Operations & Supply Chain Student Night

Speaker: Kenneth B Glasser, CPIM, C.P.M.

Topic: Contracts

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A little about me:

- 22 years at Axcelis Technologies.
  - Reports to the VP of Global Supply Chain (w/dotted line to EVP Legal /HR & General Counsel, due to legal T's & C's covered).
  - Manager of Contracts.
  - Also covering Offshore Business Process Outsourcing Contracts.
  - Software Licensing & Royalties.
  - On the Compliance team as well.
  - Work w/team on certain customer audits.
  - Purchasing team SharePoint webmaster.

- 14 years at General Electric (GE Aerospace – worked w/DAR & FAR).
  - Started as an expediter chasing late parts.
  - Then moved up to be a Buyer, buying multiple part #'s, over and over.
  - How did I get started in Contracts?? As a Buyer, I was tired of placing repetitive parts / PO's, over and over, each month, for the same & similar parts, so I grouped them together, to get cost savings & time savings (mine) -- and to get more strategic. And my 1st contract was a success. And worked my way up the org chart, via this approach, getting better and better at contracts over time.
- ASCM-Massachusetts Minuteman Board of Directors (President). Great for networking & benchmarking with industry peers, and a way to help get the next generation of supply chain practitioners get up to speed. *Join ASCM to get these opportunities*. CPIM/ASCM-APCIS & C.P.M./ISM Certified.
- Chair of the New England Supply Chain (NESCON) Conference.
- In the New England Supply Chain Hall of Fame.
- Harry J Graham Award winner (ISM Greater Boston's highest award).

Why be Contracts Manager – WHAT is this job??

- Negotiations & paperwork too (business/supply chain & legal T's & C's)*
- Strategic work (vs just repetitive tactical work)
- You get to work with multiple areas of the business (not stuck in a silo), and also get to work with multiple suppliers as well.
- You will have a LARGE impact on your company's bottom line.
- The above point gets you *high visibility* within your company. You normally will work with very high-level managers.
- Working with domestic & international suppliers, and that often involves travel (example – I have been to India 8 times so far, China once, etc).
- It is a unique skillset, and almost always in high demand.
- *When you are feeling social, you can negotiate w/suppliers (and customers). When you need peace and quite, you can work on the contract paperwork / T's & C's side of the job, lol.

Why would a company want a Contract?

- Clarity in a business relationship
  - Scope/Duties (SOW)
  - Confidentiality (NDA)
  - Payment terms
  - Delivery terms / Export controls / etc.
  - Effective Date & Termination Date
  - Warranty / Remedies
  - Etc, etc.....
- Risk mitigation PROACTIVELY.
  - Incentives & Penalties for performance / lack of performance
- Protecting intellectual property (IP)
- Minimize liability
- Cost Savings
- Customize a contract as needed (don’t be stuck with one template)

VARIED WORK: Types of Contracts (partial list – and can combine types):

- Stocking Agreement:
  - Buyer can hold liability or not, when supplier stocks/bonds items/stock.
  - Covers emergencies = less shortages / stock-outs (better customer service).
  - Reduces Lead-times = less reschedule messages.
  - Reduces repeated tactical purchasing transactions.
  - Reduces inventory at Buyer's location (which improves storage/facilities & cash flow).
  - Better pricing (bulk savings) when grouping parts, and guaranteeing business to supplier.
  - Requires REGULAR reviews of forecast to update stocking quantities.

- Pricing Agreement:
  - Protects pricing for longer-term with a fixed price template (predictable costs).
  - Some Buyers with leverage prefer YOY price reductions (makes sense for increases in productivity/learning curve, as supplier gets better at producing the product).
  - Exchange rate clauses can be added, for offshore suppliers, to take advantage of exchange rate fluctuations (NOTE: This can be a double-edged sword)….

VARIED WORK: Types of Contracts (partial list – and can combine types):

- Volume Incentive Agreement:
  - Usually combined with a Pricing or Stocking Agreement (OR, in place of those, in order to get SOME savings from a supplier, when spending some good $ with them).
  - Usually multiple levels of rebate, based on multiple levels of spend with supplier. Rewards the Buyer with rebates from Supplier, and rewards the Supplier with increasing $ spend from Buyer).

- Exclusivity Agreement: Often used with newer technology, where the Buyer is trying to get market exclusivity on certain parts/technology they/Buyer designed/developed, w/exclusivity for a period of time from the supplier (exclusivity within Buyer’s industry).
  - Also used to protect Aftermarket sales to Buyer’s customers (to keep them with Buyer, for Buyer’s part #’s).

- Joint Development Agreement (JDA): When a Buyer pays a Supplier, to work with them, to jointly develop something.
  - The underlying premise is, that the Buyer owns the tech they bring to the development, and the supplier owns the tech they bring to the dvpt, but the tech that is JOINTLY developed, is owned by the Buyer, since the Buyer is paying for the development.

VARIED WORK: Types of Contracts (partial list – and can combine types):

- Master Services Agreement / Supplier Partnering Agreement (MSA/SPA):
  - Defines multiple aspects of a Buyer/Supplier relationship.
  - Often used with offshore suppliers.

- Statement of Work (SOW).
  - Defines all aspects of the Buyer's project/needs (Objectives, Scope, timeline, etc).
  - Milestone dates per *major* project deliverable (steps)
  - Clear performance metrics / Acceptance Criteria, to define if the above milestone date (and eventually the project) is "accepted" by Buyer.
  - FPP vs T&M:
    - Fixed Price Project (FPP) – (good for a fixed budget). If the supplier finishes early to deadline, they end up with the cost advantage (no refund for finishing early). If the supplier finishes not on time, the cost/completion risk is on them (they still have to finish, but no extra $ paid).
    - Time and Materials (T&M) – (good for an unclear-constantly-changing scope / deliverables). You pay exactly for the time expended x the rate per hour.
  - Having an MSA for a project, w/o a detailed SOW, is often a recipe to fail.

- Non-Disclosure Agreement (NDA): Protects a company's confidential info (DO THIS FIRST, before sharing ANY confidential info).
  - And remember = quotes are confidential info -- you don't want a potential customer sharing your quotes with your competitors, to drive down your quoted prices for them.

Remember:

- STUDY & RESEARCH ahead of time. Never go into a contract negotiation unprepared. KNOW what you need, know what your supplier needs.
- When you do a contract, be sure to REGULARLY review the contract with the supplier. A contract is not a "Done", onto the next. If you don't regularly review them, compliance becomes very lax by both sides.
  - Additionally, an annual audit done on site @ supplier help compliance, as well as keep the parties engaged (more travel opportunities).
  - And be sure INTERNAL compliance w/contract at your company is occurring (ex: Office Supply contract).
- And when you do a contract, it is not a "win at all costs" for one side. If BOTH sides do not end up with some benefits, compliance will become an issue. And when you go to renew the contract, the other party will not work with you. It really should be a "win-win". The ongoing relationship with supplier is critical, while also protecting your company needs.
- You do NOT have to be a Lawyer, to be a Contracts Mgr. The Contracts Mgr in supply chain often works with the company lawyer, but does not have to be a lawyer. Supply chain terms vs IP/etc Lawyer terms.