

Most Negotiated Terms 2018



AN IACCM CALL TO ACTION



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Is your contracting process delivering value?



Wrong template

An analysis of more than 7,000 contracts showed that 56% were based on the wrong template.



Can't understand

A survey of business users revealed that 88% find contracts 'difficult or impossible to understand'.



Lack knowledge

A test of experienced contract negotiators discovered that 51% were wrong in their understanding of the law relating to the #1 negotiating term.

Executive Summary

A well-managed contracting process can deliver remarkable value. However, as the introductory infographic illustrates, frequently it is not well-managed. That is largely because organizations lack data – they are simply unaware of the costs (and missed opportunities) that result from today's approach to contracting. Executives mostly accept that contracts are unintelligible and rarely question whether or how they could contribute to better outcomes.

As this report reveals, while the business world may be experiencing radical change, the approach to contracts and their negotiation remains largely unaffected. Too often, we churn out agreements with limited practical application and spend time and money deliberating over things that might occur, but rarely do, while paying little attention to the things that actually will go wrong.

Is this through stubbornness? Through ignorance? Through a refusal to challenge and think differently? To some extent, it is probably all of these, but more than anything it is a failure of leadership, a failure by executives to recognize the cost associated with current practices and to demand change. Contract language does not have to be obscure; contract structure does not have to be opaque; contract terms do not need to be based on classical theories. Complex projects do not require complex legal language and structure. In fact, the more complex the nature of the engagement the more important it is to simplify contract language and maximize its usefulness. If executives think that contracts do not matter, they should scrap them. If they do matter, it is time that they brought them into the modern age.

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”

At the very least, those who create contracts should pay greater attention to the damage that poor contracting and negotiation practices are doing to their business. Rather than producing an invaluable framework and guide to a business relationship, many agreements generate confusion and even ill-will between the parties. We must do better. This report proposes five immediate steps that IACCM recommends should be taken.

1. Focus negotiations on the terms that are actually costing you money.
2. Ensure you are using the right agreement by implementing decision trees.
3. Reduce repetitive negotiation by adopting the IACCM contract principles.
4. Improve implementation and understanding by automating extraction and dissemination of contract terms.
5. Stop listening to people who say that change isn't possible!

About the report

This report is based on a worldwide survey of IACCM members. It attracted input representing 2,173 organizations. The data is offered in consolidated form and also by industry and by geography, revealing variations in negotiation priorities. In addition to acting as a ‘call to action’, the findings can be used to support internal awareness and training, to inform negotiation planning and to provide a benchmark against internal experiences.

Why do we negotiate?

A web search offers many answers to this question. An example is “Negotiations are exchanges in which you and other parties try to reach an agreement. Ideally, the objective of any negotiation is to gain an outcome where all involved win. To achieve this result, it is essential that all parties are aware of what the other wants.”

This point about an outcome, or a result, is important because different people within the business view that outcome in a different context. For example, for the Sales organization and potentially for Procurement, getting a contract signed so they can respectively receive a commission and report negotiated savings may represent a satisfactory outcome. For the legal department, achieving an acceptable position on key business risks may be deemed success. Interestingly, people who have an interest in the longer-term outcome – the actual delivery of value – may not even be part of the negotiation.

Business-to-business negotiations are frequently complicated. A multitude of different interests must be accommodated, and often they require compromise. In some cases, there are interest groups which would not sign up to the statement “the objective of any negotiation is to gain an outcome where all involved win.” When the areas of a particular stakeholder’s interest are narrow – for example, data security, export controls – there really isn’t much space for compromise or exchange. So while there may be broad

agreement that it is the outcome which matters, views of what that outcome should be and when it should occur is quite varied. And in truth, it actually varies even for the same stakeholder since different negotiations have different levels of importance.

The dilemma we face is summed up by a comment (see sidebar), sent following publication of an earlier edition of this report. These observations remain true today and highlight the point that the sophisticated lead negotiator must be clear about their goals, their approach and the goals and approach of all other involved parties. Through that determination, they will be able to decide which areas of agreement to prioritize and which they will need to ‘negotiate’ with other interest groups to achieve their agenda. However, the comment also acknowledges the need to ask ‘Is negotiation really needed at all – are we just doing it because it’s what we always do?’

This report on the 2018 ‘most frequently negotiated terms’ confirms that in many cases the quality of planning and negotiation management remains poor, that negotiations in many cases reflect a rather confused melting pot of conflicting interests and authorities and, as a result, many negotiated contracts do not support a win for either party.

Does negotiation have value?

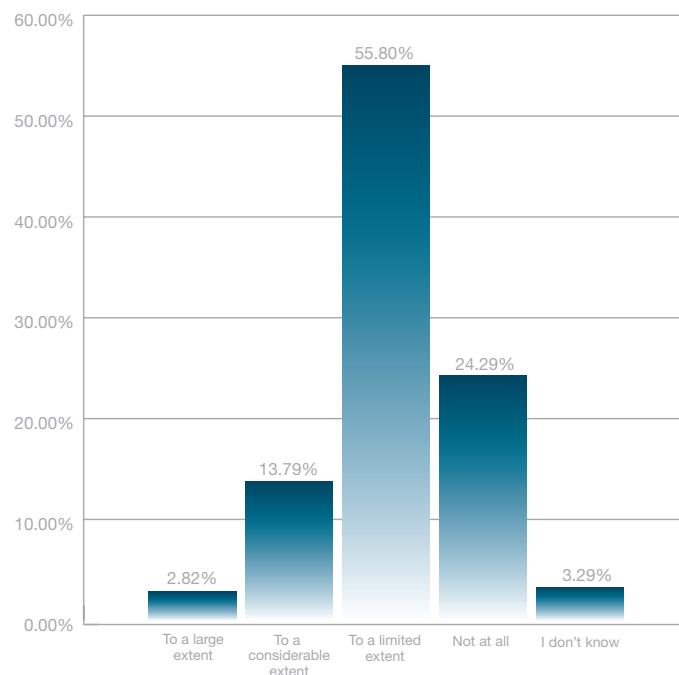
Many people use the term ‘negotiating’ in a generic form, with little thought to the variations in approach that are required by different circumstances. Take this quote as an example:

*“Proving value as in-house counsel and as a law department is a constant grind. Should we negotiate clauses that we’ll never litigate? Do we ever litigate contracts? Or, as we say at my company, do we just “manage the suppliers to death” when they are in breach? To wit: we rarely litigate, but we’ll negotiate firmly because of the belief that our internal customer expects us to do so. Sometimes that makes sense, sometimes it does not – and sometimes we may be wrong about what the internal customer actually wants! Are we “disrupting commerce” by negotiating fiercely on clauses that are never litigated or that provide very low risk, under formula: $B > P * L$ (does the Benefit of doing the deal outweigh the Probability times the Loss)? Relationship dynamics are key. We deal with the same customers on prime contracts over and over again, and we deal with largely the same pool of subcontractors across several prime contracts. Consistency in dealing should be paramount to sustain those relationships, but in a big company, our various lines of business and programs often treat both the customer and supplier very differently.”*

Will Automation change the answer?

Over the last three years the proportion of those who believe that automation will have a significant effect on the role of human negotiators has more than doubled. Today some 72% recognize that it will have an impact (see table below). An interesting question is whether the introduction of machines will accelerate change in the effectiveness and value of negotiations. As this report illustrates, people find it hard to change the negotiation agenda; once again our study blames “resistance by the other side” as the primary factor preventing a shift to focus on the most important terms. It seems likely that intelligent machines would rapidly overcome this obstacle.

To what extent do you believe automated systems will replace human negotiators?



A Deal ... Or a Relationship?

It may seem obvious, but negotiators must adjust their approach depending on whether they are establishing the terms for a transaction or a relationship. For some time, ‘relationships’ rather went out of fashion, with Procurement groups believing that they represented lost opportunities for savings. However, this attempt to ‘commoditize’ every

acquisition was also more appropriate to product purchases – and was being introduced at the same time as product sales were declining, to be replaced by services and solutions (see Table 1 below for this continuing trend). Many services, being intangible and delivered over time, require far more ‘relational’ terms and far more focus on clear definition.

Thinking back over the last 2-3 years, has the type of business offering and contract that you negotiate significantly changed?

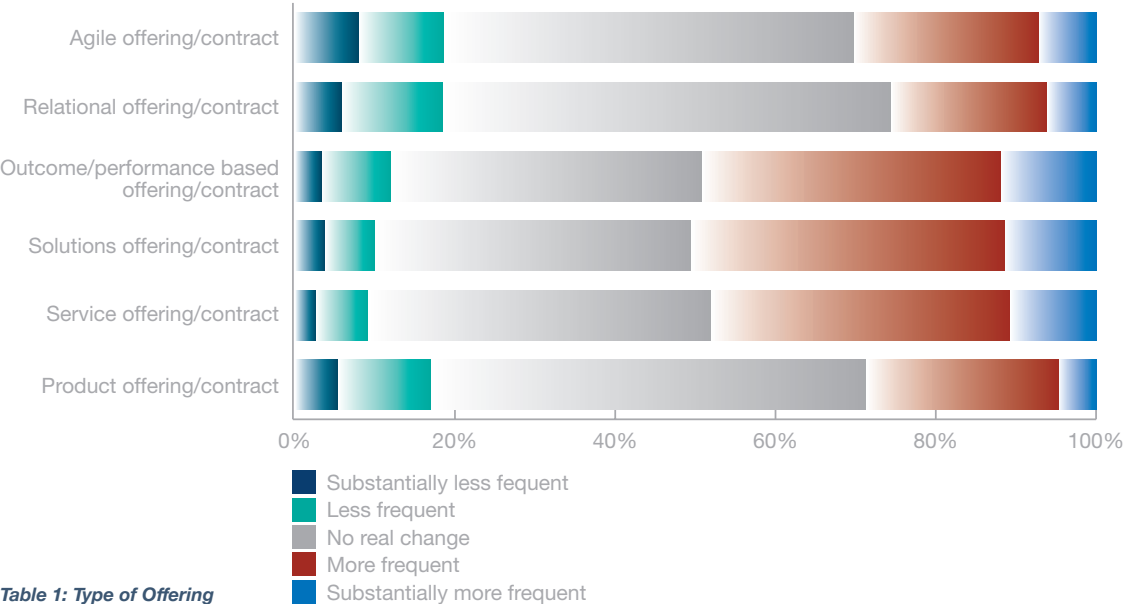


Table 1: Type of Offering

The summary that follows, origin unknown, is an excellent depiction of the key differences between ‘transactions’ and ‘relationships’:

“A transaction is a quick, short-lived exchange. It’s about this deal, these terms. Get a signature, and you’re done. Negotiating relationships is a process with no clear beginning or end. Your goal is to build sufficient understanding, comfort, and trust between parties that you can work together now and *in the future*, under conditions that enable both sides to prosper.”

- In a deal, the party you are negotiating with is, to a large extent, your opponent. In a relationship, the other party is your preferred partner.
- Deals are about getting as much of what you want as you can carry away. Relationships are based on fair division and joint burden-sharing.
- In a deal, you hold yourself aloof from the other party: hiding information, guarding your responses, pressing your position. In a relationship, you are more relaxed, open, and natural: sharing information and truly seeking to understand and resolve differences.
- In a deal, you may exaggerate the strength of your position or try to trick the other side into giving in. Successful relationships are based on honesty, reliability, and follow-through.
- Deals are static, inflexible, with exhaustive contracts intended to guarantee that every term and condition will remain “carved in stone” until the transaction is completed. Relationships are also based on fundamental agreements, but they are more accommodating, less rigidly detailed. Because relationships take place over time, change needs to be anticipated and managed constructively rather than ignored because it falls outside of the scope of the initial agreement. Relationships are dynamic, not carved in stone.”

If we now reflect on the top ten most frequently negotiated terms and relate them to the criteria outlined above, they

appear to be more oriented towards transactions – especially when compared with the table of ‘most important terms’.

Table 2: Top ten most negotiated terms 2018

			'14/ '15							
'18			'15	'13	'12	'11	'10	'09	'08	'07
1	Limitation of Liability	-	1	1	1	1	1	1	1	1
2	Indemnification	-	2	3	2	2	2	2	2	2
3	Price/Charge/ Price Changes	-	3	2	3	3	3	3	3	4
4	Termination		9	4	8	11	7	6	7	11
5	Scope and Goals/ Specification		11	5	6	5	6	8	8	9
6	Warranty		7	8	7	4	4	4	4	3
7	Performance/ Guarantees/ Undertakings		8	7	9	12	10	11	13	14
8	Payment		5	9	16	7	18	-	15	15
9	Data Protection/ Security/Cybersecurity		18	17	18	15	5	5	10	7
10	Liquidated Damages		13	6	20	14	13	12	5	5

Table 3: Top ten most important terms 2018

1. Scope and Goals/Specification
2. Responsibilities of the Parties
3. Price/Charge/Price Changes
4. Delivery/Acceptance
5. Service Levels
6. Performance/Guarantees/Undertakings
7. Limitation of Liability
8. Payment
9. Data Protection/Security/Cybersecurity
10. Change Management

Recommended Actions

1. Focus on the terms that are actually costing you money

Personnel who provide contracting or negotiating services should be thinking about quality. That would mean focusing on reducing or eliminating faults and errors. To do this, we need to understand where things go wrong.

This year's report includes a list of the most frequently contested terms (Table 4 below). It is obvious that if these are the areas that generate future contention, they also represent areas of significant risk and downstream cost. If better negotiation could reduce the frequency with which these occurred, both parties would benefit. Five of the top ten terms that are frequently causing claims or disputes do not appear in the top ten that are most negotiated.

Recent research by IACCM investigated the factors that contribute to success in major projects. A common finding was that many of the terms in the 'most negotiated' list are viewed as non-negotiable. Instead, time is spent on minimizing ambiguity in areas such as scope, the provisions related to change - - for example, what will represent a 'compensation event' - and detailed governance and escalation procedures.

To many, it may seem remarkable that negotiators would not focus on the issues that generate problems, but there are several reasons why this often does not happen. In particular:

- Those who negotiate the contract are frequently not involved in its on-going management and are not measured or incentivized on its performance or outcome.
- There is little-consolidated data related to the issues experienced in the contract lifecycle - knowledge is anecdotal rather than scientific.
- Traditional training and legal theory tends to promote a greater focus by negotiators on minimizing risk consequence, rather than the terms that might reduce risk probability.

During the post-award phase of contract performance which terms are, in your experience, the most frequent cause of a claim or dispute?

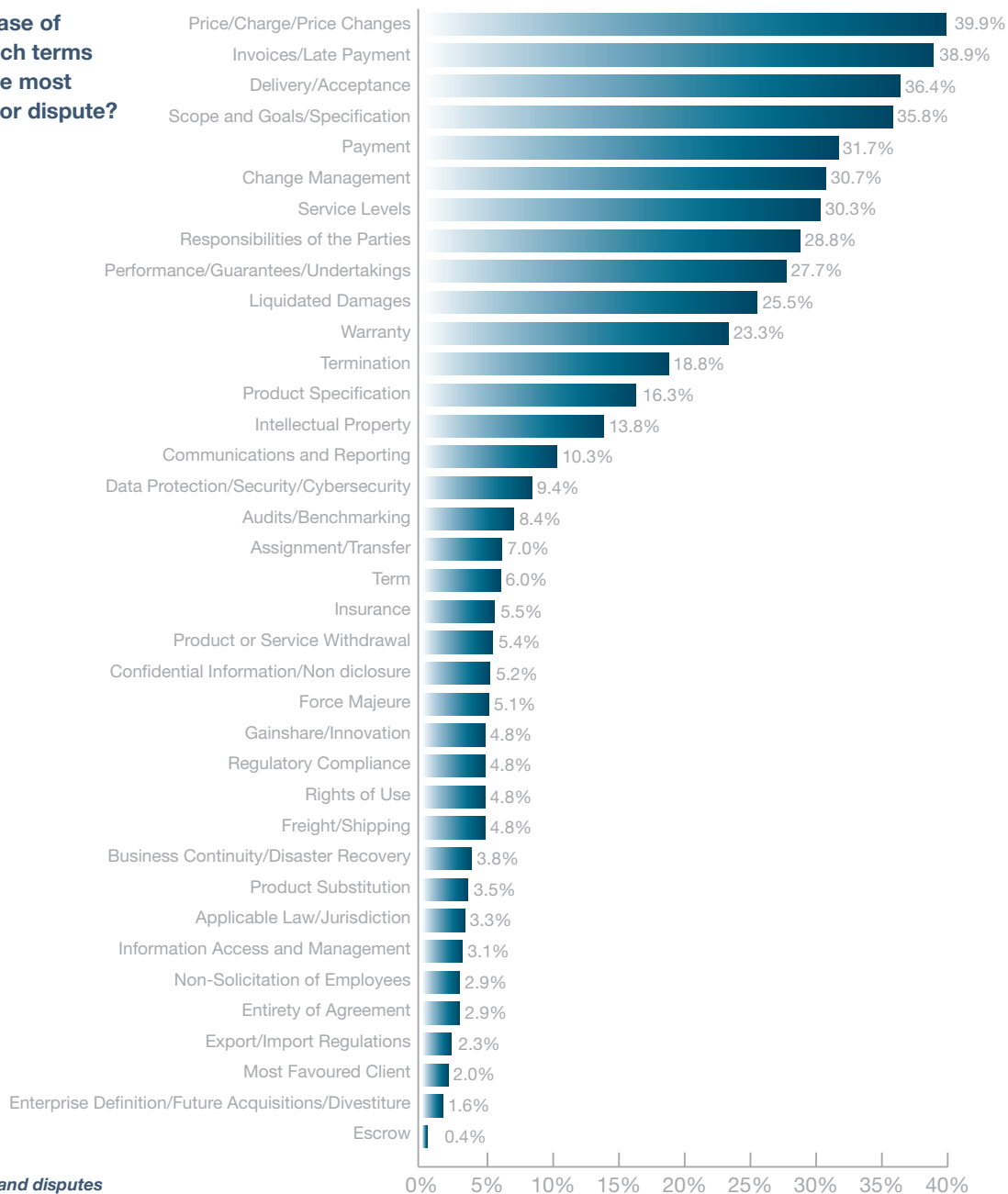


Table 4: Terms that cause claims and disputes

2. Ensure you are using the right agreement by implementing decision trees

IACCM members often reflect on the amount of time wasted in battles over inappropriate or irrelevant contract terms. Even worse, because they are engaged too late in the process, they regularly find themselves contending with the wrong form of agreement. This is especially the case when the customer is driving the selection of contract, since they will often put forward a generic template that takes little or no account of the type of acquisition or the relationship it requires.

Both of these scenarios can be avoided through the use of ‘decision trees’ – a tool that helps its user to choose between a series of available options (in this case, a range of standard templates). These are implemented via a standard process requiring relevant personnel to answer specific questions which lead to identification of the right form of relationship, the right contract template and, where necessary, the right term options.

3. Reduce repetitive negotiation by adopting the IACCM contract principles

In 2016, IACCM was approached by a group of General Counsel who wanted to reduce the delay caused by repetitive negotiation of the same issues. They highlighted six areas – not surprisingly, topics that are high on the list of ‘most negotiated terms’. Although they represented some of the biggest companies in their industry, they were not seeking to use their combined power to impose terms onto their customers. They readily accepted that the right way forward would be to develop ‘balanced terms’ that reflected a reasonable position for both parties.

This initiative led to the production of ‘The IACCM Contract Principles’, a set of guidelines that has been reviewed by negotiators in more than 150 corporations, representing both buy-side and sell-side. By formally adopting these principles as the base for their agreements, organizations can streamline contract review and acceptance, reducing negotiation of important but low-value terms and supporting a switch in focus to the terms that are deemed ‘most important’.

4. Improve implementation and understanding by automating extraction and dissemination of contract terms

Automation is increasingly being deployed to streamline the contracting process and, more important, to reduce risk and improve the economic value achieved. One example of this is automated comparison between an organization's approved 'standard terms' or 'norms' and the terms proposed by a counter-party. This not only reduces the cost and time associated with traditional methods of comparing and red-lining agreements, it also creates the possibility of machine-based decision-making on whether a proposed term falls

within an acceptable 'norm' and therefore does not require negotiation.

Another key area of automation is in the extraction of the agreed terms and their dissemination to those responsible for performance. This has the effect of reducing errors and delays, resulting in less disputes and pressure for renegotiation.



Conclusion

Society as a whole is becoming increasingly impatient with complexity. We expect things to be available on demand, easy to access and understand. While we appreciate that many things are complicated, we expect that experts will make them simple and consumable.

These principles lie at the heart of business operations and the emerging digital world. Contracts and the contracting process will not be immune. Every day, we observe growing pressure for change. Here are a few examples:

- challenging traditional power-based theories: throughout society there is increasing rejection of behaviors based on power. In the world of contracting, it is generally alive and well. Big corporates use their power to impose unbalanced and, in many cases, unfair contract terms on smaller businesses. A push-back is underway, in some cases led by government, but also through small industry associations. The days of these abusive practices are numbered – which is actually great news for everyone because those unbalanced terms brought no measurable economic benefit.
- focus on the terms that matter: McKinsey, the consultants, recently wrote: “It’s scary for most organizations to let go. We have built organizations that are hierarchical, inspired from the military....” That is such an accurate depiction of much of today’s contract negotiation, where experienced practitioners know that far too much time is spent battling over the wrong terms, at the expense of structuring an effective business deal. That is starting to change. General Counsel, in particular, are starting to challenge and push their organizations to think and behave differently.

- ‘we are not involved early enough’: for years, contracts and legal staff have bemoaned the fact that they are often involved too late, that their ability to bring value is undermined by the fact that key commercial aspects of the deal have already been committed before they are consulted. They were right to make that complaint – too often, value was lost, and deals did suffer. But now, we must turn that thinking on its head – the time has come to work out how to ensure that in most cases, we don’t need to be involved at all. How do we use technology to deliver a virtual service? How do we shift our knowledge to the front end of the process to support others in making the right decisions, the right contracting model and the right terms?
- successful contracts provide structure: this is the part that is exciting because it involves seeing the contract in a new way. We all know that contracts are a record of rights and obligations and that shouldn’t change. But historically they have not really been effective business instruments because they have been rigid, hard to understand and seen by many as instruments that have relevance only when things go wrong. But in an agile world, that thinking must change. We need to structure the contract in a way that supports achieving goals and objectives. And we need contracts and contracting processes that are designed to facilitate change, to be adaptive.

A few key principles (and core to this adaptability) are:

- 1) put the customer first – make the distance between the customer and the contract as short as possible;
- 2) put people before process – contract performance ultimately depends on collaborative interaction, often across a multitude of stakeholders, so design contracts as interlocking instruments that support and motivate the right behaviors;

- 3) welcome change – something that is traditional anathema to many procurement, contracts or legal staff, yet which is fundamental to achieving the right outcome; and 4) empower the team – they are at the front end, so provide them with the knowledge they need to make good decisions.

Clearly, these are not changes that occur overnight, and their speed will vary. But in every case, the momentum is there – and anyone who views him or herself as an expert in the world of contracting needs to be working on how to respond to these trends.

The pages that follow provide a much fuller listing of the most negotiated terms, as well as industry and geographic variations.



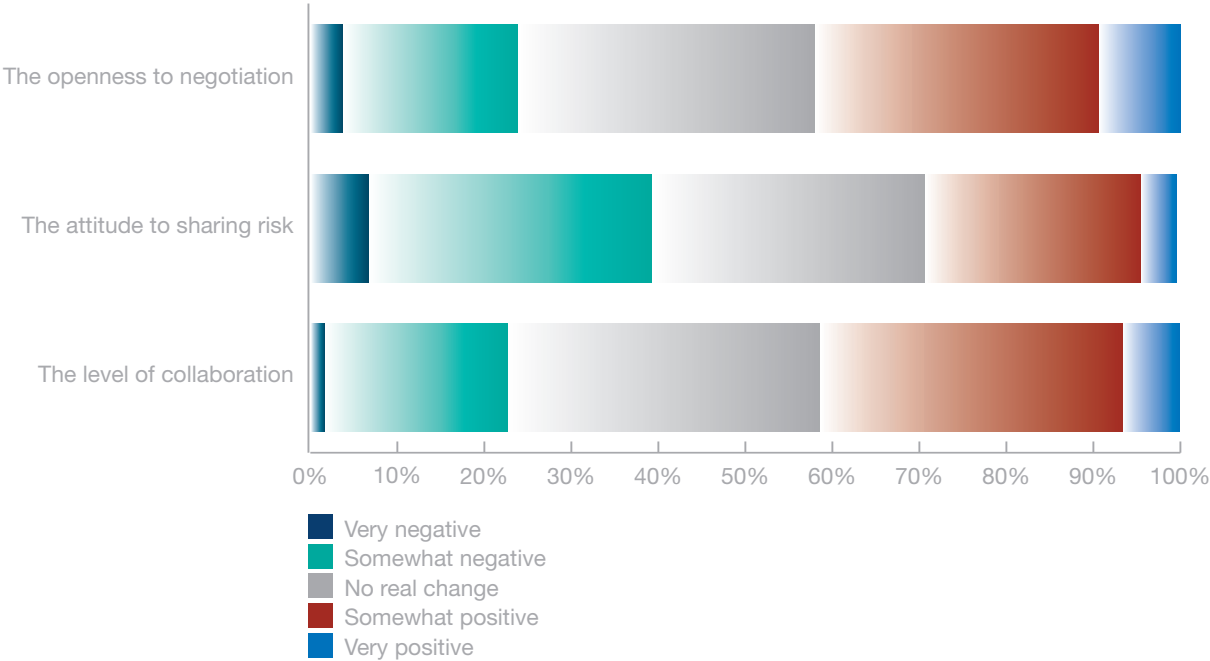
Chart 1: The top 30 'most negotiated terms' (based on surveys undertaken by IACCM during 2018, with replies representing more than 8,000 negotiators based in over 120 countries).

Year	2018	2015	2014/2013	2012	2011	2010	2009	2008	2007
1 Limitation of Liability	-	1	1	1	1	1	1	1	1
2 Indemnification	-	2	3	2	2	2	2	2	2
3 Price / Charge / Price Changes	-	3	2	3	3	3	3	3	4
4 Termination		9	4	8	11	7	6	7	11
5 Scope and Goals / Specification		11	5	6	5	6	8	8	9
6 Warranty		7	8	7	4	4	4	4	3
7 Performance / Guarantees / Undertakings		8	7	9	12	10	11	13	14
8 Payment		5	9	16	7	18	-	15	15
9 Data Protection / Security / Cybersecurity		18	17	18	15	5	5	10	7
10 Liquidated Damages		13	6	20	14	13	12	5	5
11 Delivery / Acceptance		10	10	12	8	8	7	9	8
12 Responsibilities of the Parties	-	12	12	4	16	12	14	-	-
13 Intellectual Property		6	13	11	17	15	13	-	-
14 Invoices / Late Payment		15	11	5	6	9	9	11	10
15 Service Levels		4	15	14	10	5	5	10	7
16 Confidential Information / Non disclosure		14	14	17	19	16	19	14	19
17 Term	-	17	16	10	13	11	15	12	12
18 Insurance		16	New						
19 Regulatory compliance		22	18	34	-	-	-	-	-
20 Dispute Resolution		23	30	27	-	-	-	-	-
21 Product Specification		20	19	13	23	22	22	18	15
22 Information Access and Management		24	20	15	21	19	16	16	17
23 Rights of Use		21	22	22	30	29	29	-	-
24 Change Management		25	21	19	18	17	17	-	-
25 Communications and Reporting		29	23	29	20	20	18	17	18
26 Audits / Benchmarking	-	26	New						
27 Product or Service Withdrawal		28	25	24	28	26	24	-	-
28 Force Majeure		30	24	25	24	24	26	22	27
29 Business Continuity / Disaster Recovery	New								
30 Assignment / Transfer	New								

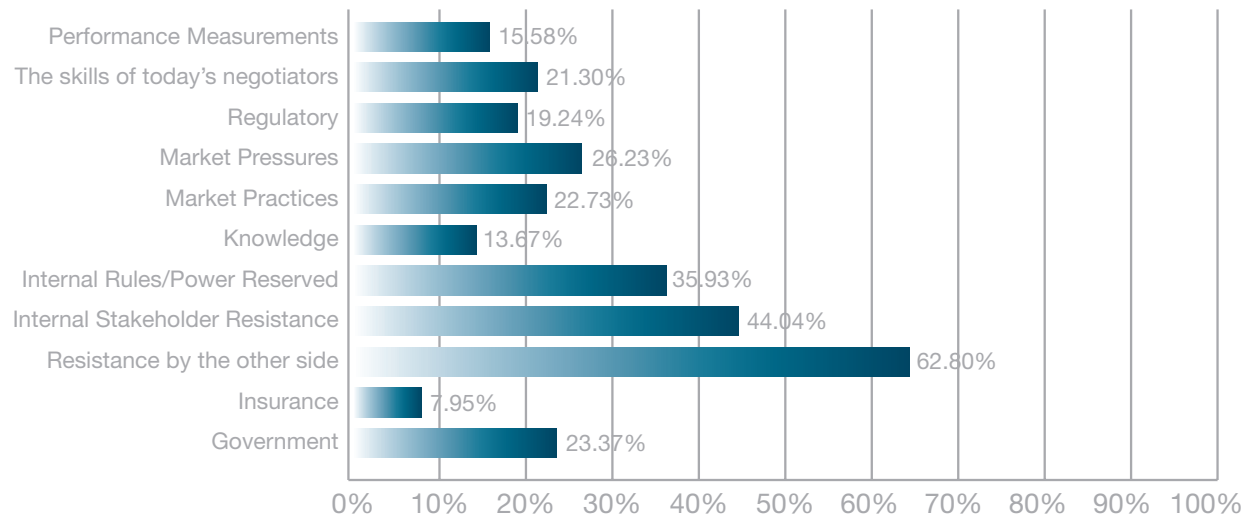
Chart 2: The most important terms (based on input from the Most Negotiated Terms survey, where respondents were asked to identify the terms that most contribute to success)

	Most Important term 2013/2014	Most Important term 2015	Most Important term 2018
1	Scope and Goals	Scope and Goals / Specification	Scope and Goals / Specification
2	Responsibilities of the parties	Responsibilities of the Parties	Responsibilities of the Parties
3	Change Management	Service Levels	Price / Charge / Price Changes
4	Delivery/Acceptance	Delivery / Acceptance	Delivery / Acceptance
5	Communication and Reporting	Price / Charge / Price Changes	Service Levels
6	Price/Change	Performance / Guarantees / Undertakings	Performance / Guarantees / Undertakings
7	Service Levels	Warranty	Limitation of Liability
8	Performance/Guarantees	Product Specification	Payment
9	Payment	Communications and Reporting	Data Protection / Security / Cybersecurity
10	Limitation of Liability	Limitation of Liability	Change Management

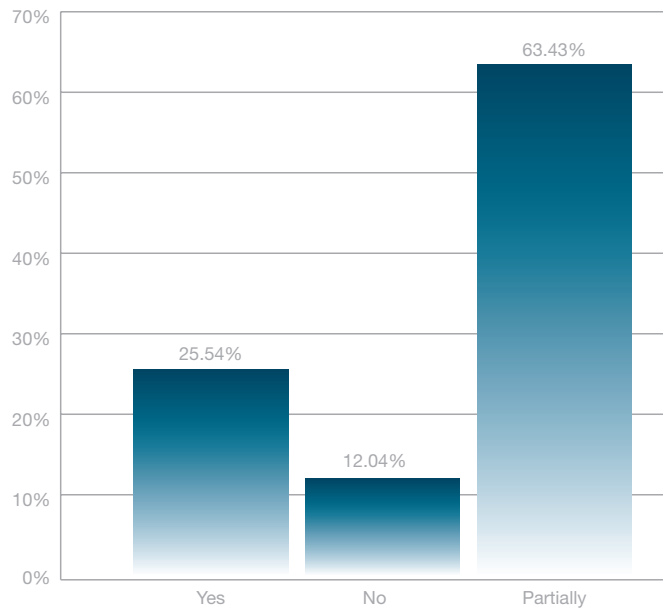
Please tell us about your recent experiences. How did market conditions and practices impact negotiations?



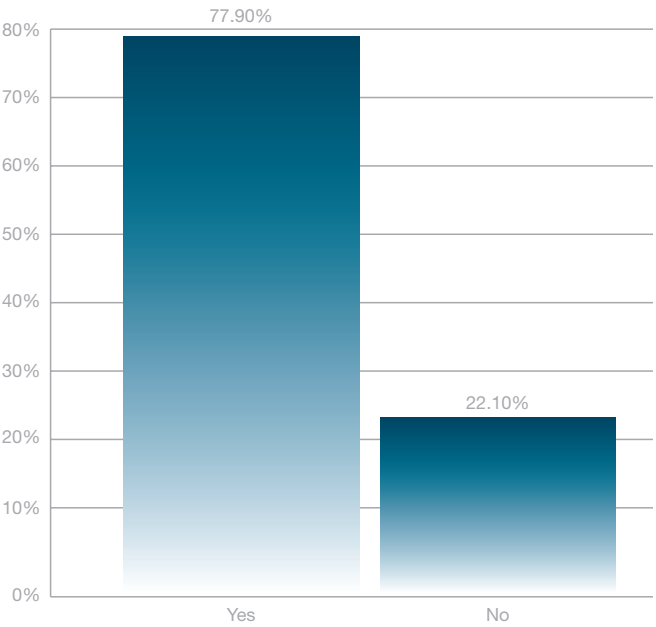
Please indicate the top 3 factors that are most significant in limiting your ability to change what is negotiated?

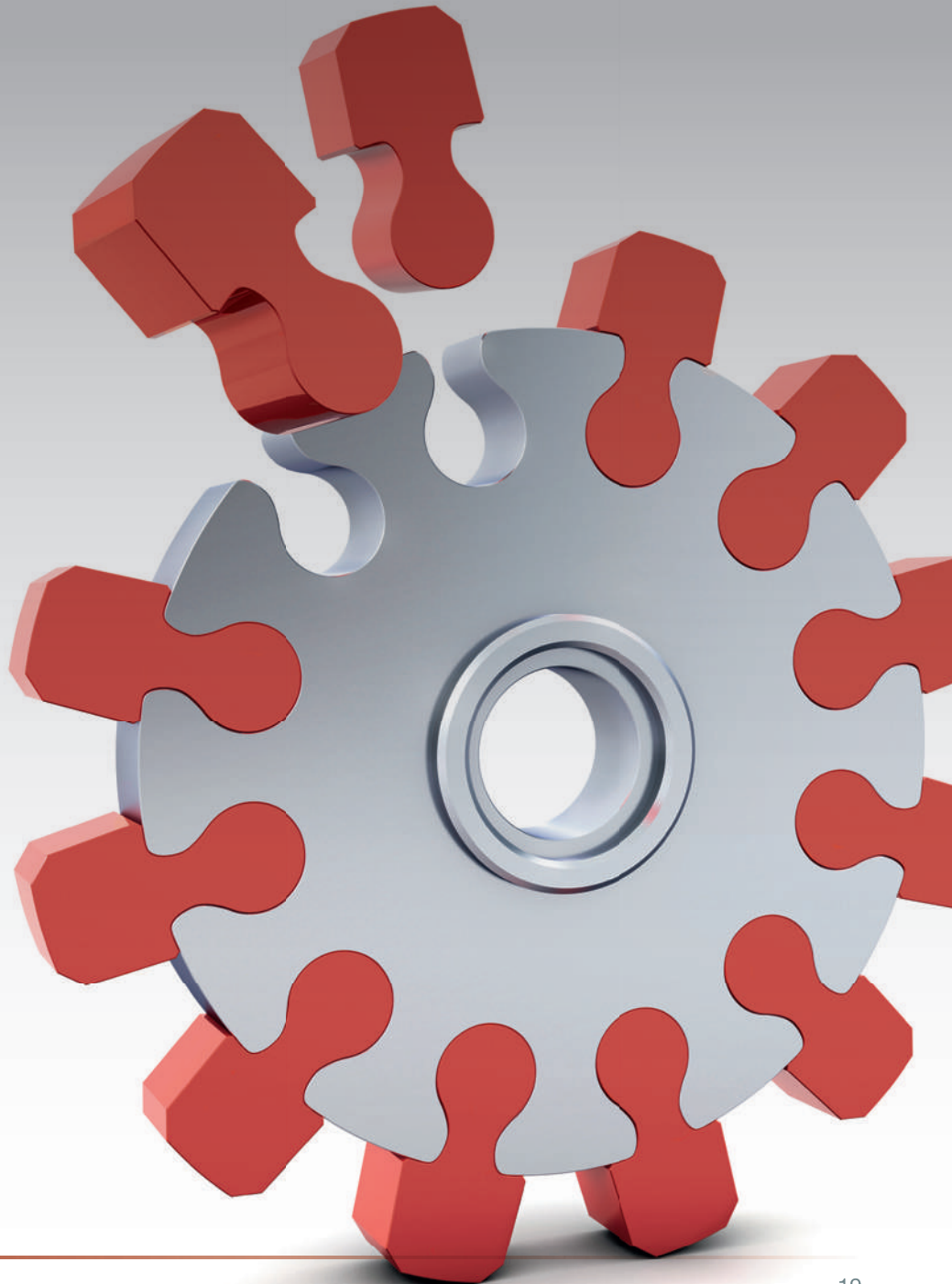


If the aim of contract negotiation is to create a framework for successful business outcomes, do you believe that negotiations today focus on the right topics to achieve that aim?



In your experience, does the focus of negotiated terms change significantly depending on complexity of a contract?





	I mostly perform or support Sales negotiations	I mostly perform or support Procurement/Sourcing negotiations	I perform or support both Buy-Side and Sell-Side negotiations
1	Limitation of Liability	Limitation of Liability	Limitation of Liability
2	Indemnification	Price/Charge/Price Changes	Indemnification
3	Price/Charge/Price Changes	Indemnification	Responsibilities of the Parties
4	Termination	Scope and Goals/Specification	Termination
5	Liquidated Damages	Performance/Guarantees/Undertakings	Payment
6	Intellectual Property	Warranty	Price/Charge/Price Changes
7	Delivery/Acceptance	Termination	Performance/Guarantees/Undertakings
8	Payment	Responsibilities of the Parties	Data Protection/Security/Cybersecurity
9	Scope and Goals/Specification	Payment	Warranty
10	Warranty	Liquidated Damages	Delivery/Acceptance
11	Responsibilities of the Parties	Data Protection/Security/Cybersecurity	Liquidated Damages
12	Invoices/Late Payment	Delivery/Acceptance	Intellectual Property
13	Performance/Guarantees/Undertakings	Service Levels	Scope and Goals/Specification
14	Service Levels	Intellectual Property	Invoices/Late Payment
15	Data Protection/Security/Cybersecurity	Invoices/Late Payment	Service Levels
16	Term	Insurance	Confidential Information/Non disclosure
17	Confidential Information/Non disclosure	Confidential Information/Non disclosure	Term
18	Insurance	Term	Dispute Resolution
19	Regulatory compliance	Product Specification	Insurance
20	Information Access and Management	Regulatory compliance	Regulatory compliance
21	Rights of Use	Dispute Resolution	Rights of Use
22	Dispute Resolution	Information Access and Management	Product Specification
23	Audits/Benchmarking	Communications and Reporting	Information Access and Management
24	Product Specification	Change Management	Communications and Reporting
25	Change Management	Rights of Use	Change Management
26	Assignment/Transfer	Product or Service Withdrawal	Product or Service Withdrawal
27	Force Majeure	Audits/Benchmarking	Audits/Benchmarking
28	Product or Service Withdrawal	Force Majeure	Force Majeure
29	Business Continuity/Disaster Recovery	Business Continuity/Disaster Recovery	Business Continuity/Disaster Recovery
30	Product Substitution	Force Majeure	Assignment/Transfer

	Qualified Lawyer	Not a lawyer
1	Limitation of Liability	Limitation of Liability
2	Indemnification	Price / Charge / Price Changes
3	Termination	Indemnification
4	Warranty	Scope and Goals / Specification
5	Intellectual Property	Performance / Guarantees / Undertakings
6	Price / Charge / Price Changes	Termination
7	Liquidated Damages	Payment
8	Responsibilities of the Parties	Delivery / Acceptance
9	Payment	Data Protection / Security / Cybersecurity
10	Data Protection / Security / Cybersecurity	Liquidated Damages
11	Performance / Guarantees / Undertakings	Warranty
12	Delivery / Acceptance	Responsibilities of the Parties
13	Scope and Goals / Specification	Intellectual Property
14	Invoices / Late Payment	Service Levels
15	Confidential Information / Non disclosure	Invoices / Late Payment
16	Service Levels	Term
17	Insurance	Confidential Information / Non disclosure
18	Term	Insurance
19	Regulatory compliance	Dispute Resolution
20	Product Specification	Regulatory compliance
21	Rights of Use	Product Specification
22	Dispute Resolution	Information Access and Management
23	Information Access and Management	Rights of Use
24	Audits / Benchmarking	Change Management
25	Product or Service Withdrawal	Communications and Reporting
26	Change Management	Audits / Benchmarking
27	Force Majeure	Force Majeure
28	Applicable law / Jurisdiction	Product or Service Withdrawal
29	Assignment / Transfer	Assignment / Transfer
30	Business Continuity / Disaster Recovery	Business Continuity / Disaster Recovery

Appendix 1; The most negotiated terms (Regions)

	English/ Common Law base	French/ French Law base	German/ Germanic Law base	Scandinavian	Islamic Law	Spanish/ Hispanic Law Base	Indian	Brazilian
1	Limitation of Liability	Limitation of Liability	Limitation of Liability	Price / Charge / Price Changes	Liquidated Damages	Performance / Guarantees / Undertakings	Limitation of Liability	Payment
2	Price / Charge / Price Changes	Responsibilities of the Parties	Responsibilities of the Parties	Limitation of Liability	Price / Charge / Price Changes	Responsibilities of the Parties	Liquidated Damages	Invoices / Late Payment
3	Indemnification	Price / Charge / Price Changes	Performance / Guarantees / Undertakings	Termination	Performance / Guarantees / Undertakings	Termination	Payment	Term
4	Scope and Goals / Specification	Scope and Goals / Specification	Price / Charge / Price Changes	Service Levels	Limitation of Liability	Limitation of Liability	Invoices / Late Payment	Price / Charge / Price Changes
5	Performance / Guarantees / Undertakings	Performance / Guarantees / Undertakings	Liquidated Damages	Responsibilities of the Parties	Termination	Warranty	Delivery / Acceptance	Delivery / Acceptance
6	Termination	Warranty	Delivery / Acceptance	Payment	Payment	Liquidated Damages	Indemnification	Scope and Goals / Specification
7	Payment	Liquidated Damages	Data Protection / Security / Cybersecurity	Term	Indemnification	Intellectual Property	Termination	Service Levels
8	Data Protection / Security / Cybersecurity	Data Protection / Security / Cybersecurity	Termination	Performance / Guarantees / Undertakings	Delivery / Acceptance	Payment	Warranty	Limitation of Liability
9	Delivery / Acceptance	Delivery / Acceptance	Warranty	Indemnification	Insurance	Price / Charge / Price Changes	Price / Charge / Price Changes	Termination
10	Liquidated Damages	Payment	Indemnification	Data Protection / Security / Cybersecurity	Invoices / Late Payment	Service Levels	Performance / Guarantees / Undertakings	Responsibilities of the Parties
11	Warranty	Termination	Scope and Goals / Specification	Scope and Goals / Specification	Scope and Goals / Specification	Data Protection / Security / Cybersecurity	Intellectual Property	Performance / Guarantees / Undertakings
12	Responsibilities of the Parties	Term	Intellectual Property	Intellectual Property	Term	Invoices / Late Payment	Responsibilities of the Parties	Data Protection / Security / Cybersecurity
13	Intellectual Property	Intellectual Property	Confidential Information / Non disclosure	Delivery / Acceptance	Service Levels	Regulatory compliance	Term	Communications and Reporting
14	Service Levels	Invoices / Late Payment	Payment	Warranty	Warranty	Scope and Goals / Specification	Scope and Goals / Specification	Dispute Resolution
15	Invoices / Late Payment	Product Specification	Term	Liquidated Damages	Product Specification	Confidential Information / Non disclosure	Confidential Information / Non disclosure	Most Favored Client

	English/ Common Law base	French/ French Law base	German/ Germanic Law base	Scandinavian	Islamic Law	Spanish/ Hispanic Law Base	Indian	Brazilian
16	Term	Rights of Use	Service Levels	Confidential Information / Non disclosure	Data Protection / Security / Cybersecurity	Term	Data Protection / Security / Cybersecurity	Warranty
17	Confidential Information / Non disclosure	Service Levels	Invoices / Late Payment	Invoices / Late Payment	Confidential Information / Non disclosure	Insurance	Dispute Resolution	Change Management
18	Insurance	Indemnification	Change Management	Regulatory compliance	Responsibilities of the Parties	Rights of Use	Regulatory compliance	Information Access and Management
19	Dispute Resolution	Dispute Resolution	Rights of Use	Rights of Use	Dispute Resolution	Information Access and Management	Service Levels	Regulatory compliance
20	Regulatory compliance	Insurance	Regulatory compliance		Intellectual Property	Dispute Resolution	Insurance	Product Specification
21	Product Specification	Product Substitution	Information Access and Management	Audits / Benchmarking	Product or Service Withdrawal	Delivery / Acceptance	Rights of Use	Entirety of Agreement
22	Information Access and Management	Confidential Information / Non disclosure	Product Specification	Dispute Resolution	Entirety of Agreement	Indemnification	Most Favored Client	Confidential Information / Non disclosure
23	Rights of Use	Force Majeure	Insurance	Product or Service Withdrawal	Force Majeure	Business Continuity / Disaster Recovery	Product Specification	Force Majeure
24	Change Management	Regulatory compliance	Dispute Resolution	Product Specification	Product Substitution	Assignment / Transfer	Change Management	Intellectual Property
25	Communications and Reporting	Product or Service Withdrawal	Communications and Reporting	Communications and Reporting	Change Management	Product or Service Withdrawal	Communications and Reporting	Liquidated Damages
26	Audits / Benchmarking	Communications and Reporting	Force Majeure	Information Access and Management	Regulatory compliance		Product or Service Withdrawal	Rights of Use
27	Force Majeure	Export / Import Regulations	Product or Service Withdrawal	Change Management	Freight / Shipping	Audits / Benchmarking	Product Substitution	Insurance
28	Product or Service Withdrawal	Information Access and Management	Audits / Benchmarking	Assignment / Transfer	Export / Import Regulations	Change Management	Business Continuity / Disaster Recovery	Product Substitution
29	Business Continuity / Disaster Recovery	Applicable law / Jurisdiction	Gainshare / Innovation	Applicable law / Jurisdiction	Audits / Benchmarking	Communications and Reporting	Assignment / Transfer	Applicable law / Jurisdiction
30	Assignment / Transfer	Assignment / Transfer	Assignment / Transfer	Gainshare / Innovation	Applicable law / Jurisdiction	Applicable law / Jurisdiction	Gainshare / Innovation	Assignment / Transfer

Appendix 2; The most negotiated terms (Industries)

	Aerospace/Defense	Banking/Insurance / Financial	Engineering/Construction /Real Estate	Healthcare/ Pharma/Chemicals	Legal	Manufacturing/ Processing
1	Limitation of Liability	Limitation of Liability	Limitation of Liability	Limitation of Liability	Limitation of Liability	Price / Charge / Price Changes
2	Price / Charge / Price Changes	Data Protection / Security / Cybersecurity	Liquidated Damages	Indemnification	Termination	Indemnification
3	Delivery / Acceptance	Confidential Information / Non disclosure	Responsibilities of the Parties	Warranty	Payment	Limitation of Liability
4	Liquidated Damages	Indemnification	Performance / Guarantees / Undertakings	Price / Charge / Price Changes	Price / Charge / Price Changes	Performance / Guarantees / Undertakings
5	Payment	Termination	Price / Charge / Price Changes	Payment	Intellectual Property	Warranty
6	Intellectual Property	Regulatory compliance	Scope and Goals / Specification	Performance / Guarantees / Undertakings	Delivery / Acceptance	Scope and Goals / Specification
7	Scope and Goals / Specification	Service Levels	Warranty	Intellectual Property	Indemnification	Liquidated Damages
8	Indemnification	Price / Charge / Price Changes	Payment	Termination	Responsibilities of the Parties	Payment
9	Responsibilities of the Parties	Responsibilities of the Parties	Delivery / Acceptance	Confidential Information / Non disclosure	Warranty	Termination
10	Product Specification	Term	Invoices / Late Payment	Scope and Goals / Specification	Performance / Guarantees / Undertakings	Intellectual Property
11	Performance / Guarantees /Undertakings	Intellectual Property	Indemnification	Data Protection / Security / Cybersecurity	Liquidated Damages	Confidential Information / Non disclosure
12	Termination	Performance / Guarantees / Undertakings	Termination	Responsibilities of the Parties	Service Levels	Term
13	Dispute Resolution	Information Access and Management	Insurance	Insurance	Data Protection / Security / Cybersecurity	Delivery / Acceptance
14	Data Protection / Security / Cybersecurity	Warranty	Dispute Resolution	Invoices / Late Payment	Regulatory compliance	Responsibilities of the Parties
15	Warranty	Scope and Goals / Specification	Term	Regulatory compliance	Invoices / Late Payment	Product Specification

Oil/Gas/Minerals/ Utilities	Public Sector/ Government	Services/Outsourcing/ Consulting	Technology/ Software	Telecommunications	Transportation/ Logistics
Limitation of Liability	Limitation of Liability	Limitation of Liability	Limitation of Liability	Limitation of Liability	Limitation of Liability
Price / Charge / Price Changes	Indemnification	Termination	Indemnification	Service Levels	Indemnification
Warranty	Scope and Goals / Specification	Indemnification	Intellectual Property	Termination	Price / Charge / Price Changes
Indemnification	Service Levels	Service Levels	Price / Charge / Price Changes	Liquidated Damages	Performance / Guarantees / Undertakings
Performance / Guarantees / Undertakings	Insurance	Price / Charge / Price Changes	Delivery / Acceptance	Invoices / Late Payment	Liquidated Damages
Liquidated Damages	Delivery / Acceptance	Scope and Goals / Specification	Service Levels	Price / Charge / Price Changes	Invoices / Late Payment
Data Protection / Security/Cybersecurity	Intellectual Property	Intellectual Property	Warranty	Indemnification	Termination
Scope and Goals / Specification	Price / Charge / Price Changes	Performance / Guarantees / Undertakings	Scope and Goals / Specification	Scope and Goals / Specification	Insurance
Responsibilities of the Parties	Responsibilities of the Parties	Responsibilities of the Parties	Data Protection / Security / Cybersecurity	Payment	Data Protection / Security / Cybersecurity
Delivery / Acceptance	Confidential Information / Non disclosure	Payment	Termination	Warranty	Payment
Invoices / Late Payment	Termination	Data Protection / Security / Cybersecurity	Payment	Delivery / Acceptance	Service Levels
Termination	Communications and Reporting	Liquidated Damages	Performance / Guarantees / Undertakings	Responsibilities of the Parties	Responsibilities of the Parties
Insurance	Performance / Guarantees / Undertakings	Delivery / Acceptance	Invoices / Late Payment	Performance / Guarantees / Undertakings	Scope and Goals / Specification
Intellectual Property	Regulatory compliance	Term	Liquidated Damages	Intellectual Property	Term
Payment	Invoices / Late Payment	Warranty	Responsibilities of the Parties	Data Protection / Security / Cybersecurity	Warranty

	Aerospace/Defense	Banking/Insurance / Financial	Engineering/Construction / Real Estate	Healthcare/ Pharma/Chemicals	Legal	Manufacturing/ Processing
16	Insurance	Payment	Change Management	Delivery / Acceptance	Confidential Information / Non disclosure	Invoices / Late Payment
17	Confidential Information / Non disclosure	Liquidated Damages	Product Specification	Service Levels	Scope and Goals / Specification	Data Protection / Security / Cybersecurity
18	Invoices / Late Payment	Audits / Benchmarking	Force Majeure	Term	Term	Service Levels
19	Regulatory compliance	Delivery / Acceptance	Intellectual Property	Product Specification	Insurance	Insurance
20	Export / Import Regulations	Business Continuity / Disaster Recovery	Confidential Information / Non disclosure	Liquidated Damages	Rights of Use	Regulatory compliance
21	Term	Rights of Use	Regulatory compliance	Information Access and Management	Information Access and Management	Dispute Resolution
22	Rights of Use	Communications and Reporting	Rights of Use	Communications and Reporting	Dispute Resolution	Freight / Shipping
23	Communications and Reporting	Invoices / Late Payment	Communications and Reporting	Applicable law / Jurisdiction	Product Specification	Product or Service Withdrawal
24	Change Management	Product Specification	Service Levels	Dispute Resolution	Non-Solicitation of Employees	Information Access and Management
25	Force Majeure	Insurance	Entirety of Agreement	Product or Service Withdrawal	Assignment / Transfer	Force Majeure
26	Service Levels	Change Management	Freight / Shipping	Rights of Use	Applicable law / Jurisdiction	Applicable law / Jurisdiction
27	Information Access and Management	Dispute Resolution	Product Substitution	Audits / Benchmarking	Product or Service Withdrawal	Change Management
28	Freight / Shipping	Product or Service Withdrawal	Data Protection / Security / Cybersecurity	Product Substitution	Force Majeure	Audits / Benchmarking
29	Product Substitution	Business Continuity / Disaster Recovery	Information Access and Management	Business Continuity / Disaster Recovery	Business Continuity / Disaster Recovery	Product Substitution
30	Business Continuity / Disaster Recovery	Assignment / Transfer	Product or Service Withdrawal	Assignment / Transfer	Assignment / Transfer	Business Continuity / Disaster Recovery

Oil/Gas/Minerals/ Utilities	Public Sector/ Government	Services/Outsourcing/ Consulting	Technology/ Software	Telecommunications	Transportation/ Logistics
Dispute Resolution	Warranty	Invoices / Late Payment	Confidential Information / Non disclosure	Term	Delivery / Acceptance
Product Specification	Payment	Confidential Information / Non disclosure	Information Access and Management	Product Specification	Product Specification
Term	Term	Rights of Use	Term	Rights of Use	Confidential Information / Non disclosure
Confidential Information / Non disclosure	Information Access and Management	Audits / Benchmarking	Rights of Use	Information Access and Management	Intellectual Property
Service Levels	Data Protection / Security / Cybersecurity	Regulatory compliance	Regulatory compliance	Product or Service Withdrawal	Dispute Resolution
Force Majeure	Product Specification	Insurance	Insurance	Regulatory compliance	Force Majeure
Change Management	Liquidated Damages	Information Access and Management	Audits / Benchmarking	Confidential Information / Non disclosure	Information Access and Management
Regulatory compliance	Dispute Resolution	Dispute Resolution	Product Specification	Dispute Resolution	Change Management
Communications and Reporting	Rights of Use	Change Management	Product or Service Withdrawal	Insurance	Regulatory compliance
Information Access and Management	Change Management	Business Continuity / Disaster Recovery	Change Management	Change Management	Product or Service Withdrawal
Rights of Use	Entirety of Agreement	Non-Solicitation of Employees	Communications and Reporting	Most Favored Client	Communications and Reporting
Product or Service Withdrawal	Business Continuity / Disaster Recovery	Communications and Reporting	Business Continuity / Disaster Recovery	Communications and Reporting	Audits / Benchmarking
Audits / Benchmarking	Audits / Benchmarking	Assignment / Transfer	Dispute Resolution	Product Substitution	Most Favored Client
Entirety of Agreement	Force Majeure	Product Substitution	Product Substitution	Product Substitution	Business Continuity / Disaster Recovery
Freight / Shipping	Product Substitution	Applicable law / Jurisdiction	Applicable law / Jurisdiction	Applicable law / Jurisdiction	Assignment / Transfer

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Notes:

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

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Who we are

IACCM is dedicated to raising individual, organizational and institutional capabilities in contracting and commercial management. It provides research, learning, certification and benchmarking to a worldwide, cross-industry audience of practitioners and executives.

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