



10 Tips on Negotiating a Simple Sales Agreement

10 tips on negotiating a basic sales contract from the seller's viewpoint are provided below. The information is written for the seller, but the buyer can easily extrapolate useful information. **Some of this material is covered in more detail** in the whitepaper “Small Company Don't Sign That Contract Yet: 5 Tips for Dealing With a Larger Company.” Download a free copy of the whitepaper [here](#).

In regards to the simple sales contract:

1. Make sure you are **negotiating with the person that holds the checkbook**. The author once worked for a company that thought it had wrapped up a sale to Cisco Systems. The company not only bent over backwards to fulfill Cisco's technical requirements, but negotiation had begun on the sales agreement for the first few copies of the software. Then it was discovered that the people with whom we had been dealing had no real say in the matter – another manager made the buying decisions. She said “no.” As a result:
 - The company suffered from the internal cost of the lost hours in the sales effort;
 - The specialized development became a sunk cost; and
 - The whole company suffered because management's attention had been distracted from the core business.
2. Be certain that a basic sales contract is what is really needed. If there are going to be many sales orders with lengthy discussions on each and significant variations in terms, **a Master Sales Agreement might be appropriate**. A Master Sales Agreement defines the basic commercial terms and conditions, but it covers more ground and also sets up the mechanisms for changing the Ts and Cs.
3. Have a **purchase order process**. That means stating what must be on a purchase order to make it valid. Include a purchase order acceptance as a requirement if you are dealing with something that takes you time to produce. You do not want to be working at maximum capacity on an order for five hundred units and be hit with an immediate order for a thousand; you wish you could take the order, but might not be able to do so without a large capital investment.
4. Be sure to cover **when ownership of title and risk of loss transfer to the buyer**. Allow some leeway for the buyer to specify shipping agent, etc., but be sure title is transferred only when payment is received.
5. Be sure **the terms and conditions of the sales agreement specifically overrule the buyer's purchase order**. Purchase orders have two sides, and one of them has onerous terms and conditions to which you do not want to agree. The author once led an acquisition due diligence team that discovered the targeted software company sold on other company's purchase orders alone. The verbiage on the back of one or more of those purchase orders placed the software in the public domain, making the company worthless.
6. **Do not forget training**. If you sell some very common widget or a service, this does not apply.

If you sell software or equipment, be sure that you offer a given number of training seats per unit sold, and anything else is extra, as is training at the buyer's facility.

7. Refer to the **written maintenance policy** in the sales contract. If you do not have one, create it. It is far better to have established answers concerning 24/7 support, levels of problems or errors and the affiliated response time, etc. Use the maintenance policy to make maintenance a profit center.
8. Include a warranty period that is **appropriate for your product and industry**, unless you subsume it in the maintenance agreement. The warranty period is how long you will make needed repairs for free.
9. If you are dealing with software, be sure you include the software license, **effective only upon full payment being received**. Make sure important issues like the right to sub-license are covered.
10. As with any contract, even the simple sales agreement should have a **term and termination section**; at some point the deal will need to be re-worked.

A free outline is available that lists all of the points to be covered in an OEM Agreement. The outline would be useful for a sales agreement as well, though it covers some superfluous areas. The outline may be downloaded [here](#).