COMMERCIAL CONTRACTS CHECKLIST
PART I – COMMERCIAL CONSIDERATIONS

If you are entering into a contract with a supplier, use this checklist to ensure that the contract includes the following important key terms and conditions.

GOODS AND/OR SERVICES

- should be clearly described;
- match what was described to you;
- include detailed specifications (if applicable); and
- include an appropriate remedy if they do not match (e.g. the supplier to resupply or rectify, or for you to obtain a refund).

PRICE

- should be clearly stated;
- set out when and how you have to pay, including whether you need to pay before or after the goods and/or services have been provided; and
- ensure that the supplier cannot change the price without your consent (unless this has been commercially agreed).

SERVICE LEVELS

- if your business requires specific service levels, ensure they are clearly set out (e.g licensed software is available 99.9% of the time); and
- the supplier has clear consequences for breaching these levels (such as providing you with a service credit or refund).

MILESTONES

- ensure that your contract includes key milestones for service and/or goods delivery;
- milestones should include key dates and/and timeframes; and
- consequences of these not being met (for example, service credits or termination rights).

WARRANTY

- ensure warranty periods against defects are long enough to cover your business risk;
- that any warranty exclusions suit your business; and
- if you are on selling the goods/services being purchased, that the supplier's warranty is as onerous as the one your customers will receive from you.

TERM AND TERMINATION

If you are receiving ongoing services from a supplier, it is important to know:

- when the services start;
- when the services end;
- how and when you can terminate the agreement; and
- check for automatic renewal clauses, particularly if you are purchasing goods or services under a subscription.

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COMMERCIAL CONTRACTS CHECKLIST
PART II – LEGAL CONSIDERATIONS

INDEMNITIES

- confirm whether the supplier will indemnify you for certain loss or damage;
- if yes, check the indemnity clause covers your key legal risks are covered (including, for example, for personal injury or death, property loss or damage or infringement of confidentiality, privacy and third party intellectual property rights); and
- that you are not providing any indemnities to the supplier.

INTELLECTUAL PROPERTY

- confirm whether you receive materials as part of your goods and/or services (such as training documentation, graphic design, software and similar deliverables);
- if yes, consider whether you have the correct intellectual property rights to use these materials, including the ability to modify, sell, use or otherwise exploit; and
- whether you should have a licence to use the intellectual property or if you should own the intellectual property outright.

DATA AND PRIVACY

- if you will be handling personal or sensitive information, make sure it is clear who holds, owns, and controls any data;
- there is a clear process for how to handle any data breaches; and
- any security standards you require your suppliers to comply with.

LIABILITY

- confirm whether your supplier has capped their liability to the price of the goods or services provided and excluded certain risks from liability altogether;
- check if these caps/exclusions cover any commercial risk that you may be exposed to under the arrangement; and
- if you need to exclude certain types of liability from the cap.

CONTACT US

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