Deal Makers

How intelligent use of contracts can help you sell more and deliver better

Tiffany Kemp
To Simon, Albert and Evie
Praise for ‘Deal Makers’

“What a wonderful and hugely practical book. I have run my own business for 25 years but learnt so much from just the first few chapters!

The quick summaries are extremely helpful for reminding you what to look for. This is a book that should permanently live on your desk, and be given as a must-have to anyone who touches your contracts.”

– Jo Haigh LLB AAT ACS CFE, Corporate Financier; Partner FDS CFS

“Many sales people find contracts intimidating, or something to be avoided until the last moment. They are often hard to understand and full of unpleasant threats. Yet there are some who use contracts to establish competitive advantage and sustain positive relationships. This book will equip its readers to grasp these benefits, turning the contract and its negotiation into a tool for winning. Read it now!”

– Tim Cummins, President, International Association for Contract & Commercial Management

“Tiffany’s book is like a Swiss army knife: it contains plenty of tools and you may find yourself using one of them every day. Resourceful sales people will soon have it in their pocket!”

– Anne Jeanpetit, Contracts and Negotiation, Microsoft
“There are many books on the art and science of selling, but whilst hooking the fish is one thing, landing the catch is another. In this book Tiffany aims high and delivers pragmatic guidance on securing the contract and building relationships, both within an organisation and with its customers. She does not shy away from explaining notoriously knotty issues such as limitations of liability and contract indemnities. In her inimitable and open style, Tiffany draws on her experience to convey the messages in a remarkably concise, clear and memorable way. Lawyers, both in-house and external, would be well advised to encourage their clients’ sales teams to read and digest this!”

- David Berry, Partner, Charles Russell LLP

“In my role I have an increasing level of responsibility for the agreement of our contracts. Before reading this book I felt I understood the contractual terms involved but was aware that I didn’t have a great depth of knowledge regarding the cause and effect of each one. The book certainly helped on that front, but its greatest value to me was in setting out how useful an understanding of contracts, and the actual document itself, can be in the sales process, as opposed to a necessary evil that will only cause problems when you thought the end was in sight.

The clarity and logical sense this book applies to each aspect of the contract document made it both an enjoyable and enlightening read.”

- Daniel Hosking, Account Director, Questers Group
“I thought I knew this stuff, until I started reading. This book was a great refresher in parts, filled in some gaps and exploded some myths.

As someone who has to manage the tensions within bid teams, as well as with external parties, I can see me handing this out as a form of ‘marriage guidance’.”

– Liz Benison, President, UK AND IRELAND, CSC

“A concise and user-friendly introduction to dealing with Business Contracts in laymen’s language. Invaluable for anyone involved in the contract negotiating process, helping them to decide when external legal advisors need to be involved and how much can be safely dealt with internally. Lots of useful summaries and all the key issues are covered in a clear, easy to read manner.”

– Peter Lingham, Managing Director, The NAV People

“As someone who normally cannot get going with ‘self-development’ books and whose mind normally wanders off to other things, I can’t actually stop reading! I’m taking so much on board, thanks to the blend of language, examples and stories. Genius!”

– Amanda Beswick, Account Director
Acknowledgements

This book would never have existed without the help and inspiration of a great many people.

My fabulous mentor, Jo Haigh, first made me wonder if I could write a book and then encouraged me to get on and do it. Thanks to the wonderful team at Devant, especially Alison Taylor, Janine Scott and Roger Huckerby. It has been with great delight that I’ve seen each of them absorb, adapt and challenge my contractual philosophy, constantly pushing me to think harder, analyse better and communicate more clearly.

To Tim Cummins and the lovely team at IACCM, thanks for your research, analysis and insight. You’ve put structure, process and hard evidence into the mix to show that commercial management is a profession that adds real value to business.

For the kindness of Abi Clark at Hiscox, who single-handedly navigated the stormy waters of corporate red tape to secure permission for me to use the Hiscox insurance policy drafting. I am eternally grateful. I’m sure I don’t need to remind readers that policy details may change, and the text I’ve used here is extracted from a particular policy that may not resemble yours!

I would also like to thank my fantastic reviewers, each of them incredibly busy and knowledgeable individuals who generously gave their time, wisdom and insight to help me make this into the book you have in your hands. Their feedback and comments were invaluable; any errors that remain are entirely my own.

Thanks to: Liz Benison and Tig Matthews of CSC for their insights into big-company contracting; David Berry of Charles Russell LLP for reminding me of the perils of ‘lawyer bashing’ and keeping me on the straight and narrow; Robert Coles for his valuable input on structure and flow; Peter Lingham of The NAV People for his practical view on what matters to a technology business; Daniel Hosking of Questers Group for agreeing to be my ‘guinea pig’ perfect reader and doing such an excellent job of it; Brian Perfect of Salesperson Centric for his perspective on the role of the contract in complex
sales management; Amanda Beswick, Paul Moore, Di Cronin and Sue Holly-Rodway for their keen observations and honest feedback; and my grateful thanks to Alison Taylor for managing to temporarily forget she’s a contract expert in her own right and review the book from the perspective of a National Account Manager.

Finally, I’d like to thank: my husband Simon for picking up everything else while I wrote, and for his unerring support and encouragement during this process; my children, Albert and Evie, for their enthusiasm and interest in the wonderful world of contracts, for reminding me it doesn’t have to be complicated, and for agreeing to share their pocket money contract with the world; and Mindy Gibbins-Klein and her team at Anoma Press for their splendid book midwifery skills.
Have you ever experienced a sinking feeling when your client (your lovely, dear, wonderful client, who really wants to buy from you, loves your product and thinks you’re the best thing since sliced bread) says:

“We’re just waiting for feedback on your contract from Legal, then we can press ahead with the deal.”

It’s the moment when years of sales training, wisdom and experience sit back and say... “Over to the Sales Prevention Squad!”

The mention of Legal, together with the words ‘your contract’, frequently signals the grinding to a halt of the sales process. Worse still, it means that the sales process has stopped being a ‘sales process’ and has become a ‘contracting process’. And that means that you, as the sales person responsible for shepherding this deal over the finishing line, have lost control.

Why is it that contractual issues can quickly become ‘deal breakers’? And why do they so often crop up at the very end of the sales cycle, when the pressure of both your company’s and the client’s expectations pushes you to agree to terms that don’t really work, just to get the deal closed and the project started?

That’s where this book comes in. The sales person’s involvement in contract negotiation varies across organisations – from taking the lead (and even doing it all themselves) through to a marginalised position, sitting on the sidelines and hoping that Legal don’t manage to lose the deal for them.

The challenge is that sales professionals invariably have little or no formal training in contract law, leaving them vulnerable and exposed when participating in negotiations.

In fact I’d go so far as to say that most sales people see the contract as something to be endured in order to get to a signed order, rather than something that adds any value to the deal or the sales process and to building positive, lasting commercial relationships.
My view is that we're missing a trick by treating the contract as an afterthought and the process of getting to contract signature as an ordeal. Used well, the contract (and the process of negotiating it) can be a positive aid to the selling process.

Since I founded Devant (a commercial contract and negotiation consultancy) in 2003, I've worked with sales people across multiple industries, negotiating many hundreds of deals. I've trained sales people and project managers on the essentials of contract law – and I've seen how those who initially viewed contracts with a combination of suspicion and boredom have embraced them as useful selling tools.

By getting to grips with contract language and taking an alternative view of how the contract is used in the selling process, these sales people have become professional 'deal makers', far less at the mercy of the contracting process. They've recognised how tightly bound their own wealth and success is with the success of the business, and have been able to take action to influence both of these in a positive way.

**Helping you make better deals**

You will see, as you work your way through the book, that there is a heavy focus on the sales person's perspective, even though performance in many of the areas we'll examine is outside the sales person's direct control. You'll also notice that some of the content falls into 'sales 101' territory. While this isn't a sales manual, it's necessary for us to look at some key sales activities (like identifying wants and needs, for example) and apply these to the contracting process in order to see how to tackle contract negotiation effectively.

However, it's not just sales people who have a narrow view of the contract and the role it plays in making good deals. Many lawyers, finance folk and even company directors and CEOs are equally guilty of viewing the contract as a necessary evil – something to be signed as quickly as possible and then put in a drawer and forgotten. The product marketing team, project managers and delivery managers sit even further away from the contract, often seeing it as nothing to do with them.
Whatever your role in the business, you can benefit from having a better understanding of how contracts work and what they can do for you. In the process, you will gain a different perspective on each element of the sales and delivery process and how they fit together, helping you appreciate the value of your own role and those of your colleagues.

So the main objective of this book is to act as your personal guide to making and delivering great deals and to fostering profitable and mutually beneficial commercial relationships.

What do I mean by great deals?

A great deal is one that:

- Delivers what each party was expecting
- Doesn’t result in disputes
- Leaves both parties happy to do business with each other again
Contracts are not just legal documents

As you work through the book, you’ll see that we examine the deal from a number of different directions. This is because each contractual relationship between you and your clients has a number of components, each of which contributes to the success or failure of the outcome.

These contractual components can be broadly described as:

While many of these components interplay throughout the contracting process, they are largely reflected in the structure of the book as follows:

1. The **psychological contract**: Chapters 1, 2 and 3 set out the key players and how they should be working together, examining their expectations of each other and the relationships between them. They look at common problem areas and how to make these relationships more effective. These chapters also introduce the contract document itself and the role it plays in deal making. Chapter 4 looks at the importance of understanding the client’s expectations, and chapter 12 comes back round the loop to see how we use what we’ve learned to negotiate and reach signature of a contract that works for both parties.
b. The **practical contract**: Chapter 4 takes the client’s expectations and compares these with what you are actually delivering – probably the most important thing to get right in any contractual relationship. Chapters 5, 6 and 7 cover the remaining practical elements of your relationship, exploring the detailed nitty-gritty of what has to be done to make the deal work.

c. The **legal contract**: Chapters 8, 9, 10 and 11 cover the more technical legal elements which you might previously have considered to be the ‘main contractual points’ – but which you will quickly realise make up only part of the overall commercial relationship. These chapters go into some detail about how the 'legalese' works and what it means to you, helping to develop your legal vocabulary so that you can work more effectively with your legal counsel to make the best deals for your business.

When reading these chapters, please bear the following in mind:

(i) while most of the information in this book is universally applicable, the legal points in this section are considered primarily from the perspective of English law. Other legal systems may look at things differently.

(ii) this book describes the legal principles involved in commercial contracts, and how they apply in a general business context. Each particular situation has its own history and set of facts, which will impact on exactly how it would be treated in a court. This means that you should always take specific legal advice when considering your deal, and should not rely on this book as a substitute! This book will, however, give you the language and the tools to request advice more clearly, understand it better and use it more effectively.
Developing your contractual competence

As you’ll see, there are a number of exercises throughout this book. These are designed to help develop your contractual competence by applying what you’re learning to your current business environment.

How?

Using a combination of:

1. **Reflection** – asking you to think about how you do things at the moment and whether this meets the needs of your business, your clients and the deals you’re making.

2. **Analysis** – examining how the principles you’ve learned could be applied to different case study situations.

3. **Action** – working with other members of the deal-making team to develop more effective ways of working and tools to help you deliver great deals.

While I know you’re busy and unlikely to have the time to work through all of these in detail, you’ll get much more out of this experience if you’re able to complete them all. For maximum benefit, use the exercises as the basis for an internal development programme, involving all of the different functional areas in your review of how things work at your company and how they could work better.

You can download the e-workbook that accompanies this book by visiting [www.dealmakersbook.com](http://www.dealmakersbook.com) and following the links. The e-workbook contains extra material, templates and tools to help you complete the exercises and get the best possible value from them. Better still, it’s free to download for purchasers of this book!

I wish you successful selling, straightforward and pain-free contracting and many happy and profitable commercial relationships.
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**Onwards and upwards**

**About the author**
1

The Sales Prevention Squad is on your side!

This book will help you structure, negotiate and close better deals.

It will help you work more effectively with your internal resources, turning deal blockers into facilitators. It will help you build stronger, deeper relationships with your clients, establishing your reputation as a person of integrity and intelligence. It will enable you to become a more credible business person, supporting the growth of your career both in sales and in senior management.

**How can you achieve all of these things?**

Approach this book with an open mind. Be prepared to see things from the other side - this is one of your strengths as a sales person and it will stand you in good stead here too. When I say ‘the other side’, I should point out that there are many ‘other sides’ to consider as you work through the sales and contracting process. We'll be looking at each of them here and the contribution they can make to helping you close deals.

Invest time in thinking through the exercises. I know time is always at a premium and you’re impatient to start seeing results. The exercises are designed to lead you along the path to success, building
on your understanding of your business and the people within it, and developing your appreciation of the world your clients inhabit. Complete them all in order if you possibly can. Have fun. Remember it’s only business! I look forward to seeing you on the other side.

**Those who sell and those who don’t**

In any serious business there will be those who sell and those who see their role as keeping the sales people out of trouble.

If your business is very small or in the early stages of its development, it’s possible that your directors see any sale as a good sale. If this is the case, you can skip the rest of this chapter for now, as the Sales Prevention Squad has not yet arrived. I say ‘yet’ because they always turn up eventually – usually as the business reaches a more respectable size and its shareholders begin to think about preparing it for sale, floatation on the stock market, or significant growth and investment.

For businesses that care about risk, that seek to ensure they’ll be able to deliver what you sell and make money from it, the Sales Prevention Squad is an essential part of the team.

**Barriers to selling**

So who are they, and why do we call them the Sales Prevention Squad?

The Sales Prevention Squad is made up of all those members of your own company who could stand between you and your sale. They might be able to do this by delaying the supply of information you’ve asked for, withholding approvals, or asking you to achieve the impossible in terms of what you must get the client to agree to before your deal will be given the green light.
Legal and contracts

Top of the leader board in the Sales Prevention stakes are legal and contracts. You may have separate people (and departments) for these two roles or they may be performed by a single individual, outsourced to a law firm, or absorbed into the role of Commercial Director, Finance Director/CFO or even the Managing Director/CEO in smaller businesses.

However this function is delivered in your business, you’ll almost certainly have felt the pain of a rosy-looking deal grinding to a halt when contracts are exchanged.

Perhaps you send your contract out with your proposals, and don’t mention them again until the sale is agreed. The client is ready to give you a purchase order, but warns you that “If you insist on having us sign your contract terms, there will be a long delay while the contract goes through legal.” If the client is a multinational, particularly if it has a US parent company, you might find your buyer desperate to go to any lengths to avoid sending terms to ‘the lawyers at head office’ – an outfit that seems to be the deal-killing equivalent of a black hole from which nothing ever returns.

It’s just possible that your client quickly reviews your terms and returns them to you with a few mark-ups and comments on areas of concern. Then the ball is back in your court, and you must navigate your own legal and contracts process to deal with those issues and find a way to signature.

In the worst-case scenario, the lawyers of both sides engage in a long, drawn-out exercise of unarmed combat. Casualties of this contractual warfare can include goodwill between you and the client, mutual trust within your own organisation, hitting your quarter end target, and even the deal itself.

*In the early days of my business, I was called in to help a vendor negotiate a deal with a large US corporation. I discovered that the negotiations had already been going on for over a year when I joined the team. They had stalled when the lawyer who was supposed to be*
supporting the vendor had so incensed the client’s negotiation team that he had been asked to leave the meeting. The client refused to negotiate with him, or even have him in the building, because of his arrogance and confrontational attitude.

Fortunately, this sort of behaviour is rare these days. The ‘race memory’ of the sales profession is long, though, so that we’re tempted to assume all lawyers are Sales Prevention specialists. And that means we’re less inclined to involve them early in a sale and work with them as constructively as we might.

Many years ago, I moved from Bid Management into the role of Commercial Manager for the EMEA subsidiary of a large US software company. Our clients were telecoms operators and their contracts were often long and complex.

I’d got up very early to accompany the salesman on a 6.00 a.m. flight to Paris for a contract negotiation meeting with a prospect whose custom he was trying to win. Despite several calls and emails, the salesman had declined to participate in a planning session with me, so all I had to go on were the latest drafts of documents exchanged. During the flight and the taxi ride to the prospect’s offices, I attempted to engage him in conversation about the opportunity, the prospect and the outstanding issues. All efforts were met with stony silence.

Despite an awkward start, it turned into an excellent meeting and we made huge strides towards agreement. In the cab on the way back to the airport, I asked the question: what had I done to upset the salesman so much? It transpired that he’d viewed my attendance at his meeting as the ‘kiss of death’ for his deal, expecting that going through the contract with the prospect would kill the relationship. Understandably, he wasn’t a big fan of having someone he saw as the chief representative of the Sales Prevention Squad interacting with his prospect!

Fortunately, the success of that meeting turned things around between us, and I was pleasantly surprised to receive a call from him a few days later announcing that “we” were off to Bratislava to see another
prospect in a week’s time. I asked why he was so keen to involve me early, given his reluctance with the previous meeting.

The answer was one of the moments that inspired me to write this book. “It’s simple,” he said. “Now I know that having a good conversation with the prospect about the contractual stuff can help me close the deal faster. OK?”

Finance

Before you can agree the deal, you must obtain financial approval for the forecast cost, revenue and margin calculations. You may have to consider revenue recognition, and how the company’s cash flow will be protected during the term of a long contract. The finance team can act as part of the Sales Prevention Squad, or can be remarkably rash when a deal is presented as being ‘strategic’.

In my experience, describing a deal as ‘strategic’ translates into: “We’re unlikely to make any money from it, but want to do it anyway.” A high volume of ‘strategic’ deals is obviously bad for business, and the job of the finance team is to keep the company solvent, with enough working capital to grow and meet its objectives. So a certain amount of Sales Prevention from finance should be seen as a good thing rather than a bad one.

The detail of financial matters is beyond the scope of this book, but there are plenty of good books explaining ‘finance for non-financial managers’. I strongly recommend that you familiarise yourself with how the numbers work. Such familiarity will help you build strong internal relationships and smooth the progress of your deal, particularly when taken together with the skills and knowledge you will gain from this book.

A good grasp of the numbers will also help you deal with the client’s own financial Sales Prevention Squad, by enabling you to put together a winning business case for your product or service.
Another good case for getting both finance and legal involved early was demonstrated by a recent deal that one of my clients was trying to close. We’d been working on the contract for several weeks when their customer asked if we could change the contracting entity on their side to be a small but related company with few assets and an unimpressive balance sheet.

This changed the riskiness of the contract significantly and meant that we needed to take a fresh look at the invoicing and payment structure, to protect my client in case this small company had liquidity issues.

Fortunately, because we were working closely with the customer’s FD, we were able to propose an alternative mechanism that protected my client’s cash flow without imposing unpalatable guarantees on their customer. As a result, this change of structure only held up negotiations for a short while, and the deal was closed with very little delay.

The Delivery Team

Number three in the Sales Prevention Squad ratings for project-based sales is the delivery team. While the delivery team can be a sales person’s greatest asset, providing pre-sales technical support, input to bids and proposals, product demonstrations and general credibility during the sales process, this isn’t always the case.

Have you ever been frustrated when the delivery team tells you that something your client has asked for “just can’t be done” or (more commonly) “Can’t be done that quickly, or for so little money?”

The temptation is to take the delivery team’s time and cost estimates with a pinch of salt. You know how good they are at working miracles – they’re unlikely to need all the contingency they’ve added. So there’s no harm in pulling dates forward a little. Or agreeing to stick to the original delivery dates, even though there’s no sign of getting an order for another few weeks at least, and you were supposed to have started work on Monday...