

Notice of Force Majeure

This is form letter giving notice of a force majeure event. This notice may be used by the party whose performance under a sale of goods or services agreement has been delayed or halted by a force majeure event to notify the other party under the terms of that agreement. This Standard Document has integrated notes with important explanations and drafting tips.

Drafting Note: Read This Before Using Document

In every business transaction, extreme events beyond the control of the obligor may arise and prevent the obligor from performing the contract. These events are commonly referred to in commercial contracts as force majeure. For example, a natural disaster can negatively affect a seller's ability to deliver goods under a sale of goods agreement.

To reduce uncertainty, in most business transactions, the parties include a **force majeure clause** to:

- Allocate the risk of specified force majeure events regardless of their foreseeability.
- Excuse the impacted party's performance during the force majeure event.

Force majeure clauses frequently require the impacted party to give notice after it becomes aware of a force majeure event, within a specified number of days or hours, or where a specified time is not listed, in a "timely," "prompt," or "seasonable" manner. This Standard Document is a form of notice of force majeure that the impacted party (sometimes referred to in this resource as the "notifying party") can send to the obligee (notified party) under the force majeure clause of a sale of goods agreement or a services agreement. It must be tailored to fit the circumstances and the requirements of the force majeure clause. For sample language in a force majeure clause requiring the impacted party to provide notice, see [Standard Clause, General Contract Clauses: Force Majeure: Section 2](#).

Assumptions

This Standard Document assumes that:

- **The underlying agreement includes a force majeure clause.** The sale of goods agreement or services agreement includes a force majeure clause, and the clause lists the force majeure event that has resulted in the impacted party's inability to perform the agreement. The notifying party should not use this form if the contract does not include a force majeure clause (or if the clause does not cover the specified event) because this form does not take into account how a court in that case may render its decision based on a more complex analysis of the foreseeability of the event. For example, Section 2-615(a) of the **Uniform Commercial Code (UCC)** excuses a seller from timely delivery or for non-delivery of goods where its performance has become impracticable either by:
 - the occurrence of a contingency the non-occurrence of which was a basic assumption on which the contract was made; or
 - compliance in good faith with any applicable foreign or domestic governmental regulation or order whether it later proves to be invalid.
- **The parties to the agreement are US entities and the transaction takes place in the US.** If any party is organized or operates in, or any part of the transaction takes place in a foreign jurisdiction, these terms may need to be modified to comply with applicable laws in the relevant foreign jurisdiction.
- **These terms are not industry-specific.** This Standard Document contemplates notice of force majeure to be sent in the context of an underlying sale of goods or services agreement. This Standard Document does not account for any industry-specific laws, rules, or regulations that may apply in certain transactions, products, or services.
- **These terms are being used in a business-to-business transaction.** This Standard Document may not be suitable for use in connection with a consumer contract or a government contract, which may involve legal and regulatory requirements and practical considerations that are beyond the scope of this resource.
- **Capitalized terms are defined elsewhere in the agreement.** Certain terms are capitalized but not defined in this Standard Document because they are defined elsewhere in the underlying agreement (for example, Force Majeure Event).
- **There are two parties to the underlying agreement.** If there are more than two parties to the agreement, the notifying party must revise this Standard Document to include additional notified parties.

Bracketed Items

Bracketed items in ALL CAPS should be completed with the facts of the transaction. Bracketed items in sentence case are either optional provisions or include alternative language choices to be selected, added, or deleted at the drafter's discretion.

END DRAFTING NOTE

[LETTERHEAD OF NOTIFYING PARTY]

[DATE]

[DELIVERY METHOD]
[NAME AND ADDRESS]

Drafting Note: Date and Delivery Method

The date of the notice is important because it can be used to determine the length of the delay in performance. A lengthy delay can trigger the notified party’s rights and remedies under the agreement. For example, a force majeure clause typically includes the other party’s right to terminate the contract without liability if the force majeure event remains in effect for a specified duration. For sample language in a force majeure clause giving the notified party the right to terminate the agreement, see [Standard Clause, General Contract Clauses: Force Majeure: Section 2](#).

The parties should also review the agreement’s notice provisions to determine the effective date of notices. For example, the notice provision may deem the effective date of the notice to be:

- The date the recipient receives the notice.
- The date the notifying party dispatched the notice.
- The date that is the specified number of days after the notifying party dispatched the notice.

The parties should review the agreement’s notices provision for specific notice requirements regarding the proper delivery method for notices. For example, email or fax may not be a valid means of delivering a termination notice. The means of delivery can also affect the effective date of the notice. For example, the notice clause may state that a notice delivered by first-class return-receipt mail is deemed received three days after it is mailed.

For more information on notices provisions, see [Standard Clause, General Contract Clauses: Notice](#).

END DRAFTING NOTE

Re: **Notice of Force Majeure under [AGREEMENT NAME]**

[Ladies and Gentlemen/Dear [ADDRESSEE]]:

Reference is made to the [AGREEMENT NAME], dated as of [DATE], by and between [LEGAL NAME OF NOTIFYING PARTY] (“**we**,” “**us**,” or “**our**”) and [LEGAL NAME OF OTHER PARTY] (“**you**” or “**your**”), as amended] (the “**Agreement**”). [Capitalized terms used but not defined herein have the meanings ascribed to them under the Agreement.]

Drafting Note: Referencing the Agreement

In the opening paragraph, the notifying party should reference the name, date of, and the parties to the underlying agreement.

The notifying party should include the optional bracketed language regarding incorporation of the definitions of capitalized terms if the underlying agreement defines “Force Majeure Event,” which

is used in this notice.

The parties should also be aware that, as used in this notice, the terms “we,” “us,” and “our” refer to the notifying party, not to both parties.

END DRAFTING NOTE

We hereby notify you under Section [NUMBER] of the Agreement that issues arising from [GENERAL DESCRIPTION OR COLLOQUIAL NAME OF FORCE MAJEURE EVENT] [and its aftermath][, as described in further detail below], which constitutes a [force majeure event under Section [NUMBER] of the Agreement (“Force Majeure Event”)/Force Majeure Event], have significantly limited our ability to perform our obligations under the Agreement.

Drafting Note: Summary Paragraph of Notice

This paragraph of the notice includes a summary of the notice:

- **Force majeure clause.** The summary paragraph refers the notified party to the force majeure clause of the underlying agreement, which includes a provision that requires the impacted party to notify the other party when a force majeure event has occurred.
- **Name of event.** The summary paragraph refers to the colloquial name of the force majeure event for ease of reference, for example:
 - Hurricane Katrina;
 - the 2011 Tōhoku earthquake and tsunami; and
 - the **2019 novel coronavirus disease (COVID-19)**. The notifying party may also include a more detailed description of the event, especially if the force majeure event is not widely known by a colloquial name, such as a regional labor dispute (see [Detailed Description of Force Majeure Event](#)).
- **Event’s aftermath.** The notifying party can include the optional bracketed “[and its aftermath]” to clarify that the force majeure event includes related events that have taken place or are taking place in the aftermath of the initial event. For example, if the initial event is a hurricane, the aftermath may include subsequent related events such as storm surges, floods, and infrastructure damage that prevents or hinders performance. The notifying party has the option to add additional information about the aftermath in the notice’s more detailed description of the event (see [Detailed Description of Force Majeure Event](#)).
- **Confirmation of force majeure status.** The summary paragraph includes a statement that the event constitutes a force majeure event under the agreement. However, a court may not give weight to the statement if it determines that the event is not a force majeure event based on its interpretation of the agreement’s force majeure clause. A court’s interpretation of the clause depends on a variety of factors including:
 - the breadth or narrowness of the clause’s language;
 - the foreseeability of the event; and
 - whether the event is unequivocally listed as a force majeure event.
- (For more information, see [Practice Note, Force Majeure Clauses: Key Issues: List of Force](#)

[Majeure Events and Standard Clause, General Contract Clauses: Force Majeure: Drafting Note: List of Force Majeure Events.](#))

- **Impact on Notifying Party's Performance.** The summary paragraph includes a statement that the force majeure event has significantly impacted the notifying party's ability to perform its obligations under the agreement. This notice includes space (optional) in a separate paragraph for the notifying party to describe the impact in more detail (see [Detailed Description of Impact of Force Majeure Event](#)).

END DRAFTING NOTE

We are unable to determine how long this Force Majeure Event will continue. However, please be assured that we are working diligently to return to normal operations as soon as practicable and to minimize the impact of this event on [your business/our customers and their businesses]. [We are in the process of evaluating the expected duration of the Force Majeure Event, and [we/[DESIGNATED PERSON OR DEPARTMENT]] will provide you with updates as more information becomes available.]

Drafting Note: Duration and Mitigation of Event

This paragraph addresses frequently included provisions in force majeure clauses regarding:

- Duration of the force majeure event (see [Duration of Event](#)).
- Mitigation of the impact of the force majeure event (see [Mitigation](#)).
- Return to normal operations (see [Return to Normal Operations](#)).
- Updates (see [Updates](#)).

Duration of Event

Force majeure clauses typically require the notifying party to state how long it expects the disruption to continue. In most cases, it is impossible for the notifying party to precisely make that determination. Rather than committing itself to a timetable it may have no control over, the notifying party typically states that it cannot determine how long the disruption will continue.

Mitigation

Force majeure clauses typically require the impacted party to work diligently to minimize the impact of the event. Rather than including a detailed list of mitigation steps, this form includes a general statement that the notifying party is working diligently to minimize the impact of the force majeure event. A general statement gives the impacted party greater flexibility to modify its mitigation steps to respond to changing events. Furthermore, depending on the severity or novelty of the event, it may not be possible to immediately provide a detailed list of steps that the impacted party has taken or is taking to mitigate the impact of the force majeure event.

The notifying party can also include information on how it intends to allocate any limited stock.

Depending on the underlying contract and the governing law, the notifying party:

- May allocate the available inventory among its customers in a fair and reasonable manner.
- Should not discriminate by supplying the company's priority customers and declaring force majeure to other customers.

Return to Normal Operations

The goal of both parties is the return to normal operations, but the notifying party should not promise the return to normal operations because the force majeure event may eventually render the return to normal operations impossible. In this notice, the notifying party merely states that it is making diligent efforts to return to normal operations. Alternatively, an impacted party can state that it is making diligent efforts to enable it to resume the performance of its obligations under the agreement.

Updates

Force majeure clauses sometimes require the impacted party to keep the other party up to date on new developments relating to the event. This information may include, for example:

- Information on worsening or improving force majeure conditions.
- Information on the failure or success of mitigation efforts to overcome the force majeure event.

Even if the force majeure clause does not require updates, it may be in the impacted party's interests to provide updates. For example, dispatching an update about the end of the event or the partial or full resumption of the delivery of goods under the contract can eliminate any right that the other party may have to terminate the agreement due to force majeure.

While best practice is to follow the agreement's notice provisions to provide major updates (such as the resumption of normal operations), the impacted party sometimes saves time by indicating that it will provide routine updates via less formal channels, such as the seller's sales department. The impacted party should check the agreement's notice provisions to determine how routine communications are to be maintained.

END DRAFTING NOTE

[Detailed Description of Force Majeure Event: [EVENT DESCRIPTION, INCLUDING EVENT'S AFTERMATH]]

Drafting Note: Detailed Description of Force Majeure Event

This notice gives the notifying party the option to establish a causal link between the force majeure event and the notifying party's delayed performance by including a detailed description of the force majeure event (including a chronology) if:

- The event is not widely known by a colloquial name, such as a regional labor dispute.
- The overall event consists of a series of events. For example, the 2011 earthquake that initially struck the Tōhoku region of Japan also caused a devastating tsunami, which in turn caused the Fukushima Daiichi nuclear disaster.

Including more detailed information about an event where public information is less available may help the notifying party:

- Establish to a court that a force majeure event has occurred.
- Support its position before a court that the event has significantly affected (or is significantly affecting) its ability to perform its obligations under the agreement (see [Detailed Description of Impact of Force Majeure Event](#)).

The notifying party can also include information about any related events that have occurred in the aftermath of the initial event. For example:

- If the initial event is a hurricane, the aftermath may include subsequent related events such as storm surges and floods.
- If the initial event is an earthquake, the aftermath may include subsequent related events such as a tsunami, gas line explosions, building collapses, and fires.

END DRAFTING NOTE

[Detailed Description of Impact of Force Majeure Event: [IMPACT DESCRIPTION]]

Drafting Note: Detailed Description of Impact of Force Majeure Event

This notice gives the notifying party the option to include a detailed description of the impact of force majeure event on its ability to perform the agreement, for example:

- Delayed ability or inability to fill orders.
- Extended lead times.
- Delayed ability or inability to perform maintenance and repair services.
- Delayed ability or inability to perform caused by necessary steps to idle specified manufacturing plants to protect them from the force majeure event.

END DRAFTING NOTE

We sincerely appreciate your patience during this difficult time. Please direct any questions to [NAME], [TITLE], [DIVISION/COMPANY], [TELEPHONE NUMBER/EMAIL ADDRESS/BOTH].

Drafting Note: Contact Information for Questions

The notifying party should include the contact information of the party responsible for fielding questions by including information like the person's name, title, division, company, telephone number, and email address.

END DRAFTING NOTE

	Very truly yours, [LEGAL NAME OF NOTIFYING PARTY]
	By: _____ Name: [NAME] Title: [NAME]
cc [PARTY OR OTHER CONTACT NAMES AS REQUIRED]	