



Preparing your telecom business for sale: Contracts are King

Once you've arrived at the decision to sell your telecoms business, you want the process to be as efficient and profitable as possible.

One of the ways you can do that is to review your customer contracts at an early stage in the sale process. In fact, best practice is to review and manage your contracts as part of 'business as usual', to avoid a pre-sale panic.

It may sound like an anodyne task, but good customer contract management can make or break a business sale in the telecoms world.

Why customer contracts are your most valuable asset

Any potential buyer will be interested in your revenue. But they want to understand how reliable and consistent that figure is as a projection of future earnings.

To do that, they look at the contractual basis upon which that revenue is due. So they'll comb through your contracts to identify terms that affect revenue such as:

- **What is the minimum contract term?**
- **Are there express early termination charges?**
- **Are there any change of control clauses?**

If there are red flags in those contracts that could impact on revenue going forward, it could reduce the price you receive for your business.

The impact of oversights in your customer contracts

Telecoms businesses deal with a large volume of customers, and most of these customers will contract on Standard Terms and Conditions. It's par for the course – you simply send out the terms and conditions as and when you sign up a new customer.

But how recently were these terms and conditions reviewed? Are they still up to date? Do they give you sufficient protection from relatively new laws and concepts like GDPR, and OFCOM regulations?

The problem is that if there is an error, oversight, or omission in one of these standard contracts, then it is likely to apply across the whole customer portfolio.

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A buyer will see this as affecting value and may seek further protection, such as:

Taking on more liability

The buyer will seek to protect themselves if they've found a problem in your contracts. Asking you to take on more personal liability. That means that you'll be asked to sign up to more extensive warranties and indemnities. If those are breached, then you could be facing a legal claim and asked to pay the buyer damages.

Onerous clawback or leakage provisions

If the buyer introduces clawback or leakage provisions into the sale contract, you could end up paying unknown amounts after the sale. It's not ideal to have this sort of uncertainty. It's much better to have a clean break and enjoy the proceeds of the sale without worrying about potential liabilities afterwards.

Delay: additional time and cost spent on the process

Once an error or oversight is discovered, then the buyer will try and renegotiate. In an ideal world, you would keep negotiations to a minimum during a business sale. All the to-ing and fro-ing wastes time, racks up costs, and usually reduces the purchase price.

If your customer contracts are watertight before you begin the sale process, you give yourself the best chance of having a smooth transaction, which is completed quickly and cost-effectively.

How to make sure your contracts are in good shape

So how do you go about checking your customer contracts?

You need to make sure that your Terms and Conditions cover the risks and obligations in your business, and that they are drafted to suit your business model (and not somebody else's).

There are also laws that impact what you can and can't put in your contract. Make sure there are no terms that would be deemed 'unfair'.

One thing that is often overlooked is the incorporation of T&Cs into your contracts with customers. You need to bring them to your customer's attention and highlight any potentially onerous clauses. This is really to do with the nuts & bolts of how you get customers to sign up.

These are just a few examples, and as you can see, it's quite a technical exercise. We'd always recommend that you ask an experienced lawyer to review your customer contracts. They have the legal knowledge to identify what is 'fair' and the current knowledge of recent laws to make sure you're up to date.

We can carry out that review service at Roxburgh Milkins if you'd like us to.

Key mistakes to avoid with your customer contracts

With all that in mind, here is a short checklist of key mistakes to avoid in your customer contracts:

Copying another business's T&Cs

One size does not fit all. It can be tempting to reuse another business's T&Cs. If you do this though, you're placing a bet on whether they've got it right, and that their business model fits in with yours. Spoiler alert: it's unlikely, and it's a big risk to take.

Falling foul of laws and regulations

OFCOM regulations and the Unfair Contract Terms Act define what you're allowed to put in your contract, and whether your provisions are fair. This can extend to contracts with business customers, not just consumers.

Errors in the proper flow-down of supplier T&Cs

Many telecoms suppliers are resellers and/or aggregators of network services, so you need to be compliant with the supplier's resale terms.

Some suppliers will ask that you specifically reiterate their clauses in your terms, some are more relaxed and will accept clauses that generally cover their key areas of risk. Either way, it's very likely that you will have to accept liability for your customers' failure to comply and a seller will want to see your terms adequately cover your business.

Failure to properly incorporate T&Cs

You have to bring the T&Cs to the customer's attention at the time the contract is formed. Attach or correctly link to your terms in the order form at the time of purchase.

Using your customer's T&Cs

The main problem with this is that your customer's terms are likely to be:

- **generic purchase/procurement terms that aren't at all tailored for your services;**
- **very one-sided and onerous**

If you're thinking about selling your telecom business, we have experienced lawyers who can help. We regularly carry out contract reviews to make sure the sale goes through without delay or wasted costs.

Have a look at our case study with Focus for more information. We helped them carry out their buy & build strategy to expand their business technology business - maybe we can help you too.

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