

Commercial contract checklist

A drafting and negotiation checklist for B2B agreements, ordered by where disputes actually arise, with the statutory limits noted.

For drafting or negotiating a business-to-business agreement — supply, services, distribution, licensing. The consumer regime does not apply here, which means the parties largely get what they wrote down, subject to the Unfair Contract Terms Act 1977 where one side contracts on written standard terms. [1]

1. Structure and formation

- ☐ Parties correctly named, with company numbers and registered offices.
- ☐ Recitals explaining commercial purpose, kept short and expressly non-binding.
- ☐ Definitions used consistently, and only where a term appears more than twice.
- ☐ Commercial detail in schedules, legal machinery in the body — it lets you renegotiate commercials without reopening the whole agreement.
- ☐ Order of precedence where schedules, purchase orders or SLAs may conflict.
- ☐ Battle of the forms addressed: state expressly that these terms prevail over any purchase order or acknowledgement.
- ☐ Execution: simple contract or deed? A deed requires the correct formalities and attracts a twelve-year limitation period rather than six [2].
- ☐ Counterparts and electronic signature provisions.
- ☐ Authority of signatories confirmed.

2. Scope and performance

- ☐ Deliverables described so a stranger could tell whether they had been delivered.
- ☐ Exclusions stated: what is expressly out of scope.
- ☐ Milestones and dates, marked as obligations or targets, with time of the essence where it matters.
- ☐ Acceptance criteria, testing procedure, and a deemed-acceptance longstop.
- ☐ Change control: who requests, who prices, who approves, in what form, and what happens while a change is under discussion.
- ☐ Customer dependencies, and relief for the supplier if they are missed.
- ☐ Service levels with a defined measurement window, exclusions, and a real consequence — credits that are the sole remedy are a common trap for customers.
- ☐ Key personnel, and controls on replacing them.

3. Commercial terms

- ☐ Price, currency, VAT treatment, and what triggers an invoice.

- ☐ Payment period and interest. The Late Payment of Commercial Debts (Interest) Act 1998 implies statutory interest at 8% above base plus fixed compensation unless the contract provides a substantial contractual remedy [3].
- ☐ Indexation or a price review mechanism for multi-year terms, with a stated index.
- ☐ Volume commitments, minimum spend or exclusivity, and the consequence of missing them.
- ☐ Suspension rights for non-payment, on notice, with a right to resume.
- ☐ Set-off permitted, restricted or excluded.
- ☐ Expenses policy and any pass-through costs.

4. Risk allocation

- ☐ Liability cap: a stated number or formula, per claim or aggregate, over a defined period.
- ☐ Excluded losses named precisely. 'Consequential loss' is narrower than most parties assume; name loss of profit, revenue, savings, goodwill and data if that is the intention.
- ☐ Carve-outs from the cap: death and personal injury caused by negligence and fraud cannot be excluded at all [1]. Keep the rest of the carve-out list short, or the cap becomes decorative.
- ☐ Indemnities: scope, control of defence, duty to mitigate, and whether they sit inside or outside the cap.
- ☐ Warranties given, and the period for bringing a warranty claim.
- ☐ Insurance: types, limits, duration, and evidence on request.
- ☐ Force majeure: defined events, notice, mitigation, cost allocation, and a termination longstop.
- ☐ Where one side contracts on written standard terms, exclusions must satisfy the reasonableness test in UCTA 1977, s 3 — a cap far below the realistic loss invites challenge [1].

5. Intellectual property, data and confidentiality

- ☐ Background IP stays with its owner; foreground IP assigned or licensed — decide which and say so.
- ☐ Licence terms: exclusive or not, sublicensable, territory, duration, and what survives termination.
- ☐ Third-party and open-source components disclosed, with their licence conditions.
- ☐ IP infringement indemnity, with a remedy — replace, modify or refund — if a deliverable has to be withdrawn.
- ☐ Data protection: controller or processor correctly identified, with Article 28 terms where there is processing [4].
- ☐ International transfers: the IDTA or the UK Addendum, plus a transfer risk assessment where personal data leaves the UK [5].
- ☐ Security standards, audit rights, and breach notification periods that let the customer meet its own 72-hour regulatory deadline.
- ☐ Confidentiality: definition, exceptions, duration, and return or destruction on exit.

6. Term and exit

- ☐ Initial term, renewal mechanism, and the notice deadline to prevent renewal.
- ☐ Termination for convenience: who has it, notice period, any break fee.
- ☐ Termination for material breach, with a cure period and a workable definition of material.
- ☐ Termination on insolvency, and on change of control.
- ☐ Consequences: outstanding fees, licence continuation, data return in a usable format and agreed timescale, transition assistance and who pays for it.
- ☐ Surviving clauses listed expressly.
- ☐ Post-termination restrictions kept to what is reasonably necessary — overbroad non-competes risk being unenforceable as a restraint of trade.

7. Boilerplate that earns its place

- ☐ Governing law and jurisdiction, and whether disputes go to court or arbitration.
- ☐ Escalation before proceedings: named roles, fixed timetable, and a carve-out for urgent injunctive relief.
- ☐ Notices: address, method, and when notice is deemed received. Does email count, and to whom?
- ☐ Assignment, novation and subcontracting.
- ☐ Entire agreement, with a carve-out for fraud.
- ☐ No partnership or agency.
- ☐ Third party rights excluded, or granted deliberately under the Contracts (Rights of Third Parties) Act 1999 [6].
- ☐ Anti-bribery, sanctions and modern slavery clauses where the counterparty or supply chain warrants them [7].
- ☐ Variation only in writing and signed — then actually follow it, because a course of dealing can undermine the clause.

8. Where to spend your negotiating capital

Issue	Why it decides disputes	A workable landing zone
Scope	Most disputes start as a disagreement about what was promised.	A schedule listing deliverables and exclusions, with a change-control route.
Delay	Both sides usually contribute to it.	Dates as obligations, with relief where the customer causes the delay.
Liability cap	Determines whether a remedy exists at all.	A multiple of annual charges, aggregate, with narrow carve-outs.
Exit	Being trapped costs more than a bad price.	Termination for convenience on reasonable notice, plus transition assistance.

The negotiation test

For each clause, ask what it does on the worst day of this relationship, not on the day of signing. Disputes concentrate in four places: scope, delay, the liability cap, and how either side gets out. Spend your capital there and concede the rest quickly — it buys goodwill for the clauses that matter.

Where this comes from

Every statement above traces to one of these. Primary legislation is on legislation.gov.uk; regulator guidance on gov.uk. Check the current version before relying on any of it — consumer law has changed twice since 2024.

- 1 Unfair Contract Terms Act 1977
Limits on excluding liability between businesses, the reasonableness test for written standard terms (s 3), and the prohibition on excluding liability for death or personal injury caused by negligence (s 2).
legislation.gov.uk/ukpga/1977/50/contents
- 2 Limitation Act 1980, ss 5 and 8
Six years for a simple contract; twelve years for a deed.
legislation.gov.uk/ukpga/1980/58/contents
- 3 Late Payment of Commercial Debts (Interest) Act 1998
Statutory interest and fixed compensation, and when a contractual remedy displaces them.
legislation.gov.uk/ukpga/1998/20/contents
- 4 UK GDPR, Article 28
Mandatory content of a controller-to-processor contract.
ico.org.uk/for-organisations/uk-gdpr-guidance-and-resources/
- 5 ICO — international data transfers
The International Data Transfer Agreement, the UK Addendum, and transfer risk assessments.
ico.org.uk/for-organisations/data-protection-and-the-eu/international-data-transfers/
- 6 Contracts (Rights of Third Parties) Act 1999
Enforcement by non-parties, and exclusion of that right.
legislation.gov.uk/ukpga/1999/31/contents
- 7 Bribery Act 2010 and Modern Slavery Act 2015
Where supply-chain and anti-corruption clauses are warranted.
legislation.gov.uk/ukpga/2010/23/contents

Important

This sheet is general information about the law of England and Wales, current at August 2026. It is not legal advice and no solicitor-client relationship arises from downloading it. Law and procedure change, and the right course depends on your facts. Take advice before acting on anything here.