



HOW COVID-19 MAY IMPACT YOUR CONTRACTS WITH SUPPLIERS

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WELCOME

Today's format

- No Q&A

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AGENDA

- COVID-19 pandemic impacts to suppliers
- Force majeure
- Other defenses to performance
- Notices and requests from suppliers
- Other contract considerations

COVID-19 PANDEMIC IMPACTS TO SUPPLIERS

- Unable to perform from normal location
- Absences
- Disruptions to the supplier's supply chain
- Unavailability of critical goods
- Government restrictions
- Financial instability

WHAT IS FORCE MAJEURE?

- Unanticipated situation (unforeseeable)
- Beyond the party's control
- That frustrates the reasonable expectations held at time of entering into the contract

IS THE COVID-19 PANDEMIC A FORCE MAJEURE?

The pandemic itself may or may not be, but the measures being taken unquestionably are:

- Government ordered shutdowns (Michigan, New York, India)
- Widespread quarantines
- Impact on production

FORCE MAJEURE IS NOT A SILVER BULLET

- Look to the language of the force majeure clause in the contract
- Performance excuse depends on contract terms and jurisdiction



FORCE MAJEURE CONSIDERATIONS

- First, consult your contract. Does it have a force majeure clause?
- Does the force majeure clause cover the event in question?
- Did the event actually prevent performance or just make it more burdensome?
- Did the supplier comply with the contract's requirements for declaring force majeure?

OTHER DEFENSES TO PERFORMANCE

- Commercial Impracticability
- Frustration of Purpose
- Impossibility
- Prevention by Government Order or Law

NOTICES AND REQUESTS FROM SUPPLIERS

What you may see:

- Notice a supplier can't perform some or all services
- Notice of force majeure
- Notice a supplier invoked its business continuity plan
- Requests for changes to services (change requests)

OTHER CONTRACT CONSIDERATIONS

- Impacts on fees and charges
- Termination
- Procurement of alternative sources
- Exclusivity
- Minimum fees
- Source code escrow
- Step-in

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