Supplier Disputes: When does mediocre service justify termination?

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Agenda

1. Case studies
2. Summary of main traps for supplier disputes – what can go wrong?
3. Tips and good practice

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Key messages

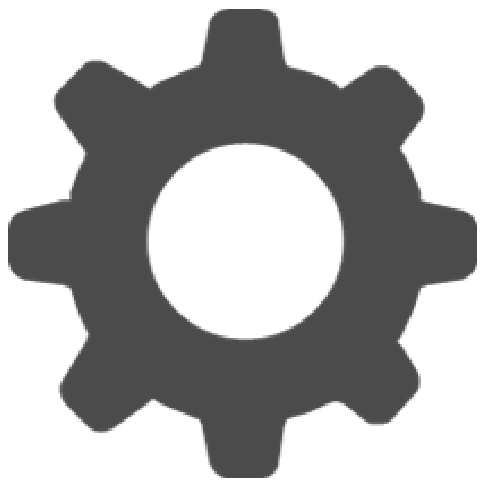
Good contract management is key

Make sure you aren't asking your Business Manager / your staff to wear too many hats.

Holding each contractual party accountable is not going to ruin relationships (including long-standing relationships)

Always notify the supplier of any performance concerns – big or small

It's never too early to get lawyers involved



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Supplier Disputes:
When does mediocre service justify termination?

Case Study 1

Maintenance Agreement

In October 2017, the College first entered into an agreement with "Clean Schools Pty Ltd" (**Clean Schools**) to provide cleaning/maintenance services. The contract was Clean Schools' standard form contract. At the time of signing, the College did not get any legal advice on the contract. The contract had a term of 4 years and an annual fee of $250k to be paid in equal monthly invoices. This annual fee would increase each year by a CPI increase. After being happy with the services provided, the College entered into a new contract with Clean Schools in December 2021 (after discovering the contract had ended 2 months earlier). This contract was almost identical to the earlier contract except the annual fee increased to $350k and there was an initial term of 3 years, with an extended term of a further 3 years. There was no specific termination clause for breach, only at the end of the initial term (with 2 months notice) or at the end of the extended term.

In January 2024, there was a changeover of staff at Clean Schools. Since March 2024, the College has been unhappy with the level of service but has not formally notified Clean Schools of this to date. The College wants to understand if (and how) it could end the contract.

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Case Study 2

Uniform Supplier Agreement

In September 2015, the School entered into a standard terms agreement for the supply of its school uniforms by Great Uniforms Pty Ltd (**Great Uniforms**) to start on 1 January 2016. The initial term of the agreement was for 4 years (ending on 31 December 2020). The agreement could be extended if the parties commenced negotiations and agreed to a new term. The termination clause in the contract stated that the Contract would end:

- by either party with 12 months written notice; or
- if one party has breached a material provision and the party alleging the breach had first complied with clause 10 (default provision).

Neither the School nor Great Uniforms negotiated a new term but continued to roll over on the current agreement. The School was unhappy with the performance of Great Uniforms. Throughout 2024, the School sent correspondence to Great Uniforms setting out the performance concerns. After deciding that these hadn't been resolved, the School took steps to terminate the contract. Great Uniforms insists they can only do so with 12 months notice.

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Traps for supplier disputes - What can go wrong

No contract management system for procurement

Asking a business manager to be an accountant, an engineer, a lawyer, a building project manager and more!

Waiting to get lawyers involved. It's never too early

Failure to read the contracts / service agreements or a lack of common understanding

Long standing arrangements and declining performance standards

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Tips and Good Practice

Take care

Be careful about what you are signing up to at the beginning

Administer

Enforce your rights under the contract, especially notification of performance concerns

Management

Don’t keep the contract in the draw. Out of sight, out of mind

External consultants

Use outside expertise (including lawyers) where necessary

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Questions?

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