCO Start Position	Level Of Importance To USCO	Possible Fall Back	Authorisation Level Needed	Comments
1. Exclusivity	None	Not known	We want it	Medium to High	Volume Commitments	GDS	Is it commercially practical, is it acceptable in Japanese culture and practice.
2. Specification	Clause 1.1	Is covered but loose	Must be clearly defined	Medium to High	None	GDS	
3. Procedures Manuals	Clauses 1.5 to 1.9	Referred to but not detailed	Principle ok, have not yet seen details	High	N/A	KS/GDS	Will need detailed review of all the manuals
4. Test Procedures	Clause 3.2	Referred to but not detailed	Principle ok, need to hacc clearly defined	Medium	N/A	KS/GDS	
5. Forecasts	Clause 4.1	Not binding	Need ability to review costs and prices if actual vols fall below forecast	High	A more general capability for periodic price reviews see note 7	GDS	
6. Liabilities for Late delivery	Clause 4.5	Uncapped Undefined	Must cap and define	High	Possibly go a little higher with the cap	GDS/DB	
7. Price Reviews	Clause 5.2	Allows for possible changes but no process to trigger review	Need to cover risk of exceptional cost moves and include a process	High	Link to specific indeces	GDS	
8. Payment Terms	Clause 5.5	Within a reasonable time	Must define period, proposed end month + 60 days	High	Possibly extend period to 90 days	GDS/DB	Need to cover all USCO supply points. Ideally same period applicable to all
9. Title	Clause 6.1	Passes at ex works delivery	Only passes when we are paid	High	None (see comment)	GDS	Is there any Japanese law issue that makes our position unacceptable?

Issue	Document References	ZZZZ Start Position	USCO Start Position	Level Of Importance To USCO	Possible Fall Back	Authorisation Level Needed	Comments
10. 15 years guaranteed availability of supply	Clause 7.3	15 years	Add option for one of sale	High	Reduce 200% price figure	GDS	
11. Traceability	Clause 8.2	Necessity	Necessity	High	None	KS/GDS	Need to review USCO Japan processes and understand ZZZZ's Must be able to tightly define "book end dates".
12. Claim Procedure	Clause 9	No time period, remedial action their determination	Need time period, joint determination and to cover factors outside our control in ZZZZ	Medium		KS/GDS	
13. Warranty	Clause 10	Undefined period, no tight link to spec	2 years or 200,000 km against spec	High	Negotiate time/mileage cap	GDS	
14. Product Liability	Clause 12	No cap and no definitions	Cap and define. Max liability not exceed contract price	Critical	Negotiate higher cap	GDS/Board	
15. Recall	Clause 13.2	ZZZZ decide	Joint decision. Process outlined, liability capped	Critical	Negotiate higher cap	GDS/Board	Keep Group Risk Management involved
16. Intellectual Property	Clause 14.2	No IP provisions relating to ownership of the products	USCO pre-existing IPR is and remains ours	Medium	None	GDS	Nb. Takes on much higher significance and needs additional wording if joint development projects involved
17. Term	Clause 14.4	Not defined	3 years	Medium	Negotiate longer or shorter	GDS	
18. Compliance with laws	Clause 14.8	Onus on supplier to ensure compliance	we warrant to agreed spec, onus on ZZZZ for trucks compliance	Medium	?	GDS	Needs GTG/Technical input to clarify significance
19. Assignability	Clause 14.9	OK with written consent	Reserve the right to assign within USCO on 3 months' notice with guarantees of continuing performance	High	Increase notice period, encourage audit of facilities	GDS	

APPENDIX D

BVAA Commercial Training Course Summary

**AN INTRODUCTION TO MANAGING COMMERCIAL
RISK, CONTRACTS AND AGREEMENTS**

- This is a one day training session designed to raise awareness of key commercial risks and how to address them in practical terms. Evaluating opportunities for level of risk, pricing, volumes, specification and warranty, liabilities, intellectual property and payment terms are among the topics covered.
- Confidentiality, Supply and Development Agreements are all addressed, in the context of stages in the relationship and business with customers, and with the focus on practical issues.
- There is a section on preparing for negotiations, which links effectively to other sales/negotiation training material.
- The course is aimed at Key Account Managers, Sales and Commercial Managers, Product and Marketing Managers, Sales Engineers, Technical/Technical Sales Managers and their teams, and will also benefit Customer Service Managers.
- It is equally relevant for specific sector and general business and should be an integral element of induction training for new starters in the above roles.
- The training is a mixture of presentation, case studies and group participation, and delegates will leave with a comprehensive “tool kit” of material to apply in practice.
- It is best suited to groups up to approx 10, and being interactive requires “face-to-face” sessions rather than webex or on-line access.

The material has been prepared based on real customer experiences worldwide over the past five years, with additional inputs from third party commercial and intellectual property lawyers and liability insurance specialists. Contact enquiry@bvaa.org.uk.

APPENDIX E

Notes about the author

Brian Joseph was formerly Commercial Director for Norgren Ltd, a subsidiary of IMI plc, having joined the group in 1986 following ten years working in the Garage Equipment Industry, and a B.SC. Economics degree from Bristol University.

Brian has extensive UK and International experience in sales, marketing, commercial and logistics roles , covering OEM's, end-users and distributors across many industrial sectors, including general engineering, utilities, oil and gas, rail, medical, and automotive. He has no legal qualification, but has extensive experience of working with commercial and intellectual property lawyers, and insurance specialists.

After many years focussing on pricing, margins and contract negotiations, Brian wrote and implemented a Commercial Training program for Norgren, which was delivered to hundreds of delegates from sales, technical, purchasing and customer service functions in the UK, Europe and USA.

In 2011, BVAA added Commercial Training to their program, and Brian wrote and has delivered the course, with excellent delegate feedback.

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