



Work in process

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USING TECHNOLOGY TO IMPROVE THE WAY YOU DO BUSINESS

How to negotiate software contracts

A major acquisition such as an ERP system should be considered a lifetime investment.

It's not just a software purchase; it's a contract that includes maintenance fees, which will exceed the cost of the software in four to five years. A good dose of due diligence is in order — not only in testing the software and assessing the vendor, but also in reading the contract.

1. Pick the right time to negotiate: Start reviewing the contract when you are close to making your decision and the remaining vendors are doing everything they can to win your business. Don't wait until the very end, because by then you will have given up most of your negotiating power. And remember, you're not just negotiating prices but also all other fees and terms in the contract. Vendors are often flexible with purchase prices but less so with maintenance fees. Ideally, those fees should be based on the discounted price rather than the list price and they should be capped to prevent unlimited escalation.

2. Give and take: Everything is negotiable until you sign the contract. This is not a standard form used by millions of customers to buy a small item. You have an obligation to your shareholders or board to obtain favourable terms. But accept compromise for the less important ones.

3. Define your scope: Vendors will often provide a statement of work containing general terms such as "consolidation" and call that scope. But scope should be more specific and include functionality such as inter-company eliminations or foreign currency translation. Scope needs to be defined tightly, or the vendor will keep issuing change orders saying your requests are outside the agreed-upon scope. Ideally, you will have given all the vendors a thorough list of requirements and received

written responses detailing how well their systems meet them. Include the winning vendor's responses in the contract as part of scope.

4. Nail down the implementation costs: Vendors will want to charge you based on time and materials — and who can blame them when they are making a trip into the unknown? Consider paying them to agree to a certain implementation cost before you sign the contract. Make sure all costs are covered, including training or travel. The goal is to have no surprises that you will need to explain to your boss.

5. Define the terms used: The software contract will contain terms such as design documentation, which could

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mean something very different to you than it does to the vendor. Make sure you understand exactly what you're getting with your purchase.

6. Define roles and responsibilities: There should be a clear delineation of responsibilities between the implementer and your organization. For example, you need to decide if the vendor is responsible for developing extra reports that don't come out of the box.

7. Include a project plan: It's hard to fault vendors for not wanting to commit to a specific project plan and schedule when some of the responsibilities they must take on and some of the tasks they must complete depend on factors beyond their control, such as your staff members' skill sets or the time they have available to devote to the project. Nevertheless, you have a right to make sure your vendor meets its obligations on time. As noted in item 4, you could pay the vendor to prepare a schedule before the project is signed based on an understanding of your resources and availability.

8. Don't overspend on licences: The vendor might offer a deal for acquiring extra licences upfront. Since you pay maintenance fees on those licences, make sure you can actually make use of them.

9. Provide incentives to complete the work: The contract should include a holdback for a portion of the fees (especially for customizations) until your system is working as per the contract's scope. Why pay the full cost until it is working properly?

10. Get a clear service level agreement: A service level agreement should include service commitments by the vendor providing for credits or refunds against maintenance fees for missed response/resolution times. There will inevitably be problems but the question is how long it takes to resolve them. Some could be classified as critical in that the entire system is down until they are fixed.

Vendors and implementers will typically do everything they can to make their clients happy and keep them that way. It all

has to do with safeguarding their reputations; in other words, it is much better to have a happy client who can be used as a reference in the future than one who is going around spreading horror stories.

Since there is fine print in every contract, you should seek legal counsel. Lawyers will delay the process somewhat but their help in developing a good contract will stand you in good stead if any problems should happen to arise later on. In the event of a dispute, I recommend arbitration rather than a lengthy and costly court battle, where every argument is met with a counter-argument from the other side. Get past the dispute so you can focus on your business.

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