

Writing What You Know: Revising to Ensure Efficiency

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Introduction

- Why?
- Learn from our mistakes.
 - Shipping issue that cost UT \$20,000.
 - PO audit resulted in high audit-failure rate.
 - Vendors overcharging UT.

Introduction

- Clear and accurate language

Language

- Drafting clear language is very important.
- A learned skill that takes effort and continuous education to master.
- *A Manual of Style for Contract Drafting 4th ed.*, by Kenneth A. Adams.

Clear language

- Most attorneys are not good at contract drafting.
- Most attorneys don't slow down to think through business issues or operational issues.
- Most organizations don't have a process in place to manage templates.

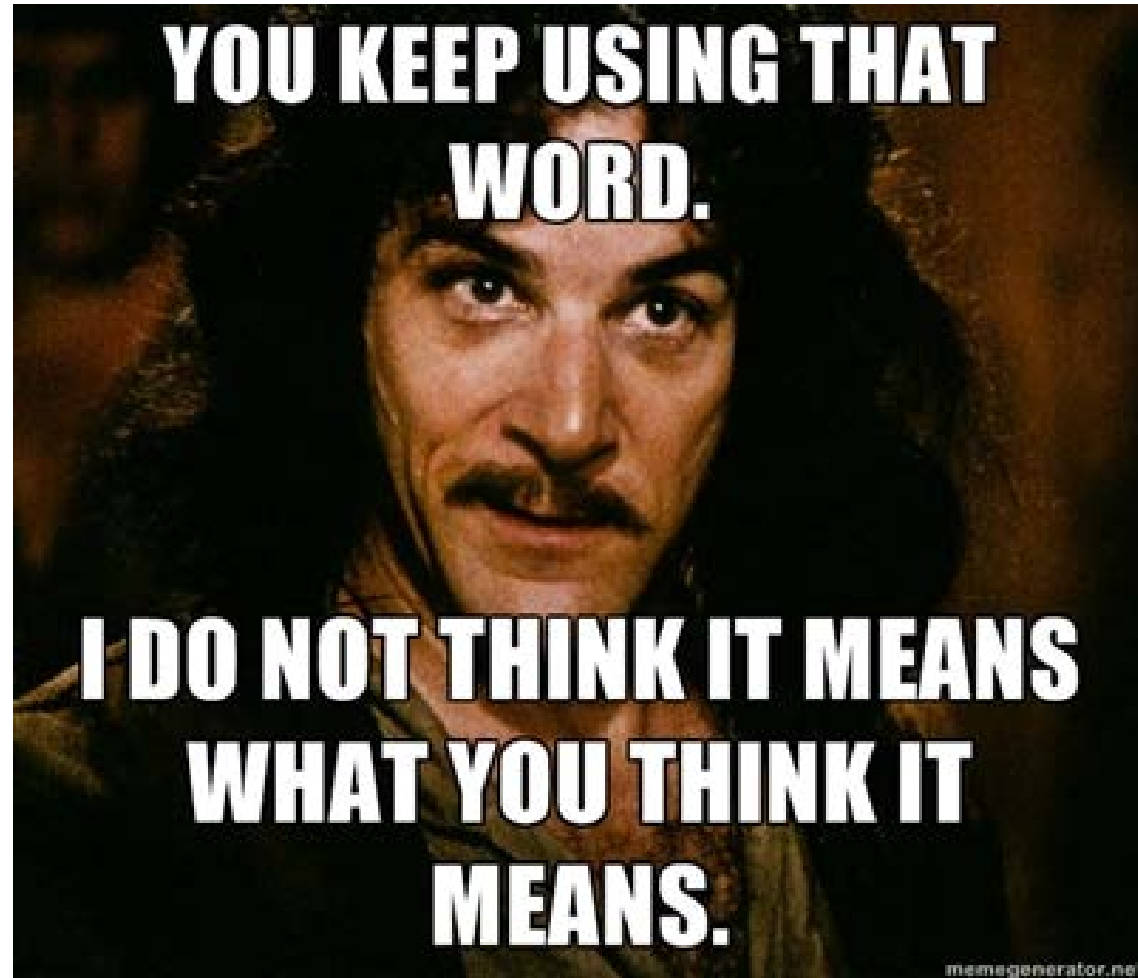
Language

- Never assume that contract language is good.
- Contracts (and processes) are like a garden (maintaining gardens is crucial).

Shipping

- FOB
- We all know what it means, right? Wrong!

Shipping



Shipping

- Drop-shipping and third-party carriers:
 - Declared value.
 - Who is insured party?
 - Who makes claims?

FOB

- Has never
 - Accounted for insurance.
 - Accounted for title transfer.

FOB

- FOB is “by far the most widely used and least understood” domestic shipping term.

-Frank Reynolds, “INCOTERMS for Americans.”

Shipping

- FOB by itself is meaningless.

Shipping

- Latest version of UCC removed all shipping terms.
- Because of extensive confusion in US.

Overview

- Most Americans do not understand shipping terms.

Shipping

- Stop using FOB.

Shipping

- Best practice:
 - Two options
 1. INCOTERMS 2010; or
 2. No acronyms/jargon
 - Best option: no acronyms or jargon.

INCOTERMS

- What?
 - International
 - Commercial
 - Terms

INCOTERMS

- Not laws.
- Internationally accepted standards.
- Not widely understood in USA, but are widely used and understood in all other countries.

INCOTERMS

- Updated every 10 years.
- Thus, INCOTERMS 2010.

INCOTERMS

- Who?
 - ICC (International Chamber of Commerce)

INCOTERMS

- When?
 - Every 10 years.

INCOTERMS

- Cover:

1. Allocation of costs.
2. Assistance with information and related costs.
3. Checking, packaging, marking goods.
4. Contract of carriage and insurance.
5. Delivery/take delivery.
6. Delivery document.
7. General obligations.
8. Licenses, security clearances.
9. Notices to buyer/seller.
10. Transfer of risk.

INCOTERMS

- Where to learn more?
 - Webinar: <https://www.wtcdenver.org/>
 - “INCOTERMS for Americans.” Frank Reynolds (available on Amazon).

Better shipping

- Avoid jargon altogether.
- Stop using “FOB.”

Better shipping

- Ask simple questions.
- Use simple contract language.

Better shipping

- Domestic shipping form.
- Simple contract language template.

A(nother) true story

- UT's Internal Audit reviewed POs.

UT's audit

- POs
 - 38% error rate

Context

- UT's accounts payable process.
- “Framework POs.” (Blanket POs).

Issues

1. Over-charges
2. Items not covered by contract
3. Vague discounts
4. Vague line-items

What can go wrong?

- Supplier:
 - Refuse to provide list prices.
 - Change the description/part-number of an item.
 - Make it difficult to categorize/classify items.

Responses

1. Embrace audit.
2. Don't rely on legal counsel to spot every issue.
3. Better documents drive better outcomes.
4. Supplier Relationship Management.
5. Supplier self-audit.
6. Compliance as a process.

Audit is your friend

- Develop a dialogue, and
- An ongoing, positive relationship.

Audit is your friend

- Ask audit to review your documentation/templates.
- Include audit early in questions you might have about bids.

Audit is your friend

- Learn what audit is looking for.
- Conduct your own audits.

Legal

- Attorneys, typically:
 - Focus only on risks.
 - Don't write contracts very well.
 - Don't understand “business decisions.”
 - Forget that the business leaders run the show.

Legal

- Attorneys, sometimes:
 - Spend insufficient time reviewing.
 - Invest almost no thought into contract terms.

Better documents

- Define list price.
- Define how to categorize/classify goods into discount categories.
- Ensure easy-to-access pricing formulas.
- Transparency for all possible costs.

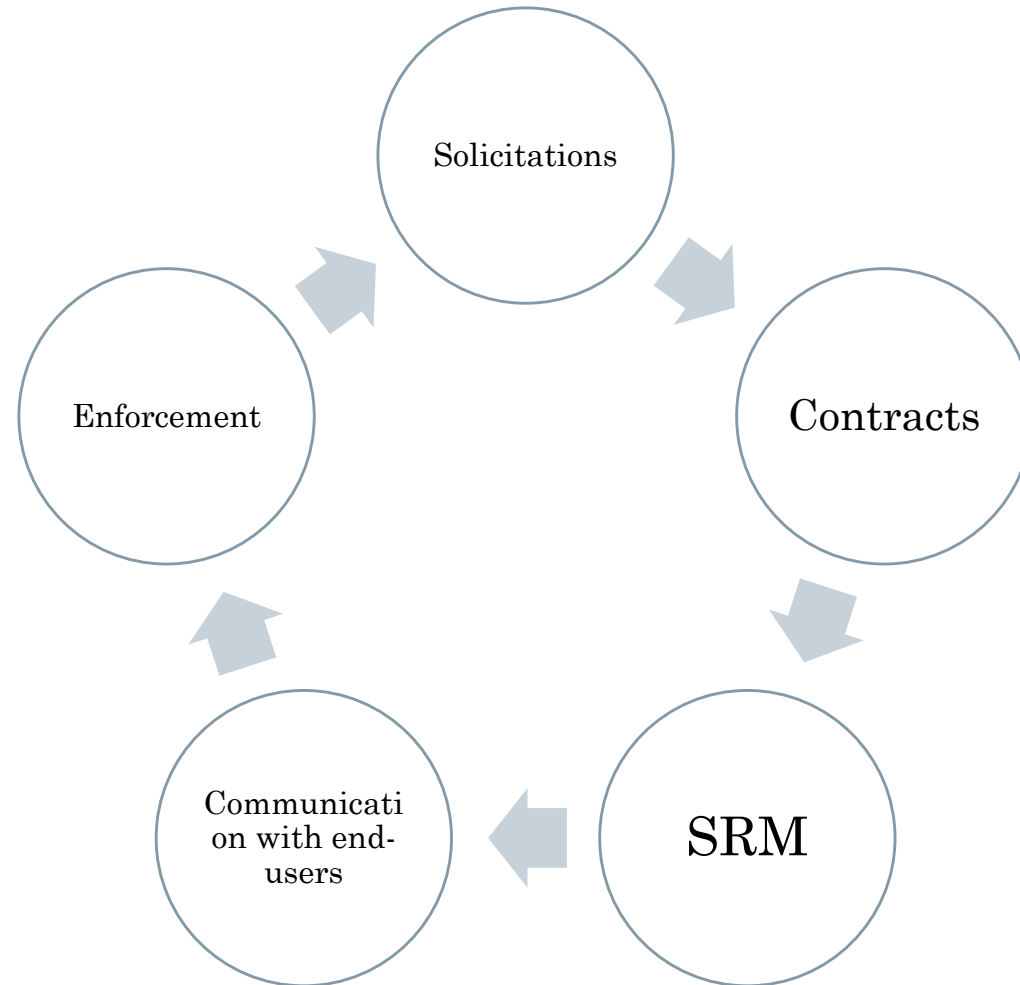
Supplier Relationship Management

- “SRM” (or “SSRM” – Strategic Supplier Relationship Management).
- Set key performance indicators (KPIs).
- Meet regularly.
- Maintain dialogue.

Supplier Self-Audit

- Some suppliers have self-audit capability.
- Ask for it.

Better



Thanks!

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- Check out this [book](#).