

The Price Battlefield

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**Under certain circumstances, profanity
provides a relief denied even to
prayer.**

-Mark Twain

an author

Price Fixed for Duration of Program



Protective Steps

- Price adjustment mechanism

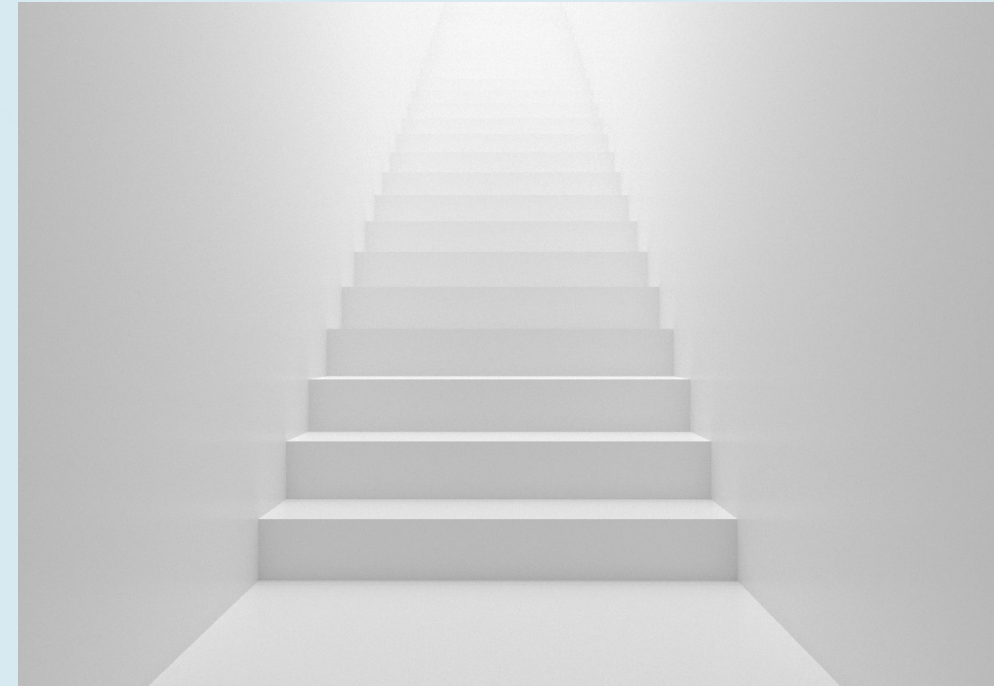


Components of Price Adjustment Mechanism

- Frequency
- Index or actual cost
- Limitations on amount
- Cost threshold triggers
- Types of costs

Other Protective Steps

- Termination clause triggers
- Timely payment is material term
- Late payment notices



Reactive Steps

- Notice of systemic material breach
- Adequate assurance demand
- Suspend performance

Scenarios

- Price dispute
- Cost down
- Debits



Recent Legal Developments

- Contract Terms
 - Blanket purchase order
 - Life of program
 - Releases
 - Subject to customer's terms and conditions



NOT SO FAST MY FRIEND



Contract Language

If this Purchase Order is identified as a “blanket” order, this order is valid and binding on seller for the lifetime of the program or until terminated pursuant to [Your Customer] Terms and Conditions.

If this order is identified as a “blanket order”, [Your Customer] shall issue a “Vendor Release and Shipping Schedule” to [You] for specific part revisions, quantities and delivery dates for Products. [Your Customer] shall have the right to cancel, adjust or reschedule the quantities of Products shown in such “Vendor Release and Shipping Schedule,” except that it may not cancel, adjust or reschedule the Products shown as “Firm Obligations” on such “Vendor Release and Shipping Schedule.”

Contract Language (*continued*)

Annual volume is an estimate based on the forecast of [Your Customer] customer and cannot be guaranteed



***MSSC v. Airboss* (Michigan Supreme Court)**

- Tier 1 vs. Tier 2 - automotive
- Price increase
- Stop shipment
- Injunction
- Reversed at highest level

What Does This Mean?

- Only contract is the release
 - Unenforceable beyond the releases actually issued and accepted
- Quantity term must be precise, specific, and in writing
- Can terminate blanket PO anytime
- Nationwide impact
- Can threaten and stop shipment



Take Aways

- Vindication of suppliers in supply chain
- Review existing blanket PO's
- Flush bad customers
- Negotiate mutually beneficial terms and conditions
- Be wary of amended blanket PO's
- Customers will now commit (via PO) to purchasing at least some quantity of parts



Prebates/Rebates

- Share equally
- Only after ROI captured
- Tie to MOQ

Questions?