



EQUALS GLOBAL PARTNERSHIP
BUSINESS & LEADERSHIP COURSE
FOR WOMEN IN THE TECH SECTOR
#EQUALSinTech

Session # 8: Negotiating Contracts
29 May 2019
15:00 - 16:00 BST time

Hosted by ITC, EQUALS and EY LLP



Session Objective: Key considerations for negotiating contracts

Proposed Agenda:

1. Guest Presentation and Follow-up Assignment Instructions (40 min)
2. Q&A (10 min)
3. Closing Discussion (5 min)

Questions from the Audience:

- Please type your question in the chat box, including your name and organization.
- If time does not allow your question to be answered during the session, the moderator will send it to the guest speaker to respond in writing.



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Senior legal and business advisor focusing on a range of commercial contract issues

Studied BSc Psychology and Post Graduate Diploma in Law





TOPIC #1: WHAT IS A CONTRACT?





1. What is a contract?

- Legally binding promise between two or more people or entities to perform obligations usually in return for 'consideration';
- Consideration may not always be money;
- Written or oral;
- Offer/acceptance.

2. What are the benefits of documenting your agreement in writing?

- Contemporaneous evidence;
- Certainty;
- Mutual understanding of each party's objectives and expectations;
- Helpful in the event of dispute.



TOPIC #2: PREPARING FOR NEGOTIATION





Remember:

- Negotiation gives insight into your counterparty and your potential future relationship - and vice versa – but still do your research.
- Be prepared and develop your own style but learn to flex.
- For all but the simplest contracts or those with large corporates, it is usual to have a period of negotiation – don't be afraid to question the offer.
- The length and complexity of negotiations will depend on a number of factors:
 - First time dealing or non-arm's length;
 - Complexity of arrangements;
 - Bargaining power;
 - Industry norm of conducting business.



Heads of terms

Memorandum of understanding

*International sale of
goods contracts*

ITC Model Contracts

Incoterms

Letters of intent

Termsheets

OHADA Uniform Act

Heads of agreement

Standard terms and conditions

UNIDROIT Principles

Protocols



TOPIC #3: REDLINE OR NICE TO HAVE





Subject Matter

- Alignment on the nature of the contract;
- Clear roles and responsibilities;
- Specification/performance measures;

Term/Termination

- One off or long term;
- Flexibility of exit vs. certainty of term;
- Early termination penalty;
- Rights on breach;
- Notice;

Price/Payment

- Pricing mechanism – fixed/variable;
- Risk – cost increases, currency fluctuation;
- Security for payment;
- Due date/penalties/interest;

Liability

- Penalties for breach/non-performance;
- Warranties and representations;
- Limitations and exclusions;
- Insurance;
- Force majeure;

Disputes/enforcement

- Transparency of local courts;
- Arbitration – binding or not;
- Mediation;

Applicable Law

- Which law will apply – your local law/theirs (if different);
- Understand associated compliance – who responsible?



- ① Negotiation – Have you negotiated terms that strike the right balance of risk and reward?
- ② Terms – Does the agreement you're entering into accurately reflect the terms you have agreed?
- ③ Certainty – Be clear on overall outcomes.
- ④ Performance – Properly set out the requirements and specifications. Business relationships can only work effectively if parties have documented properly what they want from each other.
- ⑤ Breach of contract – Have you planned for the worst case scenario?
- ⑥ Remedies – Never rely on good faith; have clear procedures in place in case things go wrong.



TOPIC #4: PROTECTING YOUR BRAND





- Entrepreneurs in the tech sector particularly should take care to consider what pre-contractual protections may be advisable to protect their “idea” before entering a binding contract/licence.
- Much of the value in digital businesses derives from intellectual property (**IP**). IP is a type of property right relating to intangible items which gives the owner certain exclusive rights, whether that be copyright, service or trademarks, software, databases or patents.
- Protecting your IP can give you the right to stop others from using or copying your brand, inventions and other work.
- Things to consider:
 - Is it worth protecting your IP rights (how much value do they hold)?
 - Can/should your IP be registered and if so, where (i.e. everywhere you trade)?
 - If yes, how can you register?
 - If not, how else can you protect your IP? Non-disclosure agreements, confidentiality arrangements, co-founder agreements, employee/consultant contracts.



- Speak to a specialist in your country and in the countries where you intend to commercialise your brand/product so you are familiar with the local laws, regulations and processes.
- When speaking with parties you wish to contract with, don't release, showcase or otherwise discuss your valuable ideas, products, solutions without a non-disclosure agreement in place.
- If you disclose sensitive information without such an agreement in place it could significantly compromise the value of your business – i.e. non-disclosure agreements; confidentiality arrangements; local statutory or other legal rights to protect intellectual property rights.



TOPIC #7: AND FINALLY...





- Protect yourself – don't assume anyone is going to look after you or your interests.
- Trust your gut – if a deal doesn't feel right, for whatever reason, don't do it.
- Build a network - the road to success is difficult already, find your village.
- Don't release, show or otherwise discuss your ideas, products, solutions without an NDA.
- It's never too early to formally establish your company.
- Don't ignore or delay protecting your intellectual property. In the digital space your IP rights are more important than if you have a tangible product.
- Protect your income – if needs be, look to established third parties to help collect payment.
- Don't be blinded by the value – get into the detail and get the right terms!



Please use the things you have learned from this webinar to draw up your own heads of terms for either:

- A specific contract which you are currently discussing; or
- Where you have no specific contract, a form of contract that you expect to find yourself negotiating most often for your business.

Once you have your preferred heads of terms, find a willing volunteer (a friend, partner or someone in your network) and role play a negotiation.

Seek constructive feedback and reflect on what went well – and what didn't - then practise.



- Local legal advice centres – in the UK we have the citizens advice bureau but elsewhere this could be a local embassy.
- Many large law firms now offer ‘start-up’ terms of business or give ‘pro bono’ (i.e. free) legal advice where there is a social enterprise element to a business.
- There are numerous websites focused on providing advice to start-up ventures, particularly in the tech sector. Some of these have a UK/EU focus, but the overall content is a helpful reminder of things to think about:
 - <http://startupeuropeclub.eu/about-us/>
 - <https://www.startupdonut.co.uk/>
 - <https://startups.co.uk/>
- You will also find online a number of technical legal resources:
 - <https://www.intracen.org/>
 - <https://iccwbo.org/>
 - <https://www.wipo.int/>
 - <http://www.worldlii.org/>
 - <https://www.unidroit.org/>



THANK YOU !
Q&A



EQUALS BUSINESS & LEADERSHIP
COURSE FOR WOMEN IN TECH

HAVE YOU
SIGNED UP?

Learn

How to Digitize Your Business and Maximize User Experience

26 June 2019

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Marketing and Communications Strategies

31 July 2019

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For any course-related inquiries, please contact: womenandtrade@intracen.org
(using subject line: “EQUALS Business and Leadership Course”)

For any questions about the EQUALS Global Partnership, please contact:
equals@itu.int

Thank you!