

Guidelines for akebono Purchasing Fair Business Practices

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Outline of The Guidelines

1-1. Background behind The Guidelines

1. Adequacy of business is necessary to grow whole suppliers.
2. The Ministry of Economy, Trade and Industry has made guidelines that show Auto Industry's adequate business practices with helps from 14 automobile OEM's, major parts manufacturers, Japan Automobile Manufacturers Association and Japan Auto Parts Industries Association.
3. The guidelines declare that parts manufacturers should prepare their own guidelines or a manual.
4. Akebono must accelerate partnership with its suppliers by raising the awareness for law compliance across the whole Akebono, i.e. from purchasing to production with its obligation of supply to its customers in mind.

1-2. Purpose of The Guidelines

The Guidelines are to reinforce the compliance to prevent violation of laws, to comply Subcontract Law and Anti-trust Law, and at the same time to promote penetration of the following

"Five Purchasing Principles for Automotive Industry".

1. To maintain and improve competitiveness of subcontractor
2. To accelerate open-minded right and fair business practice, in order to promote true partnership
3. To advance investment for both facility and R&D to increase profitability of subcontractor under the principle of sharing its outcome of improvement for business practices
4. To enjoy coexistence and prosperity together with a subcontractor through free competition
5. To prompt eagerness for ideas and devices through two way communication with subcontractor

1-3 Contents of The Guidelines

1. Contractor's obligations and prohibitions that are provided by the Subcontractor Law are described to realize the rule of purchasing business.
2. Examples that may be against the Subcontractor Law and Antitrust Law, legal points and preferred business cases are also shown.
3. Even if a business case is inapplicable to Subcontractor Law, it may be against Antitrust Law as misconduct of superior position. Adequacy of business with whole clients is the premise.
4. Akebono tries to penetrate the rule through second and third tier suppliers to conspire coexistence and co-prosperity with them.
5. Through the improvement of supplier's competitiveness, Akebono realizes and enhances the partnership with suppliers.

Who is Subcontractor in Subcontractor Law “Shitaukeho”?

[Definition by the paid-in capital of Contractor and Subcontractor]

Paid-in Capital of Contractor

Paid-in Capital of Subcontractor

1. Manufacturing Subcontract:

A: Over ¥300 million (Akebono's case) → Less than ¥300 million

B: Over ¥ 10 million, less than ¥300 million → Less than ¥ 10 million

2. Information Production and Labor Services Subcontract

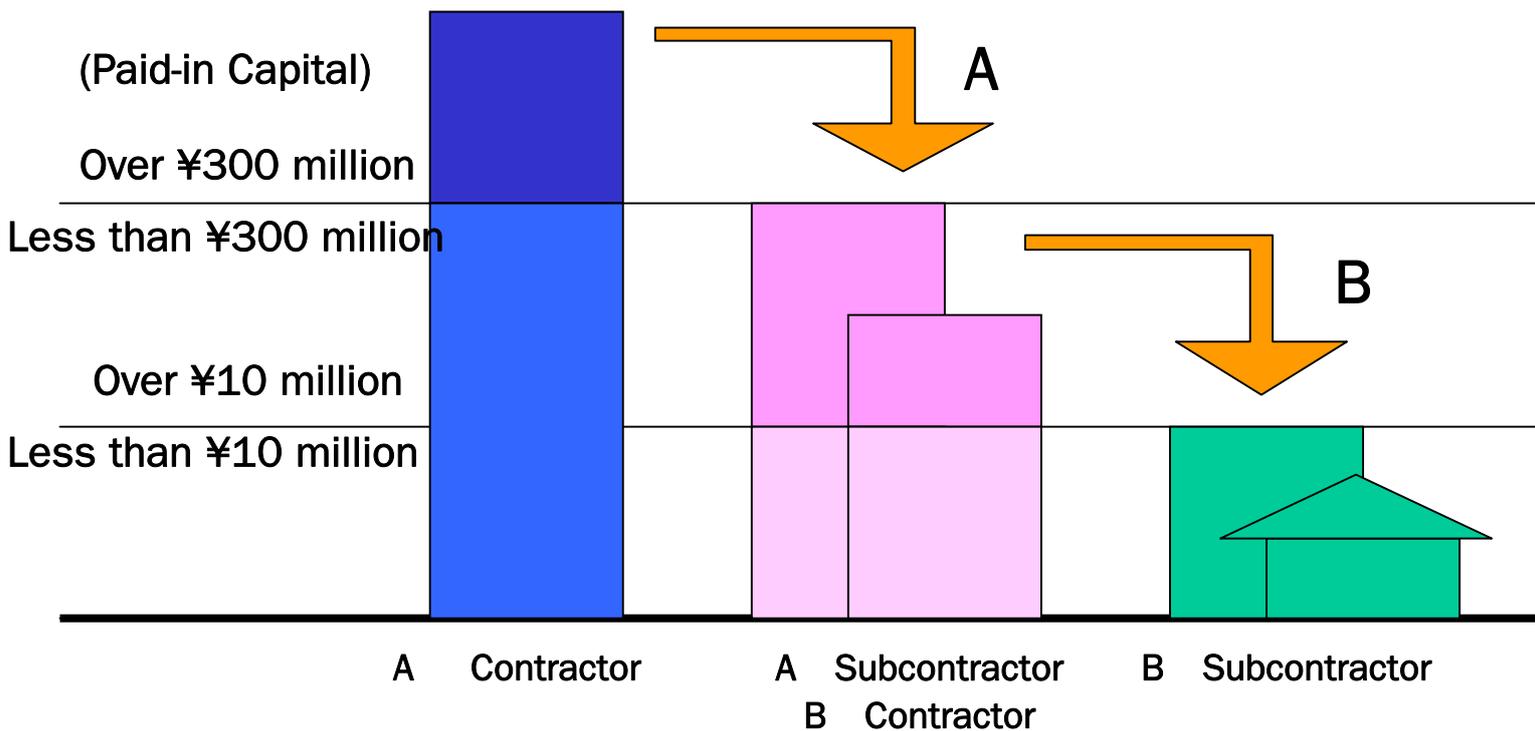
(building maintenance or cleaning etc.):

Over ¥ 50 million → Less than ¥ 50 million

Over ¥ 10 million, less than ¥ 50 million → Less than ¥ 10 million

Bellow chart shows definition of Manufacturing Subcontract.

Depending on Contractor's paid-in capital, there are cases A and B.



Contracts Restrained by Subcontractor Law

3-1. Manufacturing Subcontracts

Component parts and raw materials exclusively produced for Akebono by its specification represents Manufacturing Subcontract and subject to Subcontractor Law.

1. Standard, catalogue or multipurpose products that are sold exclusively for Akebono, or heavily depending on Akebono are considered as exclusive products for Akebono.
2. Multipurpose products that are cut to Akebono specified sizes (steel) or packed in a designated pouch (grease) are considered as exclusive products for Akebono.

While standard product packed in a package with barcode printed is considered as versatile and not subject to Subcontractor Law.

3-2. Subcontracting Information Production and Labor Services

1. This is to entrust contractor's own services to subcontractors.

Ex: In case Alocs who is in charge of transportation business entrusts its own business to other transportation supplier, Subcontractor Law is applied to Alocs.

2. In case of entrusting computer software or making TV program to other supplier, subcontractor law is applied to the contractor when it is in charge of the same business. If Akebono entrusts production of design drawing, Akebono will be subject to Subcontractor Law.

Contractor's Four (4) Obligations in Subcontractor Law

4-1. To Issue Order Documents

[Business Cases to Pay Attention and Legal Points]

1. To issue an order without price because price quotation from subcontractor or subsidiary company is not received before deadline of issuance of purchase order.
2. Place an order only over the telephone and official order is never issued.
 - Above 2 points are violation of obligation of issuance of document. If a company subcontracts manufacturing product, it has to issue a document (official purchase order) about this subcontract.
 - Akebono has to receive quotation from subcontractor, agrees and decides the price to issue a purchase order.

4-2. To Make and Preserve Order Documents: Contents of Document

[Business Case to Pay Attention]

- Main contents to be included in document:
 - 1: order date,
 - 2: order contents,
 - 3: delivery date and place,
 - 4: acceptance inspection,
 - 5: order price,
 - 6: payment terms, bank notes condition and due date,
 - 7: details of supply items from Akebono
- If Akebono confirms payment terms in separate document, an order document must specify the separate document.
- Even if Akebono has not decided order price when ordering the product, it is not considered illegal provided that the following 3 conditions are complied.
 - 1: to agree on the method of calculating price in advance,
 - 2: to mention about this in the order document,
 - 3: to agree and issue subcontract price in writing (additional document) before its delivery.

[Legal Points]

- Akebono has to keep the documents for 2 years.
- Electronic record is regarded as an official document.
- For a subcontract business, the order document is the basis for the subcontract.

4-3.To Decide Payment Due Date for Subcontract Price

[Legal Points]

- Akebono needs to agree due date with subcontractor as shorter period as possible within 60 days of receipt of product.
- Akebono has to pay within 60 days of receipt of products, no matter what agreement is made for inspection.
- Akebono has to notify subcontractor about payment terms when the business starts. Afterwards, Akebono needs to notify subcontractor whenever there is a change in the payment terms.

4-4.To Pay an Interest for Late Payment

[Business Case to Pay Attention]

An obligation for late payment interest occurs when Akebono pays late because Akebono could not confirm the receipt due to missing invoice, or an inspection takes too long.

[Legal Points]

Akebono needs to pay an interest for the number of days after agreed payment due date that payment of subcontract price is delayed at the annual rate of 14.6% on the top of the unpaid subcontract price.

[Preferred Business Case]

Akebono pays the subcontract price by the due date no matter if invoice is received or not. Akebono pays the interest for late payment for the delayed period no matter if there was a reason, or not.

Contractor's Eleven (11) Prohibitions in Subcontractor Law

5-1. Denial of Receipt

[Business Cases to Pay Attention]

- If Akebono refuses receipt of delivery from subcontractor for such reasons as absence of Akebono person in charge, mistake in an Akebono's order or any other Akebono's reasons, it is illegal as denial of receipt.

[Preferred Business Cases]

- To improve production control efficiency, Akebono needs to confirm delivery schedule with a subcontractor for receipt and inspection in writing.

5-2. Late Payments for Subcontract Price

[Business Cases to Pay Attention]

- If Akebono pays only for what has been used out of an inventory, or pays an unamortized portion of die cost after more than 60 days passing the 2 year period, it is regarded as late payment and against Subcontract Law.

[Legal Points]

- Paying only for what has been used is illegal against Subcontract Law because neither order quantity, delivery due date nor payment date can clearly be confirmed in subcontract order and falls into late payment.
- Even if delivery invoice is not attached with the delivery, Akebono owes responsibility to pay for it at the time of receipt and needs to pay in accordance with the agreed payment terms.
- 60 days represent 2 months regardless the calendar days such as 31 days/month or 28 days/month.

[Preferred Business Cases]

- Paying in 60 days after the receipt even if the inspection may be finished following month.
- Unamortized balance of die cost is paid within 60 days after when original payment period to pay the die cost ends without reaching the planned volume.
- If receipt is not in the record due to Akebono's reason, Akebono needs to try to make payment by the due date, or pay late payment interest of 14.6% per annum for the period that payment is delayed.
- If wrong product is delivered or delivered product is returned to the subcontractor to make it over again, Akebono needs to pay within 60 days of receipt of new delivery.

5-3.Reduction of Subcontract Price

[Business Cases to Pay Attention]

- Order volume for 10 day period is ordered in the early part of the prior 10 day period. If price goes down for cost reduction activity, it is mandatory to input the new price prior to the order timing to avoid reduction of subcontract price.
- Demanding price reduction for the reason of volume discount is illegal if there's no agreement in details prior to subcontracting, and proof of actual cost reduction.

[Legal Points]

- Paying less than subcontract price represents reduction of subcontract price. This is illegal against Subcontract Law no matter if it is agreed with, or requested by the subcontractor.
- Volume discount is illegal unless prices per different volume levels are determined prior to the subcontract with confirmation of the conditions in writing, there is a proof of actual cost reduction, or it is related to the subcontract.
- It always is not allowed to reduce subcontract price by lump sum payment.

[Preferred Business Cases]

- Akebono does not reduce prices retroactively by all means for subcontractor and applies new prices effective from the following month.
- Akebono agrees conditions for raw material costs in details prior to making a subcontract.
- Even if Akebono orders a product at a wrong price by mistake, Akebono does not correct it if the right price is less than what was in the order.

5-4.Return of Nonconforming Product

[Business Cases to Pay Attention and Legal Points]

Akebono needs to pay attention to the following when Akebono wants to return product for the reason of non conformance.

1. In case of 100% Inspection by Akebono:

- 1)100% Inspection : They can be returned within 6 months after receipt for non conformance that can't be found right after receipt.
- 2)Immediate return is recommended for non-conformance.

2. In case of sampling inspection:

- 1)They can be returned within 6 months after receipt for non-conformance that can't be found right after receipt.
- 2)Immediate return is recommended for non-conformance.
- 3)But if they are received as OK, they can't be returned even if non conformance that can be found right after receipt is later found. However they are returnable when: (1)business is continuously made, (2)return is agreed in writing on non conformance that can be found right after receipt prior to order, (3)order document relates to such written agreement, (4) and if they are returned before the first payment of such delivery.

3. In case receiving inspection is outsourced:

- 1)Returnable within 6 months for non-conformance

2)Not returnable if outsourcing is made without document, or inspection is omitted.

[Preferred Business Cases]

- For continuous business, disposition method for obvious nonconforming products should be agreed upon between Akebono and subcontractor prior to contract, separately from what law describes on the matter.
- Although Akebono Basic Supply Agreement specifies warranty conditions up to 60months or 100,000km after new car registration, return of nonconforming products is allowed no later than one year after it is found at Akebono.

5-5.Beating Price Down

[Business Cases to Pay Attention]

- Giving target price to subcontractor prior to receiving quotation is legal. However if price is decided neglecting its quotation is illegal being regarded as beating price down.
- Keep ordering a product at the same price neglecting cost increase due to raw material price fluctuation is illegal. It also is illegal to have subcontractor reduce price only for the reason of raw material price reduction when there is no prior agreement for such material cost fluctuation. However if price of Akebono's supply item reduces, price of manufacturing product can be reduced.
- If design changes resulted process change at subcontractor and Akebono doesn't accept its price increase proposed by the subcontractor, it violates Subcontractor Law.

[Legal Points]

- When original quote conditions are changed for reasons such as order volume reduction, end of volume production, changing to after service part, or division of delivery volume, Akebono needs to have the subcontractor issue new quotation to revise its price.
- When design change occurs, also new quotation needs to be obtained to confirm price.

[Preferred Business Cases]

- Price must be confirmed based on the subcontractor's quotation.
- To avoid raw material cost fluctuation, price adjustment formula is established prior to making subcontract.
- When original contract is made, price agreement should be made in compliance with condition changes such as volume fluctuation, end of OE production, changing to after market contract, and duration of after market supply.

5-6.Enforcing Purchases or Use

[Business Cases to Pay Attention and Their Legal Points]

- Enforcing a subcontractor to purchase or to use Akebono's designated products or services violates Subcontractor Law.
- The same is true with regards to Akebono's new system called AiMAPS. It has to solely be up to subcontractor's decision to subscribe it or not.

If Akebono enforces a subcontractor these things and asks for payment, it represents enforcing purchase and usage, which is against Subcontractor Law.

5-7.Retaliation

【 Business Cases to Pay Attention and Their Legal Points 】

- Regardless the reason, if Akebono reduces either business volume, stop the business or anything against the subcontractor only because the subcontractor informed the Fair Trade Commission or Ministry of Medium-sized and Small Business violates Subcontractor Law of Akebono's wrongful doing.

【Preferred Business Cases】

- Akebono must keep close communication with a subcontractor to understand its complaint or dissatisfaction in an early stage so that both companies are able to find a way to find a solution and to grow together.

5-8.Earlier Settlements of Supplied Items than Payment for Subcontract Products

【 Business Cases to Pay Attention and Their Legal Points 】

- If payment for parts and materials are settled the end of the supply month without considering leadtime of manufacturing product, this settlement is one month ahead of payment for products and violates Subcontractor Law.

【Preferred Business Cases】

- Akebono must settle its payment for supplied parts and materials so that it is not regarded as early settlement.

5-9.Issuance of Non Discountable Bills

【 Business Cases to Pay Attention and Their Legal Points】

- Issuance of bills that banks in general refuse to cash out violates Subcontractor Law. Under the current business practices, bills with more than 120 days sight are not easily cashed out.

【Preferred Business Cases】

- Akebono needs to agree on payment conditions with subcontractor and to consider to make them more favorable to subcontractor if required.

5-10.Demanding Unjust Economical Benefits

【Business Cases to Pay Attention】

- Demanding money or labor services e.g. cosponsoring funds, collaboration dues, providing temporary staff independent from subcontracting work is violation of Subcontractor Law.
- Having subcontractor store dies free of charge despite they are not used for long term violates Subcontractor Law.

【Legal Points】

- Asking for a die drawing separately from the subcontract violates Subcontractor Law unless Akebono pays for the drawing.
- Akebono needs to pay attention to those who are not “subcontractors” because Antitrust Law prohibits to abuse its advantageous position may apply to such cases.

【Preferred Business Cases】

- In regards to dies, Akebono needs to either 1) bear long term storage charges, 2) take them back, or 3) ask the subcontractor to dispose them on Akebono’s cost.

5-11.Changing Contents of Subcontract

【Business Cases to Pay Attention to】

- Akebono changes contents of a contract bearing no cost while no responsibility lies on the subcontractor.

【Legal Points】

- Canceling contract represents serious contract change and therefore is illegal if not bearing cost incurred by the subcontractor.

【Preferred Business Cases】

- Only when asked by subcontractor to change contents of an existing contract, akebono is allowed to do so.
- When defects are found, or wrong parts are delivered, Akebono must claim the subcontractor to make the part over again only immediately after they are found.
If defects can’t be found immediately, Akebono may ask the subcontractor to do the job over again as long as the defect is found within one year after the receipt.
- In case of resourcing (e.g. to Akebono in-house production), Akebono needs to discuss this with subcontractor early enough for the subcontractor to understand Akebono’s policy and intention.

Others

Law for Promotion of Subcontractor

This law is to make subcontractors improve their constitution and grow with independency under supports from contractors.

- If Akebono intends to change a subcontractor, it is required to discuss and agree its intention with the subcontractor as early as possible to provide the subcontractor with enough time to prepare possible countermeasures.
- Though there is no specific description of “enough time” in laws, Akebono suggests minimum 3 months; namely equal to order forecast period, or 6 months if possible.