

Agreements and Liabilities

► The management of agreement risks is a part of daily life in companies. Hazard identification is important because accidents may result in losses and liability claims. The Toolkit contains information on agreement risks and means for their management.

Manage your agreement risks

Agreements and making agreements are an essential part of business activity. **An appropriate agreement clarifies the tasks, rights and responsibilities of the parties in agreement.** Care when making agreements improves cooperation and helps avoid problems.

Insufficient investment of time and expertise in making agreements can expose you to risk. You must take into consideration changes in operation, new situations, liabilities, etc. In the worst cases, unfavourable agreements are made or agreements are not made at all.

In order to secure high-quality, profitable business activities, a company must **know and manage the problems and risks related to agreements and liabilities.** Unmanaged liabilities or disputed agreements can cause major problems and financial losses.

What are agreement risks?

The field of agreement-related risks is extensive. An agreement risk can be caused by the lack of an agreement or deficiencies in an agreement. An agreement risk can be related to issues such as the way an agreement was made, a partner in the agreement, making a quotation, general terms of agreement, contractual penalties/compensation, etc.

Assessment of agreement risks

The management of agreement and liability risks starts with hazard identification. The **agreement risk chart** on the back of this card can be used for this purpose. The chart quickly provides a rough picture of the main issues related to agreements and liabilities. The chart comprises six main categories, each of which has been further divided into subcategories.

The examination of agreement risks starts by going through the categories in the chart and assessing whether or not they concern your company. This will help give a rough picture of your company's developmental needs and possible agreement problems. You should mark your significant issues on the chart as a reminder that a more detailed examination is needed.

A **Risk Management Control Measures Summary Sheet** is provided for the collection, management and documentation of the identified hazards and the suggested control measures, in the toolkit.

Agreement Risk Chart

| | |
|-----------------------|-----------------|
| Company: | Group/Assessor: |
| Object of assessment: | Date: |

Terms of agreement

- General terms of agreement
- Specific terms of agreement
- Terms of delivery
- Object of agreement
- Selling price
- Terms of payment
- Time of delivery
- Other

Different agreements

- Agreement cover
- Parties to an agreement
- Continuous agreement
- One-off agreement
- Quotations
- Written agreements
- Other

Liabilities

- Awareness of liability
- Limitation of liability
- Liability insurances
- Other

Agreements and Liabilities

Interpretation of agreements

- National or State legislation
- General terms of agreement
- Specific terms of agreement
- Tender documents
- Trading practice
- Correspondence
- Other

Agreement process

- Agreement expertise in the company
- Freedom of negotiation
- Method of agreement creation
- Checking agreements
- Use of specialist assistance (e.g. solicitor)
- Concluding an agreement
- Other

Preparing for problems

- Delivery faults
- Delays in deliveries
- Delays in payments
- Contractual penalty
- Disputes
- Changes
- Other

Example of use

Selling price – a significant risk

OK Quotation – issue in order

~~Disputes~~ – does not concern us

Terms of agreement. The parties to an agreement are advised to not rely on implied terms of commercial law but to specifically define, limit or modify clauses to make them more appropriate to the contract. The written agreement should include either specific or general terms covering such matters as delivery, delivery times, the basis and reason for the agreement, the sale price and terms of payment.

Interpretation of agreements. Although all agreements are bound by the Country or State where the agreement is to be enforced, there is a fundamental principle of freedom of negotiation. In other words the rights and responsibilities of the parties are interpreted on the agreement between them. If there is no written agreement then interpretation can be obtained from tenders, correspondence and trading practice.

Different agreements. There can be a number of different agreements, the most typical being agreements for the sale and purchase of goods or services. Also agreements can be for continuous supplies of goods and services on a long-term basis. When entering into the agreement, the issues to be taken into consideration include the reason for the agreement, the length of it and the parties to it.

Agreement process. The parties to the agreement can decide between them the form which the agreement is to take. A written agreement is the best form of agreement. It is worth investing time and money to ensure that the agreement specifies exactly what both parties want and specialist assistance should be used when appropriate.

Liabilities. Each party should be aware of the liabilities in relation to their own business activity and the maximum amount of liability that they should take on bearing in mind their own resources. It is possible in the agreement to limit liability by inserting appropriate clauses or by sharing risk through taking out liability insurance whenever possible.

Preparing for problems. The agreement should cover the possibility of something going wrong. The agreement should take into consideration the possibilities of one or other party making a mistake or there being a delay in manufacture or delivery as well as problems caused by delay in payment. The agreement should also deal with how disputes shall be settled and on any penalty for failure to comply with the agreement by either party.