Executive Summary

Manufacturing companies are enhancing their offering by attaching increasingly more complicated services to their products. Good contracting processes and documents are required in the quest for success in this new service-focused situation. However, contracting alone cannot get things right if delivery fails. Collaboration is essential throughout the whole organization, starting with development teams, sales and marketing departments, and legal and business professionals and ending with front-line personnel.

An important ingredient of the proactive approach presented in this book is merging contract design and service design. The goal is to promote successful business relationships and prevent problems and disputes, or at least to facilitate their prompt resolution. Contracts should not be left to lawyers alone; the whole organization can benefit from the proactive approach. Contractual literacy is a skill that can help promote good quality and customer satisfaction – and make a valuable contribution to the bottom line.

Contracts are not just written documents – contracting is an ongoing process. Contracts are visible scripts for collaboration that serve as tools for planning and managing business, projects, and relationships, and contracting serves as a process of dialog and learning. Contracts help align expectations, encourage innovation, improve supply chain performance, provide adequate protection, and balance risks against benefits. For successful service contracting, the contract is not the goal; successful implementation is. Contracts do not make things happen – people do.

Many challenging – but often ignored – issues should be considered during the contracting process. These include the distinction between selling goods and services or results and resources, performance measurement and monitoring, and understanding that some of the contract terms are ’invisible’. Where the contract is silent, i.e. it does not specifically address the issue at hand, the default rules of the law enter the picture. Some requirements, such as ’professional performance’ may be problematic. Service terminology may be imprecise
and ambiguous. Working together, those in charge of service design and contract design can create a common lexicon and language.

To achieve a mutually satisfactory service relationship, aspects – which ideally are described in the service description – such as what services to deliver, who is to deliver them, how and when they are to be delivered and received, and at which performance level, need to be considered in the negotiation process and agreed upon by all parties. The goal of negotiation should not be the contract, but value for all parties. It is not necessary for companies to have tailor-made contracts developed for all their offerings. Standard terms and conditions and commercially available model contracts can facilitate transactions and offer a way to make contracts look and feel shorter and easier to use.

Proactive Service Design consists of two parts: (1) service productification to make the ‘what’ (the value that the service creates, technical quality) work and visible; and (2) creating a service guideline to standardize the ‘how’ (how the value is created, functional quality). The guideline remains in the service provider’s own toolbox, but can be used in contract design as a blueprint for collaboration. Service productification means bundling a service into a good-quality entity that is easy to understand, sell, buy, and multiply or replicate, and that sets the service provider apart from its competitors in a positive way. From a contractual point of view, the goal is to simplify the contracting process and eliminate the need for many different types of contracts.

Providing services or bundles of services and products necessitates several connections with external suppliers, business partners, and – in a global connection – local operators. In most cases, a company can only deliver services or products if it receives services or products from other suppliers. To succeed, it is necessary to ensure that these back-to-back contracts are aligned.

Aligning expectations and promises with the actual service and contracts is essential, and defining the scope of work well and agreeing on metrics and inspections go a long way to prevent problems. However, if things do go wrong, a good contract is a good thing to have. Along with the description of the scope and subject matter of the contract, the allocation of responsibilities and risks is a key concern. The risks and uncertainties must be recognized and, where possible, excluded through the use of specific contractual provisions. It is common practice for suppliers of services to limit their liability in con-
tracts. Agreed *contractual remedies* can reduce the costs and uncertainties arising from contractual disputes. In addition, a well-defined service guideline can help with successful service recovery.

The *proactive contracting and service design* agenda does not claim to be the end of all problems, but it does help. It promotes collaboration, proactive dispute and conflict prevention, and the understanding that, in the end, it is in everyone’s best interest to work towards successful relationships with customers, providing value and high quality and aiming for customer satisfaction.