Contract Review Checklist

100+ Clauses · Risk Ratings · Red Flags · Negotiation Tips

2026 Edition

Forge & Ellis
forgeellis.com

How to Use This Checklist

This checklist is designed for in-house counsel, outside attorneys, procurement professionals, founders, and anyone reviewing commercial contracts. Work through each section systematically.

Step 1: Identify the Contract Type

Determine which category your contract falls into (SaaS, employment, M&A, real estate, services) and focus on the corresponding clauses first.

Step 2: Review Each Clause

For each clause below, mark whether it is: (a) Present and acceptable, (b) Present but needs revision, or (c) Absent and should be added.

Step 3: Check Red Flags

Each clause lists specific red flags. If any red flag applies, mark the clause for mandatory negotiation before signing.

Step 4: Prioritize by Risk

Focus negotiation energy on High Risk clauses first. Medium Risk clauses are secondary. Low Risk clauses can usually be accepted as-is.

Risk Legend

- High Risk — Material financial or legal exposure. Must negotiate.
- Medium Risk — Moderate exposure. Negotiate if leverage allows.
- Low Risk — Standard/boilerplate. Acceptable in most cases.

Category A: Risk Allocation Clauses

1	**Indemnification**	High Risk	Present Mutual or one-way Cap defined
2	**Limitation of Liability**	High Risk	Cap amount Carve-outs listed Excludes consequential
3	**Force Majeure**	Medium Risk	Pandemic included Termination right Notice required
4	**Insurance Requirements**	Medium Risk	Coverage amounts Additional insured Certificate required
5	**Warranty / Disclaimer**	High Risk	Scope defined Duration stated Remedy specified
6	**Risk of Loss**	Medium Risk	Transfer point Shipping terms Title passage
7	**Liquidated Damages**	Medium Risk	Amount reasonable Not a penalty Sole remedy?
8	**Holdback / Escrow**	Medium Risk	Release conditions Time limit Dispute process

Category B: Confidentiality & Restrictive Covenants

9	**Confidentiality / NDA**	High Risk	Definition scope Carve-outs Duration
10	**Non-Compete**	High Risk	Geographic scope Time limit State law check
11	**Non-Solicitation**	Medium Risk	Employee scope Customer scope Duration
12	**Non-Disparagement**	Low Risk	Mutual? Scope Enforceability
13	**Exclusivity**	Medium Risk	Scope Duration Termination
14	**Data Protection / Privacy**	High Risk	GDPR/CCPA Processing terms Breach notice

Category C: Intellectual Property

15	**IP Ownership / Assignment**	High Risk	Work-for-hire Present assignment Scope
16	**License Grant**	High Risk	Scope Exclusivity Transferability
17	**IP Indemnification**	High Risk	Coverage scope Cap Remedy
18	**Open Source Software**	High Risk	Copyleft risk Disclosure Compliance
19	**Trademark Usage**	Medium Risk	Guidelines Approval Termination
20	**Moral Rights Waiver**	Low Risk	Jurisdiction Scope Enforceability

Category D: Payment & Commercial Terms

21	**Payment Terms**	Medium Risk	Net days Late interest Currency
22	**Pricing / Fees**	Medium Risk	Fixed vs variable Escalation Taxes
23	**Most Favored Nation**	Medium Risk	Scope Verification Duration
24	**Earnout**	High Risk	Metrics Period Dispute resolution
25	**Right of First Refusal**	Medium Risk	Trigger events Response time Terms
26	**Anti-Dilution**	High Risk	Type Trigger Cap table impact

Category E: Term & Termination

27	**Term / Duration**	Medium Risk	Start date Auto-renewal Notice period
28	**Termination for Convenience**	Medium Risk	Notice period Wind-down Fees
29	**Termination for Cause**	Medium Risk	Cure period Material breach Insolvency
30	**Survival**	Low Risk	Which clauses Duration Obligations
31	**Transition Assistance**	Medium Risk	Duration Fees Data return
32	**Effect of Termination**	Low Risk	Accrued rights Return of property Payments

Category F: Dispute Resolution

33	**Arbitration**	High Risk	Rules (AAA/JAMS); Seat; Class waiver
34	**Governing Law**	Medium Risk	State choice; Conflict rules; Federal overlay
35	**Venue / Forum Selection**	Medium Risk	Exclusive?; Convenience; Federal court
36	**Jury Waiver**	Medium Risk	Mutual?; Enforceability; State check
37	**Attorney's Fees**	Medium Risk	Prevailing party; Scope; Cap
38	**Mediation (pre-arbitration)**	Low Risk	Required?; Timeline; Cost split
39	**Injunctive Relief Carve-out**	Medium Risk	Scope; No bond; Jurisdiction

Category G: Representations & Warranties

40	**Authority / Capacity**	Medium Risk	Corporate auth; Signatory power; No conflict
41	**Compliance with Laws**	Medium Risk	Scope; Permits; Ongoing obligation
42	**No Litigation**	Medium Risk	Pending threats; Materiality; Disclosure
43	**Financial Statements**	High Risk	Accuracy; GAAP; No undisclosed liabilities
44	**Anti-Corruption / FCPA**	High Risk	Representation; Ongoing compliance; Audit right

Category H: Operational / Performance

45	**Scope of Work / Services**	High Risk	Deliverables Acceptance criteria Change orders
46	**Service Level Agreement**	High Risk	Uptime % Credits Measurement
47	**Delivery / Acceptance**	Medium Risk	Timeline Testing period Deemed accepted
48	**Reporting Obligations**	Low Risk	Frequency Format Audit rights
49	**Subcontracting / Assignment**	Medium Risk	Consent required Liability Novation
50	**Change Control**	Medium Risk	Process Pricing impact Timeline impact

Category I: Boilerplate / Miscellaneous

51	**Entire Agreement / Integration**	Low Risk	Supersedes prior No oral mods Exhibits listed
52	**Severability**	Low Risk	Reformation Blue-pencil Essential terms
53	**Waiver**	Low Risk	Written only No implied Single instance
54	**Assignment**	Medium Risk	Consent Change of control Successors
55	**Notices**	Low Risk	Methods Addresses Deemed received
56	**Counterparts / E-Sign**	Low Risk	ESIGN Act PDF valid Multiple copies
57	**Amendment**	Low Risk	Written only Signed by both No oral
58	**Conflict Between Documents**	Medium Risk	Order of precedence Exhibits vs body SOW vs MSA

Category J: Specialized / Emerging Clauses

59	**AI / Machine Learning**	High Risk	Ownership of outputs Training data rights Liability for errors
60	**Data Ownership / Portability**	High Risk	Who owns derived data Export format Deletion
61	**Material Adverse Effect**	High Risk	Definition scope Carve-outs Duration test
62	**Cybersecurity / Breach Notice**	High Risk	Timeline Cooperation Cost allocation
63	**ESG / Sustainability**	Low Risk	Reporting Compliance Audit
64	**Sanctions / Export Control**	Medium Risk	Screening Ongoing compliance Termination right

Top 20 Red Flags — Never Ignore These

1. Unlimited indemnification with no cap or carve-outs
2. One-sided termination right with no cure period
3. Perpetual non-compete with no geographic limit
4. Unilateral amendment rights without notice
5. Automatic renewal with 120+ day notice window
6. IP assignment covering pre-existing work
7. Arbitration with no discovery and no appeal
8. Liquidated damages that function as a penalty
9. Confidentiality with no standard carve-outs
10. Liability cap below contract value
11. No force majeure or pandemic exclusion
12. Governing law in counterparty's home state (distant forum)
13. Assignment without consent on change of control
14. Entire agreement clause excluding side letters you rely on
15. SLA with no meaningful remedy or credit
16. Data processing without breach notification timeline
17. Earnout metrics controlled entirely by buyer
18. Non-solicitation covering all employees globally
19. Warranty disclaimer hiding in an exhibit
20. AI-generated deliverables with no IP warranty

Negotiation Priority Matrix

Use this matrix to decide where to spend your limited negotiation capital. Focus on High Impact + High Probability items first.

Clause	Impact	Probability	Priority
Indemnification cap	Very High	High	**P1**
Liability limitation	Very High	High	**P1**
IP ownership	Very High	Medium	**P1**
Termination rights	High	High	**P1**
Non-compete scope	High	Medium	**P2**
Arbitration terms	High	Medium	**P2**
SLA remedies	Medium	High	**P2**
Payment terms	Medium	High	**P2**
Governing law	Medium	Low	**P3**
Notice provisions	Low	Low	**P3**

Key Principle

You will not win every point. Identify the 3-5 clauses that represent existential risk to your business and fight hard for those. Concede on boilerplate to build goodwill for the clauses that truly matter.

Need Help Reviewing a Contract?

This checklist is for educational purposes only and does not constitute legal advice.
Consult a licensed attorney for advice on your specific situation.