Customer contract (material)

Review checklist

Use when the Company or a Group Company is providing goods and/or services to a third party and the amount of revenue the Company or a Group Company is earning revenue from this contract is 'material' or significant.

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| **Item** | **Question** | **Guidance notes**  | **Answer** |
| **General provisions** |
|  | **Short form name** | *Use a concise, descriptive "short form name" for this document. The short form name should clearly identify the document type (e.g., Service Agreement, Purchase Agreement, License Agreement, etc.)* |  |
|  | **Data room number** | *What is the data room number of this document? If there is no data room number, then insert "Not applicable".* |  |
|  | **Parties** | *For each party (an “entity”), identify:** *full legal name*
* *entity type (organisation or person)*
* *registered address*
* *company/organisation number (if applicable)*
* *whether the entity is acting alone or as a trustee*
* *if the entity is acting as a trustee, identify the trust name and number (if applicable)*
 |  |
|  | **Document date** | *Identify the agreement date or date the agreement was entered into. If no date is provided in the agreement, insert 'Undated'. Look for dates in various locations within the document, including the header, footer, and signature blocks. Enter dates in a consistent format (e.g. DD/MM/YYYY or MM/DD/YYYY).* |  |
|  | **Amendment(s)** | *Has this document been amended?**If the agreement has been amended, modified, or changed, provide details of the amendment.**For each amendment:*1. *Quote the specific language that introduces the amendment (e.g., "The parties hereby agree to amend the Agreement as follows:")*
2. *Describe the nature and purpose of the amendment*
3. *Specify which sections, clauses, or provisions of the original agreement are modified, added, or deleted*
4. *Provide the exact text of the amended language, as well as the text of the original language being modified (if available)*
5. *Note the effective date of the amendment*
6. *Mention any conditions or contingencies related to the amendment (e.g., requiring board approval)*
 |  |
| **Commercial details** |
|  | **For each related party, answer the following:** | *Who are the parties that are related?* |  |
| *What is their relationship? E.g.:*1. *An entity that controls a company is a related party of the company*
2. *The parties are both controlled by the same holding company*
3. *Director of Company is related to the Company*
4. *Spouse and children of the Company Director are related to Company*
5. *Directors of an entity that controls the company are related parties of a company.*
6. *Spouse and children of a Director of an entity that controls the company are related to Company.*
 |  |
| *Is the agreement on commercial, arm’s length terms?* |  |
|  | **Goods and/or services being provided or sold** | *Based on the information provided in this customer contract, provide a detailed description of the specific goods and/or services that the company is obligated to deliver or provide to the customer.**In your response:*1. *Itemise each distinct good or service separately*
2. *For goods, specify key details such as product name, model number, quantity, specifications, etc.*
3. *For services, clarify the nature and scope of the services, deliverables, timeline, and any relevant performance standards or metrics*
4. *Use the exact terminology from the contract to describe the goods/services*
5. *Quote the relevant excerpts from the contract that spell out what is being provided*
 |  |
|  | **Did the customer agree to purchase a minimum quantity of goods and/services under the agreement?** | *A minimum purchase commitment provides a level of predictability regarding the revenue the seller (company) can expect from the customer. It is also a contractual obligation that the customer agrees to fulfill. Failure to meet this commitment may result in penalties, fees, or other consequences outlined in the contract.* |  |
|  | **Detail the annual value or pricing structure of the agreement** | *Please review the contract and provide the following details:*1. *If the contract explicitly states the total annual value, quote the relevant language and specify the exact dollar amount.*
2. *If the contract does not provide a total annual value but includes pricing details, describe the pricing structure in detail, including:*
	1. *Any upfront fees, one-time charges, or setup costs*
	2. *Recurring fees (e.g., monthly, quarterly, annual) and their amounts*
	3. *Variable pricing components (e.g., usage-based fees, per-unit prices, tiered pricing)*
	4. *Any discounts, credits, or incentives that impact the overall contract value*
	5. *The specific products, services, or line items each price applies to*
	6. *The period over which the specified prices are valid*
3. *If the contract includes a minimum commitment, revenue guarantee, or other mechanisms that establish a floor for the annual contract value, describe those provisions and quote the relevant language.*
4. *If the pricing structure is unclear, incomplete, or heavily dependent on variable factors (e.g., usage, performance targets), explain the specific areas of ambiguity or variability that make it difficult to estimate the annual contract value.*
5. *If the contract omits pricing details altogether, state "The contract does not include specific pricing information or an annual contract value."*
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|  | **Is the Company (or Group Company) the exclusive supplier?** |  |  |
| **Term and termination rights** |
|  | **Start date of agreement** |  |  |
|  | **Start date of agreement** |  |  |
|  | **Initial term of the agreement** |  |  |
|  | **For each option to extend the term, answer the following:** | 1. *Start date of option*
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| 1. *End date of option*
 |  |
| 1. *Party that can exercise option to extend contract*
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| 1. *Required notice to exercise the option*
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| 1. *Can the term be extended by this option period on an ongoing basis?*
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|  | **Customer’s early termination rights (other than for breach or default)** | 1. *Customer who has the early termination rights*
 |  |
| 1. *Select the applicable early termination right (other than for breach or default). E.g.:*
	* + *Termination for convenience (no cause)*
		+ *Termination for an insolvency event*
		+ *Termination for force majeure*
		+ *Termination by agreement between the parties*
		+ *Termination for a change of control*
 |  |
| 1. *Does an early termination payment apply?*
 |  |
| 1. *Describe how much notice must be given to terminate*
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| **Transfer restrictions** |
|  | **Change of control** | 1. *Identify the specific Company or Group Company (by name) to which the restriction or prohibition applies*

*If a different change of control provision applies to each party, then record this by adding another change of control "collection".* |  |
| 1. *Definition of change of control*
 |  |
| 1. *Select the option that best describes the change of control restriction or prohibition. E.g.:*
	* + *Counterparty is notified*
		+ *Certain standard conditions must be met*
		+ *Consent of the counterparty is obtained and the counterparty must consent if certain standard conditions are met*
		+ *Consent of the counterparty is obtained and the counterparty can withhold consent in certain limited circumstances*
		+ *Consent of the counterparty is obtained*
		+ *Consent of the counterparty is obtained in the counterparty's discretion*
		+ *Consent of the counterparty is obtained which cannot be unreasonably withheld or delayed*
		+ *Consent of the counterparty is obtained which cannot be unreasonably withheld if certain conditions are met*
		+ *Amendments to the agreement are required*
		+ *Comply with requirements set by law / statute*
		+ *Right to terminate the agreement*
		+ *Triggers a payment obligation*
		+ *Strictly prohibited (cannot occur)*
 |  |
| 1. *Circumstances where it is reasonable for a party to withhold consent to a proposed change of control (if applicable)*
 |  |
| 1. *Exceptions to the change of control restriction*
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| 1. *Rights of the Customer in the Event of Change of Control*
 |  |
| 1. *Based on the change of control restriction or prohibition in the contract, analyze whether the restriction would likely be triggered by the proposed transaction (if known).*

*You will need to ascertain whether the proposed transaction will trigger the change of control restriction or prohibition. This will require you to look at when is a change of control considered to have occurred under this contract, and then see whether the proposed transaction would satisfy that definition. If you are not sure, check with your supervisor.* |  |
|  | **Assignment** | 1. *Identify the specific Company or Group Company (by name) to which the restriction or prohibition applies*

*If a different assignment provision applies to each party, then record this by adding another assignment "collection".* |  |
| 1. *Select the option that best describes the assignment restriction or prohibition. E.g.:*
	* + *Assignee executes a deed of covenant with counterparty*
		+ *Pre-emption right*
		+ *Terms of any other related agreements (to the extent that those terms relate to the assignment) have been complied with*
		+ *Consent of the counterparty is required*
		+ *Consent of the counterparty is required which cannot be unreasonably withheld or delayed*
		+ *Consent of the counterparty is required which cannot be unreasonably withheld or delayed if certain conditions are met*
		+ *Consent of the counterparty is required and the counterparty can withhold consent in certain limited circumstances*
		+ *Consent of the counterparty is required and the counterparty must consent if certain standard conditions are met*
		+ *Counterparty must be notified of assignment*
		+ *Certain standard conditions are met (no consent required)*
 |  |
| 1. *Exceptions to the assignment restriction or prohibition*
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| 1. *Based on the assignment restriction or prohibition in the contract, analyze whether the restriction would likely be triggered by the proposed transaction (if known).*

*Consider factors such as:**(i) The parties involved in the proposed transaction**(ii) The nature and structure of the proposed transaction (e.g., merger, acquisition, asset sale)**(iii) Any exceptions or carve-outs to the assignment restriction**(iv) Any consents or notices required to permit assignment in the context of the proposed transaction* |  |
| **Liability regime** |
|  | **Indemnity** | 1. *Identify the Company or Group Company giving the indemnity (indemnifying party)*
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| 1. *Who are they indemnifying (indemnified party)?*
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| 1. *Are employees, directors, officers or other staff members of the indemnified party also being indemnified?*
 |  |
| 1. *The 'indemnifying party' is required to indemnify the 'indemnified party' where the loss or liability is caused by which of the following:*
	* + *All acts and omissions (no fault indemnity)*
		+ *Breach of a party's obligations under the agreement*
		+ *Negligent act or omission by a party or their personnel*
		+ *Illness, injury or death or damage to property*
		+ *Breach of law*
		+ *Breach of a representation or warranty given under the agreement*
		+ *Health, safety, environment breach*
		+ *Infringement of intellectual property rights by a party or their personnel*
		+ *Use or disclosure by a party or their personnel of the other party's confidential information*
		+ *Fraud*
		+ *Willful misconduct*
		+ *Third party claims*
 |  |
|  | **Limitation of liability**  | 1. *Identify the company or group company's liability that is limited under the agreement (other than an exclusion of liability for consequential loss) - if none, leave blank?*
 |  |
| 1. *Describe the limitation of liability (other than an exclusion of liability for consequential loss)*
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| 1. *Are there circumstances where the limitation on liability does not apply?*
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|  | **Consequential loss** | 1. *Identify company or group company's whose liability for consequential loss is excluded*
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| 1. *Describe the meaning of consequential loss for this contract. If consequential loss is not defined in this particular contract, then write "Not defined".*
 |  |
|  | **Security** | 1. *Identify Company or Group Company required to provide the security*
 |  |
| 1. *What type of security is required? E.g.:*
	* + *Bank guarantee*
		+ *Performance bond*
		+ *Corporate guarantee*
		+ *Security deposit*
		+ *Letter of credit*
		+ *Cross charge*
		+ *Performance guarantee*
		+ *Collateral*
		+ *Indemnification*
 |  |
| 1. *What is the purpose of the security?*
 |  |
| **Miscellaneous** |
|  | **Related documents** | *Describe any documents related to this document that have been disclosed (including amendments)* |  |
|  | **Missing related documents** | *Describe any documents related to this document that haven’t been disclosed* |  |
|  | **Missing and/or ineligible pages** | *Specify any missing and/or ineligible pages of the document* |  |
|  | **Document execution** | *Identify a party(s) that haven’t executed the document fully and correctly* |  |
|  | **Governing law** | *What is the governing law of the document?* |  |
|  | **Other onerous or unusual provisions** | *Identify any provisions in this document that could be considered unusually onerous, burdensome or unfavorable to one party, or that deviate significantly from standard practices.**For each such provision:*1. *State what party(s) the provision applies to;*
2. *Briefly summarise the key aspects that make it onerous or unusual;*
3. *Quote the relevant excerpt from the document.*
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