

Key Disputes in EPC Contract Negotiations

In the modern practice of implementing large infrastructure and industrial projects, EPC (Engineering, Procurement, and Construction) contracts hold a special place. These contracts combine complex technical, legal, and financial aspects that require detailed examination and thorough elaboration. During EPC contract negotiations, disputes often arise over several key issues, including:

1. Scope of Work

A clear and comprehensive definition of the scope of work is one of the most critical aspects of an EPC contract. Disputes often arise from ambiguous formulations that can lead to disagreements about what is included in the contract and what is considered additional work. Developing a detailed technical specification and appendices with technical specifications becomes a crucial condition for preventing future conflicts.

2. Pricing and Payment Terms

Determining the cost of works and payment terms is also a frequent cause of disputes. Pricing options in EPC contracts can range from fixed prices to reimbursement of actual expenses plus a specified markup. Each of these options has its advantages and risks for the parties involved. Negotiations usually pay special attention to the conditions for price changes, indexing mechanisms, and procedures for agreeing on additional work and corresponding changes in the contract's price.

3. Risk Allocation

EPC contracts imply a clear distribution of risks between the client and the contractor. Traditionally, issues of liability for non-compliance with specifications, delays in work, and the increase in materials or equipment costs are contentious. It's essential that the contract contains an acceptable distribution of these risks for both parties, as well as mechanisms for their minimization and management.

4. Changes to the Project

Changes in the project are the norm for large construction projects. However, questions related to the process of making these changes, their approval, and payment can become the source of significant disputes. The contract must contain clear procedures for managing changes, including notifications, agreements, and adjustments to the parties' financial and timing obligations.

5. Delays and Extension of Terms

One of the most controversial aspects of EPC contracts pertains to delays and terms for extending the completion of works. During negotiations, parties seek to regulate how to handle issues related to inevitable delays and who will bear the responsibility for potential financial losses. Understanding and clearly stipulated terms of extension and compensation for delays are key to minimizing disputes.

6. Quality Assurance and Warranty Obligations

Performance and quality assurances are critically important and often discussed within the context of EPC contracts. Clients demand assurances when it comes to project completion in compliance with stated standards and within established terms. Mutual agreement on warranty periods for completed works and installed equipment leaves less room for disputes in the future.

7. Force Majeure

Provisions on force majeure circumstances are also subject to thorough negotiations. The definition of force majeure, the terms under which a party can refer to force majeure, and the consequences of such reference should be clearly stipulated in the EPC contract. This helps both parties understand their obligations and rights in case of unforeseen circumstances.

A separate issue concerns the inclusion or non-inclusion of sanctions within the perimeter of force majeure. The acuteness of this question has lost its relevance at the present due to the termination of commercial relations with unfriendly countries in the realm of EPC contracts. Nevertheless, this aspect requires significant attention when contracting with companies from Global South countries due to secondary sanction regimes.

8. Termination Rights

Rights and procedures for contract termination should be clearly defined from the outset of negotiations. This includes terms under which one party has the right to prematurely terminate an EPC contract, what the financial and operational consequences of termination will be, and which steps need to be taken to ensure such termination doesn't provoke disputes.

9. Dispute Resolution

Dispute resolution mechanisms often become a stumbling block in negotiations. From the choice of jurisdiction and arbitration to mediation procedures and litigation, parties must agree in advance on ways to resolve potential conflicts. Clear agreements help to avoid lengthy and costly legal proceedings.

Conclusion

Successful negotiations for EPC contracts require careful consideration and agreement on key contentious issues such as project delays, quality guarantees, force majeure, termination rights, and dispute resolution mechanisms. A comprehensive approach to these aspects and effective communication between parties are the key to successful cooperation and risk minimization during project implementation.

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