

# Most Negotiated Terms 2024

Including exploration of the distinctions  
between big businesses and SMEs



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# Executive summary

This study examines the key terms negotiated in contracts across businesses globally, providing insights into the challenges faced by both big businesses and small and medium-sized enterprises (SMEs)<sup>1</sup>.

This year's report shows that terms like limitation of liability, price, and indemnification continue at the top of the 'most negotiated' list, even though business conditions suggest that there should be different priorities. Indeed, a separate report published in September 2024 revealed that only 16% of contract negotiators believe that they are negotiating the right things.<sup>2</sup> This disconnect between the needs of the business and the traditional approaches to contracts will be resolved only through executive intervention and greater alignment of priorities. In their efforts to contain the risk of failure, negotiators frequently jeopardize success.

We pose big questions, such as whether, as negotiators, we operate with levels of skepticism, perhaps even cynicism, that are self-defeating. Would the frequency of failure or value erosion reduce if we altered the focus of our negotiations? Similarly, to what extent do fragmented processes and poor planning constrain the scope of our negotiations and limit the focus and potential of possible outcomes?

This report also introduces a new perspective and reveals how differences in the way that big and small companies approach negotiations reflect underlying challenges, particularly for SMEs dealing with power imbalances and inflexibility from big counterparts.

Finally, the findings further highlight the importance of simpler contracts – which are easier to understand, negotiate and manage. In today's fast-paced business environment, a well-negotiated contract should help both parties achieve successful outcomes: currently, that is frequently not the case.



**Tim Cummins**  
President  
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1. In this report, we have categorized SMEs as companies with less than \$1 billion annual revenue.

2. *The Purpose of Contracts*: WorldCC and Deloitte, September 2024.

# Introduction

In business, contracts are more than just legal documents – they’re the framework for almost every relationship, transaction, and deal. This report explores the most negotiated contract terms and examines the contrasting approaches taken by big and small companies.

With responses from 937 organizations worldwide, representing the experience of thousands of contract negotiators, the study provides a global perspective on today’s challenges, and highlights practical ways both big and small companies can improve their contract processes to ensure better business outcomes.

A key observation is that, in spite of the many shifts in the business environment over the last 20 years, in particular a growing focus on outcomes, the negotiation agenda has not kept pace. The growth in regulation, shift to servitization and outcome-based contracts, digitization and Artificial Intelligence (AI), rise of Environmental, Social and Governance (ESG), and geopolitical pressures are among the many factors that have impacted trading relationships, yet have left little mark on the most negotiated terms.

Beyond becoming ever-longer, contracts and contracting practices may appear impervious to change, yet the voices for a fresh approach are becoming louder and the technologies that could support a transformation are becoming more sophisticated and widely adopted.

This year’s Most Negotiated Terms report is in two parts:

### Part 1

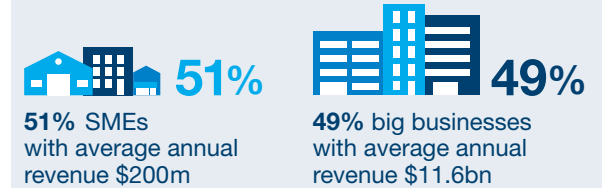
Market overview dealing with overall findings.

### Part 2

An exploration of the experiences, attitudes and distinctions between big businesses and SMEs.

## Demographic breakdown of 937 respondent organizations

### Size of organizations

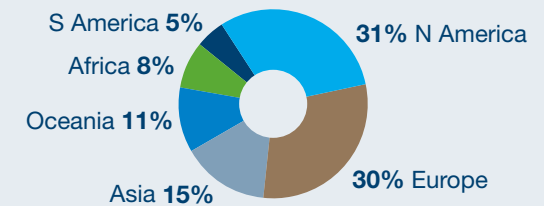


### In this report, SMEs are categorized as having less than \$1bn annual revenue

### Participants



### Regions



### Principle functions





Part 1: Market overview

# Most Negotiated Terms

The most negotiated contract terms remain consistent over time, with limitation of liability, price / charges, and indemnification maintaining their top rankings.

It is clear that these terms are important because they directly affect risk allocation, financial outcomes, and legal protection. However, we also know that they are often a source of negative contention, taken by many as implying a lack of trust (liabilities or indemnities) and setting the scene for later disagreements and efforts at margin recovery (price). We also know that these terms do not address the issues that are often the major concerns and risks faced by business – for example, security of supply, growth and reputation.<sup>3</sup> There can be a tendency to negotiate them in a vacuum, distracting from the topics that are important for successful performance.

The Appendix on page 17 shows the full list of the Top 30 Most Negotiated Terms since the first MNT report in 2007. While the leading terms have not changed much, there are some interesting movements elsewhere in the list. For example, liquidated damages shows the largest downward movement, but that is in part explained by the upward move in service levels and service credits. Cybersecurity has also shifted down, perhaps reflecting growing standardization and more widely accepted principles, especially in areas such as cloud computing. Invoicing and late payment negotiations increased, probably reflecting issues related to inflation. Two potentially welcome areas of negotiation are dispute resolution and communications and reporting, both linked to increased focus on governance and transparency.

### Key observations

When looking across the weighted average for all terms, it is notable that SMEs place greater importance on the financial terms than they do on liabilities and indemnities. The importance of cybersecurity terms shows that companies are increasingly aware of the risks posed by data breaches, and the extent to which they are vulnerable to increasingly sophisticated attacks, in some cases state-sponsored.

### Recommendations

**Simplify and prioritize terms** There is a clear desire by many to be ‘easier to do business with’. To achieve this, businesses should streamline negotiations by using plain language, basing their standard terms on market norms and focusing on critical terms. Case studies show that organizations have considerable control over the extent and duration of negotiations.

For example, a business services company increased customer acceptance of its contract from 10% to 70% – and a manufacturing company that, through benchmarking, discovered that it halved the amount of negotiation time compared to its competitors. Through further benchmarks, it established ‘market norms’ and when these were adopted, the time spent negotiating fell by 68%.

**Anticipate market shifts** When risks emerge, like cybersecurity, businesses should be proactive in updating their contracts to reflect this. Too often, standard templates are slow to adapt to changes in market offerings. The shift to Cloud Services was a good example, where buyers tried to use standard Master Services Agreements that were inappropriate and not fit for purpose. Similar issues are arising around contracts for products or services that incorporate AI.

Figure 1: Top 10 Most Negotiated Terms

	Overall	Big businesses	SMEs
1	Limitation of Liability	Limitation of Liability	Limitation of Liability
2	Price / Charge / Price Changes	Price / Charge / Price Changes	Indemnification
3	Indemnification	Scope and Goals / Specification	Price / Charge / Price Changes
4	Termination	Indemnification	Payment / Payment Options
5	Payment / Payment Options	Liquidated Damages	Scope and Goals / Specification
6	Scope and Goals / Specification	Intellectual Property	Termination
7	Warranty	Payment / Payment Options	Warranty
8	Intellectual Property	Warranty	Intellectual Property
9	Delivery	Delivery	Responsibilities of the Parties
10	Liquidated Damages	Termination	Liquidated Damages

3. *Enhancing collaboration through effective Relationship Management*: WorldCC, July 2024.



Part 1: Market overview

# Most Disputed Terms

There is a high degree of consensus on the terms that most frequently sit at the heart of disagreements during the performance of a contract. While these areas are closely related to the most frequently negotiated terms, there is a disconnect between what negotiators focus on and where problems tend to emerge.

## Most frequent sources of disagreement or dispute

### Price, charges, and changes to them

While price is consistently one of the most negotiated terms, disputes over changes in pricing or unexpected costs remain common during performance. This suggests that negotiators may fail to build adequate flexibility or contingency plans into the pricing terms, or they may not spend enough time ensuring mutual understanding of pricing structures and adjustments. There can also be a degree of dishonesty and manipulation in setting price or charge levels, with

procurement teams often motivated to achieve negotiated savings and not enquiring too deeply into the potential for later changes due to poorly specified requirements. Similarly, sales teams are motivated to win business and may operate on the expectation that upward adjustments will be achieved during performance. They therefore knowingly commit to prices that they know are not sustainable. In each case, a key problem is that the negotiators may not have any responsibility for post-award performance.

### Scope and goals, specification

Scope is another top negotiation focus, yet it also remains a major source of conflict during contract execution. This often indicates that organizations do not invest enough time in clearly defining or aligning on scope, or they might lack structured approaches to managing scope changes during the course of a project. It may also be that the precise scope is hard to define at the outset, or is almost inevitably going to be impacted by changes to capability or requirements. If negotiators fail to understand or acknowledge such factors, they may create an inappropriate level of rigidity into the contract or set it up using the wrong commercial model.

### Delivery or acceptance

Delivery and acceptance terms are rising in importance but are still prone to disagreement during performance. Misunderstandings about timelines, conditions for acceptance, or delivery standards can create friction. It may be that negotiators focus more on general delivery clauses without thoroughly working through the specifics of how acceptance will be measured or handled in case of delays. Another factor can be a lack of disciplined change procedures, leading to inconsistencies between the contract and the delivery.

*Continued next page*

Figure 2: Top 10 Most Disputed Terms

	Overall	Big businesses	SMEs
1	Price / Charge / Price Changes	Price / Charge / Price Changes	Price / Charge / Price Changes
2	Scope and Goals / Specification	Delivery	Scope and Goals / Specification
3	Delivery	Scope and Goals / Specification	Invoices / Late Payment
4	Invoices / Late Payment	Service Levels	Delivery
5	Service Levels	Invoices / Late Payment	Responsibilities of the Parties
6	Payment / Payment Options	Payment / Payment Options	Service Levels
7	Responsibilities of the Parties	Responsibilities of the Parties	Payment / Payment Options
8	Amendments / Changes to Contract	Liquidated Damages	Amendments / Changes to Contract
9	Liquidated Damages	Amendments / Changes to Contract	Warranty
10	Termination	Warranty	Liquidated Damages

## Part 1: Market overview

### Most Disputed Terms (*continued*)

#### Invoices and late payment

Payment issues, including late payments, are frequently negotiated but remain a common source of conflict. This could stem from negotiators not ensuring alignment on invoicing processes or not building in safeguards to handle delays in payment. Complicated pricing or charging mechanisms can create invoicing errors and the steady move towards servitization also means that businesses are frequently dealing with intangibles, which are far more likely to result in disputes over the value received or the time expended. For SMEs especially, late payment can have a major impact on cash flow and funding of the business, a point increasingly recognized by regulators and competition authorities.

#### Service levels

Service Level Agreements (SLAs) often become points of contention during performance, despite also being a focus during negotiations. It's possible that negotiators overlook the importance of establishing clear, measurable, and mutually agreeable SLAs that reflect actual business capabilities or priorities. Often, disagreements may arise due to conflicting or disputed data. It is important that negotiators define the data sources, how data will be validated and the extent of data sharing and transparency, including realistic rights of audit or validation.

#### Payment terms

Payment terms are frequently negotiated, but as with invoices, issues still arise during performance. The gap here suggests that while payment schedules and terms are discussed, not enough attention may be given to practicalities like cash flow, payment delays, and dispute resolution mechanisms.

#### Responsibilities of the parties

Despite being a key area for negotiation, undefined or poorly defined responsibilities of the parties often lead to disagreements during contract performance. This can reflect a lack of focus on clearly delineating roles and responsibilities, or it may point to insufficient alignment on how responsibilities will shift as the contract progresses. Sometimes it is due to a failure to recognize interdependencies between areas of responsibility, leading to a culture of finger-pointing and blame. Buyers in particular need to adequately assess the extent to which they can reasonably and realistically pass responsibilities to their supplier and the implications this will have on their levels of visibility and control over performance.

#### Amendments and changes to the contract

Changes to the contract are a natural part of business, but they remain a source of tension. Negotiators often focus on drafting rigid contract terms that are designed to constrain changes, believing that this creates an environment of certainty and control. Many contracts, especially those involving services or running over an extended period of time, need structured mechanisms that build in sufficient flexibility to accommodate changes in market conditions, regulations, requirements or capabilities.

#### Liquidated damages

Though liquidated damages (LDs) are commonly discussed, they are also a frequent point of conflict when they become relevant during performance. Negotiators may agree on liquidated damages without fully considering the likelihood or implications of invoking these clauses, leading to tension when they come into play. As WorldCC has identified in past studies, liquidated damages may also be counter-productive as a performance mechanism. For example, suppliers may price in the anticipated cost; they are frequently hard to collect since a supplier will point at customer failings as a cause; and they generate an environment of dishonesty, blame and failure to share data on a timely basis. WorldCC recommends a different approach that introduces graduated charges and incentivizes early warning of potential risks or delays.

#### Termination

Termination is a heavily negotiated term, but disputes still arise when one or both parties seek to terminate the contract. The precise details and circumstances of termination are hard to predict and may be consensual or acrimonious. It may therefore be hard to substantially reduce the frequency with which this is an issue, but negotiators should pay attention to understanding under what conditions termination will be invoked and the process for doing so. This should include considering termination as a last resort, with mechanisms established to seek reconciliation or identify ways to recover from a strained relationship.<sup>4</sup>

4. WorldCC is currently engaged with a member working group that is examining the economic cost of termination, as opposed to reconciliation.



Part 1: Market overview

# Most Important Terms

## Which terms do negotiators view as the most important?

The data shows an interesting and important dynamic.

There is alignment across businesses and between buyers and suppliers on what contract terms are most important, and these also align with the terms that cause disputes. But when it comes to negotiation, these are often not the ones that receive the most focus. This raises a key question: why do negotiations tend to focus on terms that address what happens when things go wrong, rather than on the terms that actually lead to problems in performance?

### Key findings

According to survey participants, the terms they believe are most important are directly related to achieving successful business outcomes, and it is therefore not surprising that they align closely with the areas where disputes typically arise.

This set of terms focuses on the practical aspects of contract performance – the very areas where disputes are most likely to occur. What are the factors that explain why negotiations are not more focused on these terms during the negotiation phase, instead of disproportionately focusing on clauses related to legal risk management, such as indemnities and limitation of liability? Several factors commonly contribute to this imbalance between what’s negotiated and what’s truly important.

### Fragmented negotiation processes

Multiple stakeholders often handle different aspects of the negotiation in isolation and become detached from organizational expectations and success measures. Legal teams may focus on protecting against risks, while commercial teams are more concerned with practical terms like scope, price, and delivery. By the time legal or contracts professionals are involved, the sales team or business unit may have already defined scope and set

prices, limiting the room for negotiation and potentially even compromising the ability to set the most appropriate commercial model and terms. A lack of coordination leads to fragmented negotiations where terms that are fundamental for successful performance (like scope and service levels) may not receive enough attention and therefore create a need for greater focus on risk-related clauses.

Silos within organizations mean that internal stakeholders may not fully understand or trust each other’s priorities. Some are driven to close the deal quickly, while others are focused on mitigating risks and uncertainties, creating tensions that result in imbalanced negotiations. Traditional education (for example, programs in contract law or strategic sourcing) does not assist in creating shared understanding and alignment.

### Focus on risk over practicality

As highlighted in the previous section, negotiators often prioritize legal and financial protections, to mitigate the impact of things going wrong. But they do not directly address why things go wrong. Meanwhile, critical business terms like scope, delivery, and service levels can be overshadowed.

This risk-averse mentality is often driven by fear of expensive mistakes and a desire to prevent the worst-case scenario, rather than an emphasis on ensuring the contract leads to success in everyday operations.

*Continued next page*

Figure 3: Top 10 Most Important Terms

	Overall	Big businesses	SMEs
1	Scope and Goals / Specification	Scope and Goals / Specification	Scope and Goals / Specification
2	Price / Charge / Price Changes	Price / Charge / Price Changes	Price / Charge / Price Changes
3	Delivery	Delivery	Delivery
4	Service Levels	Service Levels	Responsibilities of the Parties
5	Responsibilities of the Parties	Payment / Payment Options	Service Levels
6	Payment / Payment Options	Responsibilities of the Parties	Payment / Payment Options
7	Acceptance	Acceptance	Limitation of Liability
8	Product Specification	Product Specification	Acceptance
9	Limitation of Liability	Amendments / Changes to Contract	Amendments / Changes to Contract
10	Amendments / Changes to Contract	Limitation of Liability	Product Specification



**Part 1: Market overview**

**Most Important Terms (continued)**

**Disconnection between deal-making and risk management**

A significant portion of negotiation time is spent on terms that may never be invoked unless something goes wrong. While it's essential to have protections in place, the disconnection between deal-making (ensuring the contract benefits both parties) and risk management (protecting against negative outcomes) creates an imbalance.

The lack of a holistic, coordinated and planned approach can result in contracts that protect against risks without fully supporting the day-to-day operations that deliver business value. We know from other research<sup>5</sup> that few organizations operate with a consistent approach to negotiation planning. For many, it is optional and either not undertaken, or omits key stakeholders from the process.

**Rebalancing negotiations for better outcomes**

Given this imbalance, isn't there a more intelligent way to reconcile these differences and achieve a better-negotiated outcome? The key may lie in improving the coordination, planning, and integration of negotiation processes.

**Variations by jurisdiction**

Figure 4 shows there is a noticeable similarity of Most Important Terms between regions using US and European based systems of law. By contrast, Indian, Russian and Islamic jurisdictions give importance to different terms, and the order of importance, from the West and from each other. This is another factor to consider when businesses negotiate contracts with counter-parties from other jurisdictions.

**Figure 4: Top 5 Most Important Terms by jurisdiction**

	<b>English / US / Common Law</b>	<b>French / Civil Law</b>	<b>German / Germanic Law</b>
1	Scope and Goals / Specification	Scope and Goals / Specification	Price / Charge / Price Changes
2	Price / Charge / Price Changes	Price / Charge / Price Changes	Responsibilities of the Parties
3	Delivery	Delivery	Scope and Goals / Specification
4	Service Levels	Product Specification	Delivery
5	Responsibilities of the Parties	Responsibilities of the Parties	Product Specification
	<b>Scandinavian Law</b>	<b>Spanish / Hispanic Law</b>	<b>Brazilian Law</b>
1	Amendments / Changes to Contract	Price / Charge / Price Changes	Scope and Goals / Specification
2	Responsibilities of the Parties	Scope and Goals / Specification	Amendments / Changes to Contract
3	Scope and Goals / Specification	Service Levels	Delivery
4	Price / Charge / Price Changes	Invoices / Late Payment	Acceptance
5	Delivery	Acceptance	Communications and Reporting
	<b>Indian Law</b>	<b>Russian Law</b>	<b>Islamic Law</b>
1	Liquidated Damages	Scope and Goals / Specification	Limitation of Liability
2	Acceptance	Price / Charge / Price Changes	Dispute Resolution
3	Payment / Payment Options	Payment / Payment Options	Applicable Law / Jurisdiction
4	Perf. Guarantees / Undertakings	Responsibilities of the Parties	Amendments / Changes to Contract
5	Confidential Info. / Non-disclosure	Service Levels	Responsibilities of the Parties

5. *The ROI of Contracting Excellence*: WorldCC report, July 2023.





Part 1: Market overview

# MNT, MDT and MIT compared

Figure 5 takes a slice across figures 1, 2 and 3 comparing Most Negotiated, Most Disputed and Most Important Terms for big business.

As we explained, term-by-term, on pages 5 and 6, there is a disconnect between what negotiators focus on, i.e. the Most Negotiated Terms versus where problems tend to emerge, i.e. the Most Disputed Terms.

There is a similar disconnect between Most Negotiated Terms and Most Important Terms. As we explain on page 7, a number of factors contribute to this imbalance between what's negotiated and what's truly important.

Conversely, the Most Important Terms for big businesses align more with the areas where disagreements typically arise, i.e. Most Disputed Terms. This because the terms believed to be most important are directly related to achieving successful business outcomes, which in turn are the terms where disputes occur most often.

**Figure 5: Top 10 MNT, MDT and MIT for big businesses**

	Most <b>Negotiated</b> Terms	Most <b>Disputed</b> Terms	Most <b>Important</b> Terms
1	Limitation of Liability	Price / Charge / Price Changes	Scope and Goals / Specification
2	Price / Charge / Price Changes	Delivery	Price / Charge / Price Changes
3	Scope and Goals / Specification	Scope and Goals / Specification	Delivery
4	Indemnification	Service Levels	Service Levels
5	Liquidated Damages	Invoices / Late Payment	Payment / Payment Options
6	Intellectual Property	Payment / Payment Options	Responsibilities of the Parties
7	Payment / Payment Options	Responsibilities of the Parties	Acceptance
8	Warranty	Liquidated Damages	Product Specification
9	Delivery	Amendments / Changes to Contract	Amendments / Changes to Contract
10	Termination	Warranty	Limitation of Liability

## Part 1: Market overview

# Key insights

### Integrated negotiation teams

To create a more balanced negotiation, organizations should form integrated teams that develop a common definition of a successful outcome. This should bring together commercial, legal, and operational stakeholders early in the process. These teams should work collaboratively to ensure that key business terms like scope, delivery, and service levels are prioritized alongside legal, financial and reputational protections, as well as paying due regard to the likelihood of future changes or disruptions (both good and bad). Ensuring that everyone is on the same page about the business goals and risk profile from the start leads to more efficient and aligned negotiations.

### Better alignment between business and risk terms

Instead of treating legal protections and performance terms as separate categories, businesses should adopt a more holistic approach that links these terms together (although when it comes to structuring the agreement itself, there are real benefits in keeping these items separate since they have relevance to different user groups). For example, scope changes should be tied to both price adjustments and service level impacts, making it easier for both sides to understand how business performance will influence financial outcomes and risk management.

### Focus on practical outcomes

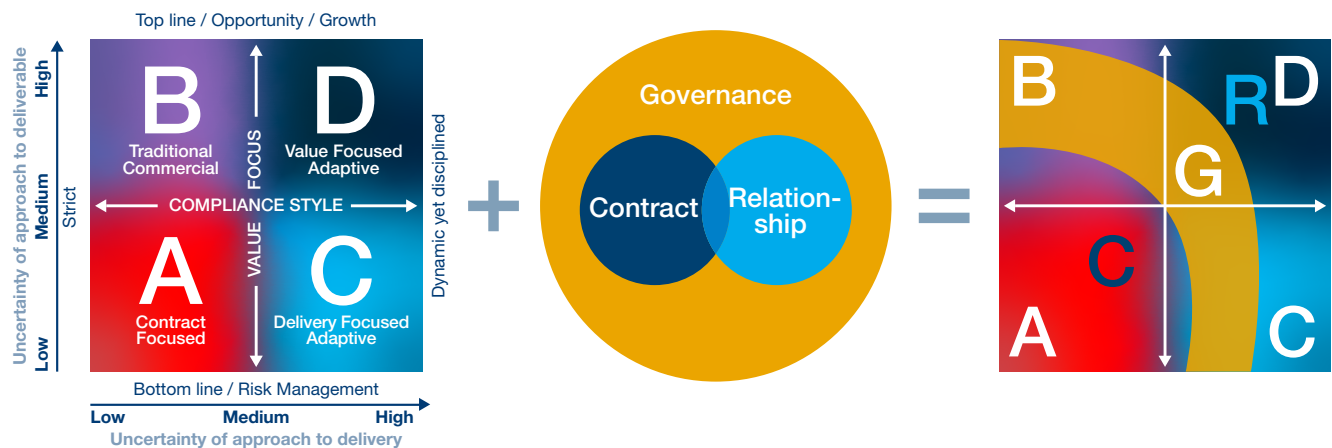
Negotiators should ensure that practical terms, like delivery schedules, service levels, and payment processes and dependencies, are clearly defined and understood. For example, to ensure everyone is on the same page negotiators should consider the use of graphics, flow-charts and timelines. These practical terms directly affect the contract's success, and failing to clarify them upfront is likely to lead to disputes. There should be structured mechanisms for addressing flexibility in these areas, to allow adjustments without triggering disagreements or conflicts. These might include forums for problem-solving or issue resolution, as well as clear escalation paths and response times.

### Structured approaches to flexibility

Contracts should include structured approaches to flexibility, particularly regarding scope and price adjustments. Rather than relying on rigid terms that may not reflect the realities of a changing business environment, negotiators should work to build in clauses or triggers that allow both parties to adjust terms based on evolving needs. This may be through establishing governance principles that operate either within or alongside the contract. WorldCC has published guidance on this topic and also recommends that negotiators should actively evaluate the extent of future uncertainty (see Figure 6) and consider the balance that is needed between the available mechanisms of contract, governance and relationship.<sup>6</sup>

*Continued next page*

**Figure 6: VCU and CGR frameworks**



#### The WorldCC VCU Framework

A systematic way to consider and assess the likely uncertainties in relation to value creation.

#### The WorldCC CGR Framework

A holistic approach to designing the contract attributes, the governance approach, and the relationship characteristics.

#### VCU + CGR Frameworks combined

A dynamic approach to adapting the relative dominance of the contract, the governance, and the relationship based on the levels uncertainty.

6. *Relational Contracting and Governance Guide*: WorldCC, June 2024



## Part 1: Market overview

### Key insights (*continued*)

#### Education and process alignment

Internal education can help stakeholders across legal, commercial, and operational departments understand each other's priorities. There is tremendous benefit in having them participate in shared education and generating greater understanding and respect for their differing roles and viewpoints. This reduces the tension between getting the deal closed and protecting against risk. Having everyone aligned on both the business goals and the risk profile of a deal can lead to more thoughtful and more successful negotiations.

#### Shift from defensive to collaborative mindset

Instead of focusing solely on protecting against worst-case scenarios, negotiators should adopt a more collaborative and open mindset, where the goal is to ensure mutual success. This could involve finding ways to align incentives between the parties, ensuring both sides benefit from a well-executed contract and feel confidence in the mechanisms they have established to resolve problems or ambiguities further down the line.

Negotiation should assist in building trust: too often, it actually undermines trust – and this is especially the case when the focus is on risk.<sup>7</sup> There is also a need for greater openness and honesty: traditional bidding and selection processes frequently fail to explore true interests and motivations. For example, a recent report on relationship management by WorldCC revealed a fundamental misunderstanding between many buyers and suppliers of 'the things that matter'.<sup>8</sup>

7. The Negotiation Room webinar, *Behavioural economics in negotiation*, featuring Dan Ariely: WorldCC, August 2024.

8. *Enhancing collaboration through effective Relationship Management*: WorldCC, July 2024.

Part 1: Market overview

# Observations

**Disconnect between negotiation and performance** The data suggests that human negotiators continue to be overly focused on terms like pricing and liability, but spend insufficient time on understanding of key business terms related to scope, delivery, and responsibilities. These areas frequently cause issues during contract performance but are sometimes overlooked in favor of time spent on boilerplate legal clauses – i.e. a greater focus on the consequences of failure than on the mechanisms for success.

**Unstructured approach to flexibility** Many of the issues that arise during contract execution, such as changes in price and scope, suggest a lack of flexibility in contracts and a reluctance to address market realities. Negotiators may be focused on finalizing the deal without fully considering how terms may need to evolve over time. Sometimes they view looking to the future as difficult, likely to create delay or raise uncomfortable questions. However, the introduction of structured approaches to manage changes and contingencies can be relatively generic in form and could prevent disagreements down the line.

**Capability and process misalignment** Disputes over delivery, payment, and service levels indicate that process alignment between parties is not always fully explored during negotiations. Businesses might enter contracts without conducting diligence and thoroughly assessing whether both parties have the capabilities and processes in place to meet agreed terms, leading to performance gaps and conflict.

**Focus on risk over practicality** Negotiations often prioritize terms related to risk management (e.g. limitation of liability, indemnification) rather than focusing on the day-to-day delivery of the contract, like scope, responsibilities and payments. This can result in disagreements – not about catastrophic risks, but about basic operational misalignments.



**Negotiators should focus on basic business terms like responsibilities, scope and delivery – not legal terms.**

# Recommendations

**Spend more time on key business terms** Negotiators should place greater emphasis on aligning on scope, delivery, and responsibilities during the negotiation phase, rather than focusing solely on high-level legal protections. This goes to the heart of planning, with negotiation teams focusing on areas of positive friction (e.g. clarity of requirements) and working to avoid negative friction, both during the negotiation and during performance.<sup>4</sup>

**Build flexibility into contracts** In today's market environment, contracts should include structured approaches to accommodate changes in price, scope, or performance as business conditions evolve. This may be through negotiated governance provisions or frameworks that establish the principles under which the parties will work together. Without this, there is a heavy dependency on the strength and health of the business relationship, which is typically a fragile and risky approach to resolving problems or issues.

**Align capabilities and processes early** Both parties should assess and discuss their operational capabilities during negotiations to ensure they are able to deliver on agreed terms. Negotiators are often reluctant to engage in such conversations, fearing it may result in higher prices or imply delivery risks, but there is a certain irony that negotiations are so strongly focused on risk consequence and so little on risk likelihood and mitigation.

**Consider performance-driven negotiation** Negotiations should not only focus on legal risk but also on ensuring that the contract will support successful performance and prevent operational friction during execution.

**And – address the elephant in the room** As negotiators, do we operate with a high degree of skepticism, perhaps even cynicism – although perhaps claiming that we are being realists? A question that must be asked is whether our approach is a consequence of failure and lack of trust, or a cause of them. Would the frequency of failure or value erosion reduce if we altered the focus of our negotiations?

Part 1: Market overview

# Part 1: Conclusion

The data reveals a clear disconnect between the terms that cause disputes and those that negotiators focus on the most. While businesses continue to emphasize risk-related clauses, the real source of performance issues lies in practical terms like scope, price, delivery, and service levels.

To reconcile these differences and achieve better outcomes, companies need to integrate their negotiation processes, establish more formal approaches to collaborative planning, address the balance between business terms and risk appetite, and create contracts that allow for flexibility and alignment throughout the lifecycle of the agreement. By doing so, they can reduce disputes, improve contract performance, and ultimately foster stronger, more successful business relationships.



**Businesses continue to focus on risk-related clauses...**



**... but the real issues lie in practical terms like scope, price, delivery and service levels.**



Part 2: Negotiating with SMEs

# SMEs negotiation challenges

For SMEs, negotiating contracts with big businesses can be a daunting task. Our data shows that 88% of SMEs believe big businesses are inflexible, and 78% feel pressured to accept unfavorable terms.

These challenges are compounded by the perception that SMEs struggle to influence the negotiation agenda and achieve fair value. Given the growing importance of SMEs, their role in supply chain security and as a source of innovation, the inability of big corporations and government agencies to adjust their approach is often self-defeating.

The common challenges for SMEs include:

- Inflexibility from bigger businesses
- Pressure to accept unfavorable terms
- Difficulty in securing fair value
- Lack of depth in negotiation expertise.

Despite these hurdles, SMEs continue to negotiate frequently with bigger businesses. In fact, 40% of SMEs enter into contracts with big businesses more than ten times a year.

## Key observations

SMEs often feel the pressure to accept terms they know are unfavorable, especially when they are up against bigger, more powerful businesses. In some cases, they give way because they know that the terms are unenforceable due to their limited assets. In others, they simply do not have the time and resources to engage in prolonged negotiations, but the experience leaves them wary and does not create a positive relationship.

Simplifying contracts could help SMEs better understand their risks and options, improving their confidence and success in negotiations. Equally, as indicated in the earlier case study, SMEs can also take the initiative in creating a simpler, fit-for-purpose contract that their sales or procurement teams feel confident in using and explaining. By introducing their agreement early in the process, they may improve the chances of acceptance and avoid lengthy negotiations.

Increased regulation and government intervention is also having an impact. With greater frequency, governments are introducing policies that seek to protect SMEs from unfair contract terms. For instance, the amendment of the EU's Unfair Contract Terms Directive (93/13/EEC) seeks to protect consumers against unfair standard contract terms imposed by traders. Similarly, Australia followed suit with the update to the Australian Consumer Law (ACL) and the Australian Securities and Investments Commission Act 2001 (ASIC Act), which commenced on 9 November 2023 and was designed to strengthen the protection of SMEs. Also, regulation on diversity and inclusion is requiring big businesses to engage with small and indigenous businesses. In the mining industry, for example, there are now instances where major businesses have been forced to simplify contracts and revisit their risk policies and posture in order to meet regulatory requirements.

## Recommendations

**Leverage unique value propositions** SMEs should emphasize what makes them unique to strengthen their negotiation position.

**Build negotiation skills** Investing in formal negotiation training and consulting with external experts can help level the playing field. SMEs should also familiarize themselves with ways that AI (in particular Generative AI) can raise capabilities in areas such as bids and proposals, term evaluation, negotiation planning and aspects of contract drafting.

**Simplify contracts** Simpler contracts make it easier for SMEs to understand key terms and negotiate more effectively. This can also shorten negotiation time and improve mutual understanding.

**Benefit from technology** Figure 7 reveals the scale of opportunity to improve negotiation planning and intelligence through greater use of technology. In this context, we already see AI having positive impacts, which are readily accessible to businesses of all sizes.

**Figure 7: How companies use Contract Lifecycle Management (CLM) technology or AI**

	Overall	Big businesses	SMEs
Identify Most Negotiated Terms	14%	14%	15%
Suggest new languages	17%	18%	16%
Support your negotiations	18%	24%	13%

Part 2: Negotiating with SMEs

# Big business perspective (on SMEs)

For big businesses, engaging with SMEs presents a different set of challenges. While 34% of respondents view SMEs as strategically important, only 12% regard them as critical to their success. Many big businesses recognize the value of working with smaller partners but find issues with financial stability, contract understanding, and compliance capabilities.

## Key challenges for big businesses

- Ensuring financial stability of SMEs – an area where creative negotiations can reduce the problem and also drive better outcomes and on-going loyalty.
- Lack of confidence in contract understanding and regulatory compliance by smaller partners – an area where simplified contract language and structure can overcome problems.
- Negotiation expertise – some big businesses are concerned that SMEs lack the skills and knowledge to effectively negotiate complex terms.

## Key observations

Big businesses are less likely to offer flexibility on high-risk terms like termination rights, liquidated damages, and cybersecurity. This often creates friction in negotiations with SMEs.

Despite their size and resources, big businesses still recognize the value of clear and simplified contracts, with 69% emphasizing the importance of clarity in agreements with SMEs. However, less than 20% have undertaken or initiated steps to address this issue.

## Recommendations

### Consider supporting SMEs with negotiation resources

Big businesses should consider providing tools and training to help SMEs understand and negotiate contract terms.

### Tailor contracts to partner capabilities

Adjusting terms such as liability limitations and cybersecurity requirements based on the size and capabilities of smaller partners can foster stronger, more cooperative relationships. Ensure that terms are realistic – for example, requirements for insurance cover may be unachievable or unaffordable.

### Assess strategic importance

Big businesses should actively evaluate the role of SMEs in their broader strategies and engage with them accordingly, offering more flexibility where possible.



**Big companies should provide tools and training to help small businesses negotiate contracts.**



**Adjusting terms to help small businesses can foster stronger, more cooperative relationships.**



**Large businesses should evaluate the role of SMEs in their strategies and offer more flexibility where possible.**



Part 2: Negotiating with SMEs

# How SMEs prepare for negotiations

SMEs, despite the challenges they face, often benefit from having more streamlined teams and direct leadership involvement in negotiations.

As we have observed, SMEs often feel at a disadvantage in negotiations, in particular due to the power dynamic and the imbalance of resources, both in terms of available skills and time. However, being small can also bring advantages.

Major negotiations are frequently led by top executives who possess a holistic view of the company's goals and strategy, and they typically have greater decision-making authority. This leadership structure allows for faster decision-making and more focused negotiation efforts, which can explain why 73% of SMEs see leadership meetings to define goals as an essential step. For SMEs, having a smaller team often means that decision-making is more centralized, reducing the need for extensive internal coordination.

Figure 8 shows us the preparation tactics that are most commonly used by SMEs, illustrating both strengths and weaknesses.

Figure 8: Top 5 SMEs preparation tactics

1. Leadership team meetings to define goals	73%
2. Gathering data to support their position	62%
3. Researching the counter-party's needs and objectives	54%
4. Consulting with legal advisors	53%
5. Formal negotiation planning and role plays	46%

## Key preparation tactics

### 1. Leadership team meetings to define goals

While important, internal team meetings are not universally seen as critical in SMEs. Factors behind this include the engagement of top executives and a much shorter line of command and control, which results in a clearer sense of company objectives. Smaller teams are more agile, allowing them to focus quickly on the core aspects of a negotiation without lengthy preparatory sessions.

### 2. Gathering data to support their position

Despite their size, many SMEs still place great emphasis on gathering data to support their position and anticipate the bigger counter-party's needs or demands. This involves compiling information about pricing, past performance, and market standards, allowing them to enter negotiations armed with facts. Data plays a crucial role in making a case for fair terms, especially when dealing with big businesses that may have more leverage. However, the fact that almost 40% do not view this as an essential step suggests a degree of fatalism or naivete, which helps explain the big business concerns over the competence of SMEs in truly assessing and evaluating their position.

### 3. Researching the counter-party's needs and objectives

To a degree, this is about empathy, but it is also core to planning for an effective negotiation and establishing bargaining power. The fact that almost half do not consider this an essential step is a point of concern and indicates a strategic weakness. It is more prevalent when the SME is a buyer and appears to result in part from a sense of helplessness when working with a big supplier. While that is to a degree justified, it implies that there is insufficient thought given to impact and options, and that opportunities for negotiated benefits or safeguards are often missed. On the sell-side, this is also a critical step. By identifying what is important to their counter-parties, SMEs can tailor their proposals to align with the big business' objectives, increasing the likelihood of reaching a mutually beneficial agreement. This step reflects a strategic approach to negotiations, despite the inherent power imbalance.

*Continued next page*





## Part 2: Negotiating with SMEs

### How SMEs prepare for negotiations (*continued*)

#### 4. Consulting with legal advisors

Here too, almost half of SMEs do not engage formal legal advice when preparing for negotiations. This is attributable to a combination of factors:

**Affordability** Hiring legal counsel can be costly and internal resources may be constrained or non-existent, so many SMEs may prioritize reaching an agreement without incurring additional expenses.

**A desire to reach agreement** SMEs may prioritize speed and simplicity, aiming to secure a deal rather than focus on legal and risk terms that they feel they may not be able to influence.

**A sense of resignation** There's a perception that certain standard contract terms, especially from big businesses, are non-negotiable. SMEs may feel that investing in legal advice won't change the outcome on these terms, particularly in areas like indemnity or limitation of liability.

#### 5. Formal negotiation planning and role plays

While less than half of SMEs engage in formal negotiation planning, such as role plays, reflecting their confidence in leaner, more flexible decision-making processes, as well as a broader immaturity in their business planning and controls. With executives often leading the charge, there's a belief that SMEs can adapt on the spot rather than relying on extensive pre-planned scenarios. However, more structured role-playing and preparation could still offer benefits, especially when dealing with complex, high-stakes contracts.

## Key insights

### Simplifying contracts and procedures

One of the most consistent findings in this study is the call for simpler contracts. Respondents overwhelmingly agree that simpler contracts are easier to understand and negotiate. 72% of respondents believe that contract simplification would improve understanding, reduce negotiation time, and boost confidence among negotiators.

### Practical steps for businesses

#### Simplify language and structure

Make contracts easier to read and understand by reducing legal jargon, focusing on the key terms and structuring the overall agreement in a way that it is easier to find and use the data within it.

#### Provide negotiation resources

Big businesses can offer guides, templates, or training to help SMEs better understand contract clauses.

#### Focus on fairness

Contracts should be fair and transparent, ensuring that both parties can benefit equally from the agreement.

### Addressing power imbalances

Big businesses should be aware of the challenges faced by SMEs and strive to create more equitable negotiation processes. Offering flexibility on terms like payment schedules, liability, and termination rights can lead to more successful partnerships.



Part 2: Negotiating with SMEs

# Observations

## Smaller teams, greater flexibility

SMEs often benefit from having smaller, more agile teams, which can lead to faster decision-making and more direct leadership involvement in negotiations. This may reduce the perceived need for extensive internal meetings, as top executives typically already have a clear understanding of the company's goals and priorities. However, this can also indicate an absence of effective planning and controls that may result in accepting unquantified risks and missing opportunities for more favorable outcomes.

## Limited legal advice

The fact that nearly half of SMEs do not consult with legal advisors is understandable given the financial constraints and the perception that certain terms are non-negotiable. However, it's worth emphasizing that even limited legal guidance could help SMEs better understand the risks they are taking on, particularly with more complex or risk-heavy contract terms.

## Optimism and growth focus

SMEs often approach negotiations with a sense of optimism in their ability to perform and a strong drive to secure deals with bigger, brand-name customers or suppliers. This optimism, combined with their focus on growth and reputation, can motivate SMEs to move more quickly and make concessions in order to win business, but can also lead to over-commitment.



**SMEs should continue to capitalize on streamlined decision-making and direct leadership involvement.**



**SMEs should consult legal advisors to gain clarity and prevent disputes later.**



**SMEs should maintain a growth mindset and be cautious about agreeing to terms that may harm them in the long run.**

# Recommendations

## Continue leveraging executive leadership

SMEs should continue to capitalize on their streamlined decision-making processes and direct leadership involvement. This flexibility allows them to move quickly, but they should ensure that all key goals, opportunities and risks are aligned within the team before negotiations.

## Targeted legal consultation

SMEs can benefit from consulting with legal advisors, even in a limited capacity, to gain clarity on the key risks associated with boilerplate terms. This may help prevent costly misunderstandings or disputes later.

## Maintain a growth mindset

While there is a drive to achieve growth and improve market reputation through partnerships with big businesses, SMEs should be cautious about agreeing to terms that may harm them in the long run. Balancing optimism with a realistic view of their own capabilities and risks will lead to better business outcomes.

Part 2: Negotiating with SMEs

# Part 2: Conclusion

This study highlights the complexity of contract negotiations, particularly the differences between big companies and SMEs. While bigger companies are often focused on risk management, SMEs are more concerned with securing fair commercial terms.

A well-negotiated contract should support a successful business outcome for both parties by balancing risks, clarifying terms, and ensuring fairness. Both big and small companies can benefit from simpler, clearer contracts that foster better understanding and smoother negotiations. By focusing on mutual goals and simplifying the negotiation process, businesses can build stronger partnerships and achieve better outcomes for everyone involved.



**Big and small companies can achieve better understanding and smoother negotiations with simpler, clearer contracts.**



# Appendix: Top 30 Most Negotiated Terms

Rank 2024	Average 0-4 scale	Term	Change from 2022	2022	2020	2018	2015	2014/13	2012	2011	2010	2009	2008	2007
1	3.2	Limitation of Liability	0	1	1	1	1	1	1	1	1	1	1	1
2	3.0	Price / Charge / Price Changes	0	2	2	3	3	2	3	3	3	3	3	4
3	2.9	Indemnities	0	3	3	2	2	3	2	2	2	2	2	2
4	2.6	Termination	+1	5	6	5	11	5	6	5	6	8	8	9
5	2.6	Payment / Payment options	+2	7	7	8	5	9	16	7	18	-	15	15
6	2.6	Scope and Goals / Specification	0	6	5	4	9	4	8	11	7	6	7	11
7	2.5	Warranty	+1	8	9	12	12	12	4	16	12	14	-	-
8	2.5	Intellectual Property	+2	10	12	10	13	6	20	14	13	12	5	5
9	2.5	Delivery	+3	12	4	13	6	13	11	17	15	13	-	-
10	2.5	Liquidated Damages	-6	4	10	11	10	10	12	8	8	7	9	8
11	2.5	Responsibilities of the Parties	0	11	8	15	4	15	14	10	5	5	10	7
12	2.4	Service Levels	+2	14	11	9	18	17	18	15	5	5	10	7
13	2.3	Cybersecurity / Data Privacy	-4	9	14	6	7	8	7	4	4	4	4	3
14	2.3	Invoices / Late Payment	+3	17	16	17	-	-	-	-	-	-	-	-
15	2.2	Amendments / Changes to Contract	-1	16	17	14	15	11	5	6	9	9	11	10
16	2.2	Confidential Information / Non-disclosure	-1	15	13	17	17	16	10	13	11	15	12	12
17	2.2	Term (Period / Length)	-4	13	15	16	14	14	17	19	16	19	14	19
18	2.2	Performance Guarantees / Undertakings	0	18	18	7	8	7	9	12	10	11	13	14
19	2.1	Insurance	+1	20	19	20	-	-	-	-	-	-	-	-
20	2.1	Product Specification	+1	21	22	-	-	-	-	-	-	-	-	-
21	1.9	Adherence to Policies (e.g. environmental, security, etc.)	+1	22	20	21	20	19	13	23	22	22	18	15
22	1.9	Acceptance	+3	19	-	-	-	-	-	-	-	-	-	-
23	1.9	Information Access and Management	+1	24	24	22	24	20	15	21	19	16	16	17
24	1.8	Dispute Resolution	+4	28	27	-	-	-	-	-	-	-	-	-
25	1.7	Regulatory Compliance	-2	23	23	19	22	18	34	-	-	-	-	-
26	1.7	Rights of Use	+3	29	28	-	-	-	-	-	-	-	-	-
27	1.6	Applicable Law / Jurisdiction	-2	25	30	-	-	-	-	-	-	-	-	-
28	1.6	Communications and Reporting	New	-	-	-	-	-	-	-	-	-	-	-
29	1.6	Force Majeure	-3	26	26	20	23	30	27	-	-	-	-	-
30	1.6	Product or Service Withdrawal	New	-	-	-	-	-	-	-	-	-	-	-

Score basis: 0 = Rarely / Never, 1 = Sometimes, 2 = About half of the time, 3 = Often, 4 = Most of the time / Always

Dashes in the table indicate that some terms in the 2024 top 30 have been new entrants to the list since its inception in 2007. Correspondingly, other terms (now not shown) have dropped out of the top 30 over time.

Additionally, over time, we have combined and separated terms to reflect changes in the world of contracting. For example Acceptance was combined with Delivery until 2020, but is now listed separately.



### About World Commerce & Contracting

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With unmatched technology and category-defining innovation, Icertis pushes the boundaries of what's possible with contract lifecycle management (CLM). The AI-powered, analyst-validated Icertis Contract Intelligence (ICI) platform turns contracts from static documents into strategic advantage by structuring and connecting the critical contract information that defines how an organization runs. Today, the world's most iconic brands and disruptive innovators trust Icertis to fully realize the intent of their combined 7.5 million+ contracts worth more than \$1 trillion, in 40+ languages and 90+ countries.

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