

Most Negotiated Terms

Business services, outsourcing and consulting sector



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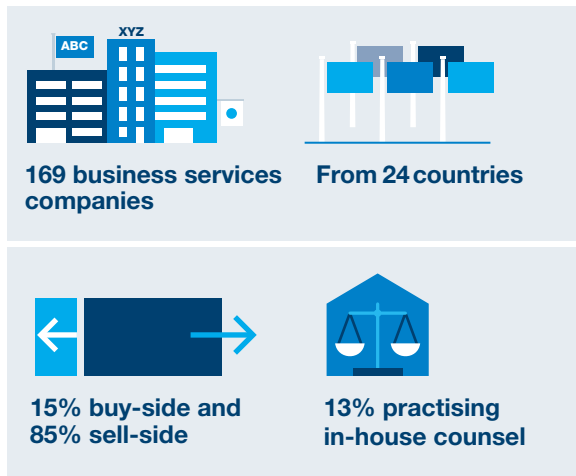
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Scope and purpose

This report focuses exclusively on the negotiation of business services, outsourcing and consulting sector contracts between businesses and, to a degree, between businesses and governments. It reveals the terms and conditions that dominate those negotiations as well as the areas that negotiators consider most important and those that are most likely to result in subsequent disagreement or dispute.

Its purpose is to help negotiators and business leaders better understand and prepare for contract negotiations. The report highlights the current state, but also indicates where changes can be made – changes that would generate better outcomes for both parties. As such, a core objective is to encourage self-reflection, to cause businesses and their negotiators to examine and question current practices and identify a better way.

Data demographics for this report



Meaning of the report terms



Forewords

Insights to the market and its evolution

There are distinct cultures, market influences and learnings from the past that affect negotiations in different sectors. Understanding how these impact what is negotiated and the impact this has on risk and value is critical to any business negotiator. The WorldCC study of the 'Most Negotiated Terms' provides unique insights to current norms – and also enables analysis of how these norms should change to meet altered business conditions.

Market pressures have forced the business services sector to learn how to become more agile and adaptive. Negotiators today operate with greater empathy and sensitivity to the business relationship. Working as they do across multiple sectors, this demands true sensitivity to a client's situation.

This report offers insights to the state of the market and how it is evolving. It also confirms that today's dynamic business conditions drive a need for more effective implementation and use of technology, to equip negotiators with the information, tools and terms that they need to develop and agree the right forms of agreement.



Tim Cummins

President
World Commerce & Contracting

Realizing the contract's higher purpose

At Icertis, we believe every contract, every clause, has a purpose. When the intent of these contracts and clauses is realized, they collectively have the power to make companies better partners and the world a better place.

That's why we are so proud to partner with World Commerce & Contracting on the latest 'Most Negotiated Terms' report and this deep dive into results from the business services sector.

For this year's survey, the expectation, or at least the hope, was that two years of almost constant global disruption would precipitate a shift in how the sector approached their contracts: as not just tools to allocate risk, but create value and better define the full purpose of their relationships.

For the business services sector, this year's survey data suggests this is exactly what's happened. For example, in Figure 2, we see 'Scope and Goals / Specifications' ascend to a top three negotiated term starting with the pandemic – demonstrating that negotiators recognize the contract as an important blueprint for the commercial relationship's success. Indeed, Figure 3 shows that 'Scope and Goals / Specification' also ranks near to top of Most Important Terms. Surprisingly, such alignment between what's considered 'important' and what gets negotiated is more the exception than the rule in other sectors.

Meanwhile, a healthy majority (65%) said that collaboration between negotiation parties increased since the pandemic, and 57% increased communications and data exchange with their counterparties. Best yet, 60% of respondents say the contract and the role it plays in the business is more important today than it was in the past.

I'm confident that a collaborative, value-driven approach to contracts will become increasingly common as contract data becomes more robust and readily available. This won't just drive commerce but enable companies to leverage their contracts to address emerging imperatives like sustainability, equity, and ethical sourcing. That's why at Icertis we make it our purpose to leverage contract intelligence to build trust, strengthen bonds, and create a better world. And it's why we are so proud to support research for the benefit of the business services sector that advances the art and science of negotiation and achieving the higher purpose of each contract.



Bernadette Bulacan

Chief Evangelist
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The state of the market

Back in 2020, when the pandemic first disrupted traditional meetings and communications, just over 70% of negotiators in the business services sector expressed concern over the loss of face-to-face negotiation. They believed it would make reaching agreement much harder and increase the likelihood of misunderstandings. At that time, less than 25% were making regular use of video technologies to support their customer and supplier relationships – though even at that low level, the sector was ahead of most others.

Move forward to 2023 and attitudes have altered, but not as much as some other sectors. 13% believe that the virtual environment has had a negative impact on their ability to negotiate and conclude agreements, almost double the cross-sector average. 27% feel that the impact has been positive, with 17% saying there has been no impact. The remaining 43% say that the answer depends on the nature

of the contract and the counter-party – perhaps a realistic reflection of the cross-sector nature of the customer base.

This sector is distinct from others in that it operates entirely in intangibles. Services are often more difficult to define and manage, making on-going communication and reporting of far greater significance. It often involves far deeper interactions and the need to work on-site at client locations. Longer-term agreements frequently require updates and renegotiation, making the quality of governance a much more important ingredient of the contracting mix.

The pandemic was clearly a major disruption, both for providers and clients. It is not surprising that it has caused a major re-think of working practices and relationships. At the outset, the need for new ways of negotiating was understandably seen as a threat, but the reality proved different.

It is not dissimilar to the initial attitude to working from home, which for many has since swung to a reluctance to return to the office. These experiences illustrate that people do not like change and often assume it will be negative without any evidence. As the Chair of McKinsey’s Global Institute recently observed, “We get afraid of something... and when we are afraid, we stop”. Essentially, we fear the worst until we discover it is not so bad and maybe in reality the new ways are better.

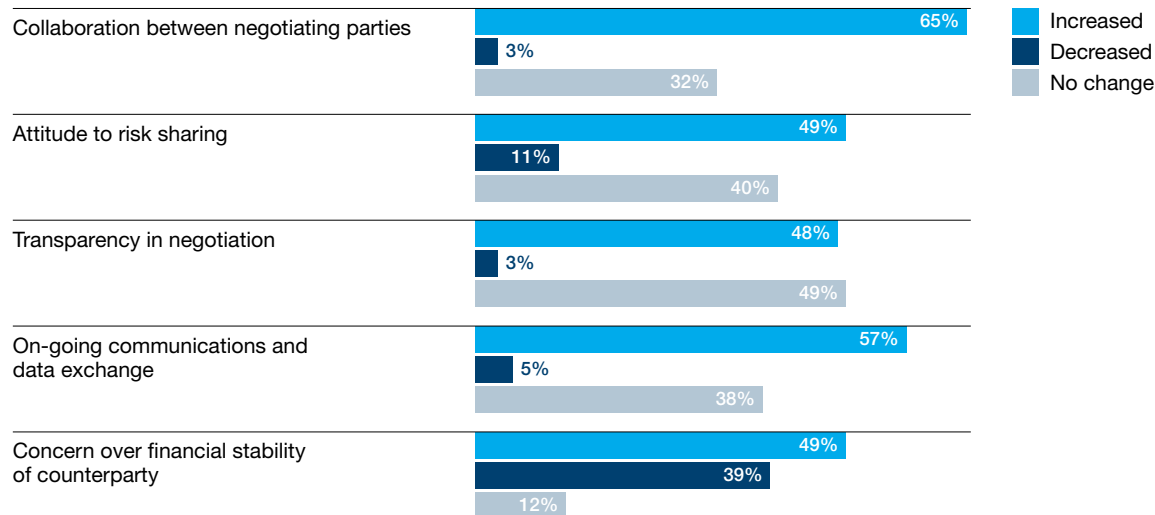
Figure 1 suggests that many have indeed found those new ways and are moving towards far more positive relationships – relationships that have the characteristics needed for greater adaptability and value.

Past periods of uncertainty have often created increased contention in negotiations; this time, they appear to have been broadly positive. The proportion sensing a positive increase in collaboration and on-going communication represents an impressive improvement and this is further reflected in levels of internal collaboration – that is, across business functions – where 72% identify improvement.

Behind the scenes, there is also growing appreciation that contracts matter. Many in this sector are aware that ‘the contract’ often provided limited support in navigating market disruption. This has led to increased discussion over the content of the core agreement, versus perhaps more formal governance and relationship management. 60% report that the contract and its role within the business is now viewed as more important than in the past.

It is factors such as these that are setting the scene for today’s negotiations and should be prompting altered thinking and planning. These together would allow a continued shift of negotiation away from risk allocation and ‘preventism’ to a stronger focus on the factors – and terms – that support positive outcomes and shared value.

Figure 1. To what extent have the events of the last three years resulted in a shift



The evolution continues

The switch to virtual negotiation was imposed – there was no choice. In the case of what we negotiate, we remained free to select the agenda. While all around us there was dramatic change, the impact on the negotiation agenda has been more gradual. As one executive observed, “In some respects, all the turmoil pushed contracts into the background; it was the quality of the relationship that really mattered”. Though this is somewhat counter to the previously expressed view that 60% consider that contracts have become more important.

Figure 2 tracks the Most Negotiated Terms for the business services sector since 2015. There are some changes, a few perhaps surprising.

For example only since 2020 has Cybersecurity entered the list and many might expect it to be higher than seventh place. Even more surprising is the elimination of Indemnities from the top ten – a rapid fall from third place in 2018. The decline in the position of Service Levels is also unexpected, given the impact that market volatility often has on requirements and capabilities.

However, overall, the Most Negotiated Terms in this sector continue to progress and are more positive than in other sectors. That is because they focus far more on value and performance. It is, for example, especially notable that Force Majeure does not make it onto the top ten list and 76% of respondents confirm that the pandemic and subsequent events resulted in very few Force Majeure claims.

To a degree, the Most Negotiated Terms still appear inconsistent with the sentiments of increased collaboration and greater readiness to share risks. Yet as already observed, that interpretation may be misleading because some within the sector are engaging in conversations around improved forms of governance. These would include better mechanisms to handle change and manage risk, leading to improved communications and greater levels of reporting and transparency. Such initiatives might not impact perceptions of the Most Negotiated Terms because they often sit outside the contract and discussions may involve different personnel or not be viewed as ‘negotiation’.

Figure 2. Most Negotiated Terms in the business services sector

	2015 Pre-pandemic	2018 Pre-pandemic	2020 Pandemic	2022 Post-pandemic	All sectors 2022
1	Limitation of Liability	Limitation of Liability	Limitation of Liability	Limitation of Liability	1 Limitation of Liability
2	Price / Charge / Price Changes	Termination	Scope and Goals / Specification	Price / Charge / Price Changes	2 Price / Charge / Price Changes
3	Indemnities	Indemnities	Price / Charge / Price Changes	Scope and Goals / Specification	3 Indemnities
4	Termination	Service Levels	Termination	Responsibilities of the Parties	4 Liquidated Damages
5	Payment / Payment Options	Price / Charge / Price Changes	Responsibilities of the Parties	Termination	5 Termination
6	Service Levels	Scope and Goals / Specification	Service Levels	Payment / Payment options	6 Scope and Goals / Specification
7	Invoices / Late Payment	Intellectual Property	Cybersecurity / Data Privacy	Cybersecurity / Data Privacy	7 Payment / Payment Options
8	Liquidated Damages	Performance / Guarantees	Payment / Payment options	Liquidated Damages	8 Warranties
9	Intellectual Property	Responsibilities of the Parties	Delivery	Delivery	9 Cybersecurity / Data Privacy
10	Delivery	Payment / Payment Options	Indemnities	Service Levels	10 Intellectual Property



Business and services sector top 10 compared to all sector average (2022)

The evolution continues (continued)

These observations are reflected in the list of terms that negotiators deem most **important**, where there have been some notable shifts in the views pre- and post-pandemic. There is greater alignment in this sector between the lists of Most Negotiated and Most Important, with six of the terms common to both. The areas of difference represent a shift between areas of risk allocation (Liabilities, Liquidated Damages, Termination) and those of risk management (Governance, Communications and Reporting, Changes and Amendments to Contract). This focus on issues that

are critical to the on-going management of the relationship and its performance shows considerably greater maturity than in many other sectors and also reflect the pandemic's influence on making agreements more adaptive.

There is much to recommend the creation of governance frameworks and strong arguments to keep them separate from the contract – not least because this allows greater flexibility to make changes and also results in a design that may be more user-friendly.

Figure 3. Most Important Terms in the business services sector

	2015 Pre-pandemic	2018 Pre-pandemic	2020 Pandemic	2022 Post-pandemic	All sectors 2022
1	Service Levels	Scope and Goals / Specification	Scope and Goals / Specification	Price / Charge / Price Changes	1 Scope and Goals / Specification
2	Delivery	Responsibilities of the Parties	Responsibilities of the Parties	Scope and Goals / Specification	2 Price / Charge / Price Change
3	Scope and Goals / Specification	Price / Charge / Price Changes	Delivery	Delivery	3 Delivery
4	Change Management	Delivery	Price / Charge / Price Changes	Service Levels	4 Service Levels
5	Gainshare / Innovation	Service Levels	Service Levels	Amendments / Changes to Contract	5 Responsibilities of the Parties
6	Price / Charge / Price Changes	Performance / Guarantees	Data Security	Responsibilities of the Parties	6 Acceptance
7	Governance, Comms. and Reporting	Limitation of Liability	Change Management	Governance, Comms. and Reporting	7 Amendments / Changes to Contract
8	Responsibilities of the Parties	Payment / Payment Options	Data Privacy	Acceptance	8 Payment / Payment Options
9	Performance / Guarantees	Cybersecurity / Data Privacy	Governance, Comms. and Reporting	Invoices / Late Payment	9 Product Specification
10	Information Access	Change Management	Cybersecurity	Cybersecurity / Data privacy	10 Limitation of Liability



Business and services sector top 10 compared to all sector average (2022)

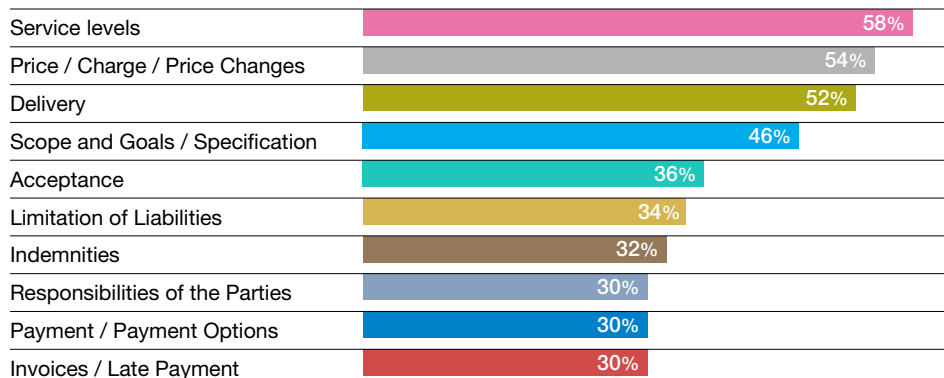
What goes wrong?

Approximately 6.8% of agreements in the business services sector encounter one or more ‘significant disagreements’ during performance. This is significantly above the cross-sector average and perhaps explains the interest and desire to improve levels of collaboration and communication. As previously observed, the intangible and people-dependent nature of services, along with the challenges of defining and maintaining scope and goals, create an environment where the probability of disagreement is far greater. Figure 4 shows the issues that most often lie at the core of the disagreement.

Many of the terms causing disagreement are interconnected – for example, a disagreement about scope often translates into a debate over price and whether a particular requirement is chargeable or non-chargeable. Equally, squabbles over payment and invoices are often linked with debates over service levels or the accuracy of charges. Evolving contract models – towards performance and outcome-based agreements – have the potential to further increase the number of disagreements and disputes – again pointing to the importance of better reporting and governance, supported by shared technologies.

Forward-looking organizations, especially suppliers, increasingly monitor these sources of disagreement, appreciating that they are the cause of value loss and damaged relationships. For a few, it is leading to more comprehensive negotiation planning and greater engagement with sales account teams to alter the focus of customer conversations. Intelligent negotiators focus on how to avoid problems, rather than on how to protect against their consequences. As one CEO observed, “Conversations about the contract really should shift to the beginning of the sales process, not operate at the tail-end as if they were an after-thought”.

Figure 4. Terms with most significant disagreements (relative frequency)

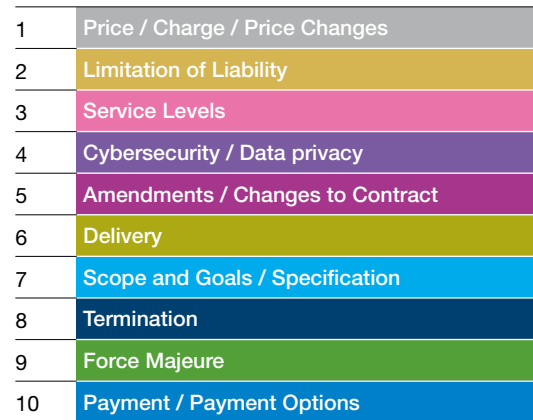


Impacts of market volatility

“2022 was a year of never-ending negotiations,” according to an executive at a business services company. She highlighted the multiple factors hitting the business, often in quite inconsistent ways – some causing surges in demand, others creating delays, cancellations or fears over security of supply. WorldCC research endorsed this view, with consequent ‘operational workload’ proving overwhelming for many contracting groups.

Many of contract negotiations were therefore renegotiations and the variety of topics rising to the fore is indicative of the contrasting situations created by market disruption.

Figure 5. Most Renegotiated Terms in the business services sector (2022)



Conclusions

Core elements of the ‘call to action’ are consistent across most sectors. However, business services has distinctive characteristics that set it apart from many other sectors.

As highlighted, the intangible nature of a service makes agreement of terms both more complicated and important. In addition, the propensity for change and the potential for disagreement create a need for terms that support on-going management of performance. In many cases, the long-term nature of the service means there will almost inevitably be shifts in demand, in delivery models and methods and in relevant regulation. Such contracts therefore require provisions related to continuing improvement or innovation and, historically, many also assumed on-going price reduction.

These are examples of the factors that make commercial and contracting competency and adaptability such a critical discipline. They are also factors that, until recently, have constrained technology adoption; only now are we starting to see technologies that can cope with the innate complexity of contracting in the business services sector.

The leaders are doing things differently. Increasingly, this involves using modern technology to streamline and develop competitive advantage through contracts and negotiations that draw on market intelligence. Look outward, not inward! However, success in adoption depends upon process redesign and a clear focus on understanding contract data flows and their management.

The need for CGR: WorldCC has developed frameworks reflecting a growing appreciation of the need to plan the mix of contract, governance and relationship as the key tools for managing success. This approach also assists in better understanding the nature of the underlying contract – for example, when to use standard agreements such as MSAs and when to consider performance, outcome, relational or agile models.

Pricing and charging models are also fundamental to incentivizing and achieving positive outcomes. The need to raise internal understanding of alternatives and how to assess their suitability has been intensified by current levels of inflation.

Raising skills and capabilities in the production of Statements of Work has become important for many as they identify the root cause of value erosion and potential disputes. Targeted tools and training can improve the abilities of project teams and business unit staff who are often charged with Statement of Work production.



1. Market intelligence

Are you negotiating because your positions are unreasonable and out of line with market norms? Investing in market intelligence data and an evaluation of your ‘ease of doing business’ is increasingly easy to achieve. It can cut your frequency of negotiation by 50% or more.



2. Consistency of standards

There is growing appreciation of the value that can be gained from the adoption of standards. In areas such as ESG compliance and reporting, progress in many ways depends on consistency of approach, certainly within sectors and in some cases across sectors.



3. Contract simplification

The spread of contract simplification and design – has brought a recognition that contracts do not need to be documents, do not have to be written and do not require ‘legalese’ to be enforceable. Early evidence shows that when organizations make contracts easier to understand, the amount and nature of negotiation changes.



4. Intelligent clause libraries

Short-term, technology may be making things more adversarial as organizations standardize and consolidate their contract portfolio, reducing flexibility for negotiators. For most, the idea of the intelligent clause library remains a dream – but it is increasingly achievable and will steadily replace the templates that underpin the traditional ‘battle of the forms’.

Call-to-action

Plan, Plan, Plan! While there are some negotiators who truly do plan – and seek to move beyond today’s Most Negotiated Terms – they are very much the exception. Most organizations do not have a standardized approach to contract negotiation – they see it and handle it as an exercise in compliance and risk, not as a source of value management. **Perhaps the most important and easily actionable take-away from this report is to consider how your negotiations can shift their emphasis away from ‘the most negotiated’ and towards ‘the most important’.**

About World Commerce & Contracting

World Commerce & Contracting is a not-for-profit association dedicated to helping its global members achieve high performing and trusted trading relationships. With 75,000 members from over 20,000 companies across 180 countries worldwide, the association welcomes everyone with an interest in better contracting: business leaders, practitioners, experts and newcomers. It is independent, provocative and disciplined existing for its members, the contracting community and society at large.

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About Icertis

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 10 million+ contracts worth more than \$1 trillion, in 40+ languages and 90+ countries.

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Find out how WorldCC can help

We provide members with market insight and data. We can work with you to evaluate your current status and assist in identifying the critical areas for improvement.

If your negotiations are creating long cycle-times and failing to generate the outcomes you want to achieve, WorldCC can help. [Get in touch.](#)