



**Force Majeure:**

Take calculated risks in the event of coronavirus

**ZYCUS**

## Force Majeure: An Introduction

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With coronavirus pandemic spreading at its current rate across the world, contractual disputes with regards to organization's ability to deliver are bound to increase. The Force Majeure contractual clause will play an important role in such situations. Force Majeure meaning "superior force" is a legal term that frees both the parties of the contract from liability or obligation when an extraordinary event or circumstance beyond the control of the parties occurs. Sometimes also referred to as the "act of God", this termination clause is meant to be exercised in a variety of situations covering natural disasters such as hurricanes, earthquakes, tsunamis, etc. to events such as war, crime, strikes, riots, etc. While the world battles with the coronavirus crisis, many organizations have declared Force Majeure to safeguard themselves from impending losses.



## Does coronavirus apply as Force Majeure?

While Force Majeure is intended to cover situations that are beyond the reasonable control of the parties, a pandemic such as Coronavirus is not naturally included in covered disasters. Since the clause is worded worldwide by lawyers in different capacities and dealing with different situations, some contracts may cover pandemics such as this due to their broad language and inclusive writing, on the other hand, if contract authors have been specific and do not include pandemic or similar situations, negotiations may not favour them.

Having originated in China, the Chinese government has already identified and tackled the issue by offering “Force Majeure certificates” to those dealing with foreign trading partners to safeguard companies against liabilities for non-performance.

In other countries, the common law practice during such an event is the drafting of the clause in a contract. The clause must also definitively “prevent” the parties from performing their end of the deal and not just make it more difficult or expensive. While coronavirus cases in countries like China, Italy, Iran, India and many more have brought the countries to a complete stop, many other have found a way to survive without a complete lock down and have businesses running in controlled manners. In situations like these, it is best to consult your contract and read through the specificities of the clause and then conclude whether a claim can be raised.



# What procurement can do to minimize the risk of Force Majeure:

## **Identify and document the exact cause of the non-fulfilment:**

Suppliers and vendors based out of coronavirus affected countries with provisions in the contracts will declare Force Majeure and are bound to promise non-performance. If you receive a Force Majeure declaration from your suppliers, make sure to collect all details about how exactly the coronavirus pandemic has affected their business, what are the reasons related to the pandemic that prevents the supplier from fulfilling the contract. Document these details and run them through all possible scenarios before responding or taking any formal position in the matter.

Be sure that the declaration is not vague and does not lack specifications. This should help you take a decision on whether the claims are genuine or otherwise.

## **Identify if your inability to perform the contracted work can constitute as Force Majeure:**

All contracts are governed by different laws and terms. Some of these do not necessarily offer a Force Majeure defence for pandemics such as the Coronavirus. Ensure that your situation goes through careful legal inspection before any formal declaration is sent out to the other party.

The availability, scope, and requirements of a Force Majeure defence will depend on the exact nature of the supply/performance problems, the terms of your agreed contract, and the governing law of the contract. In case you have been unable to perform your end of the contract due to a Force Majeure issued by your supplier, it is advisable to assess the risk allocation under each of your contracts separately before issuing a notice to the recipient.

In case your governing law requires you to issue Force Majeure notices within specified time, which is usually the case in most countries, take note of all the notice periods and prioritize accordingly. In case you need to issue a Force Majeure notice before you've had the time to analyse and document the situation, it is best to use broad language and write in an inclusive manner.



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### **Identify and exploit alternative supply options:**

Many contracts and governing laws exclude a Force Majeure defence if it is possible to overcome the situation and fulfil contractual obligations. Peruse your contracts and look into your supplier's declaration and situation in detail to make sure this is not the case.

Even if you receive a Force Majeure declaration that you believe to be invalid, there will be high chances of non-deliverability. To overcome this, it becomes necessary that you mitigate losses by procuring alternative options. Reach out to tier 2 and tier 3 suppliers and engage with them for an emergency supply chain.

### **Take stock of existing supplies and allocate with efficiency:**

If your existing stock and capacity allows you to fulfil limited amount of output, it is best to review your contracts and governing laws and ascertain if there are any regulations and guidance regarding allocation and prioritization in this situation. If there are none, you may review your company's internal regulations to be followed in the times of disasters and prioritize accordingly.

Similarly, in case of a Force Majeure declaration by a supplier, ascertain supplier's allocation of their remaining stock and available product quantities. In case their allocation deems inappropriate, consider an interim relief request- its possibility and your chances of availing the same.



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### Resolution in case of disputes:

The best way to overcome disputes during a pandemic would be amicable settlement, considering all parties to have faced similar, if not the same dire situation. With lockdowns, curfews and loss of lives, all companies across the world are facing the same issues. Amicably resolving disputes is faster, cheaper, and helps maintain business relations - a major win for both parties. Amicable settlement can be achieved through structured negotiations among the parties or mediation by a neutral third party. Third party mediation helps ascertain who will be responsible for what amount of losses in the situation.

If amicable settlement is out of question, the dispute resolution clause in the contract should help govern the next steps in such a situation. In any case, if a dispute arises, it is important to that all necessary evidence is collected and documented, paper trails are maintained and collated of your and the vendors conduct and communication during this situation, check insurance policy clauses to affirm coronavirus related supply risks are covered. You may even want to conduct an early case assessment (ECA) that should give you a fair idea of where you stand in the dispute and your chances of succeeding in case the dispute is dragged to a court.



### Procurement's ability to fight the crisis:

The procurement department happens to be the only department that can help save costs, manage spend, strengthen supply chain and manage stakeholders across business processes at a time like this. From sourcing, supplier management, contract management, procurement to invoicing and savings management, the procurement organization oversees a host of activities that control business continuity and finances - 2 critical areas in times of disaster management.

With end-to-end source-to-pay software solutions like Zycus powered by Merlin A.I. led BOTs, procurement teams can now control and collaborate from anywhere in the world. Zycus' SaaS based software solution is meant to scale as per your business needs and its mobile application facilitates work from anywhere.

Zycus' foundation can be traced back its first patent more than 20 years ago in AI powered spend categorization. Zycus has come a long way since then with Zycus Merlin A.I. Suite. Zycus Merlin A.I. Suite is one-of-a-kind platform for procurement to leverage cutting edge A.I. technology, by using BOTs to automate routine, mundane, or data-intensive tasks.

### Some of our expert BOTs from our Merlin A.I. Suite:

1

#### Invoice Extractor BOT:

Self-learning, template agnostic invoice extraction solution

- ❖ Automate invoice intake
- ❖ Extract key business fields (including header and line-level details)
- ❖ Create auto-draft in the eInvoice system

2

#### AP Inbox Manager BOT:

Digital enabler for inbound email automation

- ❖ Intelligently sort and classify the emails from AP mailbox
- ❖ Auto-fetch status of the invoices
- ❖ Auto-generate responses to supplier emails on payment and invoice queries



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3

**Contract Extractor BOT:**

Intelligent solution to identify, extract and analyze contractual texts

- ❖ Automate extraction of metadata from 3rd party contract documents
- ❖ Extract customer fields from contract document

4

**Contract De-Risker BOT:**

Effective and efficient mitigator of contract risks

- ❖ Auto-identify clauses in the contract from a repository
- ❖ Benchmark it against organization's best practices
- ❖ Highlight the review score at a contract level

5

**The Force Majeure De-Risker BOT:**

Effective, Efficient & Intelligent Identifier and Mitigator of Force Majeure Risk

- ❖ Mitigating risk
- ❖ Foresee more events or effects and understand them better
- ❖ Intelligence to access more resources to deal with mission-crippling events
- ❖ Identify more alternatives to insurmountable obstacles

The logo for Merlin A.I. Suite is centered on the right side of the page. It features the word "MERLIN" in a large, bold, white sans-serif font, with "A.I. SUITE" in a smaller, white sans-serif font directly below it. The text is surrounded by several curved, overlapping lines in shades of blue, red, and yellow, creating a dynamic, circular effect. The background of the right side of the page is a dark blue gradient with a faint, semi-transparent image of a woman wearing a white face mask and looking towards the camera.

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With the coronavirus pandemic wreaking havoc on global economies, the above mentioned BOT technology takes precedence due to its relevance. Some of the benefits of the BOT are listed here below:

**Zycus' Force Majeure De-Risker BOT tells you quickly if:**

- ❖ Force Majeure clause is present or not
- ❖ Force Majeure events are covered in your agreement
- ❖ Whether Covid-19 is covered explicitly or generically within your agreement, or not covered at all
- ❖ The BOT is also capable of identifying the exact event under which Covid-19 is addressed, if covered

Thus, the BOT helps shuffle through innumerable contracts and helps you effectively identify the contracts that need your attention

- 1** The BOT also helps identify contracts where Force Majeure is not present and allows you to terminate the agreement if the impact of missed obligations is hugely significant for you
- 2** The BOT helps you identify the occurrence period and the expected period under Force Majeure before which you can take a decisive action in the contract such as termination.
- 3** It also helps you identify if termination is applicable and the notice period required to be stated before the same is declared.

As the situation worsens and disputes arise, it's time for you to stay ahead of the curve and invest in technologies that help you overcome some of these foreseeable challenges.

**For more information, please reach out to us at [product.marketing@zycus.com](mailto:product.marketing@zycus.com) or fill up this [demo form](#) and we'll call you right back!**



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# ZYCUS

Zycus is a leading global provider of A.I. powered Source-to-Pay suite of procurement performance solutions. Our comprehensive product portfolio includes applications for both the strategic and the operational aspects of procurement- eProcurement, eInvoicing, Spend Analysis, eSourcing, Contract Management, Supplier Management, Financial Savings Management, Project Management, Request Management, and Merlin A.I. Suite.

The Merlin A.I. Suite is a unique platform consisting of pre-packaged intelligent BOTs to automate run-of-the-mill procurement and A.P. tasks with smart, predictive suggestions. It enables teams to improve productivity through optimal efforts, enhance accuracy with minimal human intervention, and focus on strategic activities. Driven by Artificial Intelligence, Zycus' Merlin A.I. BOTs introduce cutting edge technologies in procurement operations, making it truly autonomous and cognitive.



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