

The Top Ten Most Negotiated Terms in 2007

Almost 800 organizations contributed to this year's Top Ten, with inputs representing thousands of negotiators from around the world.

This record input has allowed more detailed investigation of the results - for example, examining differences between geographies and legal systems. The charts show the variations - and the similarities. Perhaps the most notable point is how limited the differences are and how little has changed in the years we have been conducting the survey. There are temporary 'blips' as major events drive sudden interest in particular clauses or approaches - for example, Force Majeure in the aftermath of 9/11 or Payment Terms at the time of new revenue recognition legislation. But overall, the results indicate a continuing 'status quo', with the battle-lines firmly drawn and almost unchanging - despite the pace of change in other parts of the business.

So is this good news (indicating dependability and good risk management), or bad news (indicating a community that is failing to keep pace with the times and is thereby either out of touch, or perhaps failing to address the risks of today's market conditions)?

To some extent, our results will always be skewed towards companies and negotiators with global perspectives and influences, because that is the group most interested and also most represented in our membership. Because they are trading in higher-risk environments (large deals, often cross-borders and cross-cultures), this is likely to result in stronger focus on 'risk managing' terms such as liabilities, indemnities and IP. Differences in legal system may also make those legally-oriented discussions longer and more complex.

However, those same issues should be leading competent risk managers to recognize the need for better governance and relationship management systems and terms. Yet there is very little evidence of this. The only slight indicator is the continued rise of service level terms, this year reaching 7th place on the global chart (but separate research by IACCM indicates that many of these service level terms are also relatively negative in their impact, driving confrontation and blame, rather than supporting innovation and positive outcomes).

With relationships more complex, with regulation and governance high on the business agenda, with growing inter-dependency between companies, it seems long overdue for negotiations to increase their focus on the mechanisms that will drive successful outcomes. But the charts stubbornly refuse to move - it appears most negotiators remain fixated around protecting against failure, rather than defining the terms and structures that might incent and enable success. And that approach not only threatens the success of their business - it also means inevitable questions over their personal value and relevance.

What Next?

Many IACCM Corporate Members have taken advantage of the chance to have IACCM create a 'custom URL' that enables them to run an internal study of their negotiators and receive benchmarked information from IACCM, showing differences from wider industry trends or practices. They use this data to support an internal strategic planning meeting, to review both the variations that exist, and the variations that they might create moving forward. This is designed not only to ensure adequate protection, but importantly to investigate possible sources of competitive advantage or improved economic outcomes. For many, a key question is around the overall issue of 'ease of doing business' and making their company not only attractive as a trading partner, but also enhancing the brand image for integrity and trust. Anyone interested in understanding more about this approach should contact info@iaccm.com or call Katherine Kawamoto at 1+(203) 431-8741 ext. 623.

(The IACCM survey of negotiated terms was conducted in November - December 2007. Participants came from in-house legal, contract management and procurement groups, representing cross-industry, multi-country perspectives. The split of buy side versus sell side was approximately even. The input was weighted towards larger corporations, with around 80% coming from companies with annual sales revenues exceeding \$1 billion.)

Table of Top 30 Terms in 2007

	Top 30 Terms in 2007	▲▼	2006	2005	2004	2003	2002
1	Limitation of Liability	-	1	1	1	1	1
2	Indemnification	-	2	2	4	10	3
3	Price / Charge / Price Changes	▲	4	6	3	5	7
4	Intellectual Property	▼	3	3	5	3	2
5	Termination (cause / convenience)	-	5	7	7	7	5
6	Warranty	-	6	5	2	2	6
7	Service Levels	▲	11	10	13	-	-
8	Payment	▲	9	4	6	4	11
9	Delivery / Acceptance	▼	8	9	8	12	13
10	Confidential Information / Data Protection	▼	7	8	10	14	15
11	Liquidated Damages	▼	10	12	9	13	19
12	Insurance	-	12	15	11		
13	Applicable law / Jurisdiction	▲	14	14	12		
14	Invoices / Late Payment	▲	19	-	-		
15	Performance Bonds / Guarantees / Undertakings	▼	13	13	23		
16	Dispute Resolution	▲	17	-	-		
17	Audits / Benchmarking	▲	18	17	18		
18	Rights of Use	▼	15	-	16		
19	Assignment / Transfer	▼	16	16	17		
20	Most Favored Client	-	20	18	-		
21	Freight / Shipping	-	21	22	19		
22	Force Majeure	▲	27	20	24		
23	Entirety of Agreement	-	23	21			
24	Business Continuity / Disaster Recovery	▼	22	19			
25	Security	▼	24	24			
26	Enterprise Definition / Future Acquisitions / Divestiture	▼	25	11			
27	Non-Solicitation of Employees	▼	26	-			
28	Export / Import Regulations	-	28	23			
29	Product Substitution	-	29	25			
30	Escrow	-	30	-			

▲ Up or ▼ Down indicates change from 2006 Rankings

Comparison: Buyer's vs. Seller's

Buyer's Terms	
1	Indemnification
2	Limitation of Liability
3	Price / Charge / Price Changes
4	Termination (cause / convenience)
5	Service Levels
6	Intellectual Property
7	Payment
8	Warranty
9	Confidential Information / Data Protection
10	Delivery / Acceptance
11	Insurance
12	Applicable law / Jurisdiction
13	Liquidated Damages
14	Dispute Resolution
15	Invoices / Late Payment
16	Assignment / Transfer
17	Audits / Benchmarking
18	Rights of Use
19	Performance Bonds / Guarantees / Undertakings
20	Freight Shipping
21	Force Majeure
22	Entirety of Agreement
23	Business Continuity / Disaster Recovery
24	Most Favored Client
25	Security
26	Enterprise Definition / Future Acquisitions / Divestiture
27	Non-Solicitation of Employees
28	Product Substitution
29	Export / Import Regulations
30	Escrow

Seller's Terms	
1	Limitation of Liability
2	Indemnification
3	Intellectual Property
4	Price / Charge / Price Changes
5	Warranty
6	Termination (cause / convenience)
7	Delivery / Acceptance
8	Payment
9	Service Levels
10	Confidential Information / Data Protection
11	Liquidated Damages
12	Applicable law / Jurisdiction
13	Insurance
14	Performance Bonds / Guarantees / Undertakings
15	Audits / Benchmarking
16	Invoices / Late Payment
17	Rights of Use
18	Dispute Resolution
19	Assignment / Transfer
20	Most Favored Client
21	Business Continuity / Disaster Recovery
22	Force Majeure
23	Entirety of Agreement
24	Enterprise Definition / Future Acquisitions / Divestiture
25	Security
26	Freight / Shipping
27	Export / Import Regulations
28	Non-Solicitation of Employees
29	Product Substitution
30	Escrow

Comparison: Buyer's vs. Seller's (cont'd)

Asia/Pacific Terms	
1	Limitation of Liability
2	Indemnification
3	Price / Charge / Price Changes
4	Liquidated Damages
5	Delivery / Acceptance
6	Payment
7	Service Levels
8	Termination (cause / convenience)
9	Intellectual Property
10	Warranty
11	Performance Bonds / Guarantees / Undertakings
12	Applicable law / Jurisdiction
13	Insurance
14	Confidential Information / Data Protection
15	Dispute Resolution
16	Invoices / Late Payment
17	Entirety of Agreement
18	Export / Import Regulations
19	Assignment / Transfer
20	Audits / Benchmarking

Europe/ Middle East/ Africa Terms	
1	Limitation of Liability
2	Indemnification
3	Price / Charge / Price Changes
4	Intellectual Property
5	Service Levels
6	Termination (cause / convenience)
7	Payment
8	Delivery / Acceptance
9	Warranty
10	Liquidated Damages
11	Confidential Information / Data Protection
12	Audits / Benchmarking
13	Applicable law / Jurisdiction
14	Insurance
15	Performance Bonds / Guarantees / Undertakings
16	Invoices / Late Payment
17	Rights of Use
18	Assignment / Transfer
19	Dispute Resolution
20	Force Majeure

North America Terms	
1	Indemnification
2	Limitation of Liability
3	Price / Charge / Price Changes
4	Intellectual Property
5	Confidential Information / Data Protection
6	Termination (cause / convenience)
7	Warranty
8	Payment
9	Service Levels
10	Delivery / Acceptance
11	Insurance
12	Applicable law / Jurisdiction
13	Liquidated Damages
14	Rights of Use
15	Assignment / Transfer
16	Dispute Resolution
17	Invoices / Late Payment
18	Audits / Benchmarking
19	Most Favored Client
20	Freight / Shipping

South/Central America	
1	Limitation of Liability
2	Indemnification
3	Delivery / Acceptance
4	Price / Charge / Price Changes
5	Termination (cause / convenience)
6	Warranty
7	Intellectual Property
8	Liquidated Damages
9	Invoices / Late Payment
10	Performance Bonds / Guarantees / Undertakings
11	Service Levels
12	Payment
13	Insurance
14	Applicable law / Jurisdiction
15	Dispute Resolution
16	Entirety of Agreement
17	Confidential Information / Data Protection
18	Audits / Benchmarking
19	Assignment / Transfer
20	Business Continuity / Disaster Recovery

Comparison by Applicable Law

UCC Terms	
1	Indemnification
2	Limitation of Liability
3	Price / Charge / Price Changes
4	Intellectual Property
5	Warranty
6	Termination (cause / convenience)
7	Confidential Information / Data Protection
8	Payment
9	Delivery / Acceptance
10	Service Levels
11	Insurance
12	Applicable law / Jurisdiction
13	Liquidated Damages
14	Assignment / Transfer
15	Dispute Resolution
16	Rights of Use
17	Invoices / Late Payment
18	Freight / Shipping
19	Most Favored Client
20	Audits / Benchmarking

Common Law Terms	
1	Limitation of Liability
2	Indemnification
3	Price / Charge / Price Changes
4	Intellectual Property
5	Termination (cause / convenience)
6	Service Levels
7	Warranty
8	Payment
9	Confidential Information / Data Protection
10	Delivery / Acceptance
11	Liquidated Damages
12	Insurance
13	Applicable law / Jurisdiction
14	Audits / Benchmarking
15	Rights of Use
16	Invoices / Late Payment
17	Performance Bonds / Guarantees / Undertakings
18	Dispute Resolution
19	Assignment / Transfer
20	Force Majeure

German / Germanic Law Base Terms	
1	Warranty
2	Limitation of Liability
3	Price / Charge / Price Changes
4	Termination (cause / convenience)
5	Service Levels
6	Intellectual Property
7	Indemnification
8	Delivery / Acceptance
9	Liquidated Damages
10	Payment
11	Audits / Benchmarking
12	Invoices / Late Payment
13	Confidential Information / Data Protection
14	Applicable law / Jurisdiction
15	Dispute Resolution
16	Performance Bonds / Guarantees / Undertakings
17	Rights of Use
18	Force Majeure
19	Insurance
20	Assignment / Transfer

French/French Law Base Terms	
1	Limitation of Liability
2	Price / Charge / Price Changes
3	Delivery / Acceptance
4	Intellectual Property
5	Warranty
6	Indemnification
7	Payment
8	Liquidated Damages
9	Service Levels
10	Applicable law / Jurisdiction
11	Termination (cause / convenience)
12	Insurance
13	Invoices / Late Payment
14	Performance Bonds / Guarantees / Undertakings
15	Dispute Resolution
16	Export / Import Regulations
17	Entirety of Agreement
18	Product Substitution
19	Freight / Shipping
20	Audits / Benchmarking

Comparison by Applicable Law (cont'd)

Scandinavian Law Terms	
1	Price / Charge / Price Changes
2	Limitation of Liability
3	Service Levels
4	Intellectual Property
5	Delivery / Acceptance
6	Indemnification
7	Termination (cause / convenience)
8	Audits / Benchmarking
9	Liquidated Damages
10	Assignment / Transfer
11	Confidential Information / Data Protection
12	Payment
13	Performance Bonds / Guarantees / Undertakings
14	Applicable law / Jurisdiction
15	Electronic Contracts / EDI
16	Rights of Use
17	Entirety of Agreement
18	Insurance
19	Freight / Shipping
20	Warranty

Spanish / Hispanic Law Base Terms	
1	Limitation of Liability
2	Indemnification
3	Delivery / Acceptance
4	Price / Charge / Price Changes
5	Termination (cause / convenience)
6	Warranty
7	Invoices / Late Payment
8	Payment
9	Liquidated Damages
10	Performance Bonds / Guarantees / Undertakings
11	Intellectual Property
12	Service Levels
13	Dispute Resolution
14	Applicable law / Jurisdiction
15	Audits / Benchmarking
16	Confidential Information / Data Protection
17	Insurance
18	Entirety of Agreement
19	Business Continuity / Disaster Recovery
20	Freight / Shipping

Middle East / Islamic Law Terms	
1	Limitation of Liability
2	Performance Bonds / Guarantees / Undertakings
3	Price / Charge / Price Changes
4	Payment
5	Indemnification
6	Liquidated Damages
7	Insurance
8	Delivery / Acceptance
9	Termination (cause / convenience)
10	Dispute Resolution
11	Applicable law / Jurisdiction
12	Entirety of Agreement
13	Warranty
14	Confidential Information / Data Protection
15	Invoices / Late Payment
16	Force Majeure
17	Business Continuity / Disaster Recovery
18	Rights of Use
19	Freight / Shipping
20	Assignment / Transfer

Other Law Terms	
1	Limitation of Liability
2	Price / Charge / Price Changes
3	Delivery / Acceptance
4	Indemnification
5	Intellectual Property
6	Payment
7	Termination (cause / convenience)
8	Service Levels
9	Warranty
10	Confidential Information / Data Protection
11	Liquidated Damages
12	Applicable law / Jurisdiction
13	Insurance
14	Invoices / Late Payment
15	Assignment / Transfer
16	Performance Bonds / Guarantees / Undertakings
17	Freight / Shipping
18	Dispute Resolution
19	Audits / Benchmarking
20	Rights of Use