

CONTRACTS

Contract Reviews

What a commercial contract review covers, including liability caps, indemnities, termination rights, IP ownership and auto-renewal traps.

Why review before signing

Most business contracts are signed on the strength of the commercial deal and the relationship. The terms that matter most, such as who bears the loss when something goes wrong, are in the small print and are rarely read until there is a problem. A review before signature costs little. A dispute after it costs a great deal more.

A review is not about rewriting the other side's contract. It is about knowing what you are agreeing to, spotting the clauses that could hurt the business, and deciding what to ask for.

What a review covers

- **Parties and capacity.** The right legal entities, correctly named, with authority to sign. For companies, check the registered name and number.
- **Scope and deliverables.** What is being supplied, to what standard, by when, and what is not included.
- **Price and payment.** Fees, expenses, indexation, payment terms and interest on late payment.
- **Term and renewal.** The start date, the length, and how and when the contract ends.
- **Liability.** The caps, exclusions and indemnities, covered below.
- **Intellectual property.** Who owns what is created or supplied, and what licences are granted.
- **Data and confidentiality.** Personal data terms and the duty of confidence.
- **Boilerplate.** Governing law, jurisdiction, notices, assignment and entire agreement.

Liability caps and exclusions

A liability cap limits the most one side can be made to pay. It is common and often reasonable, but check what the cap is linked to, such as the fees paid in the last year, and whether it applies equally to both sides. Some losses cannot lawfully be limited, including death or personal injury caused by negligence and fraud. Other limits must be reasonable under the Unfair Contract Terms Act 1977 where it applies.

Key points

- Read the liability, indemnity, termination and renewal clauses first.
- Check who bears the risk of loss, and whether it is insured.
- Auto-renewal and long notice periods trap many businesses.
- Make sure IP ownership is clear in writing.
- Boilerplate matters when a dispute starts.
- Negotiate before signing, not after.

Indemnities

An indemnity is a promise to cover the other side's loss, usually for a specific event, such as a claim that the product infringes someone's IP. It can be wider than ordinary damages, because it may cover costs the law would not otherwise award. Check whether the indemnity is one-way, whether it is capped, and whether it is limited to loss that was not the other party's fault.

Termination

Look at when each side can end the contract and what follows. A good clause lets you leave for serious breach, insolvency of the other side, or loss of a key person or licence. Check notice periods, minimum terms and early termination fees. Look at what survives termination, such as confidentiality, payment of fees due and return of materials.

Auto-renewal and price rises

Many contracts roll over for another full term unless notice is given, sometimes months before the end. Diary the notice date. Also check any right to increase prices, and whether a rise is capped or linked to an index.

IP ownership

A contractor or supplier generally owns what they create unless the contract assigns it. If the business is paying for bespoke work, the contract should say who owns the result, and what the supplier may reuse. Check that the supplier warrants it has the right to licence what it supplies.

After the review

Rank the issues: those that must change, those worth asking for, and those the business can live with. The other side is more likely to move on a short, reasoned list.

Questions to ask

- If the other side fails, what do we lose, and can we recover it?
- If we fail, what is our maximum exposure?
- Can we leave if things go badly, and at what cost?
- What happens to our data, our stock or our work in progress on termination?
- Who owns the materials we share?
- Who is responsible for the people working on site?

Before you start

- What is the contract worth to the business?
- What happens if the other side fails?
- What is the maximum loss, and is it insured?
- When must notice be given to end or renew?
- Who owns the work?
- Is personal data involved?

How MTM can help

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We review commercial contracts for practices and their clients, with a short report setting out the issues in order of importance and suggested wording for any changes. We can also negotiate points with the other side and prepare the final version. Commercial decisions stay with your client.