

Contract Negotiation Checklist: Practical Tips for In-house Counsel

This checklist was prepared based on the ACC Webcast titled “[Which Contract Issues are “Worth the Fight” in Negotiations? Tips for In-house Counsel on Evaluating Risk](#)” (23 February 2021) delivered by Heather Marx, Cozen O’Connor, and Kristi Zentner, of Cozen O’Connor. For more tips, [watch the webcast](#). Also check out the ACC Curated Collection of Resources on [Contract Negotiation Skills](#).

➤ First consider the big picture:

- What is your company’s **main business objective** with this contract?
- How does the deal fit your **company’s business strategy** – is it an essential component?
- Is it a one-shot deal, or are there **other contracts/relationships** between the parties?
- What **leverage** do you have? What alternative solutions does each party have to making this deal?
- Understand how much **negotiation margin** you have, and who wants the deal more.

➤ Prepare your roadmap:

- Set your **list of key objectives** and keep it in mind throughout the negotiation.
- Draft a list of **must-have**, nice-to have, and what you can concede.
- Know your company’s **risk tolerance**, policy/playbooks/list of **non-negotiable v. negotiable terms**.
- Ask internally **what went wrong** in previous similar deals.
- Identify **who you need** on your deal team (e.g., if IP aspects are critical, involve your IP counsel).

➤ Be strategic during the negotiation and contract review:

- Discuss key business terms first** (e.g., price, timeline, assets included, etc.), and consider setting them in a **term sheet** or letter of intent before negotiating legal terms.
- If you have little bargaining power**, you may want to focus solely on your must-have.
- Think through the deal’s lifecycle** – what happens at the end if everyone has complied, and what if not.
- Read each line, each clause, and clarify as needed** – if you don’t understand a clause, ask what it means.
- Ensure the contract reflects the parties’ **rights and obligations**.
- Ensure your company’s **representations and warranties** reflect reality. They are binding terms.
- If you need something done before closing the deal, insert it as a **condition to close**, and plan what happens if the condition isn’t met, and what margin/flexibility there should be to avoid stopping the deal.
- Ensure **defined terms** are used consistently.

➤ SPOTLIGHT: indemnity clauses and damages

- Who** is indemnifying who, for **what**, and for **how long**?
- Avoid accepting one-sided indemnity clauses obligating only your company, try to make them **reciprocal**.
- Consider putting a **time-limit** on the indemnity obligation.
- Consider putting a **cap** on the amount of indemnity.
- Consider excluding consequential or punitive damages, and carving back in specific types of consequential damages you want covered (such as consequential damages resulting from breaches of confidentiality, as these are often deemed consequential).

Lean more tips:

[Watch the ACC Webcast: Which Contract Issues are “Worth the Fight” in Negotiations? Tips for In-house Counsel on Evaluating Risk](#)

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