



Contract Watch

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Buyer B.E.W.A.R.E.

The salesperson sitting in front of you has extolled the virtues of the product/service you have decided to purchase – you might be an MD, you might be an FD, an office manager or the Procurement/Purchasing Manager – he pushes a contract/agreement/document in front of you and indicates the areas where you should sign your approval to “get the ball rolling”.

Very often Contract Watch are called in to sort out the minefield of dubious clauses on contracts / agreements, written by companies large and small, where the main purpose of the contract seems to be that the Purchaser is unable to :

1. Read the printing on the Terms and Conditions because it's minuscule and printed in a pale unreadable colour.
2. Understand the legalese with clauses leaving you wishing you had a lawyer on hand to explain the ramifications of the document you are about to sign.
3. Allocate the time to read, far less understand the never-ending number of clauses, designed to protect the seller and a surprising lack of conditions to protect you, the purchaser.

In our experience, as many as 7 out of 10 sign without reading the terms and conditions !!!!

Most individuals who sign contracts/agreements and documents are aware of the main elements that make up such documents – but unfortunately, all this takes time !!! and explanation. Most of us are of the opinion that, with all the rules and regulations governing these type of contracts, that a healthy proportion of the contracts you are about to sign will reflect the latest legislation – not true!!!! A surprising number of Salespeople have never been trained in the terms and conditions of the company whose product/service they are promoting.

If you do nothing else – at least check to following areas are based on B.E.W.A.R.E (Cost reduction – this will save you a surprising amount of money in the long term!!)

Begin ?

When does the contract/agreement start ? If you sign for a year or three years – does the contract term commence when you sign – or on the first day of the following year – there are a few companies out there who start the contract term on the first day of January of the following year, even though they may be signing the contract in say, the March of the current year – **ask the sales person to verify the end date of your commitment and write this as a notation on the document your are signing** (ie “contract end date 24/11/2011”) – initial the notation and then ask the salesperson to do the same, preferably next to the clause that specifies how the end of the contract is handled – now *you're* covered. !!!

Escalations !

Does the document you are signing assume the right to escalate the rental/lease payment each year, if so **ask the sales person to verify that there will be no increases applied during the term of the contract, add a notation to the contract** (ie. Price fixed at £ ????? for the full term of this contract) initial the notation and ask the salesperson to do the same.

What ??

If escalations are to be applied during the term of the contract, establish with the salesperson which index will be used to measure the escalations – is the index published ?– i.e. RPI - Electronic Engineering Wages index (check on the web for the latest figures) – ask the salesperson to show how this will be calculated and ask if the percentage increase will be applied to the maintenance element or to the whole sum – capital and maintenance – when you have this information at your fingertips, you will be able to make a more informed

decision about whether you are getting value for money – ask the salesperson to initial his calculations and keep this paperwork with your contract. Remember, at any point, before signing the paperwork, you can renegotiate the percentage and have this notated on the actual contract.

Always !!

Ensure that any points regarding liquidated damages (early termination) is clarified by the salesperson by asking them to calculate, on paper, what would be payable if you had to terminate the contract in say year two of a three year contract. Ensure that you understand the formulae for calculating the early termination figure – again, ask the salesperson to initial his calculations and retain the paperwork with your contract. Also, ask the salesperson to show the clause that applies- again, if you don't like the sums, renegotiate and always remember **to initial your notation on the contract** and ask the salesperson to do the same.

Rollovers !!!

If your contract runs to the end of the “initial term” ie you have signed for three years, ask the salesperson to show you the clause that will apply when you have reached the end of the “ initial period “– we always advise our clients to send a letter cancelling for the end date of the contract term, usually directly after they have signed the contract, to ensure that you have the necessary time to check out the latest available on the market, given that technology is changing at an exciting rate these days.

End

You must establish for what period of time you would be tied in to the contract in the “secondary period”- one of our clients was astounded to find out that he was tied in for a further seven years !!!!! because he had not cancelled within the three month window at the end of the initial term - on an initial term 3 year contract. Again, and most importantly – if you don't like it – just take the clause out or apply a notation initialled by both yourself and the salesperson. You may opt for a yearly rollover ...or not !!! Also, at the end of the initial term of the contract, ask the question - what happens – if equipment is involved - do you get to own the product or pay a peppercorn rent (i.e. one month's rent per year) remember you will, by now, have paid the capital cost of the product – so it may be that you will only negotiate to pay for maintenance (if applicable). Negotiate – if you don't ask – you don't get !!!!! and.....always remember if you agree something - add a notation to the contract and initial yourself and ensure that the salesperson initials also.

Don't forget to take a copy of the document you have just signed, front and back, every page regardless of whether the salesperson says that it must be approved by his Head office