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China Manufacturing Agreements. Make Liquidated Damages Your Friend.

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One of the hallmarks of a good China OEM Contract is that it provides for very specific penalties if the Chinese manufacturer fails to abide by its crucial terms. These penalties will typically be in the form of a liquidated provision, which Wikipedia defines as follows:

Liquidated damages (also referred to as liquidated and ascertained damages) are damages whose amount the parties designate during the formation of a contract for the injured party to collect as compensation upon a specific breach (e.g., late performance).

Chinese courts tend to view contractual liquidated damages provisions very favorable and so long as they are not unreasonable, they will usually be enforced.

Liquidated damages provisions make sense in many different types of contracts with Chinese companies and they make particular sense in the context of a product supplier relationship.

We most often put in liquidated damages provisions to "encourage" the Chinese supplier to comply with the following:

1. Shipping Dates. If the product our client is having made in China is at all time sensitive, it is our practice to specify the delivery date and a penalty to the Chinese manufacturer for not meeting that date. We sometimes set the penalty at a flat dollar amount and at other times, we make it a percentage of the value of the order. We sometimes set out just one penalty and at other times, we have the penalty escalate as the lateness increases. The key is to make sure the provision is very clear on the date (or dates) that trigger the penalty.

2. Quality Specifications. We also often put in a liquidated damages provision if the quality of the product falls short on what was promised by the contract. These provisions make particularly good sense if what you receive can still be sold, but for less money. For example, if you are buying a food product that is industry-rated from A to D and you pay for an A product and half of what you get is B, you will be much better off with a contract that clearly states you get \$1 for each level below A the product falls than having to prove up your damages by showing how you could have made X dollars more with the A product than with the B you were provided.

We generally strive to make the penalties reasonable not only because the courts are more likely to enforce such penalties, but because the Chinese manufacturer is more likely to take them seriously as well. The thing to remember about penalties is that the best ones need never be enforced because they were so effective in molding the manufacturer to comply.

For more on what should go into an OEM Agreement, check out the following:

- [China OEM Agreements. Ten Things To Consider](#)
- [China OEM Agreements. Yet Another Reason To Have One](#)
- [China Supply Agreements. Why The "Perfect" OEM Agreement Should Cost Less](#)
- [OEM Agreements With Your China Supplier. Not Just For The Big Boys](#)
- [China OEM Agreements. Why Ours Are In Chinese. Flat Out](#)

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