

CONTRACT CONSIDERATIONS FOR A VOLATILE STEEL MARKET

by JP Vogel and Tim Fandrey

It is certainly no secret that tariffs and general uncertainty in the steel market has caused instability in steel pricing. As a steel distributor, it is crucial to properly protect your business at the transactional level. The existence of an appropriately selected written contract can act as a shield and sword in the event of a dispute. Because there is no one size fits all contract and no two transactions are identical, certain types of contracts are better suited for this market than others.

The Uniform Commercial Code – the law governing the purchase and sale of steel pipe, among other goods – allows parties to enter into what are commonly referred to as requirements contracts and output contracts. A requirements contract is a contract in which a supplier agrees to furnish all of a good – in this case steel pipe – that a purchaser may require. An output contract is a contract in which the purchaser agrees to purchase all of the goods that a supplier may produce or obtain.

Requirements contracts and output contracts certainly have their advantages. They provide certainty that steel pipe will be furnished and purchased. However, in a volatile market with large swings in prices, it is easy to see how what was once a good deal could quickly go very wrong.

The Uniform Commercial Code offers some limited protection. In many jurisdictions, the parties owe a duty of good faith and fair dealing to each other not to take unfair advantage of each other. In the context of output and requirements contracts, typically a party purchasing through a requirements contract may not drastically change the quantity of materials

that it requires. And in the case of an output contract, the party supplying materials may not drastically change the quantity supplied.

While the duty of good faith and fair dealing can help limit losses by controlling the quantity purchased or sold, there are still losses to be had on those quantities. There are certain provisions that can be included in an agreement, however, to further mitigate such losses. Keeping the length or term of a requirements or output contract short allows the parties to reassess. Further, fail safes can be inserted into the parties' agreement providing that the parties need not perform if the market price of materials goes above or below a certain amount.

Additional controls that parties may use to protect themselves include:

- Meet-or-release clauses - requires the seller to meet a lower price if the purchaser can find one.
- Most favored customer clauses - require the seller to sell to the purchaser on the same terms that it offers to other customers.
- Minimum purchase obligations - require the buyer to purchase a minimum amount of goods.
- Take or pay clauses - require the buyer a certain quantity of goods or pay a penalty.

Requirements and output contracts certainly have some allure in that it provides certainty that materials will be available or will be purchased, and it reduces transaction costs in that terms do not need to be re-negotiated for every transaction. However, in the context of a volatile market, it may be advisable to avoid them all together and instead use stand-alone agreements.

Market conditions aside, the majority of transactions run smoothly with no major issues, but the small percentage of transactions that go wrong could

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The attorneys of Gray Reed wish NASPD a happy 45th birthday!

*Thanks for your invaluable service to
the industry and here's to many more
years of continued success.*



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Friday's program will continue that evening at the Marine Corps Air station at Miramar, home of Top Gun. It has been approximately 20 years since we held an event at Miramar. Be sure to consult your convention packet for details regarding our visit with instructions for bringing and submitting personal identification and other important access instructions.

This year we will be inducting the next recipient of the NASPD Hall of Fame award to Mr. Barry Zekelman. Mr. Zekelman is the Executive Chairman and CEO of Zekelman Industries. Barry started out working at Atlas Tube in the early 1980's and assumed ownership, along with his brothers in 1986 after the sudden passing of their father. In 2006, Atlas Tube became part of the company known as Zekelman Industries with Barry Zekelman as COO. Today Barry Zekelman leads the largest independent steel pipe and tube manufacturer in North America with sales exceeding 2.7 billion. It is sure to be a great evening and overall program.

Lastly, I have been asked to give an update on my continuing project conducting video interviews of our "Legends in the Steel Pipe Business" series. At our last conference held in Scottsdale, Arizona, I had the pleasure of interviewing a friend who has built a 55 year career selling pipe for his company, C.W. Sales, and the past 30 years with Kelly Pipe, Mr. Chuck Wooley. It was a very enlightening and entertaining interview. Chuck told me several stories during our almost 1 hour visit with one story that really had me shaking my head. Chuck has sold a lot of pipe overseas for many large projects and this story had him in China with a handful of customers. While most pipe suppliers take their clients out to dinner or lunch for entertainment, Chuck decided that day they would go to a firing range to shoot off bazookas, hand held missiles and the like. It turned out to big hit with his customers.

You can hear the complete story in his interview, along with all the other interviews I have conducted early next year. We will present snippets of some of the interview in San Diego. To date I have interviewed 17 Legends of the Steel Pipe Business with more interviews being conducted in San Diego, including past president, Ms. Dianne Burger and hopefully Mr. Jerry Rubenstein. As always, I am looking for recommendations about other legends to interview, so please send me your ideas.

We hope to have a great turn out for our 45th Anniversary Annual Convention, see everyone in San Diego. ●

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 potentially spell big financial problems. Contracts are intended to protect against these dark occurrences and provide the framework for the resolution of eventual disputes. The easiest but worst thing a business owner can do is skip the step of taking the time to ensure it has an appropriate contract in place for every transaction big or small. Bottom line, invest some time in working with your counsel to prepare a series of contracts that custom fit your business to save a fortune in the long run.

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