Contracts and IP

Terms, SLAs and Who Owns What.

A Practical Guide for Founders, Agencies and Owner-Managed Businesses.

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FUSION LAW

INTRODUCTION

Ask most owners what their business is worth and they will point to revenue, customers, maybe the brand. Ask them who owns the code their developer wrote, whose terms govern their biggest customer contract, or what happens to their data if their main software supplier goes under, and the answers get vaguer. None of it feels pressing. It stays that way until a buyer's due diligence, a dispute with a supplier, or a falling-out with a contractor turns a comfortable assumption into a problem with a price tag.

Two things sit at the centre of this guide: the contracts that govern how you trade, and the intellectual property that is often the most valuable thing you own. "We paid for it" is the phrase I hear most, and for copyright work it is a potentially costly misunderstanding for a growing business. Paying for work does not, by itself, make you the owner of what was created. The law sets the default, and the contract can change it — but only if it was written to.

This guide is written for founders, agencies, technology and SaaS businesses, and any owner-managed company whose value sits in its contracts, its brand and its know-how. It walks through what your terms of business actually do, where liability really sits, who owns your IP, and the gaps a buyer will look for. It is general information under English law, not advice on your particular contracts, but it should show you what to check — and where a short conversation now saves a much larger bill later.

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1. YOUR TERMS OF BUSINESS: WHOSE RULES APPLY

1.1 The battle of the forms

You send a quote with your terms attached. The customer replies with a purchase order carrying their terms on the reverse. Work begins. Whose terms govern the deal? English courts usually apply ordinary offer-and-acceptance principles. The last set of terms accepted by words or conduct will often prevail, but prior framework arrangements and the parties' conduct can change the outcome — "last document wins" is not a complete rule, and the courts have shown as much where an overarching arrangement or the way the parties actually behaved pointed the other way.

The safer approach is not a mechanical race to send the last document. It is to state expressly which terms govern, reject conflicting purchase-order terms, and obtain clear acceptance before work begins. Get that process right and you are far less likely to find, years in, that you have been trading on terms you never chose.

1.2 What good terms actually control

A solid set of terms does unglamorous but valuable work. It fixes payment terms and the right to interest or suspension if you are not paid. It sets out service levels and the remedies if they slip. It deals with retention of title where you supply goods, so you keep ownership until you are paid. And it is explicit about what survives termination — confidentiality, accrued payment, IP licences and limitation of liability all need to outlast the contract itself. The clauses people forget to check are usually the ones that still bind after the deal has ended.

> **Illustrative example based on issues commonly seen in transactions.** *A supplier trades for three years on what it assumes are its own terms. A payment dispute arises, and only then does anyone read the file: every order was confirmed on the customer's purchase order, which capped late-payment interest and extended payment to 90 days. The customer's contractual payment and interest provisions governed the relationship, subject to any applicable statutory late-payment protections. The supplier's own 30-day terms, which it had assumed applied throughout, were not the ones it had been trading on.*

2. LIMITATION, EXCLUSION AND THE CLAUSES THAT BITE

2.1 What the law lets you cap

Most terms try to limit liability. Not all those limits survive. In business-to-business contracts, the Unfair Contract Terms Act 1977 may subject certain exclusions and liability caps to a reasonableness test. That includes exclusions of liability for negligence, and clauses relied on where one party is contracting on the other party's written standard terms. It does not automatically subject every individually negotiated B2B cap to a reasonableness assessment. Consumer contracts are principally governed by the Consumer Rights Act 2015, under which unfair terms are not binding on the consumer.

Separately, some limits are off the table altogether. Under section 2(1) of the Unfair Contract Terms Act 1977, liability for death or personal injury resulting from negligence cannot be excluded or restricted. And a party cannot exclude liability for its own fraud in inducing the contract. The practical lesson runs against instinct: a clause that fails an applicable statutory test may be ineffective, potentially leaving the party without the protection it expected. A sensible, defensible cap, clearly drafted and properly brought to the other side's attention, is worth far more than an aggressive one a court may not uphold.

2.2 Indemnities: the clause people sign without reading

An indemnity can allocate loss differently from an ordinary contractual damages claim. Depending on its wording, it may affect questions such as causation, remoteness, mitigation, control of third-party claims, and when payment falls due. That is precisely why the wording matters: the courts construe the actual indemnity language rather than applying broad assumptions about what indemnities always do. Indemnities get accepted as boilerplate all the time. They are not boilerplate. They are one of the few clauses capable of putting a number on the table larger than the whole contract is worth.

An indemnity may also sit outside the general liability cap, if the definitions, carve-outs or cap mechanics say that it does. Read every indemnity against the cap. If one sits outside it, the cap is doing less than you think.

2.3 Assignment, subcontracting and change of control

At the back of most contracts sit clauses on who may transfer the contract, who may subcontract, and what happens if a party is acquired. A change-of-control clause can let your customer or supplier terminate, or reopen the terms, the moment you sell your business. That is something you want to know before you go to market, not when a buyer's lawyers find it in diligence and use it to chip the price. If your key contracts can be ended on a change of control, that is a fact about how saleable your business is, not just a line in a contract.

> **The clauses that catch people out.** *Indemnities sitting outside the liability cap. Auto-renewal on the customer's terms. Change-of-control rights that hand a counterparty an exit the day you sell. Liability caps drafted so aggressively that a court may not uphold them. None of these read as dangerous. All of them can cost real money.*

3. WHO OWNS YOUR IP — AND WHY "WE PAID FOR IT" ISN'T THE TEST

3.1 The default, and what it takes to change it

This is the point that catches the most owners. "We paid for it" is not the same as owning it. For copyright and many design rights, the creator is usually the first owner unless the work was created by an employee in the course of employment, or the parties agreed otherwise. A legal assignment of copyright must be in writing and signed by or on behalf of the person assigning it. Other rights, including patents and database rights, have their own ownership rules; patents in particular turn on who the inventor is and on separate statutory rules for employee inventions.

So the law sets the default, and the contract can change it — but only in the right form. The question is never "did we pay?" It is "do we have a written assignment?" If the answer is no, you may be left relying on an implied licence whose scope, duration and transferability are uncertain, granted by someone who can still say no.

3.2 The employee position, and where it stops

Where an employee creates work in the course of their employment, the employer usually owns it. That position is genuinely useful, but it does not extend to contractors, consultants, freelancers or agencies. With them the default flips back: they own what they create unless they have assigned it to you in writing. And do not assume employees need nothing in writing either. Employment and consultancy documents should still deal with duties, inventions, confidentiality, moral rights, further assurance, and work created outside ordinary duties, so the ownership chain holds up under scrutiny.

Employee versus contractor: who owns the work

	Employee	Contractor / agency
Who owns work created	Usually the employer, automatically, where the work is created in the course of employment.	Usually the contractor, unless there is a written assignment to you.
What you need	Still address inventions, confidentiality, moral rights and further assurance in the contract.	A signed, written IP assignment. "We paid for it" is not enough.
The common gap	Senior people who are really consultants, not employees, treated as employees.	Developers and agencies paid in full who never assigned the IP they created.

3.3 The contractor and developer gap

A common gap is the developer or design agency, paid in full, who never assigned the IP. Because of the contractor default, without a written assignment they own the copyright in the code, the designs and the brand assets they created, and you may be left relying on an implied licence whose scope, duration and transferability are uncertain. That is exactly what a buyer's diligence is built to find.

The cure is not always a one-page form. A proper contractor provision should ordinarily address present and future rights, all relevant territories, moral-rights waivers or consents, further assurance, subcontractor contributions, third-party and open-source material, warranties, and the right to modify, sublicense and transfer the work. Where work is ongoing, the assignment should be built into the engagement terms so it happens as a matter of course rather than as something chased years later once the freelancer has moved on. And watch for joint ownership: where, say, an employee and an external contractor build a website together, you can end up co-owning the result, with each owner's consent needed to exploit it.

> **Illustrative example based on issues commonly seen in transactions.** *A founder sells a software business. Diligence turns up that the core platform was built, over four years, by a freelance developer who was paid promptly and assigned nothing in writing. Tracking the developer down, and negotiating the assignment after the event, holds up the deal and weakens the seller's position at exactly the wrong moment. A properly drafted assignment at the outset would have avoided all of it.*

4. SOFTWARE, SAAS, DATA RIGHTS AND EXIT

4.1 The real question is rights, not "ownership"

"Ownership" is not the most useful legal concept for most business data. The commercial questions are whether the business has the contractual and technical rights to access, use, copy, export, retain and transfer it, and whether it can keep operating when a platform relationship ends. Before you commit to a platform, and again before you leave one, work through:

- What data and configuration can be exported?
- In what format, and within what period?
- Is there an additional exit charge?
- What is retained, and what is deleted, after termination?
- Are backups available independently of the provider?
- Which subprocessors and hosting locations are involved?
- What business-continuity or exit assistance applies if the supplier fails?

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4.2 AI-assisted work: who owns the output

AI-assisted work may qualify for copyright where there is sufficient human creative contribution. The position for wholly machine-generated output remains uncertain. UK law currently contains a special provision for computer-generated works, but its application to modern generative AI is largely untested, and on 18 March 2026 the Government proposed removing that provision while retaining copyright protection for qualifying AI-assisted human work. The provider's terms still matter, but a contractual right to use an output does not by itself guarantee that copyright exists in it, or that the output is free from third-party infringement.

If AI-generated material is going into something you treat as a business asset, three checks are worth running. First, are staff entering confidential, client or personal information only into approved tools? Second, are the human contribution, prompts and revisions recorded well enough to evidence provenance? Third, do the provider's terms cover training use, output rights, third-party claims, and the use of open-source or third-party material? This is a fast-moving area; the terms you agree to are doing more work than the settled law.

5. BRAND, DOMAINS AND THE ASSETS A BUYER CHECKS

When a buyer runs diligence, IP ownership sits high on the list, and the questions are predictable. Are the trade marks registered, and in the right name? Who are the domain names registered to — the company, or a former developer's personal account? Do you own the website copy and images, or hold a licence you have not read? And can you lawfully use and transfer the customer data in your CRM? On a sale, the ability to transfer personal data depends on the transaction structure, the lawful basis, transparency and security — not merely on whether the seller calls it "our data." The Information Commissioner's Office expects data-sharing to be considered in M&A due diligence where information moves to a different or additional controller. Gaps here rarely kill a deal outright; they slow it down and hand the buyer leverage, which usually shows up in the price.

> **Registered rights and disputes.** *This guide is about the commercial and contractual side of IP: ownership, assignment, licensing and what your terms say. Where registration, enforcement or a specialist IP dispute is required, we coordinate with appropriate IP counsel while keeping the commercial contracts, the ownership chain and the transaction strategy aligned.*

6. THE TAX ANGLE ON HOLDING YOUR IP

Where IP is valuable, how you hold it can carry a tax dimension as well as a legal one — whether rights sit in the trading company or a separate holding company, how licences and royalties between group companies are structured, and how that interacts with a future sale. These are not decisions to take on the legal paperwork alone. As part of the Fusion Consulting Group, we work alongside our tax colleagues so that the way you own and hold your IP is sound legally and sensible on tax, settled deliberately rather than landed on by accident. Where it earns its place, we bring them in early.

7. AN IP AND CONTRACTS OWNERSHIP CHECKLIST

Work through these. Where you cannot answer “yes,” that is where to get advice — and the list doubles as the starting point for the audit described below.

- You have a signed IP assignment from every contractor, consultant, developer and agency that has created anything material for the business, dealing with present and future rights, moral rights and any third-party or open-source material — not just paid invoices.
- Your quote, order acknowledgement and contracting process clearly identify which terms govern, conflicting purchase-order terms are expressly rejected, and acceptance is obtained before performance begins.
- Your liability caps and exclusions are drafted with their enforceability assessed in the context of the contract, the parties and the applicable legislation.
- Every indemnity has been read against the liability cap, and you know which ones sit inside it and which outside.
- You know which of your key contracts can be terminated, or reopened, on a change of control, and what that means for a sale.
- Service levels, payment terms, retention of title and survival-on-termination clauses say what you think they say, including whether service credits are the sole remedy.
- You know what data and configuration you can export from your SaaS platforms, in what format and period, and what happens if a provider fails.
- Where AI tools are used on business assets, you have checked who owns the output, what the provider may do with your inputs, and that provenance is recorded.
- Your trade marks, domains, website content and CRM data are owned, or licensed, in the right name and lawfully transferable.
- The way you hold valuable IP has been considered for tax as well as ownership, not left to chance.

8. HOW FUSION LAW CAN HELP

Fusion Law's commercial team advises owner-managed businesses on the contracts and IP that hold their value. On the ground covered by this guide, our work includes:

- Drafting and reviewing terms of business, service level agreements and the supply, distribution and customer contracts you trade on — and getting the contracting process right so your terms, not the other side's, actually apply.
- Reviewing liability caps, exclusions and indemnities so they are drafted to do what you intend and to stand up in context.
- Putting in place IP assignments from contractors, consultants, developers and agencies, and building assignment into engagement terms for ongoing work.
- Checking SaaS, software and data terms for export rights, data portability and exit — and the commercial terms around AI-assisted work.
- Advising on brand assets, domains and website content, and the data-protection angle on transferring CRM data in a sale.
- Running a contracts and IP-ownership audit ahead of a sale, so the gaps a buyer looks for are closed before diligence starts.

Where appropriate, we work alongside our tax, accountancy and financial-planning colleagues across the Fusion Consulting Group — in this area, most often with Fusion Tax on how valuable IP is held and structured. In practice that means the legal and tax pieces are scoped together, so the structure is right before it is committed, not patched up afterwards.

If you are signing a significant contract, taking on a developer or agency, building something with AI, or thinking about a sale, we would welcome a conversation before you commit.

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