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WHITE PAPER · PROCUREMENT & COMMERCIAL RISK

THE ULTIMATE PROCUREMENT CONTRACT HANDBOOK

15 clauses that protect your business before the first purchase order - a practical framework for procurement leaders, CFOs, founders and in-house counsel.

CORPORATE ADVISORY SERIES · 2026

STRATEGIC COMMERCIAL RISK | CORPORATE ADVISORY | CONTRACT INTELLIGENCE

INTRODUCTION

EVERY PROCUREMENT DECISION IS A RISK DECISION

While procurement teams focus on pricing, delivery timelines and supplier capabilities, the contract determines who bears the cost when something goes wrong.

A well-negotiated agreement can protect margins, preserve business continuity and prevent disputes. A poorly drafted one can expose the organization to unnecessary financial and operational risk.

Over the years, we have found that procurement contracts rarely fail because of the commercial terms. They fail because critical legal and risk allocation provisions are overlooked or treated as boilerplate.

Whether you are a procurement leader, CFO, founder or in-house counsel, the fifteen clauses that follow are the ones that deserve your attention before signing any procurement agreement.

• WHAT THIS HANDBOOK COVERS

- Foundation & Delivery - scope, pricing, performance, acceptance and change
- Risk & Protection - IP, confidentiality, warranties, indemnity, liability and insurance
- Exit & Governance - termination, compliance, audit rights and dispute resolution

• KEY INSIGHT

If the supplier believes an activity is "out of scope," the buyer may face unexpected change requests, delays, or additional costs. Most disputes trace back to ambiguity that was never resolved at drafting stage.

PART I · CLAUSES 01–05

FOUNDATION & DELIVERY

DEFINING WHAT IS OWED, AT WHAT PRICE AND TO WHAT STANDARD

CLAUSES 01–05

01 SCOPE OF SUPPLY

The scope should define exactly what is being supplied - specifications, quantities, quality standards, acceptance criteria, delivery locations, implementation requirements and documentation. Ambiguity in scope is one of the most common causes of disputes.

SPECIFICATIONS · QUANTITIES · QUALITY STANDARDS · DELIVERY LOCATIONS · DOCUMENTATION

Key question - would an independent third party understand exactly what the supplier is obligated to deliver?

02 PRICING & PAYMENT TERMS

Price alone does not determine the commercial outcome. A poorly drafted payment clause often creates unnecessary cash flow disputes.

FIXED VS VARIABLE · TAXES & DUTIES · FX RISK · MILESTONE PAYMENTS · RETENTION · INVOICING TIMELINES · LATE PAYMENT · PRICE REVISION

03 SERVICE LEVELS & PERFORMANCE STANDARDS

Every procurement contract should define measurable performance expectations. Performance without measurable standards is difficult to enforce.

DELIVERY TIMELINES · UPTIME · RESPONSE & RESOLUTION · QUALITY BENCHMARKS · AVAILABILITY · DEFECT THRESHOLDS

04 ACCEPTANCE TESTING

Many organizations forget to define when goods or services are considered accepted. Without a structured process, businesses may inadvertently accept defective products or incomplete services.

TESTING PROCEDURES · ACCEPTANCE CRITERIA · INSPECTION PERIODS · REJECTION RIGHTS · CORRECTIVE ACTION

05 CHANGE CONTROL

Business requirements evolve and contracts should anticipate change. A disciplined change process reduces disputes and protects project budgets.

APPROVAL AUTHORITY · DOCUMENTATION · COMMERCIAL IMPACT · TIMELINE ADJUSTMENTS · APPROVAL HIERARCHY

PART II · CLAUSES 06–11

RISK & PROTECTION

ALLOCATING FINANCIAL EXPOSURE BEFORE IT MATERIALIZES

CLAUSES 06–08

06 INTELLECTUAL PROPERTY RIGHTS

Ownership of intellectual property should never be assumed. The agreement should clearly distinguish between pre-existing IP, newly created work product and licensed or open-source components. Failure to address IP ownership can create significant commercial and legal complications.

PRE-EXISTING IP · NEW WORK PRODUCT · CUSTOM DEVELOPMENTS · LICENCES · THIRD-PARTY SOFTWARE · OPEN SOURCE

07 CONFIDENTIALITY & DATA PROTECTION

Suppliers increasingly handle confidential information, customer data and business-critical systems. In today's digital environment, cybersecurity is a contractual issue - not just an IT issue.

CONFIDENTIAL INFO · DATA SECURITY · PRIVACY COMPLIANCE · DATA RETENTION · RETURN / DESTRUCTION · CYBERSECURITY STANDARDS · BREACH NOTIFICATION

08 WARRANTIES

A supplier's warranty is the buyer's assurance of quality. Well-defined warranties reduce operational uncertainty and improve accountability.

PRODUCT QUALITY · SPEC COMPLIANCE · LEGAL COMPLIANCE · PROFESSIONAL STANDARDS · DEFECT CORRECTION · WARRANTY DURATION

> **This clause often represents the largest financial exposure in the contract and deserves careful negotiation.**
>
> ON INDEMNITY - SEE CLAUSE 09, OVERLEAF

CLAUSES 09–11 · WHERE EXPOSURE CONCENTRATES

09 INDEMNITY

An indemnity determines who bears financial responsibility when specific risks materialize. Typical procurement indemnities cover IP infringement, third-party claims, property damage, personal injury, confidentiality and data breaches and regulatory violations.

IP INFRINGEMENT · THIRD-PARTY CLAIMS · PROPERTY DAMAGE · PERSONAL INJURY · CONFIDENTIALITY BREACH · DATA BREACH · REGULATORY VIOLATION

10 LIMITATION OF LIABILITY

Every commercial contract should define the financial limits of each party's liability. A balanced liability framework protects both parties while ensuring accountability for high-risk events.

OVERALL LIABILITY CAPS · EXCLUDED LOSSES · UNLIMITED LIABILITY EVENTS · CONSEQUENTIAL LOSS EXCLUSIONS · FRAUD / WILFUL MISCONDUCT CARVE-OUTS

11 INSURANCE REQUIREMENTS

Insurance provides financial protection if significant risks arise. The contract should specify minimum coverage limits and evidence of insurance.

PROFESSIONAL INDEMNITY · PUBLIC LIABILITY · PRODUCT LIABILITY · CYBER INSURANCE · WORKERS' COMPENSATION · EMPLOYER LIABILITY

“The strongest procurement contract is not the one that wins a dispute. It is the one that prevents the dispute from arising in the first place.”

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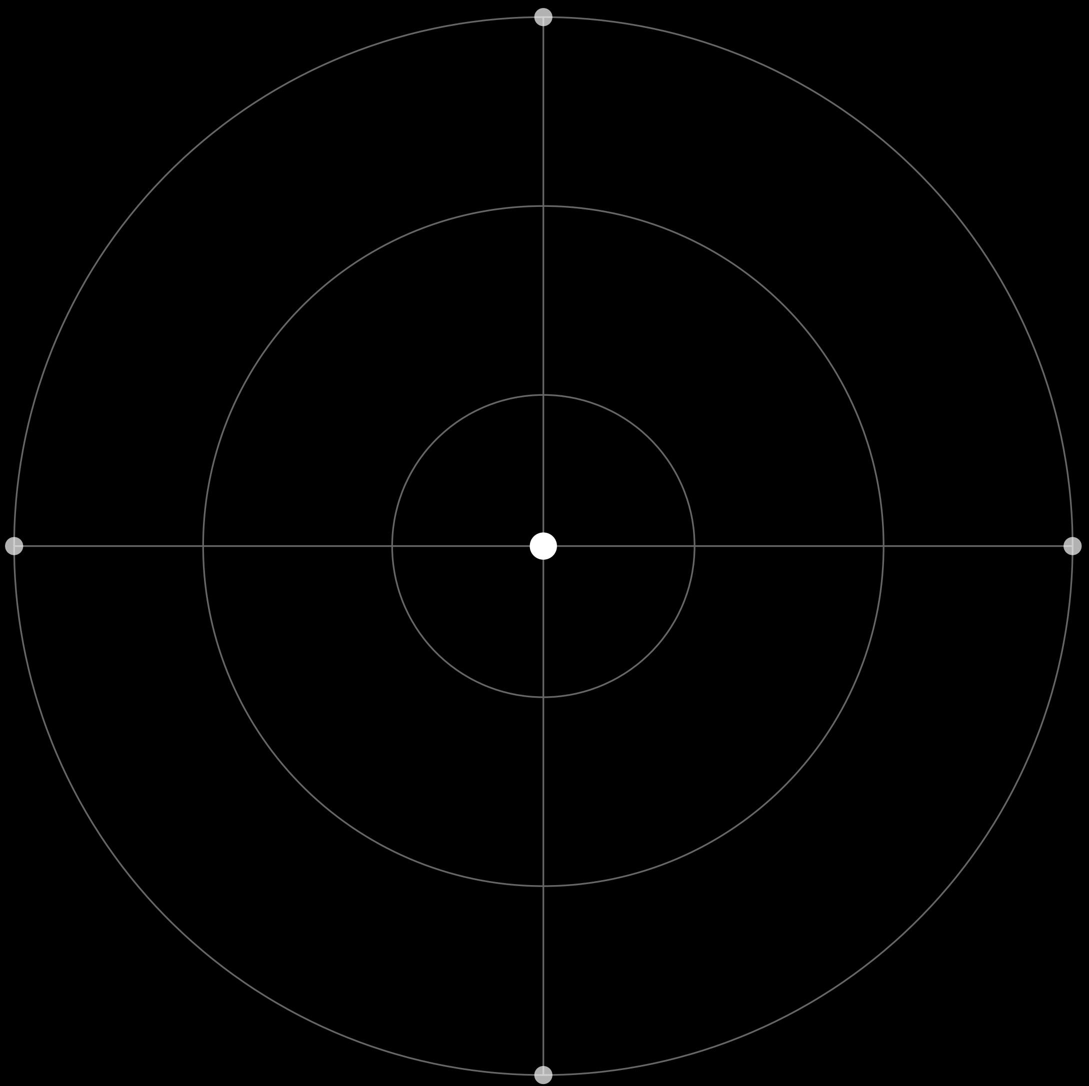

PART III · CLAUSES 12–15

EXIT & GOVERNANCE

ENSURING COMPLIANCE TODAY AND A CLEAN EXIT TOMORROW

CLAUSES 12–15

12 TERMINATION RIGHTS

Termination provisions should address not only breach but business continuity. A clear exit mechanism can significantly reduce operational disruption.

FOR CONVENIENCE
MATERIAL BREACH
INSOLVENCY
FORCE MAJEURE
TRANSITION ASSISTANCE
EXIT OBLIGATIONS

13 COMPLIANCE WITH LAWS

Regulatory non-compliance by a supplier can expose the buyer to financial, operational and reputational consequences.

LABOUR LAWS
ENVIRONMENTAL REGS
ANTI-BRIBERY
EXPORT CONTROLS
DATA PRIVACY

14 AUDIT RIGHTS

For critical suppliers, buyers should retain the contractual right to verify compliance - particularly valuable in regulated industries and long-term outsourcing.

FINANCIAL AUDITS
SECURITY ASSESSMENTS
COMPLIANCE REVIEWS
QUALITY INSPECTIONS

15 DISPUTE RESOLUTION

Disputes are not always avoidable, but they can be managed effectively. A well-designed clause often prevents prolonged commercial disruption.

ESCALATION
MEDIATION
ARBITRATION
GOVERNING LAW
JURISDICTION
INTERIM RELIEF

CLOSING

PROCUREMENT IS ABOUT MANAGING RISK, NOT JUST MANAGING COST

Successful procurement professionals understand that the lowest bid is not always the lowest-risk option.

Every procurement contract should answer four fundamental questions:

- 01

  What exactly is the supplier obligated to deliver?

- 02

  What happens if performance falls short?

- 03

  Who bears the financial consequences when things go wrong?

- 04

  How can the business exit the relationship with minimal disruption?

The answers to these questions determine whether a contract protects the business - or merely records the commercial deal.

> **As legal advisors, our role extends beyond drafting agreements. We help organizations allocate risk intelligently, strengthen commercial relationships and create contractual frameworks that support sustainable growth.**
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What clause do you believe is most frequently overlooked in procurement contracts?

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