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Negotiating the Framework Agreement

Dana Whitlock is Head of Procurement at Harlow Foods. Mateo Ruiz is Sales Director at Veltec Packaging. They are meeting to finalise a three-year framework agreement for packaging supply. Read the negotiation and answer the questions.

Mateo Thanks for making the time, Dana. I think we're close. From our side, the open points are pricing, the indexation clause and the liability cap.

Dana Agreed, plus payment terms and the exclusivity you added to the last draft, which we hadn't discussed.

Mateo Fair. Let's start with price. We've come down four percent since the first offer. I'm not sure there's much room left.

Dana There's always room, Mateo, the question is whose. Your proposal is based on a volume commitment of two million units a year. We're prepared to commit to that, but a firm commitment deserves a firm price. We'd want a further two percent.

Mateo Two is steep. I could do one, if the commitment is binding and the shortfall penalty stays in.

Dana One and a half, and the shortfall penalty applies only if we fall below eighty-five percent of the committed volume, not ninety.

Mateo One and a half at eighty-five. I can take that back to my board, but only if indexation stays as drafted. Raw material prices move, and I can't carry that risk for three years.

Dana We accept indexation in principle. What we can't accept is a clause that lets you reprice every quarter on an index you choose. Annual review, a published index we both agree on, and a cap of five percent per year in either direction.

Mateo Either direction?

Dana	If resin prices fall, we'd expect to benefit as well. Symmetry is a reasonable thing to ask for.
Mateo	It is. It's also expensive. Annual review and the five percent cap, fine, but the floor is three percent, not five. I need some protection on the downside.
Dana	Three down, five up. That's not symmetry, that's a slope.
Mateo	It's a gentle slope, Dana, and it keeps my finance director from calling me on weekends.
Dana	I'll give you the slope if we fix the liability cap. Your draft limits your liability to the value of the affected order. If a faulty batch contaminates a production run, our loss is the run, not the box it came in.
Mateo	We can't accept uncapped liability. Nobody in this industry does.
Dana	I'm not asking for uncapped. I'm asking for a cap at twelve months of contract value, with product recall costs carved out and covered by your insurance.
Mateo	Twelve months is our entire annual revenue from this account. Six months, recall costs covered up to a fixed amount, and we'll share the policy details with you.
Dana	Nine months, recall costs covered in full up to two million, and we move on.
Mateo	Nine. All right. Payment terms?
Dana	Sixty days from invoice. Our standard.
Mateo	Thirty is our standard. Forty-five, and we offer a one percent early payment discount at twenty days.
Dana	Forty-five with the discount. And the exclusivity clause comes out entirely. We're committing volume, not fidelity.
Mateo	I was waiting for you to say that. It comes out. Can we at least have a right of first refusal on new product lines?
Dana	You can have a right to be told first. That's not the same thing, and both of us know it.

Mateo	It's enough. Shall I summarise?
Dana	Please. And send it in writing before either of us remembers it differently.
Mateo	Price minus one and a half percent, binding commitment with penalty below eighty-five percent, annual indexation capped at five up and three down, liability at nine months with recall costs to two million, forty-five days net with one percent at twenty, no exclusivity, first notification on new lines. Term three years, termination for convenience on six months' notice after year one.
Dana	That's the deal. Thank you, Mateo. That was almost pleasant.
Mateo	Almost is the best I ever get from procurement. I'll take it.