I started my career in a mid-sized law firm doing sophisticated corporate deals about 28 years ago. Since then, my practice has evolved into doing sophisticated tech, telecom and outsourcing deals. With this evolution, I found new contracting norms.

I went from a world of good first drafts of agreements prepared by competent lawyers to a world where first drafts often came from illiterates. This article is a short how-to guide to get you from illiteracy to a workable and fair agreement.

In negotiating your agreements, you must avoid that natural tendency to see the deal’s starting point as being the vendor’s form. Most of the first drafts of contracts from tech vendors that I see are atrociously written. They arrive on thoughtlessly used templates modified by the incompetent. They are not so much one-sided in favor of the vendor as simply not an expression of the deal.

Know the norms

The tech world has some rather firmly established contracting norms. It’s important to know them so that you don’t push where pushing is not likely to garner meaningful concessions. Knowing the norms allows you to effectively focus on the areas where you can have impact, while choreographing your concessions around areas where you’re not likely to win the battle, anyway. You simply cannot negotiate these deals effectively unless you understand the norms.

Know the contracting norms and enter into your contracting process with goals in mind: 

- First, the final version of the written document has to be good enough to stand on its own since it is possible that none of the people sitting at the negotiating table will be around when a question arises down the road.

- Second, use the contracting process to ensure communication between the parties. Odds are, the business leads have not worked through all of the deal points or potential problems in the heady early days of the relationship.
• Third, use the contracting process to pull those one-sided vendor terms back to the middle. What’s good for them is good for you. That’s fairness.
• Fourth, push for extensive warranties. It’s tough to tell you in a vacuum how much of a warranty you need. However, if you have anything that looks or smells like a warranty in your agreement, that’s at least a good starting point.
• Fifth, always negotiate for better support and Service Level Agreement response time guarantees than are first being offered. Follow this up by requesting specific escalation provisions, which help to insure that if level one support can’t get the job done in a reasonable amount of time, it will move up through the vendor's chain of command quickly. Good response time and escalation provisions can be worth their weight in gold when you're in crisis.
• Finally, you should always focus on damage limitations. Be leery of clauses that limit Vendor’s liability since they may limit you to some predetermined, and usually low, dollar figure. Limitations of liability are negotiable and a one-sided damage limitation could emasculate much of what you gained in other aspects of your negotiation.

Changing your contracting process can be a difficult task, but it is often easiest at the beginning of the deal. Unfortunately, too many companies don’t put in the time and effort at the beginning of the deal, and the reasons are actually quite simple—it's all about time and money. IT contracting is often a time-consuming and resource-draining project. It takes effort to thoroughly negotiate an IT contract.

You could choose to march ahead with a contract that has as much definitive and clear material as a politician's stump speech. If all goes well, you'll feel like you made the correct judgment. However, in reality, you were just lucky. This method is okay for the desperate and for those who like to play in the dark. But if you don't specify things in your contract, you may find yourself staring into the face of a bad situation down the road.

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