

Negotiating Favorable Contracts –Issues & Provisions

Detroit Chinese Business Association

December 7, 2006

Presented by: Shusheng Wang

Sales

To U.S. OEMs

- U.S. OEMs and major suppliers required written contracts or Purchase Orders
- Purchase Orders are very detailed and include many terms and conditions in addition to price, quantity and product specifications
- Terms and conditions establish legal framework. The most important of these terms relate to warranty, product liability, and protection of intellectual property
- Other terms cover shipment, delivery, rights of inspections, acceptance, termination, etc. In order to do business with an OEM, you will have to do business on their terms, Seldom negotiate changes.
- OEM terms favor OEMs and transfer much of the risk to the supplier.

Sales to U.S. Suppliers

- If you are doing business with a supplier, you have a somewhat better chance of negotiating some of the terms and conditions
- The best way to protect your company is to ask a legal advisor to explain what the terms mean, and get a good translation into your language.
- Knowing the risks that your company is accepting prior to entering into a contract is useful, so that you can price your products properly and include appropriate processes into your manufacturing systems.

General Contract Issues & Technical Provisions

- Contract term
- Shipment term
- Inspection, acceptance & rejection
- Title transfer
- Payment term - payment day, currency & exchange rate
- Warranty
- Insurance & risks – loss, inventory, exchange, product modification & price adjustment
- Intellectual property
- Tooling cost recovery
- Choice of law & arbitration

BUTZEL LONG

350 South Main Street, Suite 300
Ann Arbor, Michigan USA 48104
Phone (734) 995-3110 / Fax (734) 995-1777

C. Peter Theut – theut@butzel.com

Direct dial (734) 302-1022

Shusheng Wang – wangs@butzel.com

Direct Dial (313) 225-5313

Jennifer Feng Smith – feng-smith@butzel.com

Direct dial (734) 312-3604

www.butzel.com