



## **Mediation Case Study**

### **Benroyce and RubberSeals**



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#### Précis of Parties' Summaries

There has been a breakdown in a commercial contractual relationship. Benroyce (B) manufacture luxury cars. As part of the manufacturing process, they include rubber seals around door frames, as an essential part of the luxury design. These are a specialist product and can only be obtained from a few sources. This is because the luxury car production is low volume and the tooling which is set up for manufacturing the seals is expensive.

RubberSeals (R) manufacture the specialist seals. They have provided these for 10 years to B. Three months ago, R decided they wished to cease supply. They wrote a letter to B advising that the delivery that week would be the last one. B asserted that the parties had a framework agreement by which R would provide the seals until the car models for which the seals were provided ceased to be manufactured. That would be another five years at least. Alternatively, they argued that there should at least be a reasonable period of notice, given that it could take them up to a year to find a replacement specialist manufacturer and set up the tooling and validation process for the seals.

The parties' lawyers have traded correspondence and begun litigation. R's advisers are clear in correspondence. There were no contract terms, express or implied, specifying a fixed duration for delivery and, just as B could unilaterally cease to place purchase orders with R, R can unilaterally cease to supply. B have argued strongly that it makes no commercial sense to have no protection in this market and that they will suffer huge losses if unable to manufacture its cars for up to a year. They say that it is industry practice to have at least a period of reasonable notice.

In earlier discussions, R have offered to continue to supply seals for the duration of manufacture of the cars provided B pay six times the prevailing price at the date of termination. Alternatively, they have offered to supply for a period of six months only at nine times the price.

B have offered to go as far as twice the price, subject to certain conditions. The parties are at impasse and the matter is now at mediation. Despite this, supplies have continued on a contingency basis with the basic price being paid by B and an agreement that a further six times provision will be placed in a joint account pending resolution one way or the other. However, B's lawyers have delayed implementing this, causing further polarisation.

*Note: These instructions can be used in workshops with clients only (one or two people for each party) and where there are lawyers present also. Each role player can use his or her own name and work from the summaries for the party it is representing.*