

# Contract Negotiation Checklist

Key Considerations for Structuring and Negotiating Technology Agreements

LAWSEL ADVISORY | [WWW.THELAWSEL.COM](http://WWW.THELAWSEL.COM)

## How to Use This Checklist

This checklist is designed for founders, commercial leads, and in-house counsel at technology companies negotiating SaaS agreements, licensing deals, platform partnerships, and enterprise contracts. Use it as a pre-negotiation review and during redline cycles to ensure critical provisions are addressed. Items marked [PRIORITY] are the most commercially significant.

### 1. Pre-Negotiation Preparation

- [PRIORITY] **Define your commercial objectives** — what must this deal achieve (revenue target, market access, strategic partnership, technology integration)?
- Identify your non-negotiables** — the terms you cannot concede — and your concession points — the terms you can trade for value elsewhere
- Assess the counterparty's likely priorities** — understanding what they need helps you structure trades rather than impasses
- Determine your BATNA** (Best Alternative to a Negotiated Agreement) — knowing your walkaway point prevents bad deals
- Review the counterparty's standard terms** before proposing your own — you will negotiate more effectively if you understand their starting position
- Assemble your negotiation team** — identify who has authority to agree commercial terms, legal terms, and final sign-off

### 2. Scope & Service Definition

- [PRIORITY] **Define the scope of services or licence precisely** — ambiguity in scope is the most common source of commercial disputes
- Specify what is included and what is excluded** — assumptions about "included" features cause friction post-signature
- Define service levels (SLAs)** with measurable metrics: uptime percentage, response times, resolution times, and the consequences of breach (service credits, termination rights)
- Address customisation, configuration, and professional services** separately from the core licence or subscription
- Clarify the scope of any "unlimited" or "enterprise" usage rights** — define fair use parameters to avoid disputes

### 3. Pricing & Payment

- Define the pricing model clearly**: per-seat, usage-based, tiered, flat-fee, or hybrid — and specify how each metric is measured
- Address price escalation**: what happens at renewal? Cap annual increases or tie them to a defined index
- Specify payment terms**: net 30/60/90, invoicing mechanics, currency, and late payment consequences
- Clarify tax treatment**: which party bears sales tax, VAT, withholding tax, and similar obligations?
- For usage-based pricing**: define measurement methodology, reporting frequency, audit rights, and dispute mechanisms for usage data
- Include true-up and true-down provisions** if usage fluctuates — avoid locking in commitments that do not match actual consumption

## 4. Intellectual Property

- [PRIORITY] Define IP ownership unambiguously:** who owns pre-existing IP, newly developed IP, customisations, configurations, and derivative works?
  - For custom development:** specify whether the customer receives ownership or a licence — and define the scope of any licence granted
  - Protect your core IP:** ensure the agreement does not inadvertently grant broader rights than intended through overly wide licence grants
  - Address open-source components:** disclose any open-source software included in the deliverables and confirm licence compatibility
  - Include IP warranties:** the licensor should warrant that the technology does not infringe third-party IP rights
  - Define escrow arrangements** if appropriate — particularly for critical enterprise software where source code access is important for business continuity
- 

## 5. Data Rights & Privacy

- [PRIORITY] Define data ownership and usage rights:** who owns the data inputted, generated, and derived from the platform?
  - Restrict vendor use of customer data:** prohibit use for training AI models, benchmarking, or product improvement without explicit consent
  - Include data processing agreement (DPA) provisions** compliant with GDPR, DPDPA, and other applicable privacy laws
  - Address data portability:** ensure you can extract your data in a standard, usable format on termination
  - Define data localisation requirements** if applicable — some jurisdictions require data to be stored within their borders
  - Specify data deletion obligations** on termination: timeframe, certification of deletion, and exceptions
- 

## 6. Liability & Indemnification

- [PRIORITY] Negotiate the limitation of liability carefully:** review the cap (typically 12 months' fees), exclusions from the cap, and carve-outs
  - Ensure appropriate carve-outs from liability caps** for: IP infringement, confidentiality breach, data breach, wilful misconduct, and indemnification obligations
  - Review the exclusion of consequential damages:** understand what is excluded and whether the exclusion is mutual
  - Define indemnification obligations:** IP infringement indemnity (from the vendor), data breach indemnity, and regulatory penalty exposure
  - Ensure indemnification procedures are workable:** notification requirements, right to control defence, cooperation obligations, and settlement approval
  - Avoid uncapped liability exposure** — even in heavily negotiated enterprise deals, both parties should have defined risk parameters
- 

## 7. Term, Renewal & Termination

- Define the initial term and renewal mechanics:** auto-renewal, renewal notice periods, and renewal pricing
- Specify termination rights:** termination for convenience (with notice period), termination for cause (material breach, insolvency), and the cure period for breaches
- Address post-termination obligations:** data return/deletion, transition assistance period, wind-down of services, and survival of key provisions (confidentiality, IP, indemnification)

- Include a transition assistance provision** for critical enterprise agreements — 30-90 days of cooperation to migrate to an alternative provider
  - Review lock-in risk:** are there practical barriers to switching (data portability, integration dependencies, training costs) beyond the contractual term?
- 

## 8. Warranties & Representations

- Require performance warranties:** the technology will perform materially in accordance with the documentation and agreed specifications
  - Include compliance warranties:** both parties warrant compliance with applicable laws, including data protection, anti-corruption, and export control
  - Address security warranties:** the vendor warrants implementation of industry-standard security measures (reference ISO 27001, SOC 2, or equivalent)
  - Define warranty remedies:** repair, replace, refund — and the timeframe for each
  - Review warranty disclaimers:** ensure broad disclaimers ("as-is") do not override specific warranties you have negotiated
- 

## 9. Security & Compliance

- Define minimum security standards:** encryption (at rest and in transit), access controls, vulnerability management, penetration testing, and incident response
  - Require security certifications** where appropriate: ISO 27001, SOC 2 Type II, CSA STAR, or sector-specific certifications
  - Include audit rights:** the right to audit vendor compliance with security and contractual obligations (directly or via independent auditor)
  - Define breach notification obligations:** timeframe (24-72 hours), content of notification, cooperation requirements, and remediation responsibilities
  - Address regulatory compliance:** which party is responsible for compliance with evolving regulations (AI Act, GDPR, sector-specific requirements)?
- 

## 10. Dispute Resolution

- Choose the governing law** carefully — it determines how ambiguous provisions will be interpreted and what remedies are available
  - Define the dispute resolution mechanism:** negotiation, mediation, arbitration, or litigation — and specify the sequence
  - For cross-border deals:** consider arbitration (SIAC, ICC, LCIA) for enforceability under the New York Convention
  - Include escalation procedures:** require senior management negotiation before formal dispute resolution begins
  - Preserve interim relief rights:** ensure the dispute resolution clause does not prevent either party from seeking injunctive relief in urgent situations
- 

## 11. Change Management

- Include a change control procedure:** how are changes to scope, pricing, or specifications proposed, evaluated, and agreed?
- Define how product updates and deprecations are handled:** notice periods for breaking changes, end-of-life policies, and migration support
- Address regulatory changes:** who bears the cost and effort of adapting the service to new regulatory requirements?

- Specify amendment procedures:** amendments in writing, signed by authorised representatives — avoid informal scope creep

---

## 12. Cross-Border Considerations

- Review local law requirements** for each jurisdiction: consumer protection, e-commerce regulations, local language requirements, and mandatory terms that cannot be contracted out of
- Address currency and exchange rate risk** for multi-currency deals
- Consider withholding tax implications** and define which party bears the economic burden
- Verify enforceability:** ensure choice of law and dispute resolution provisions are enforceable in all relevant jurisdictions
- Address export control and sanctions compliance** if the technology is subject to US EAR, EU dual-use regulations, or other export restrictions

---

## Negotiation Red Flags

Watch for these provisions that disproportionately favour the counterparty:

Red Flag	Why It Matters
Uncapped liability for one party only	Asymmetric risk allocation
Broad IP assignment (not licence)	May transfer ownership of your improvements
Unrestricted vendor use of customer data	Commercial exploitation of your data
Auto-renewal with no price cap	Escalating costs with limited exit options
Exclusive remedy of service credits	Caps your real recovery for material failures
Unilateral amendment rights	The other party can change terms without consent
Broad force majeure including "business conditions"	Allows performance excuses for commercial convenience

---

## Next Steps

Every deal has unique commercial dynamics. This checklist provides a framework — the specific negotiation strategy depends on your leverage, the deal value, and your business objectives.

**Lawsel Advisory** structures and negotiates technology agreements for companies at every stage — from first enterprise deal to cross-border expansion.

**Book a consultation:** [www.thelawsel.com](http://www.thelawsel.com) **Email:** [rini@thelawsel.com](mailto:rini@thelawsel.com)

---

*This document is for informational purposes only and does not constitute legal advice. Specific contract provisions should be tailored to the circumstances of each transaction.*

*Copyright 2026 Lawsel Advisory. All rights reserved.*