

Sales Contract Deal-Breakers



Top 5 Deal-Breakers...

1. **Termination for Convenience**
2. **Unlimited Liability**
3. **Most Favored Nation Clause**
4. **Assignment / Change of Control Restriction**
5. **Unlimited Users or License Term**



Termination for Convenience

Deal-breaker language...

Allows client to unilaterally terminate the entire agreement for **ANY or NO reason at any time.**

Language impact...

- Cannot count the booking value of the agreement for the full term as 'Total Contract Value'
- Count 'Contract Value' monthly as each month of agreement expires without being terminated
- Provide discount & other deal terms based on size and term of commitment
- **Reduces overall enterprise value of the company!**

Our approach...

- No Term for convenience language included in standard agreement
- Standard termination language for an uncured material breach of the agreement only



Unlimited Liability

Deal-breaker language...

Liability language that does not limit the amount we could owe to the client for negligence, injury, business interruption, loss or corruption of data, inaccurate data or other harm caused by our services or employees.

Language impact...

Exposes us to unlimited liability, that in the VERY unlikely event we are found to be liable for damages could bankrupt the company

Our approach...

Standard agreement limits our liability to “...the fees paid by the customer to the company for the services under this agreement in the 12 months prior to the act that gave rise to the liability...”



Most Favored Nation Clause

Deal-breaker language...

Contract provision where we agree to give customer best terms (pricing, discounts, quantity, etc.) it makes available to any other customer during the term of the entire term of the customer's agreement (popular with government contracts).

Language impact...

- Must continuously track terms on EVERY contract and compare to agreements that contain MFN clause
- Any 'better' deals found must be applied to the MFN contracts
- Restricts our pricing flexibility in competitive deal situations
- Results in reducing bookings & revenue on all MFN contracts; thus reducing income and enterprise value.

Our approach...

- No Term Most Favored Nation Clause in standard agreement
- Negotiate and give on other deal points in order to stand firm on not agreeing to MFN provision



Assignment / Change of Control Restriction

Deal-breaker language...

Provision restricts ability to Assign customer agreement to an acquirer **OR** allows for termination of agreement upon Change of Control **OR** requires customer consent of the Assignment or COC.



Language impact...

- Can severely impact the enterprise value of the company
- Limits market of potential acquirers if language calls out competitors of customer
- Typically comes up in due diligence after initial price has been set, which makes it a hugely contentious point to deal with later in the process.

Our approach...

- No Assignment restrictions or COC consent requirements included in standard agreement
- Negotiate and give on other deal points in order to stand firm on not agreeing to Assignment or COC provisions



Unlimited Users or License Term

Deal-breaker language...

Providing the client with a license for either unlimited or undefined number of users **OR** a perpetual / undefined license term.

Language impact...

- Unlimited or undefined number of users could provide an unlimited cost burden on the company from a hosting, 3rd party services, technology & support standpoint.
- Perpetual license term would impact revenue recognition period & severely limit our ability on renewals & upsells.
- No way to manage against MFN clauses.

Our approach...

- Standard agreement requires inputting of number of users, use cases & license term.

