

How to negotiate and execute efficient contracts



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Author: Dr. Mihails Kuznecovs / CEO

We have witnessed and participated in a wide variety of contract-preparation meetings and actual negotiations. These ranged from straightforward purchase agreements to complex service-provider negotiations, which were held both informally and in board rooms.



Regardless of the contract's complexity, associated revenue tag, geographical coverage and business approaches, there are numerous and never-ending issues that can arise, even at the very last minute, not to mention the imperfections found only when time has passed.

Below, we explain the top 10 caveats to consider when preparing and negotiating contracts (i.e. partnership terms and conditions):

1. Talk with decision-makers only.

Alternatively, talk with someone who can really influence decision-makers.

2. Allocate enough time for the whole negotiation process.

This holds true for the initiation stage, actual negotiations, subsequent drafting and final due diligence.

3. Be prepared for pre-agreed terms to be turned upside down.

That is, what is orally agreed, once on paper, may no longer be acceptable by the other party.

4. Have a strategy on pricing-policy formation.

Carefully consider your initial maximum starting-price position. This will be reduced significantly during the negotiation process, meaning that the final pricing level is highly dependent on where you started negotiations.

5. Be prepared for sudden delays in communication.

In particular, these can occur during the critical stages of the negotiation process, in most cases this is nothing but negotiation tactic.

6. Be ready for emotional critics and unprofessional ethics.

Do not forget that contracts are prepared by people, not machines, and as human beings, we might not always be rational, especially when making important decisions.

7. Be prepared to expect the unexpected.

From time to time, there are unexpected market and economic conditions that can affect contract execution. Therefore, you should have alternative contract-execution scenarios (for example, be able to substitute suppliers on short notice, have alternative buyers, change the financing organisation).

8. Make sure you have exclusivity rights.

This is crucial for those who are in the intermediary position (i.e. a reseller) or who have a success fee-type agreement.

9. Do not underestimate your development spend.

Contract negotiations and subsequent preparation may take considerable time and require the involvement of various professional consultants, including those responsible for due diligence and translations to/from various languages.

10. Consider different business approaches.

Always pay extra attention and allocate enough time for international agreements.

By bearing in mind these 10 fundamental contract-negotiation considerations, you will be able to think ‘beyond’ the actual contract terms and potentially spot additional issues (such as contract penalties, exit terms, exclusions, liabilities), which can be mitigated well in advance and become apparent only after a certain number of years. All in all, a professionally prepared contract, which can be considered a company’s brand name, signifies to potential partners how strong you are in your business field.