

Software Contract Review Checklist

You know your own templates. The risk hides in the buyer's paper. When a customer says "here is our paperwork," these are the terms to check on their SaaS agreement, license, DPA, services agreement, and NDA.

✓ **CONFIRM IT'S THERE** ⚠ **WATCH FOR: THE RED FLAG IN THEIR PAPER**

SaaS Subscription Agreement		THEIR ORDER FORM & MSA
Term & renewal	✓ Auto-renews for successive terms unless the customer gives timely non-renewal notice.	⚠ No auto-renewal, or renewal that depends on your notice or lets the customer cancel at will.
Termination	✓ A mutual right to terminate for convenience.	⚠ A customer-only right to walk away at any time.
Liability	✓ A reasonable cap is stated, and consequential damages are excluded.	⚠ Uncapped liability, or the consequential-damages exclusion struck out.
IP & license	✓ You keep ownership; the grant is limited and non-exclusive.	⚠ Broad, perpetual, or transferable rights; any transfer of ownership.
Customer data	✓ Your service and analytics data rights survive; incident notice is defined.	⚠ Bans on using data to run the service; open-ended security duties.
Software EULA / License		LICENSE TERMS YOU'RE SENT
License grant	✓ Scope and intended use are stated and bounded.	⚠ Open-ended, enterprise-wide, or transferable grants.
Use restrictions	✓ No modification, reverse engineering, service-bureau or timesharing use.	⚠ Rights to modify, copy, resell, or host for third parties.
IP & notices	✓ You retain IP; proprietary notices stay on every copy.	⚠ Notice-stripping, or any claim on your IP or feedback.
Warranty & liability	✓ Disclaimers present; a reasonable cap; consequential damages excluded.	⚠ Implied warranties or fitness guarantees; uncapped exposure.
Audit	✓ You keep a license-compliance audit right on reasonable notice.	⚠ Your audit right removed or narrowed so you cannot verify compliance.
Data Processing Agreement		THEIR DPA
Processing scope	✓ Only on documented instructions, with a clear purpose limitation.	⚠ Open-ended processing duties or vague purpose language.
Security	✓ Risk-based, appropriate measures.	⚠ Absolute or "best-in-class" security promises you cannot meet at scale.
Subprocessors	✓ Appointment flexibility with equivalent flow-down terms.	⚠ Consent or veto on every subprocessor.
Breach notice	✓ Timely, and bounded to what you can commit to.	⚠ "Immediate" deadlines; unlimited breach-cost shifting.
Transfers & assistance	✓ A named, valid transfer mechanism; assistance kept to reasonable limits.	⚠ Blanket transfer bans; unlimited assistance obligations.
Services & Professional Services		THEIR SERVICES / MSA PAPER
Deliverables & IP	✓ You own your deliverables; work-made-for-hire is not forced on you.	⚠ Customer owns all work product, tools, or background IP.
Indemnity	✓ Limited to your fault.	⚠ Indemnity for the customer's misuse, or for "any claim."
Liability	✓ A reasonable cap; no liquidated damages.	⚠ Uncapped liability, liquidated damages, or inflated carve-outs.
Payment	✓ Net 30, with a fixed window to raise disputes.	⚠ Pay-when-paid, or open-ended withholding and dispute periods.
No lock-in	✓ No most-favored-customer pricing, exclusivity, or acceptance overreach.	⚠ MFN pricing, exclusivity, non-solicit on you, or "sole discretion" acceptance.
Mutual NDA		THE COUNTERPARTY'S NDA
Definition	✓ Standard exceptions: public, prior possession, third-party, independently developed.	⚠ Exceptions removed, so everything you already knew is "confidential."
Duration	✓ A defined term, with trade secrets surviving.	⚠ Perpetual confidentiality on all information.
Scope creep	✓ An NDA and nothing more.	⚠ A non-compete, employee non-solicit, or indemnity smuggled in.
Return & remedy	✓ Return or destroy on request; equitable relief for breach.	⚠ No return right; one-sided or unlimited damages.
Representatives	✓ Each side is responsible for the people it shares information with.	⚠ Liability for third parties you do not control.
Across Every Agreement		EVERY CONTRACT
✓ Governing law & venue named, not left blank. ✓ Assignment needs your consent, with a change-of-control carve-out for you. ✓ Force majeure excuses your non-performance, not just theirs.		✓ Jury-trial waiver and one-sided fee-shifting removed. ✓ Publicity uses your name only with consent. ✓ Order of precedence named when an order form, MSA, DPA, and click-through stack up.