

### 3.2 Commercial terms and conditions

*Provisions involving business relations between buyer and seller such as guarantees, warranties, and other commercial terms and conditions* Except as **otherwise** permitted by **these the provisions in sub-clauses of 3.2 of the** Essential Requirements, ANS shall not *be included in an American National Standard. The appearance that a standard endorses any particular products, services or companies must be avoided. Therefore, it generally is not acceptable to* include terms or conditions that are primarily contractual or commercial in nature, as opposed to technical, engineering or scientific in nature. Thus, **among other things**, an ANS shall not include contractual or contract negotiation requirements (3.2.1); endorse or require the use of proprietary products or services (3.2.2); or endorse or require the use of particular conformity- assessment bodies, testing facilities or training organizations (3.2.3).

**Commented [A1]:** Suggest the edits in red to clearly state the limited permitted exceptions, as there appear to be no other instances of the ERs permitting the use of commercial terms and conditions.

**Commented [A2]:** Recommend adding "among other things" to make abundantly clear that any "terms or conditions that are primarily contractual or commercial in nature, as opposed to technical, engineering, or scientific in nature" should not be included in an ANS, whether or not they fall in to the specific lists in Sections 3.2.1-3.2.3.

#### 3.2.1 Contractual or Contract Negotiation Requirements

**Except as provided below** An ANS shall not contain contractual requirements such as those relating to particular products or services, guarantees, warranties, reworks, indemnities, buybacks, price- related terms and other conditions of sale or use. **Nor shall an ANS contain requirements primarily relating to negotiation of contracts.**

**Commented [A3]:** The phrase "Except as provided below" is unnecessary as the exceptions in 3.2.2 and 3.2.3 do not relate to contractual requirements or contract negotiations. Recommend striking this phrase.

**Commented [A4]:** Consider adding this sentence to obviate any concerns that an ANS might require the inclusion of particular terms or phrases in the contract. As standardizing commercial terms and conditions raises concerns, standardizing negotiations concerning commercial terms and conditions also can raise concerns for an ANS. While this conclusion is implicit in the existing and proposed ANSI text, it would be beneficial to state it explicitly.

#### 3.2.2 Endorsements of Proprietary Products or Services

ANS shall not endorse or require the purchase or use of proprietary products or service providers as a condition of implementing the standard. Proprietary in this context means products or services that are the property of an owner and cannot be obtained or recreated without the consent of the owner. For example, an ANS may not endorse or require the purchase or use of brand-name tools or components, licenses, manufacturer lists, service provider lists, or similar material in the text of a standard or in an annex (or the equivalent). Where a sole source exists for essential equipment, or copyrighted materials.

However, for informational purposes, where known sources exist for products or services necessary to comply with or to determine compliance with the standard ANS, it is permissible, but not obligatory, to supply-identify the name and address of the source-sources in a footnote, an appendix, or informative annex as long as reference to a website. The referenced products or services shall be reasonably available from the referenced sources, the words "'or the equivalent'" are" shall be added to the reference-, and the reference shall also expressly state that identification of products or services is not an endorsement of those products or services or their suppliers.

#### 3.2.3 Conformity Assessment, Testing and Training

In connection with standards ANS that relate to the determination of whether products or services conform to one or more standards, the process or criteria for determining conformity can may be standardized as long as the description of the process or criteria is limited to technical and, engineering or scientific concerns and does not include what would otherwise be a contractual or commercial term terms.

It is permissible for health, safety or environmental protection reasons to include a generic requirement for third-party, i.e., independent, conformity assessment, testing or training. ANS shall not dictate the use or non-use of a particular conformity-assessment body, testing facility or training organization.

However, for informational purposes, where known sources exist for products or services necessary to determine compliance with the ANS, it is permissible, but not obligatory, to identify the name and address of the sources in a footnote, an appendix, or reference to a website. The referenced products or services shall be reasonably available from the referenced sources, the words “or the equivalent” shall be added to the reference, and the reference shall also expressly state that identification of sources is not an endorsement of those sources.

<sup>1</sup>The term "copyrighted materials" is not intended to include: (a) manufacturers' instruction/safety manuals; or (b) third-party standards, when such documents are incorporated by reference into the text of an ANS for non-commercial technical, or safety-related purposes, as long as such references do not otherwise violate other provisions of the Commercial Terms and Conditions Policy (e.g., they cannot also contain warranties, guarantees and like commercial clauses).