

## Sustainability in Contracts: A Summary of Current Status

Data from 105 organizations suggests that the importance and impact of sustainability clauses in contracts varies significantly across industries and geographies. The results imply that few are handling the UN Global Sustainability Goals in an integrated fashion but are selecting those that are most appropriate to their markets and jurisdiction.

In the buyer community, 75% have incorporated some additional terms into their standard templates, with 46% saying that this is in all agreements and 61% drawing on industry standards where these exist. For suppliers, 59% have added terms into their agreements, but most have done this for only some of their templates and 25% have done it only for certain geographies. Only 47% draw on industry standards.

Key factors in determining the priorities for inclusion of additional terms are the practicality of implementation and the consequences of breach or failure. On a scale of 1-5 (where 5 is high), survey respondents indicated a score of 3.8 in terms of the importance of ESG terms in today's contracts. However, in a separate poll, only 12% indicated that this is a frequent area for negotiation (with 59% indicating 'occasional negotiation') and 29% saying that it does not arise at all. Again, there is a divide between buyers and sellers, with buyers saying there is far less push-back or resistance than suppliers say there is.

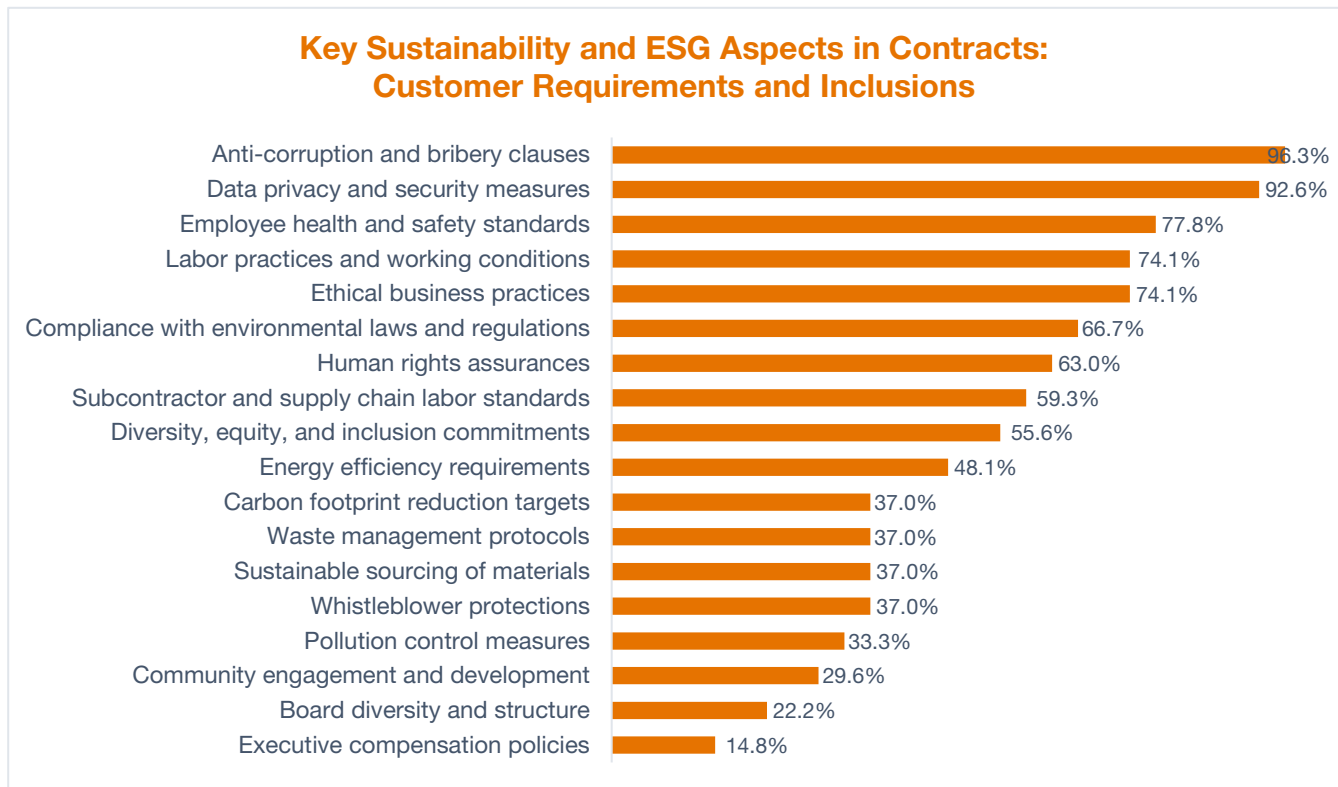
The results show that there is a greater overall impact in Europe, with more targeted focus in the United States. This finding is not surprising given their respective political and regulatory emphasis.

Where tensions arise, they tend to relate to issues around risk and reporting, with suppliers highlighting the extent of liability (77%) and audit rights (59%) as the areas of greatest contention. More than half indicate regular challenges with customer terms on overall reporting, the application of reporting to the extended supply chain and termination rights. Figure 3 contains this information in greater detail.

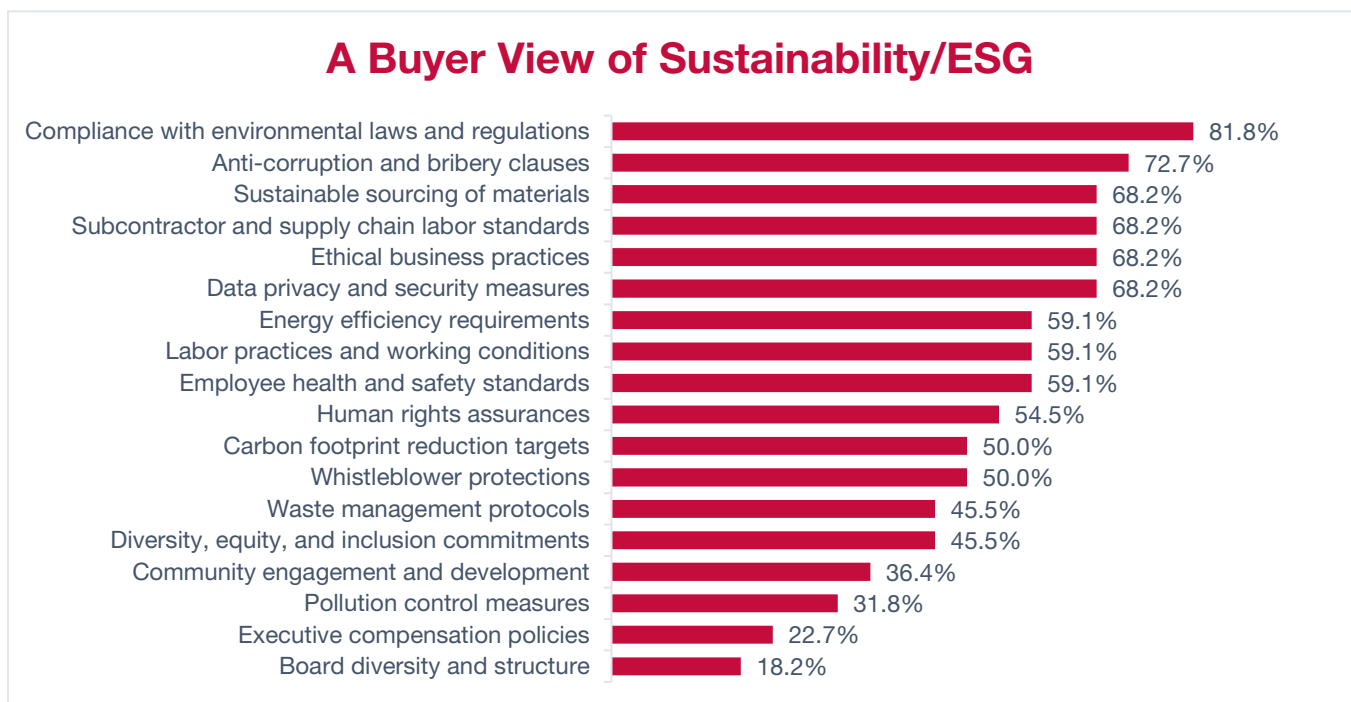
Beyond well-established areas of corruption, data privacy and health and safety, suppliers report that the topics which are now appearing in customer contracts with the greatest frequency are:

1. Labor practices and working conditions (74%)
2. Ethical business practices (74%)
3. Compliance with environmental laws and regulations (67%)
4. Human rights assurances (63%)
5. Subcontractor and supply chain labour standards (59%)

**Figure 1** shows a more comprehensive list of the terms and their frequency.



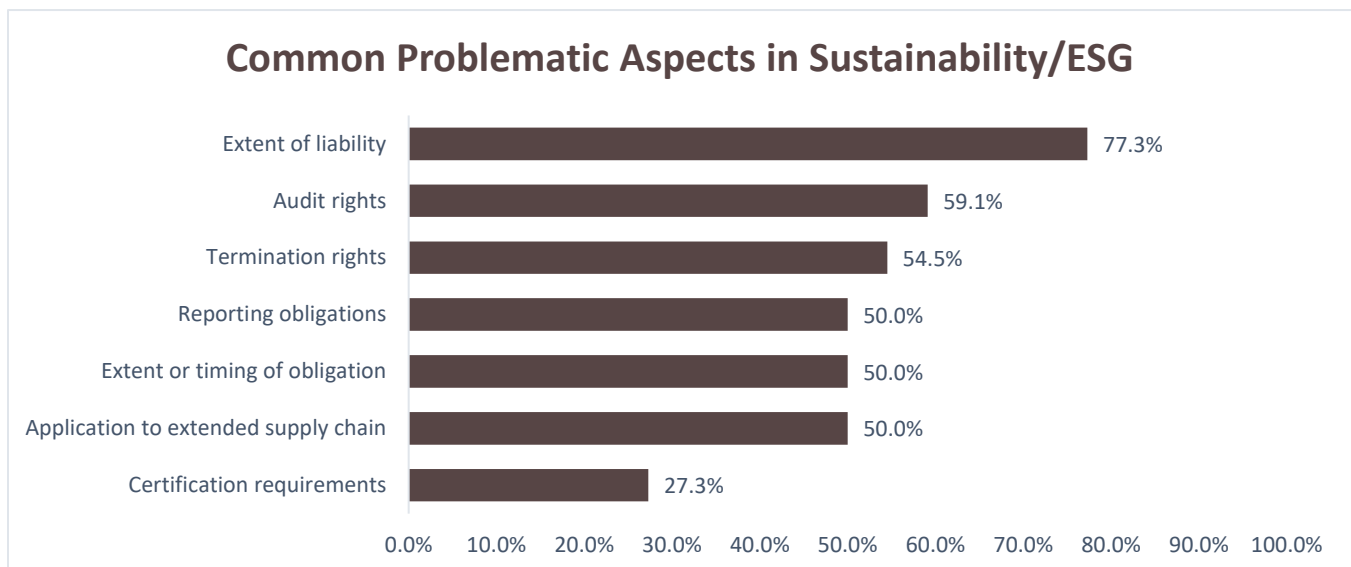
When asked the same question, the buyer community revealed some interesting variations in the view of both importance and frequency, with the most glaring gap being around sustainable sourcing of materials. **Figure 2.**



## Sources of Contention

The contentious issues appear to be less about the principles that underlie ESG than they are about the practicality of compliance and the extent to which this should be a shared responsibility. For example, the focus of buyers on audit rights ignores the fact that they too should be committing to meet the standards they are imposing. Hence, should audit rights be mutual, or are they perhaps the wrong way to ensure compliance and drive improvement?

**Figure 3** shows the areas where there is the greatest contention when negotiating ESG-related terms.



Many argue that sustainability impacts society as a whole, and therefore, achieving ESG targets depends on shared responsibility and collaborative action. Therefore, the traditional approach to bargaining over risk allocation is simply not appropriate. In this view, draconian liabilities, termination, and audit rights are inconsistent with the behaviours we must adopt in response to the universal challenge.