

# INSIGHTS

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## CONTRACT REVIEW: YOUR RELATIONSHIP THERAPIST

Overlooking contract reviews is not just an oversight; it is a severe failure of corporate governance that exposes your organisation to consequential and multi layered risks. The consequences cascade from direct

financial loss to strategic paralysis and reputational destruction.

In the business landscape, contracts are the fundamental building blocks of commercial relationships. They govern transactions, partnerships, employment, and virtually every aspect of organisational activity.

Contract review is the systematic process of examining and analysing a contract's terms and conditions to ensure they align with organisational objectives, legal requirements, and risk tolerance. A contract review exceeds a simple legal check; it is a strategic business function and important control mechanism.



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## Comprehensive Contract Review

A thorough contract review is methodical and must have key elements:

### 1. Fundamental Business Terms (W<sup>3</sup>H: What | When | Who | How Much)

- Parties: Correctly identified and confirmed to be legitimate and solvent entities.
- Scope of Goods/Services: Description must be accurate, complete, and unambiguous.
- Pricing and Payment Terms: Rates, payment schedules, invoicing procedures, and currency must be clear with no hidden costs.
- Term and Termination: Duration, and conditions for renewal must be explicit, ensure that termination clauses are fair and practical.

### 2. Risk and Liability

- Indemnities: State the obligations for third party claim compensation and whether these are reciprocal, limited, and insurable.
- Limitation of Liability: If there is a cap on liability, Is it mutual? Does the cap exclude key areas like breach of confidentiality, indemnity, or wilful misconduct?
- Insurance: Insurance requirements (types, coverage limits) align with the risks assumed in the contract, and your organisation can meet them.
- Warranties and Guarantees: Realistic and achievable with defined remedies for breach.

### 3. Operational and Performance Terms

- Service Levels & KPIs: Performance metrics clearly defined, measurable, and achievable with defined consequences for missing them.
- Change Management: A clear process for managing changes to the scope, actors, timeline, or budget.
- Reporting and Audits: Meet reporting obligations. State rights for parties to audit each other's performance.

### 4. Compliance and Legal

- Governing Law and Jurisdiction: Country's laws governing the contract and where/how disputes will be heard.
- Dispute Resolution: Escalation process, mediation, or arbitration clause before litigation.
- Confidentiality: Obligations to protect sensitive information, these must be robust and mutual.
- Data Privacy & Security: Compliance with applicable data protection laws and adequate data processing methods.
- Force Majeure: Narrowly or broad definitions and whether these cover disruptions like cyber-attacks or pandemics.
- Assignment: Transfer of the contract to another party.

### 5. Administrative and Practical Elements

- Definitions: Key terms defined consistently throughout the document.



- Notices: Correct methods and addresses for official communications.
- Entire Agreement Clause: The written document represents the entire agreement, and supersedes all other agreements, state addendums or other documents to be incorporated.
- Execution: The signatories are correct and authorised.

### **Types of Contracts Subject to Review**

Virtually every binding agreement your organisation enters should be reviewed. The scope and depth of the review will vary based on the contract's value, complexity, and risk profile, which can be categorised as follows:

#### **High-Risk/High-Value Contracts (Rigorous Review):**

- Mergers & Acquisitions (M&A): Asset purchase agreements, share purchase agreements, merger agreements.
- Strategic Partnerships & Joint Ventures: Complex agreements defining long-term collaboration, profit-sharing, and governance.
- Major Technology Deals: Enterprise software licenses, SaaS agreements and technology development contracts.
- Critical Supply Chain Contracts: Agreements with sole source suppliers or contracts for essential raw materials.
- Large Scale Real Estate: Commercial property leases, purchase agreements and construction contracts.
- Intellectual Property Agreements: Licensing key patents, trademarks, or copyrights.
- Finance Agreements: Credit, loan and security agreements.

#### **Medium Risk/Routine Commercial Contracts (Standardised Review):**

- Procurement & Vendor Agreements: Contracts with suppliers for goods and services (IT, marketing, consulting).
- Customer/Client Agreements: Service Level Agreements (LSAs), Scope of Work (SOWs), and Terms of Service.
- Confidentiality Agreements (NDAs): High volume but lower individual risk; reviewed against standard templates.
- Data Processing Agreements (DPAs): Critical for POPIA and privacy law compliance.
- Distribution and Reseller Agreements: Defining channels to market.
- Employment & Contractor Agreements: Employee contracts, offer letters, independent contractor agreements and non-compete clauses.

#### **Lower Risk Contracts (Template-Based):**

- Standardised Purchase Orders: Under a pre negotiated master agreement.
- Low Value Software Subscriptions: For commonplace, low-cost SaaS tools.
- Online "Click" Agreements: For common services where negotiation is not possible (e.g. standard social media terms). Typically reviewed by each click and not frequently amended.



## Types of Contract Reviews

### 1. Manual Legal Review:

- Conducted by a qualified legal professional and best suited for high risk, high value, complex, or novel agreements that require expert judgment and negotiation.

### 2. Collaborative Review:

- The legal reviewer collaborates with subject matter experts across the organisation e.g. Finance, IT/Security, Operations, Privacy Officer. Best for Complex contracts that impact multiple business units.

### 3. Template-Based Review:

- Process: The organisation uses pre-approved templates with standardized terms for common agreements (e.g., NDAs, MSAs); best for medium risk, high volume contracts. This dramatically increases efficiency and consistency.

### 4. Technology Assisted Review (CLM Software):

- Contracts are uploaded into a Contract Lifecycle Management (CLM) system. Using AI and machine learning, the software automatically flags non-compliance words and clauses and can extract requested data. Suitable for all contract types, but particularly for managing high volumes of routine agreements. It allows legal teams to focus only on the exceptions flagged by the system.

## Best Practice for Reviews

1. There is no one size fits all schedule, frequency is driven by trigger events and a risk-based schedule. The gold standard is a risk-based approach combined with trigger events. High risk contracts are reviewed more frequently and upon any material change, while lower risk contracts are reviewed primarily at the renewal point. A CLM system is invaluable for automating renewal alerts and managing the review schedule.
2. Whether receiving or drafting the contract, contract reviews are not a bureaucratic hurdle but a fundamental business hygiene practice. When your organisation is the contract receiving party, the review is a shield against external risk; if it's the contract drafting party, it is a quality control check that ensures internal governance and operational efficiency. Both are indispensable for sound and sustainable business growth.

## Conclusion

Neglecting contract reviews is like refusing couples therapy for a critical business relationship. The partnership might seem fine on the surface for a while, but unresolved issues and unspoken assumptions will fester. Eventually, a major dispute will erupt, and the resulting breakdown would have been entirely preventable. The cost of a review is a tiny fraction of the potential cost of a messy "divorce," making it one of the most valuable investments your organisation can make for its own stability and future.

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