

IT Procurement Negotiations – The Importance of Setting Expectations

By Andrew Martin

Negotiation of product and services contracts should include more than just the business terms, but many times the “standard terms and conditions” or “boilerplate” is glossed over by the vendor and ignored by the procurement team. For IT-related products and services, it is the language in these “boilerplate” provisions that often control which party shoulders the principal risks associated with the transaction—particularly the data privacy and security, intellectual property infringement, and confidentiality risks—so negotiation of all of the language contained in the vendor’s contracts is critical. To this end, procurement teams that work to set the vendor’s expectations for the negotiation early often are the most successful both at obtaining the best possible deal and at streamlining the process.

One of the simplest methods to set the vendor’s expectation is to ask for an editable version of the vendor’s paper early on in the negotiation, even before the suitability of the product or service has been determined. This will indicate to the vendor that terms and conditions will be reviewed while the engagement is being evaluated from a business perspective. This technique has the further benefit of giving the purchaser’s legal team a head-start on the review process, so as not to bog down the deal after the parties has agreed on the business terms.

When vendors have only sent their PDF version of the agreement, and the customer makes edits to it either in-line in the PDF or by converting the PDF to an editable version, the vendor can be surprised to find a redlined copy of this agreement coming back from the customer. This tends to put the vendor in a reactionary and defensive position, where it is less likely to accept reasonable changes to its document because it was not anticipating any changes at all. Contrast this to those situations where the purchaser sets the vendor expectations early on in the negotiation. Just taking the simple step to ask for an editable copy of the vendor’s agreement will yield, on average, a more balanced and timely deal for the customer.

For additional information on IT Procurement, [click here](#) where you will find Andrew’s recent webinar “IT Procurement: Key Issues and Negotiation Strategies” under the Research heading.



About the author Andrew Martin:

As an associate attorney with extensive prior experience advising information technology start-ups, Andrew’s practice focuses on finding solutions for his clients’ intellectual property issues. Due to his extensive experience in the software and technology industries, Andrew understands both the practical and legal issues involved in IP licensing agreements and disputes. In addition to licensing, Andrew helps his clients find new ways to use existing technologies to assist his clients in areas such as data privacy compliance. Andrew uses his diverse background which includes founding a record label and working for a world-wide concert promoter when counseling the firm’s entertainment clients.

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