Non-Solicitation Clause: Employee Protection and Anti-Poaching Bans in Supply Contracts

The non-solicitation clause is a contractual provision that prohibits the contracting parties from poaching the other party's employees, customers or suppliers. In B2B procurement, it primarily concerns the relationship between the contracting party and the supplier where there is close collaboration, training or staff deployment at the respective site. It protects investments in know-how and personnel and is therefore a practically relevant element of supplier contract management.

As of October 2026 · amplifa-marketplace.ai/en/glossary/non-solicitation-klausel

Key facts at a glance

01 The non-solicitation clause typically prohibits the active poaching of the contracting party's employees for the duration of the collaboration and often for six to twelve months thereafter.

02 In a procurement context, it protects suppliers from the loss of skilled workers qualified by the customer through joint projects – and vice versa.

03 Permissible exceptions such as job advertisements or unsolicited applications by employees should be expressly regulated in the contract.

04 The agreed contractual penalty or liquidated damages is in practice often a multiple of the gross annual salary, but must remain subject to judicial review.

05 The clause must be distinguished from the patent or successor clause and must not be structured as a disguised antitrust ban or unreasonable restraint of trade.

06 Buyers should address the clause early and uniformly across all framework agreements as part of supplier lifecycle management (SLM) and contract negotiation.

Definition: non-solicitation clause

The non-solicitation clause (anti-poaching ban) is an ancillary obligation in contracts that prohibits the contracting parties from deliberately poaching the other party's employees, customers or suppliers for their own purposes. It typically complements confidentiality and non-compete provisions and, in procurement, is frequently contained in framework agreements, NDA templates and development agreements.

Distinction from related clauses

The non-solicitation clause must be clearly distinguished from the non-compete clause: the non-compete prohibits competitive activity altogether, whereas the anti-poaching ban only concerns access to personnel or business relationships. The confidentiality agreement likewise protects a different asset – confidential information rather than personnel. In practice, all three clauses are often bundled together in a single contract, but they serve different purposes.

- Non-solicitation: protection of personnel and business relationships
- Non-compete: protection against competitive activity
- NDA: protection of confidential information

Directions of protection in the procurement context

From a buyer's perspective, there are two directions: on the one hand, the supplier protects its qualified professionals, whom the customer has come to know through training, engineering support or joint qualification projects such as a supplier development plan. On the other hand, the customer protects its buyers, developers and quality experts from poaching by the supplier. Both directions should be regulated symmetrically in the contract in order to increase acceptance during contract negotiations.

Use cases and typical contractual contexts

Non-solicitation clauses appear primarily where close personnel collaboration exists: in development projects, shop floor relocations, on-site deployments of service technicians and long-term supply relationships with high know-how transfer. It is precisely in these constellations that a considerable poaching risk arises, because both sides get to know the other side's personnel directly.

Development partnerships and ramp-up

In series development, engineers on both sides often work together for months. If the customer gets to know the supplier's skilled workers and approaches them deliberately, this can hit the supplier hard – especially with scarce profiles such as firmware developers or toolmakers. Conversely, suppliers gain insight into the competence of buyers and sourcing specialists. The anti-poaching ban reduces this risk on both sides and stabilises the staffing of critical projects.

Framework agreements and supply chains

In framework supply agreements, contract manufacturing agreements and group general terms and

conditions, the clause is often standardised. It becomes particularly relevant when changing suppliers or in ramp-down management: as a buyer planning a relocation of production volumes, you should check whether the anti-poaching ban prevents the transfer of key personnel from the departing supplier to a new partner – for example, when a holder of qualification know-how is to move to alternative sourcing.

Design: methods and approach in contract negotiation

The draft contract should formulate precisely whom the clause protects, which activities are prohibited, how long the obligation applies and which sanctions threaten in the event of breach. Vague wording, as experience shows, leads to disputes and is difficult to enforce in court.

Defining subject matter and scope

First, the protected group of persons must be defined. Typically these are employees with whom the other party has actually had contact in the last twelve months – not the entire workforce. Only active poaching activities should be covered, such as personal approaches, headhunter mandates or targeted recruitment; general job advertisements, by contrast, are irrelevant and unproblematic. Protection of customer and supplier relationships may also be included where professionally appropriate.

Duration, exceptions and sanctions

In practice, a term of six to twelve months after the end of the contract is common. Exceptions must be expressly regulated: unsolicited applications by employees, recruitment processes already underway and general job advertisements. Sanctions may take the form of contractual penalties, liquidated damages or a claim for injunctive relief. Important: these legal and tax aspects should always be reviewed on a case-by-case basis by the legal department or external counsel, as permissibility may vary depending on the legal system and the individual case.

Ensuring symmetry and acceptance

One-sided clauses that only bind the supplier cause friction in contract negotiations and prolong negotiation times. A mutual clause with identical terms and exceptions is often accepted more quickly and is legally more robust. For buyers, a uniform clause library across all contracts is worthwhile in order to avoid dispersion in supplier lifecycle management (SLM).

Key KPIs and control metrics for procurement management

Although the non-solicitation clause itself is difficult to measure, surrounding indicators can be derived that monitor the poaching risk and contract implementation.

KPIs for effectiveness

In addition to formal KPIs such as the coverage rate of framework agreements with anti-poaching clauses, operational indicators are useful: staff turnover at interfaces, the number of recruitments from

the supplier pool, and reported breaches or breach notifications from supplier evaluations. Ideally, this data feeds into supplier risk management and can be visualised in a risk heatmap.

- Contract coverage: proportion of supply contracts with an effective non-solicitation clause
- Turnover rate at critical supplier interfaces
- Number of documented breaches or warnings per year

Linking to supplier evaluation

Compliance with the clause can be incorporated as a soft factor into the supplier evaluation, for example alongside performance evidence, response times for a Supplier Corrective Action Request (SCAR) or delivery reliability. Breaches are therefore not only subject to legal sanction but also affect volume allocation and inclusion on the supplier shortlist of future tenders.

Risks and controls: pitfalls in practice

The clause only works if it is precisely worded, legally robust and operationally monitored. In practice, many anti-poaching bans fail due to overly broad drafting, a missing sanction chain or inadequate documentation of contacts.

Legal and antitrust limits

Clauses that are too broadly drafted – for example, a ban on ever hiring an employee of the contracting partner, regardless of contact or initiative – may be invalid or regarded as an unreasonable restriction of professional freedom. Antitrust issues may also arise if non-solicitation agreements between competitors are understood as a mechanism to avoid competition for labour. The legal assessment must be reviewed on a case-by-case basis by experts.

Operational controls

Buyers should document in the onboarding process which supplier employees they know, and update this list at the end of the contract. Defined escalation paths are sensible in the event of NDA breaches or salary offers to key personnel. Breaches can be escalated within ramp-down management, for example through volume reduction, contractual penalties or exclusion from future tenders. Communication with the supplier should in this case be conducted objectively through contract negotiation, not through emotional escalation.

Current developments: skills shortage and supply chain dynamics

The shortage of skilled workers in the DACH region's industry makes qualified personnel a strategic asset. This increases the importance of non-solicitation clauses – and at the same time their susceptibility to conflict.

Scarce profiles heighten the risk

Professional groups such as electronics developers, CNC specialists, toolmakers and IT experts are in short supply on the labour market. Suppliers fear that large OEMs with better terms will poach staff deliberately; buyers, conversely, fear the loss of supplier expertise. As a result, suppliers often demand stronger anti-poaching bans in contract negotiations, while customers focus on flexibility.

Digital contract management

More and more procurement organisations manage contract clauses centrally in contract management systems and automatically check which supply contracts contain non-solicitation clauses, price escalation clauses, product liability clauses and renewal provisions. This transparency supports not only compliance but also cost driver analysis and procurement cost centre reporting, as personnel interactions between suppliers and customers become visible as a cost factor.

Typical metrics

Metric	Typical value
Non-solicitation contract coverage	> 95% *Proportion of framework agreements with an effective anti-poaching clause; typical benchmark for established procurement organisations*
Tail period after contract end	6–12 months *Duration common in practice; longer only for highly sensitive development projects*
Documented breaches per year	< 2 *Number of reported poaching cases; repeated breaches should trigger escalation in supplier risk management*

Practical example

A mid-sized mechanical engineering company is working closely with a toolmaking supplier on a new injection moulding series. Several of the supplier's employees are involved at the customer's plant for months. After the project ends, the customer discovers that two of the three key personnel were poached by the customer's manufacturing partner. The supplier threatens delays in the spare parts supply and a risk heatmap escalation. The buyer responds with a structured package of measures.

- Renegotiation of a mutual non-solicitation clause with a twelve-month term and clearly defined exceptions for unsolicited applications
- Agreement of a graduated contractual penalty in the event of breach, anchored alongside existing product liability clause and price escalation clause provisions
- Establishment of a documented contact register of all project-related supplier employees as a basis for future contracts

- Integration of clause compliance into the supplier evaluation and supplier risk management, linked to future volume allocation

Conclusion

In B2B procurement, the non-solicitation clause is more than a formality: it protects personnel investments on both sides, stabilises critical supply relationships and reduces poaching risks in close development partnerships. It is only effective through precise wording, clear exceptions and a robust sanction chain. Buyers should anchor it uniformly group-wide, monitor it operationally and integrate it into the supplier evaluation. Detailed legal questions – such as the appropriateness of contractual penalties or antitrust limits – must be clarified on a case-by-case basis by the legal department or external counsel.

Frequently asked questions

? What is a non-solicitation clause?

A non-solicitation clause is a contractual provision that prohibits the contracting parties from deliberately poaching each other's employees, customers or suppliers. It is frequently included in framework agreements, NDAs and development agreements and usually applies for the term of the contract plus a tail period of six to twelve months.

? How long does a non-solicitation clause typically apply?

In practice, six to twelve months after the end of the contract are common, occasionally longer for sensitive development projects. The duration should be expressly regulated in the contract. Excessively long tail periods increase the risk of legal invalidity and should be reviewed by legal counsel.

? Is a non-solicitation clause legally permissible?

In principle yes, provided it is objectively justified, reasonable in scope and duration, and clearly worded. Problems arise with blanket hiring bans that have no connection to concrete poaching activities, or in antitrust-critical constellations between competitors. Permissibility must always be reviewed on a case-by-case basis by the legal department or external counsel.

? What is the difference between non-solicitation and non-compete?

A non-compete clause prohibits competitive activity altogether, whereas the non-solicitation clause only prohibits the deliberate poaching of employees or the approaching of business relationships. In a procurement context, the non-solicitation clause is usually the milder and more readily accepted variant, as it does not restrict the counterparty's business activities.

? What exceptions should be regulated in a non-solicitation clause?

Common exceptions are general job advertisements, unsolicited applications by employees without prior approaches, and recruitment processes already underway. It should also be defined whether

contact at the employee's own initiative is permissible. Without such exceptions, the clause is often rejected in contract negotiations or later declared unenforceable.

? Why is the non-solicitation clause relevant to buyers?

It protects the buyer from the loss of supplier expertise and protects the supplier from the loss of qualified professionals who became known through joint projects. In doing so, it stabilises supply relationships, affects supplier risk management, and breaches can be sanctioned via supplier evaluation and volume allocation.

Find the right suppliers on Amplifa

Verified industrial suppliers in Germany, Austria and Switzerland. Describe your requirement and receive comparable offers.

amplifa-marketplace.ai