

VII. Contracts

Once you have found a manufacturer that you want to do business with; i.e. a company that is capable of and willing to sell you the product you want and has passed all of your background checks, the next step is drawing up a contract. The contract establishes the basic terms of the business agreement; mainly, price, quantity, and product. It will also address other issues such as disputes and return policies. The contract should be clear and concise and should keep foreign “legalese” to a minimum. It should be specific enough to avoid ambiguity and misinterpretation, but it should not be too overwhelming either.

It is important to keep in mind that while Westerners view the contract as a binding agreement, Asians may view it as only a starting point from which to negotiate. For example, some Asian manufacturers’ contracts might be shorter and simpler than a standard Western contract, leaving much to chance. If a clause states that “the manufacturer will provide XX number of products at YY price in accordance with the buyer’s requirements,” you should make sure that those requirements are actually listed in the contract.

Of course, this may not be the case in every country in Asia, as there is a great deal of variation in cultural and business practices within Asia, but it is true in some Asian countries. In China, for example, business has commonly been conducted based on personal relationships (called *guanxi* in Chinese), whereby it is expected that you use your connections to get ahead. In contrast, in Western societies, rule of law is normally the governing system. Each entity is treated equally before the law and the law is applied to everyone equally. Laws govern the functioning of business and nobody gets special treatment. If someone uses his personal connections and it results in unfair treatment, this may be punished or frowned upon in the West. In China, this is considered part of normal business. Obviously, there are exceptions to this rule.

This is not to say that a contract is not useful, however; it is still important to get everything in the agreement down in writing. It just may *not* be viewed by the Asian company in the same regard as another US or European company might. For this reason, you should make sure that the terms of the contract are specified as clearly and as precisely as possible, especially when it comes to issues like payment terms, quality standards, lead times, etc. If there is any doubt about something, put it in writing. It is important to note that translating your contract into the local language may also be required.

At the stage of contract negotiations, you should be careful to avoid thinking, “We’ve done all this work and come all this way, so we have to come out of this with an agreement.” After the long process of identifying manufacturers, it can be embarrassing to discover that your prospective partner is actually not honest or capable enough. Because of this sense of investment in the process, buyers can be reluctant to quit in the later stages of talks. This problem is common to all negotiations, but it is especially common in Asian deals because of the perception that “Asia is the future” and that using Asia is vital to your company’s survival.

Asian companies are aware of this reluctance and may take advantage of it in negotiations. But a bad supply agreement can be worse than no agreement at all, when it results in poor-quality