

The Legal Contract Process: Streamlining Negotiation, Contract Processes Can Speed Up Closing

By John Yates, Special To LTW

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ATLANTA - In these challenging economic times, technology companies are trying to close deals more quickly – and more cost-effectively.

Revenue needs to be recognized on a more consistent basis. This requires a streamlining of the contract and negotiating processes.

Technology companies are frustrated by elongated sale cycles. The time from lead generation to contract execution has become too long and expensive. However, companies have little control over their customers' decision-making timetable.

On the other hand, tech companies can take a leadership role in streamlining the process from lead to prospect to customer contract signing. And legal counsel (both inside and outside lawyers for the tech company) can facilitate and help manage the process.

There are several key considerations in the sales contracting process:

1. Players: Analyze all the players in the prospect-to-signing process. They include:

- Your sales team.
- The financial “buyer” in the prospect’s organization.
- The final decision makers at the prospect.
- Your inside and outside legal counsel.
- Your financial organization.
- Your development/customization team.
- Your final decision maker for approving a deal.
- Your internal and outside accountants.

Many tech companies have successfully automated pieces of this process. Unfortunately, unless the entire process is streamlined, the weakest link can delay the sales order cycle. The result may be an elongated process, ineffective and expensive systems, and intense frustration.

2. Role of the Lawyer: The sales automation process may grind to a halt if the lawyers are not well prepared to expedite the deal flow. Frustration can arise where the lawyers for your company and the customer engage in the back and forth process of negotiating terminology in

the agreement. Even worse, the parties may lose precious time deciding which parties' standard agreement will be the starting point in the process. These issues need to be confronted and addressed in a manner that facilitates a rapid closure of the deal.

3. Project Flowchart: Legal counsel for the tech company must take a leadership role in understanding and streamlining the sales contracting process. Ultimately, the order-to-cash stream can't begin until the contracting process has been completed. As the "keeper" of the contract, the lawyer is often in the best position to understand the roles of the players and the flow of the contracting cycle. On the other hand, the lawyer's input is frequently discounted (or ignored). After all, what does a lawyer know about business processes?

4. Organize the Players and Steps: To construct the sales contracting flow, the lawyer should take a leadership position in organizing the players in the process. The in-house legal counsel should spearhead the contracting team. The organizational process should initially include a careful review of each step in the process:

A. Form of Agreement: Who's agreement will be used in the process? If it's the tech company's paper, then has the prospective customer agreed?

B. Control of the Document: Who will control the modifications to the document during the negotiations? This is a crucial consideration, and is important in order to expedite the negotiating process.

C. Customizations: Will there be customizations to the standard product produced by the technology company? If so, what's the process within your company to approve these customizations?

D. Development/Customization Group: If there are modifications or customizations to the standard product, what is your internal process for pricing these services, timetable for delivery, ownership, warranties, etc.? An internal checklist should be created within your company to reflect these and other relevant considerations in connection with the customization process.

E. Accounting Review: At what stage in the negotiating process does your internal accounting department (or CFO) have to approve any changes to the standard pricing? What required sign-offs are required within your company for such approvals?

F. External Auditors: Do your external auditors have to approve the transaction, an especially important issue if the customer's contract is being used (in place of your standard form)? If so, at what stages in the negotiating process is approval to be obtained?

G. Liability Provisions: Does outside legal counsel have to approve the agreement or specific provisions – such as warranties, indemnifications, limitations of liability, etc.? If so, such approval should be obtained early in the process, since these provisions are often confrontational and may expand the negotiating process.

H. Role of Sales: The role of the sales force needs to be clearly understood in the negotiating process. Too often, the sales team has acted aggressively to close the deal and may have compromised important provisions. Specific guidelines should be imposed on the sales team early in the contracting process.

I. Sign-Off Checklist: This checklist is the most useful way to determine each step in the contracting process. The checklist should be reviewed by the tech company's internal team at the beginning of the process. The checklist should also include a timetable and should be closely monitored during the contract negotiations.

J. Post-Closing Follow-up: After contract signing, the tech company's internal team should reconvene and determine the post-contract steps to be taken by the parties.

By careful planning, this sales contracting process can go smoothly and expedite the time from prospect to negotiations to contract signing. Without proper planning, the sales process can be elongated and become overly burdensome. Worse yet, a contract may be signed that later proves defective and costly for your company.

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