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To: PSA Department <PSA@ansi.org>

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Subject: Comments on Proposed Revision to the ANSI Essential Requirements, Section 3.2, Commercial terms and conditions, ExSC_096_2019

November 25, 2019

ANSI Executive Standards Council (ExSC)
American National Standards Institute
25 West 43rd Street
New York, NY 10036
psa@ansi.org
Via email

**Re: Comments on Proposed Revision to the *ANSI Essential Requirements*,
 Section 3.2, *Commercial terms and conditions*, ExSC_096_2019**

Dear ANSI Executive Standards Council:

We write to comment on the Proposed Revision to Section 3.2 of the ANSI Essential Requirements, *Commercial terms and conditions*, denoted as ExSC_096_2019. While ANSI's existing Essential Requirements do not permit American National Standards to include terms or conditions that are primarily contractual or commercial in nature, we believe further clarification and elaboration can be beneficial.

We propose the following additional clarifications, with deletions shown in strikeout and additions underscored:

3.2 Commercial terms and conditions

Except as otherwise permitted by these Essential Requirements, ANS shall not 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); require the use of, or endorse, brand-name or proprietary products or services (3.2.2); or require the use of, or endorse, particular conformity-assessment bodies, testing facilities or training organizations (3.2.3).

3.2.1 Contractual or Contract Negotiation Requirements

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

It would accordingly be helpful to add the phrase, “among other things,” to the second sentence of Section 3.2 to be 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.

With respect to Section 3.2.1, it is useful to explicitly define “contractual requirements” to be clear that they are not limited to particular products and services. For example, an ANS that required all contracts in a certain field or industry to have a particular term, regardless of whether it is limited to a specific product or service, equally may raise concerns.

Also, in Section 3.2.1, we suggest modifying the phrase “other price-related terms and conditions of sale,” because it is not clear that the rest of the categories in the list are “price-related terms and conditions of sale.” We also suggest for even greater clarity changing “including” to “including but not limited to.” We suggest adding “or use” following “sale,” for the sake of absolute clarity that contracts like rentals and licenses are included in the scope of this provision, in addition to sales.

Finally, for the same reasons that 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.

We appreciate the opportunity to comment on the proposed revisions and would be happy to answer any questions concerning these comments.

Sincerely yours,

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