



COMMERCIAL CONTRACTS AND NEGOTIATION

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What will we cover today?

■ Contracts Refresher

- What are the ingredients for a contract?
- Why have a contract?
- What should I look out for?
- • What if something goes wrong?

■ Contract negotiation

- Basics
- Preparation
- Zone of Possible Agreement
- Top Tips

■ Please ask questions!

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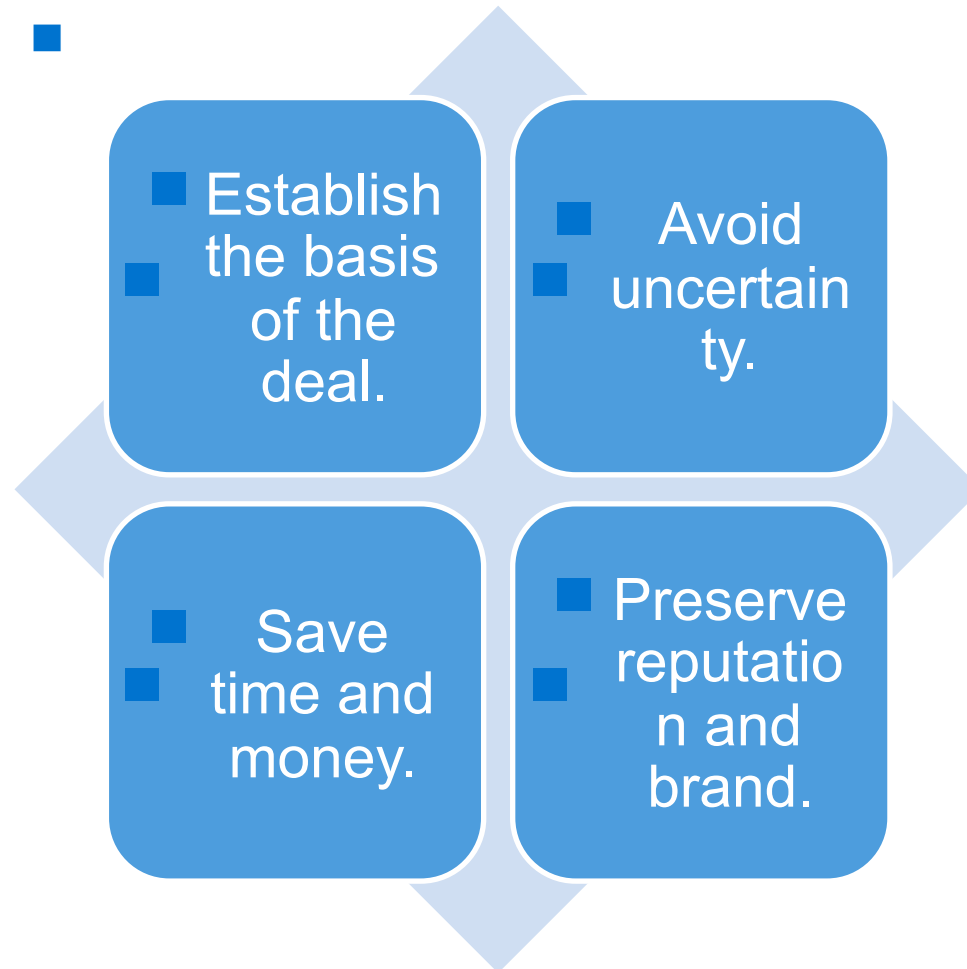
Contracts Refresher

Contracts: What are they?

- **Agreements giving rise to obligations enforced or recognised by law.**

- Written
- Oral
- Conduct

Contracts: Why are they important?

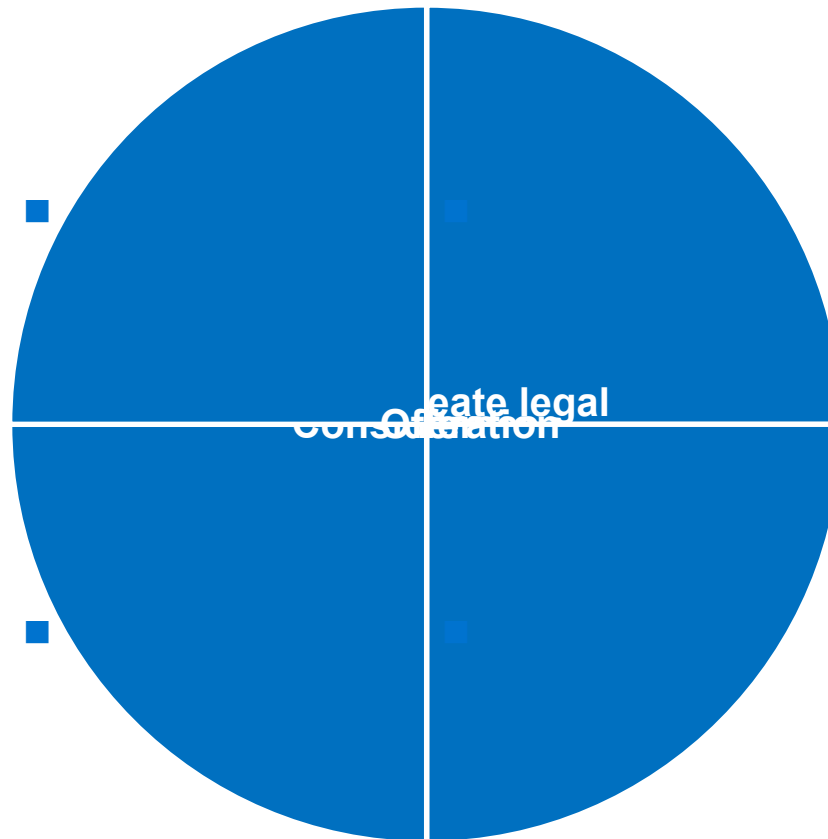


Contracts: What are the ingredients

Contract or not?

Contract or not?

"I accept if you include....."



Contract or not?

- I promise to do x if you promise to do y
- £1
- Peppercorn

Contract or not?

- Memorandum of understanding
- Heads of Terms
- Letter of Intent
- Heads of Agreement
- Draft Subject to Contract

Contracts: What should I look out for? (1)

Parties

- Financial standing
- Reputation
- Compliance

Scope of Products / Services

- What service / products will be delivered?
- When?
- Exclusivity?

Price & Payment Terms

- How much?
- When should it be paid?
- Does the price include tax?
- Are there hidden extras?

Contracts: What should I look out for? (2)

Warranties and Representations

- What quality is acceptable, and how will this be judged?
- What facts and circumstances are either party asserting?
- Remedies?

Liability and Indemnities

- What if things go wrong?
- What types of losses might be suffered?
- What types of losses can be recovered? What types are excluded?
- What are the limits of liability?
- Speak to your lawyer!

Intellectual Property

- Is any IP being licensed?
- Is any IP being transferred?
- Will any IP be created?

Contracts: What should I look out for? (3)

Term

- How long does it last?
- When does it start? Signature date / Effective date / Service commencement date
- When does it end?
- Renewals – automatic / on notice / notice period

Termination

- How do you get out?
- Insolvency - usual
- Material breach
- Force majeure - usual
- Termination for convenience?
- Change of control – good for you?
- Compensation on termination

Definitions

- Do the defined terms mean what you expect them to?

Contracts: What should I look out for? (4)

Boilerplate Terms

- Confidentiality
- Data Protection
- Information Security
- Governance
- Change Control
- Disaster Recovery
- Benchmarking
- Exit Arrangements
- Compliance
- Assignment
- Subcontracting
- Anti-Bribery
- HR Provisions
- Exclusivity
- Notices
- Governing Law and Jurisdiction

Contracts: What if they go wrong?

- Look out for the signs:
 - People unclear about things
 - Nothing documented – "she said / he said"
 - Milestones missed
- No response
- Avoid the problems above!
 - Minute meetings / summarise conversations and contract negotiations in an email
 - Set out agreed actions and timelines
 - Diarise important events and follow-up
 - Keep talking – regular meetings - contracts need managing

Speak to your lawyer early – don't wait for things to go wrong!

Questions?

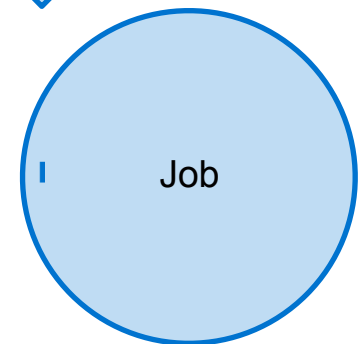
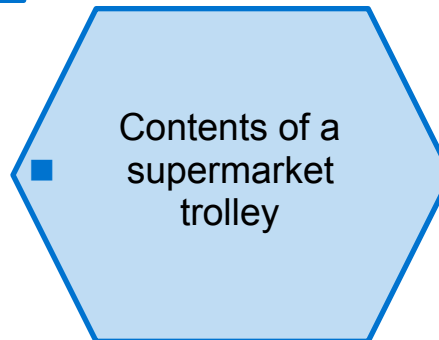
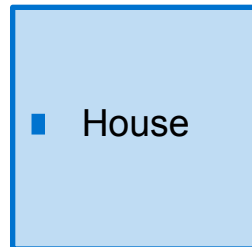
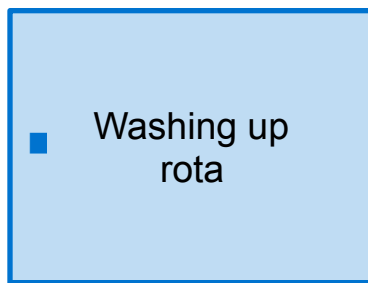
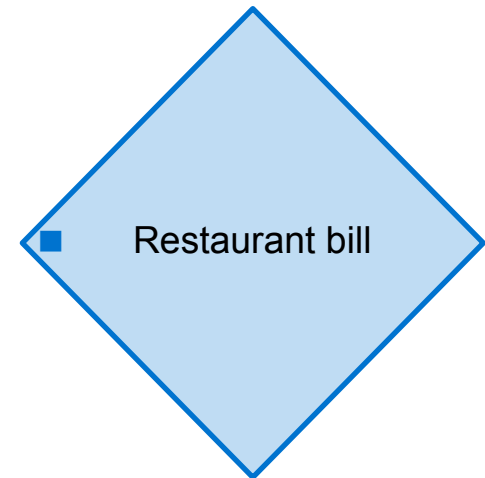
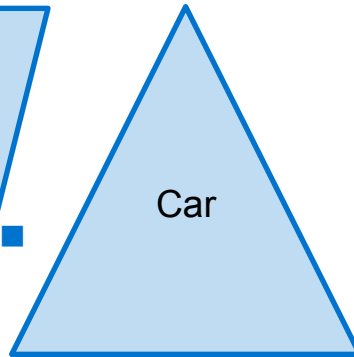
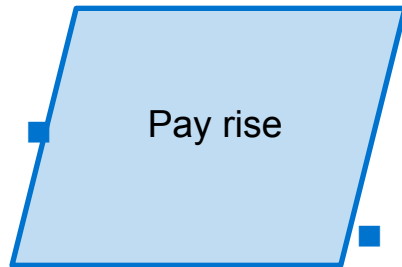


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Contract Negotiation

Everything's negotiable

In your private capacity, would you negotiate the price / terms of the following?



Negotiation ...

- is not personal
- is part of the job
- fosters relationships
- can produce surprises
- takes time and patience
- can be fun!

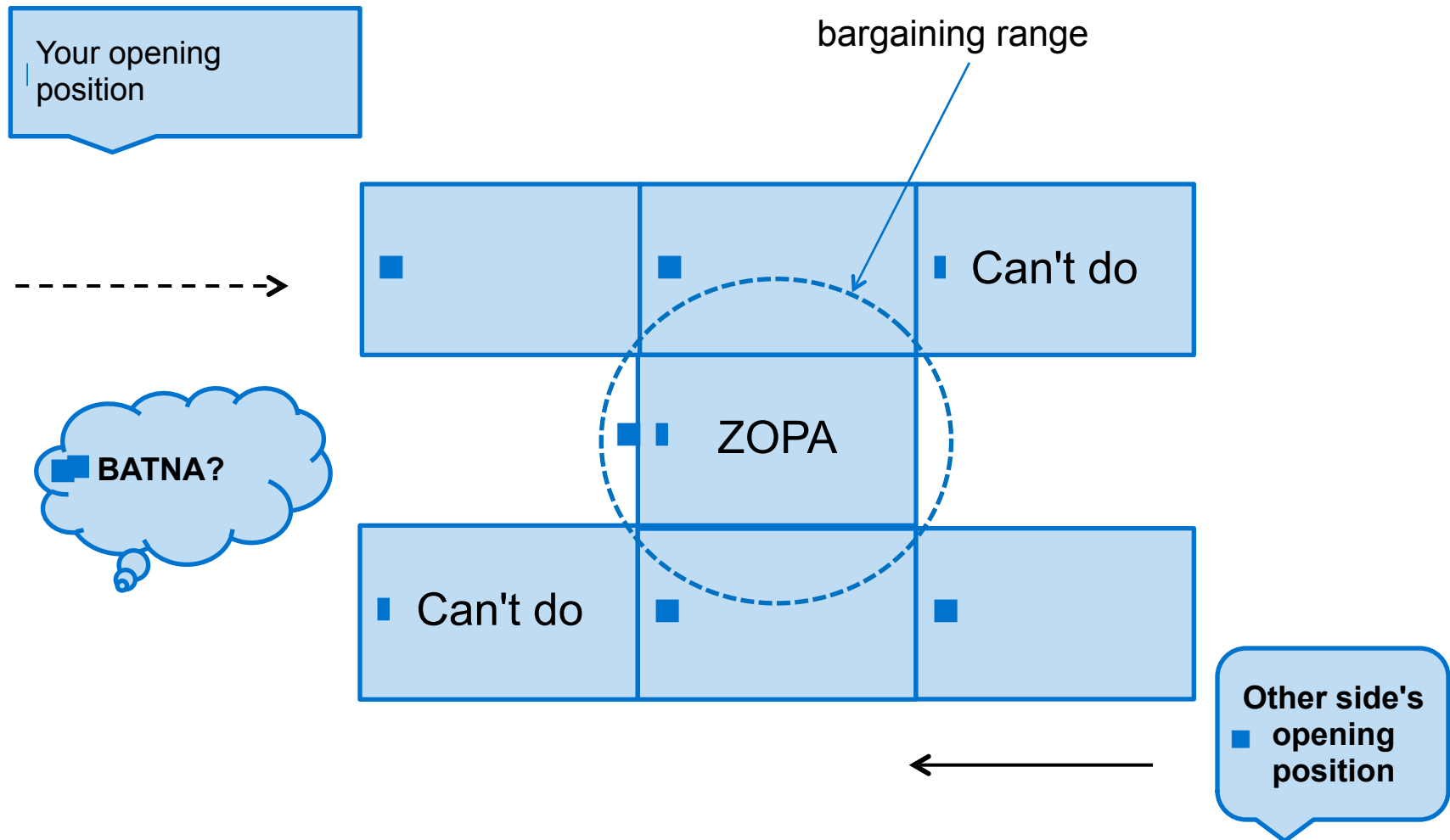
- don't jump the gun



Things to consider/prepare for in advance?

- What is the commercial driver for the negotiation?
- Who are the stakeholders involved?
- What do you want? Understand the purpose of the contract.
- Agree your position / issues with team beforehand.
- Understand the other party's position.
- What's your opening position?
- Identify the areas you can be flexible on and those you can't.
- What are the alternative solutions (if any).
- Know your Best Alternative to a Negotiated Agreement (BATNA).

Zone of Possible Agreement (ZOPA)



Why do negotiations fail?

- Too much positioned bargaining
- Too much principle bargaining
- Poor negotiation skills
- Emotional /personality clash
- Distrust
- Failure to communicate interests or offers
- Gamesmanship
- Lack of authority

Negotiation top tips

DO...

- Use silence
- Use conditional statements
- Ask questions
- Listen
- Summarise/confirm in writing
- Building on common ground
- Know what you will / won't trade
- Emphasise agreement

DON'T...

- underestimate your strengths
- assume that the other party knows your weaknesses
- assume that you know what the other party wants
- accept the first offer
- be afraid to say no
- interrupt

Think...

Don't issue ultimatums / threats unless you are prepared to go ahead with them.



Final Thoughts

- Three key features to a successful negotiation:
 - plan and prepare
 - revisit the plan and prepare
 - flexibility – don't get wedded to a bottom line, don't fail to adapt

