

## Tried and True Tactics for Expediting Contract Negotiations

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**The Problem:** Companies engaged in large-ticket sales of products and/or services, particularly when their customers are also large and sophisticated, frequently find it challenging to sell their products or services time- and cost-effectively, while also controlling business and legal risks. Large-volume customers usually have strict internal policies and

procedures for purchasing that include “mandatory” terms and multiple levels of review and approval, by both legal and business units. If not managed correctly, these negotiations can drag on, lengthening the sales cycle, burdening internal resources, increasing outside legal costs, and resulting in last-minute concessions to close the deal timely.

### Tactics for Expediting the Contract:

#### Know Your Customer.

Understand the customer’s timetable for launch. If implementation is not imminent, conserve resources by responding only as necessary to keep the deal alive until it makes sense to proceed. Repeated starts and stops and deal changes increase costs unnecessarily.

Understand the customer’s familiarity with your product/service and whether the customer is entering a new technology arena or market. If so, expect delays and build in time for education.

Learn the customer’s approval process and identify the decision-makers.

Assess the parties’ relative leverage: do they need you, or do you need them?

Appreciate that the customer’s attorneys, whether in-house or outside, will be highly motivated to avoid any risk. In most cases, the incentives to avoid risk will override the incentives to get the deal done.

#### Set the Customer's Expectations.

Educate the customer at the outset of your contracting process, from both a business and legal perspective, and remind as necessary during the negotiations.

Set expectations early as to what is/is not possible/negotiable, from both a business and legal perspective.

Make sure that front line sales is selling the terms as well as the product/service.



#### The Contract is Key.

Consider whether lower-value products or services can be separated from the bundle and sold or licensed on a PO or a click- or-shrink-wrap agreement. Consider moving an SLA or other highly technical terms to a webpage that can be cross-referenced in your customer contract. The idea is to remove as many terms as possible from the negotiation process.

Present the customer with a pristine contract. While it is easy to push back on a lawyer who is “moving commas,” you will quickly become bogged down in defending typos, grammatical errors and ambiguities.

Maintain compilation/database of acceptable compromises and educate negotiators about them.

Move as many of the “negotiated” terms as possible to the exhibits. Not only will this take focus away from the provisions that you would rather not change, but it will facilitate identifying non-standard terms throughout the term of the customer relationship.

Avoid separately pricing consulting services and the resulting “if we pay for it, we own it” response.

#### Control the Paper.

Don’t expect that sending a document in a form that is not intended to be edited will discourage comments. Technology and custom have left those days behind. Do impress upon the customer that versions of your agreement will be controlled at your end and commit to turning revisions timely.

Encourage the customer to discuss comments by phone rather than inputting changes (once made, the customer becomes wedded to the changes).

Always provide a marked copy. Failure to do so promotes unnecessary suspicion.

#### Control Your Counsel.

Make sure your outside counsel is aware of company “hot buttons” and is clear on the chain of command.

If there are legal budget constraints on the deal, make sure your outside counsel is aware of these.

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Check your counsel's availability for conference calls and notify him/her in advance if "on call" availability is necessary.

Make sure the business representatives are controlling the deal.

### Just Say No!

Make sure the team members are supporting, rather than undercutting, one another. "Good cop/bad cop" only works when everyone know his/her role.

The tone should always be respectful but firm. If antagonized, the customer's representatives are likely to dig in their heels.

Resist deal fatigue, threatened deadlines, and last-minute nickel-and-diming; make concessions only if assuming additional risk makes sense in the context of the entire deal.

Choose a contract negotiator who will not own the ongoing customer relationship.

### Business Versus Legal.

Separate business from legal issues and have the business people negotiate their issues separately. Having attorneys present during business negotiations is usually not an effective use of legal resources.

On the other hand, astute business negotiators can contribute to negotiation of the "legal" issues by making decisions about the appropriate level of risk the company should assume.

Have your counsel hold training sessions with contract negotiators to sensitize them to the importance of warranties, limitations of liability and indemnification provisions.

### On the Same Page.

Internally: take 5 or 10 minutes before a scheduled call to bring the negotiating team up to date on interim developments.

With the customer: insist on getting all requested changes before responding; don't negotiate against yourself.

### Deal Momentum.

Make the call.

Don't end the call or leave the room without agreeing upon next steps and a timetable. Hold your team accountable to meet its commitments.

### Contract Evolution.

Constantly update templates in response to historical comments.

Convene periodic meetings with counsel to review and evaluate issues arising in contract negotiations.

Err on the side of reducing the level of detail.

### **SAVE THE DATE!**

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