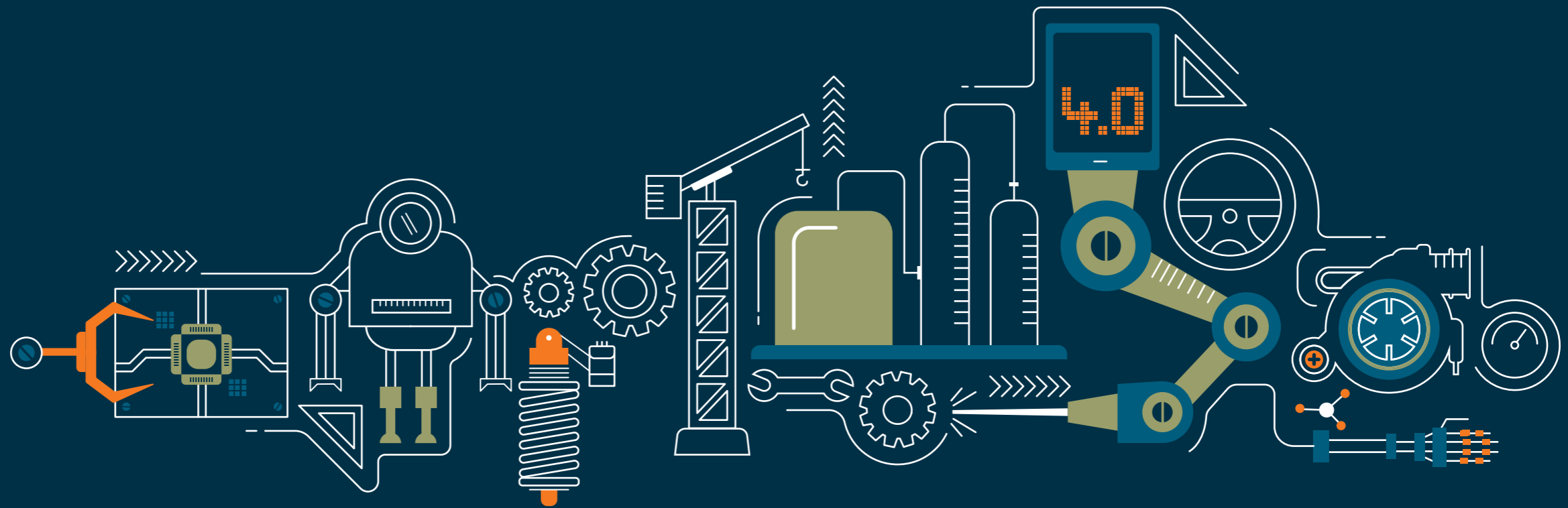
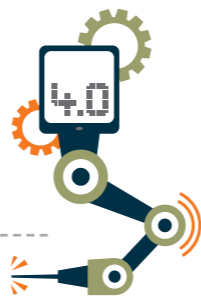


What We Can Do For You

At BTG Legal, we help you ensure that your priorities are focused so you can approach the negotiation table with:

- Clear and precise objectives
- An appreciation and understanding of the other party's perspectives
- A strategy to get you what you want without unduly antagonizing the other party – a good start to any contractual relationship!





1. SCOPE CREEP

The expansion of a project outside of the planned specifications, deadlines and deliverables is commonly known as scope creep. Quite often, this leads to additional costs or delays in deliverables or in some cases, the deliverables may also differ from the originally agreed ones.

Tip: Explicitly list out the scope requirements and specifications. Be clear about inclusions and exclusions. The agreement should provide an easy to administer framework for change management. This should be followed diligently by the contract management team.

2. DISPUTE CLAUSE

Although commercial contracts usually contain dispute resolution clauses, these provisions tend to be ignored until a problem actually arises. A vaguely-drafted clause can be very costly - if, for instance, you have failed to mention the arbitration body and have to settle for ad-hoc arbitration in India.

Tip: Dispute resolution should preferably be through arbitration and where possible conducted in a neutral body/jurisdiction.



3. DAMAGES AND LIABILITY LIMITATIONS

There is no law that explicitly defines what constitutes indirect/consequential losses. Hence, certain damages such as loss of profit or loss of business, even though indirect, may not be automatically excluded. However, parties can contractually limit/exclude most liabilities in a contract.

Tip: Draft a detailed limitation of liability clause that specifically lists out the losses and damages which are to be excluded. Always insist on an overall limitation of liability clause.

4. EXCLUSION OF RIGHT TO CLAIM

While parties to a contract can limit and exclude their liabilities, they cannot agree to waive their rights to seek legal recourse - A no-recourse clause e.g. a restriction against cross claims. Such clauses may be unenforceable as restraining the right to legal recourse.

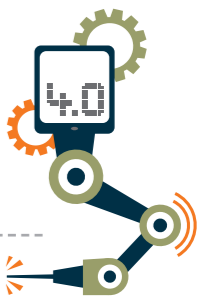
Tip: Ensure that the clause limiting the claims is not worded as a no-recourse clause.



5. TAG REGIME

The taxes applicable to a contract for sale of goods vary from the taxes applicable to a contract of services and a contract of works. Further, the Indian Government has introduced a new Goods and Services Tax (GST) regime, which is expected to come into effect from April 2017, affecting the current tax rates.

Tip: To avoid the tax authorities from taking a view that the contract is not only for sale of equipment but also for providing services or is a works contract, it is advisable to take tax advice prior to executing any major contracts in India.



6. PAYMENT SECURITY

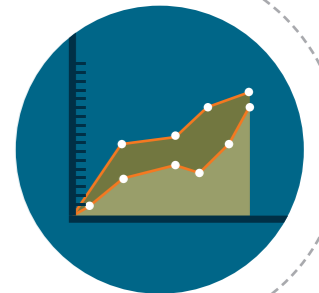
Dispute resolution can be a complex and protracted process in India. Often bank guarantees are given as performance security. It is very difficult to get an injunction against invocation of bank guarantees.

Tip: Companies supplying to India should insist on irrevocable LCs and bank guarantees as security. Conversely, a supplier needs to be cautious while providing bank guarantees. Set out unambiguous payment terms, and the process for disputing invoices. In addition, define conditions that trigger invocation of a bank guarantee.

7. MEASURING PERFORMANCE

A contract is a living document and needs to be continuously monitored to ensure that you are getting what you contracted for. This may be as simple as confirming delivery of goods that conform to specifications. It is easy to become complacent and lose track of contract performance until a dispute scenario becomes inevitable.

Tip: Explicitly specify the performance parameters, evaluation benchmarks and service levels. Also specify monitoring frequency and procedures for deliverables, review and acceptance.



8. WARRANTIES

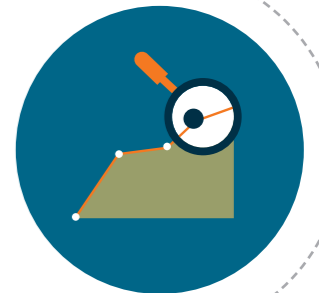
India has a well developed regime of warranties with some unique features. Implied warranties (unless they are conditions to the contract) can be specifically and expressly excluded or limited in B2B contracts. There are no statutory warranty periods that are prescribed under law. Further, there is no concept of a 'guarantee' as is understood in certain civil law jurisdictions.

Tip: Depending on whether you are a supplier or a customer, the warranties (and its exclusions) have to be carefully drafted to provide adequate protection.

9. SPECIFIC PERFORMANCE

In case of default in contractual performance, the party claiming breach may also have the right to sue for specific performance of the contract. However, this option is available only where monetary damages are not adequate and the contract has not been terminated.

Tip: Take legal advice prior to issuing any termination correspondence in case of disputes. One cannot ask for specific relief under the contract after termination of the contract.



10. PROTECTING YOUR IP

Most commercial contracts involve transfer or use of technology from one party to another. It is therefore crucial to ensure that the scope and extent of its authorized use are included in the contract. Additionally, for IP that may be created during the performance of the contract, the contract will need to clarify the IP ownership.

Tip: The contracts should have sophisticated and detailed IP clauses that set out all necessary rights and obligations (including provisions for jointly developed IP) to avoid any disputes in the future.