



Risk Management *Tips*

Managing Vendor Relationships: What You Don't Know Can Hurt You in the Future

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Running a summer camp can be a complicated endeavor. You must have expertise in accounting, human resources, procurement—and it does help to know a little bit about managing and working with young people. You love interacting with your staff and campers alike but find the business side of the camp tedious and boring. Yet the future of your camp may turn on how well you manage the business side of your operations.

Most camps deal with a variety of vendors who supply goods or services to the organization. Your vendors run the gamut and include those who supply food stuffs, athletic equipment, or transportation services. Some camps keep everything informal, relying on a handshake and the good faith built up over years of dealing with the same suppliers. Others just sign any paperwork put before them by their vendors, a signature here and a signature there, to ensure that the camp has everything it needs to run smoothly once the busy season begins.

Few read the terms and conditions of a purchase order or contract until there is a problem. In the absence of such written documents, camp management usually relies on an informal “understanding”

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of what is expected from a longstanding vendor. The problem with such ad hoc business practices is only revealed when there is a serious problem that arises, such as when a camper gets hurt or the camp bus is involved in an accident.

In order to avoid these unfortunate but foreseeable problems, we suggest the following “best practices” when dealing with outside vendors who supply goods or services.

Always Have a Written Agreement

Your camp has always used “Tom’s Fresh Food” to supply food products. Tom is a good and trustworthy supplier, never letting you down in the 20 years that you have used his company. Business with Tom is based on trust and a clear understanding that your kitchen is small, so you need your deliveries promptly every Monday morning to restock the fresh meats and produce for the coming week. Lately, Tom seems less engaged and his young nephew Christopher is taking a more prominent role in the business. Your frustration builds to a critical mass when the company fails to make a late July delivery until the middle of the week and arrives without a single hamburger on the truck. You reject the delivery because you’ve had to purchase from an alternate supplier in order to feed the mouths of hungry kids at camp.



Chris calls and claims that there was never an explicit agreement that the company would make all deliveries on Mondays and sends you a bill for the rejected goods. When you politely ask to speak to Tom, Chris advises you that Tom has retired and that he expects to be paid in full, or else he plans on suing you. How did you get into this mess?

The entire problem could have been avoided if a short contract or purchase order was signed in the beginning of the season. The document should identify the parties to the contract, what your vendor is required to supply, and, most importantly, that all deliveries must be made by the close of business every Monday. Better still, the documents should state that Monday deliveries are “time of the essence,” a term of legal significance that reinforces the importance of that deadline. It would also be helpful to state the time period (e.g., June 22 through August 23) for which you require the goods.

Always Read the Fine Print

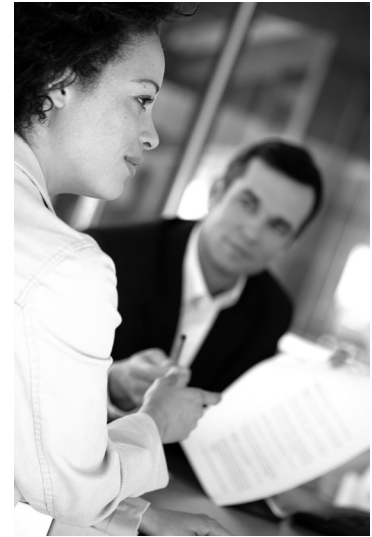
You decide to expand the activities available to your campers this year. You’ve heard of a new vendor, “David’s Daredevils,” who will come to your camp and set up a series of ramps and rails for those who want to try or improve their skateboarding. David’s company will handle the activity from soup to nuts, providing everything from the skateboards to the instructors. Your staff will have minimal involvement since the vendor promotes itself as an expert in teaching safe skateboarding skills. You sign all the necessary paperwork prepared by the vendor during the hubbub of your preseason preparations and move on to more pressing business.

Months later, the season begins and the skateboarding activity is a big hit at the camp. But as (bad) luck would have it, one of your campers takes a nasty fall on a ramp, seriously injuring her arm. Worse, it turns out that her mother is a big shot plaintiff’s attorney who is yelling about “owning this camp” when advised that her daughter is in the emergency room.

After cooler heads prevail, you speak to the vendor about what will happen if the family actually sues the camp and politely suggest that the responsibility for the activity lies with the vendor. To your shock and horror, the vendor pulls out the agreement and points to a paragraph called “Indemnity Provision.” You take a deep breath and read it carefully. You are no lawyer, but the document seems to say the camp will defend, indemnify, and hold harmless the vendor in the event that any injuries are sustained during a skateboarding activity. You read it again and advise the vendor that there must be a mistake. Why should the camp have to defend the vendor when the vendor ran the activity and marketed itself as the expert in this field?

Although the law varies from state to state regarding the enforceability of such indemnity agreements, the time for carefully reading all contracts and purchase agreements is before—not after—you sign them. Don't be shy about questioning provisions that do not make sense to you. Physically strike out those paragraphs that seem unfair or do not accurately reflect your agreement.

Sometimes an ounce of provision is worth a pound of cure. Why not consult a lawyer or risk management consultant who can draw up an indemnity agreement that you can insert in every agreement you enter? The provision should require your vendor to defend, indemnify, and hold your camp harmless for all suits arising out of their operations or goods provided for your camp. For the most protection, you should require your vendor to obtain a general liability insurance policy *which names your camp as an "additional insured."*



Always Save Your Purchase Orders and Agreements

There is an old saying, "An oral contract isn't worth the paper that it's written on." There is not much benefit to following the two steps outlined above if you fail to save a copy of the written purchase orders or agreements. We know that these documents can contribute to the clutter in the camp administration office; but they are designed, by their very nature, to avoid or mitigate problems that arise in the future. If you have a dispute with your vendor over the quality or timeliness of goods and services provided, you can avoid many problems by calmly pointing out the relevant provisions in the purchase order or other written agreement that requires all deliveries by a certain date or specifies a brand that you require. Your goal is not to win a future lawsuit but to avoid one. If you do get sued by a third party, the indemnity provision may protect you by requiring the vendors and its insurance company to defend you in the lawsuit.

The way you handle your vendor relationships can have a significant impact on the financial health of your camp. A single dispute or lawsuit can significantly disrupt the operations of your camp in terms of the time, effort, and money expended to handle the problem. These problems can be minimized—or even avoided—if you require written agreements in all your vendor relationships, read the fine print of all documents you sign, and keep copies of those documents for reference. The effort spent following these "best practices" will keep your camp on sound financial footing and permit you to sleep well at night.

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If you have a safety or risk management question or a suggestion for a topic, please contact Markel's Risk Management Department at safety1st@markelcorp.com.