

Creating Better Contracts

Why (and how) you should optimise
your contract templates



The standard contract templates we use affect every step of the contract lifecycle, so improving them can have a massive impact.

Simmons has a team dedicated to creating better contracts; what we call 'Contract Optimisation'. This guide explains why it is so important and provides some practical tips for anyone thinking about improving their own contracts.

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What is Contract Optimisation?

Contract Optimisation is about improving the content and design of contract templates and playbooks. In other words, it's about improving the standard documents we use as the starting point for transactions.

It's not just about the words on the page. Creating better contracts includes understanding how your templates fit into – and can improve – the whole contracting process. Whether it's generating contracts quicker, cutting down on negotiation, capturing more contract data or building better relationships, the contract documents we use have a massive impact.

Clear, balanced and well-designed contracts remain key to optimising so much of the contract lifecycle.

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Good templates remove friction and wasted time from almost every stage of the contract process...



What is an 'optimised' contract?

We focus on creating contracts that are:

Clearer. Contracts that are written in plain English and well-designed are easier to understand, faster to navigate and quicker to agree.

Shorter. Contract templates tend to grow over time, collecting issues that aren't necessary and language that is overly complex. The best templates tend to be shorter as well as clearer.

Modular. Designing templates with optional 'modules' and clauses makes them easier to adapt for different scenarios. This results in contracts that are more relevant and easier to generate without relying on expensive legal resource.

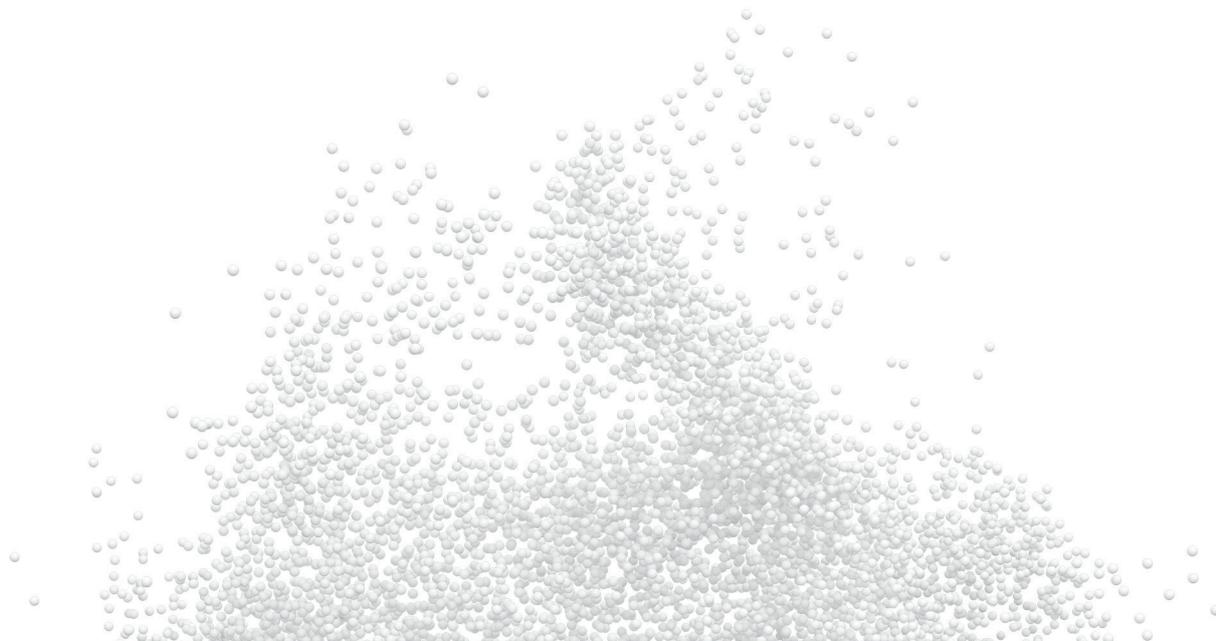
Balanced. Probably the most effective way to streamline the contract process – especially negotiations – is to remove issues that are not worth negotiating in the first place. We recommend balanced templates which, wherever possible, remove one-sided or unnecessary contract positions.

Ready for automation. To get the most out of document automation, it's normally necessary to update and adapt contract templates before they are implemented into a new tool. This can be a forgotten (but crucial) step on the automation journey.

What's great is that all these elements can positively impact one another. So taking time to improve your contract templates can create a virtuous cycle that drives more and more benefits.

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Benefits of better contracts

Improving contract templates drives:

Speed. Good templates remove friction and wasted time from almost every stage of the contract process, especially creating the first draft of a contract and negotiations.

Self-service. Clear and flexible templates – along with supporting guidance – can dramatically reduce the need for lawyers' input and will help business colleagues help themselves.

Richer insight. Well-designed templates ensure that the key contract details are easy to capture at the outset and find in the future. This allows contract data to be used more effectively and drive business insight.

Better relationships. Your standard contract templates set a tone. They create an important first impression with the other party (and their lawyers) that will last through negotiations and beyond. A good first impression reinforces a good relationship. And unfortunately, the opposite is also true.

Easier maintenance. A set of well-structured and succinct templates will be easier to update and maintain. This is especially true where you can consolidate lots of templates into a simpler set of documents. It facilitates proper document management and version control.

And this leads to:

Cost savings. Put simply, better contract templates result in cost savings, which can be dramatic. No surprise, really, given the benefits described above, which can cut time and expensive resource from almost every step of the process.

Enhanced compliance. Optimising templates is not just about taking unnecessary content out. It's also about making sure critical content is in. This is especially true for compliance obligations and key contract risks, which should be dealt with clearly and appropriately.

Better governance and risk management. The process of refreshing contract templates is also an opportunity to (re)align your standard contracts with your internal governance requirements and approval processes, as well as your overall risk appetite as an organisation.

Satisfaction. Contracts impact a lot of people. Making them pragmatic and easy to work with will remove common frustrations and improve a lot of peoples' day jobs.

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What stops people creating better contracts?

Lots of people want to create better contract templates but there are some common hurdles that get in the way. From our experience these include:

Fighting BAU. It's rare for businesses to have dedicated or protected resource for maintaining contract templates and playbooks. This means that, despite everyone's best intentions, competing business priorities and the immediate pressure of day-to-day deals can force this work down the to-do list.

Shorter takes longer. To borrow a quote often attributed to Mark Twain (and many others): "*I didn't have time to write you a short letter, so I wrote you a long one*". What is true for letters is perhaps truer of contracts. Careful editing and design take time (so, in practice, a sensible balance often needs to be struck).

The old ways. For some good reasons – and some not so good reasons – lawyers are used to creating contracts by tweaking and adapting what has gone before. This can be rational for individual deals where time is tight, but it naturally makes contract documents accumulate baggage. It's also common to lose contact with why a particular clause or phrase was used in the first place – and yet the path of least resistance is often to leave it there.

It falls between the cracks. Who is best placed to create and maintain your contract templates? There is no right answer. But it's a job that can fall between the cracks. In-house lawyers will know your business best, but are often busy [fighting BAU](#). External legal advisers may be used to writing contracts, but are typically focussed on transactional work or will create contracts using [the old ways](#). It remains rare to use dedicated contract drafting and design specialists.

Opinions. People often have strong opinions about what standard contracts should say based on what they are used to. Whilst understanding user requirements and positive collaboration is vital, a cacophony of competing voices and a lack of clear ownership can grind down new initiatives.

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It's easy to dismiss the importance of clear formatting and typography, but they have a big impact on how easy contracts are to navigate, understand and use.

What types of project do we work on?

TEMPLATE REFRESHES

Optimising the content and design of existing templates.

AUTOMATION

Preparing and optimising contracts for automation.

PLAYBOOKS

Creating guidance and additional clauses to support contracts, including fall-back positions and deal-specific content.



NEW CONTRACTS

Creating new templates, either because clients don't have them or because their existing templates aren't fit for purpose.

CONSOLIDATION

Consolidating templates for clients who have accumulated lots of documents that overlap*.

CONSULTANCY

Helping clients review and define what contract templates they need and their approach to content management.

MAINTENANCE

Helping clients maintain their existing templates, including managing change requests as well as horizon scanning for new legal or regulatory changes.

*Our in-house data scientists have developed advanced techniques to quickly compare and review lots of similar templates alongside each other. This is really powerful when consolidating existing templates.

Tips for your project: Who

Involve users. Lots of people have a stake in what your contract templates say and how they are used. Key business users – such as sales, procurement and customer support teams – will have valuable insights into your existing processes and pain points, so it's great to involve these voices. Identifying stakeholders early and coordinating their input effectively is important.

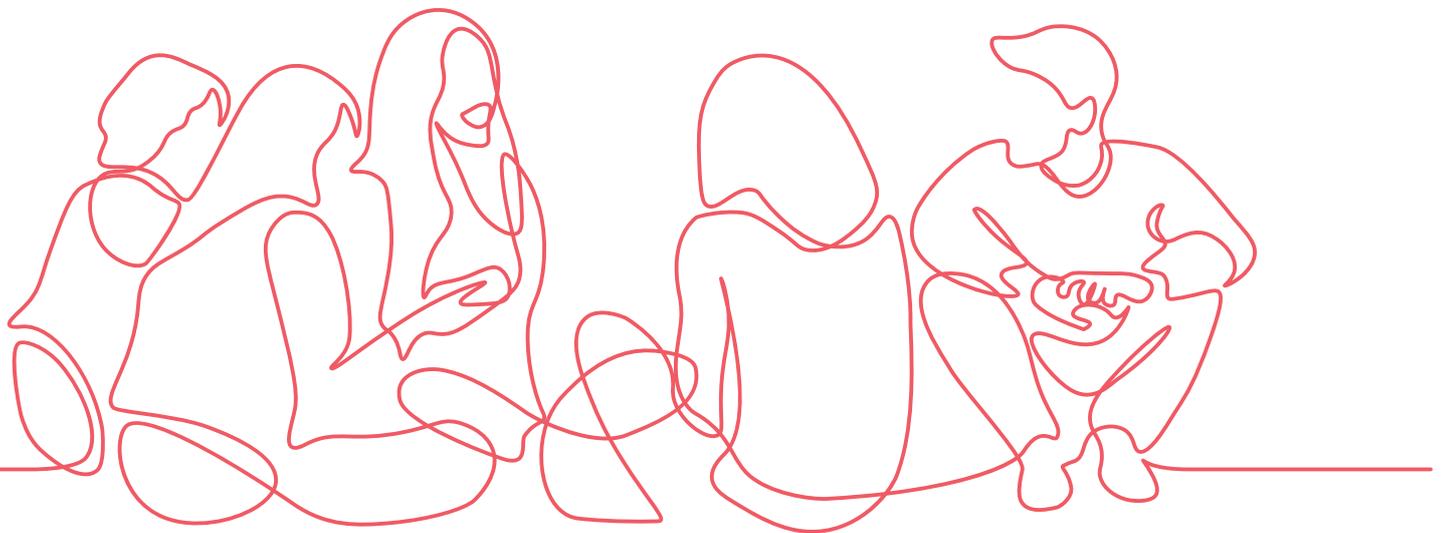
Don't draft by committee. Whilst involving users is important, the job of writing should be limited to a small core team. It helps ensure consistency and avoids the problem of too many [opinions](#).

Identify decision makers. Creating standard contracts triggers lots of decisions. Some will be easy ('What are our standard payment terms?') whilst others may trigger debate ('What should our policy be on liability and indemnities?'). To make the process as efficient as possible, it's best to nominate a small group of decision makers who are empowered to answer questions themselves – or are responsible for getting answers swiftly where they can't.

Consider external support. Bringing in external experts can help combat lots of the challenges identified above (particularly [fighting BAU](#)). Additional resource can speed things along, but more importantly, the right support should act as a critical friend and a creative partner - someone who considers the wider contracting process and helps deliver pragmatic templates based on best practice.

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Contract optimisation is about small changes, not just big programmes. If there's one clause in your contracts that regularly causes unnecessary friction, start there.



Tips for your project: How

Agree guiding principles (Style Guides). Discuss and agree key drafting and design choices early. Ideally these should be captured in a Contract Style Guide that can be used to ensure consistency during the project, as well as a manual for the future work. See the [Contract Style Guides](#) box below.

Look ahead. Try to anticipate future requirements at the outset. For example, is it likely that your templates will need to cover new products in future? Will some clauses be maintained by different teams? You don't want to get stuck in analysis paralysis, but identifying obvious issues and opportunities early could influence the [structure](#) of your templates and avoid unnecessary reworking down the line.

Start with structure. Getting the structure (or 'architecture') of your templates right is important, particularly if you're aiming for modular contracts with lots of optional content. A common structure is to have a front sheet with key commercial details, a set of general terms and then more deal-specific sections for different scenarios. Deciding what should go where will depend on a range of factors, including what deals are most common, what issues are regularly negotiated and what content (if any) will need input from lawyers. Once you've done this thinking, you can map out an outline structure of your templates before zooming in on detailed wording. See the [Architecture Diagrams and Wireframes](#) box.

Prioritise. For larger projects, it's always sensible to plan and develop new templates in a phased approach based of your key priorities. To help with this, consider:

- what templates (or modules) will be dependencies for future work;
- what templates could quickly be put into operation ('quick wins');
- areas where the immediate need is greatest ('pain points'); and
- grouping templates that have the same business stakeholders.

Contract Style Guides

A contract style guide provides instructions about how your contracts should be written and formatted. It's similar to a set of brand guidelines, which most organisations create to ensure their brand is used consistently.

A good style guide will combine general best practice with choices that reflect your organisation's tone of voice and preferred approach.



Contract style guides should cover two areas:

Drafting

Drafting guidelines explain how your contracts should be written. This includes instructions about the consistent use of language and definitions, as well as guidance about words and phrases to avoid.



Design

Design guidelines explain how your contracts should be formatted, including font styles, sizes, spacing, numbering styles and so on. For those who use Microsoft Word, ideally all these elements should be embedded into a properly created Word template file (.dotx) for future use.

Tips for your project: What

Start small and build out. Large projects can be daunting, but if you get your foundations right (remember to [look ahead](#), [prioritise](#) and [start with structure](#)) you can start small and build from there. This generates momentum and will mean that you can start using your first contracts quickly, giving you the opportunity to [test and improve](#) as you go.

Test and improve. Once your first templates have been created we recommend using them in some live deals to see how they work in practice. This is especially important if you plan to implement your contracts into a document automation tool. Once that has been done it can become harder to make routine changes, so factor in time to test and improve the templates before your content becomes relatively 'locked'.

Don't forget design. It's easy to dismiss the importance of clear formatting and typography, but they have a big impact on how easy contracts are to navigate, understand and use. For most contracts this needn't (and shouldn't) be about creating complex, graphical designs. In fact, the constraints of most word processing and document automation tools make this impractical anyway. But creating well-designed, accessible and stable documents using everyday tools is a skill in its own right and should be factored into any good contract optimisation project.

Expect change. It is common for template projects to unearth issues or prompt questions that may not have been anticipated at the start. Questions like 'Do we really need that indemnity?' or 'Why do we have multiple templates for similar products?'. Business priorities can also change. From our experience, it's sensible for your project plan to allow for changes in scope and content.

Architecture Diagrams and Wireframes

We often use architecture diagrams and wireframes to help plan and agree the best contract structure before writing detailed content. These techniques are very common in software development and transfer well to contracts, particularly if you're creating modular documents.

The process doesn't have to be long or complicated – sometimes just a sketch will do - but it's very helpful for ensuring a common understanding of the end goal and for testing and refining ideas about the optimum structure.



Contract architecture diagrams

An architecture diagram is an abstract visualisation of the different parts of a contract and how they fit together. The focus is on the high-level documents or modules that make up the template, rather than individual clauses.



Wireframes

A wireframe is a skeleton or outline summary of a contract. It's a little like an architecture diagram but at the next level of detail. It will typically list individual clause headings and show where they should sit. A wireframe is also a useful tool for demonstrating and agreeing on formatting and design.

Tips for your project: When

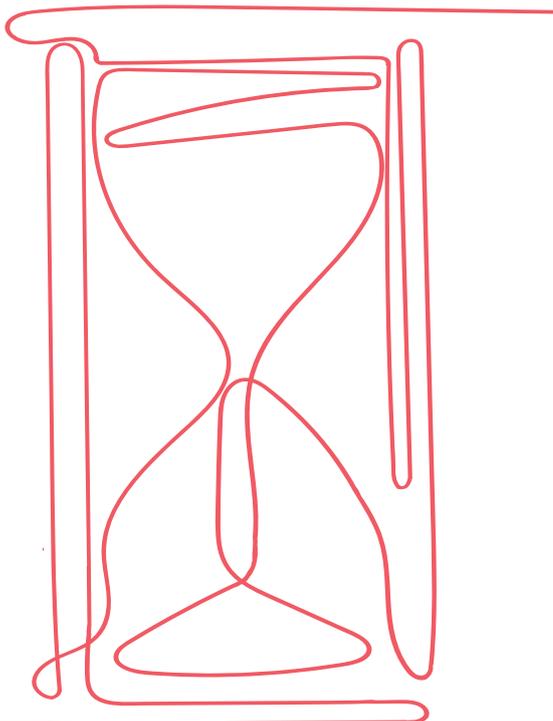
Start now! Given the benefits of better contracts, why wait? Remember, contract optimisation is about small changes, not just big programmes. If there's one clause in your contracts that regularly causes unnecessary friction, start there. And even if you do want to carry out a large refresh project, you can start small and deliver in a phased approach, especially if you [look ahead](#) and [prioritise](#) effectively.

Pace will increase. It's typical for the first few templates to take longer whilst various generic issues are ironed out, such as standard positions on liability and so on. The pace will then pick up as the decisions and content created early on can be reused or built upon in later phases.

Value the process. It's quite common for contract optimisation projects to take longer than initially thought. Sometimes people set expectations based on the more [traditional approach](#) ("Aren't you just tweaking a precedent here and there?") even though they want a fully optimised and design-led service. More often, it's because [changes come up](#) and the process of creating contracts will prompt internal discussion about wider business processes. But rather than being a problem, if managed properly, this process of engaging users, challenging old assumptions and on-going refinement is one of the real benefits of creating better contracts. The process itself drives improvement, not just the outcome.

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Contract Optimisation in Practice: Case Study

The context



- A cyber security business had amassed 28 contract templates to cover different products and sales channels, even though most of the content was the same. The templates were long, outdated, very difficult to maintain and led to unnecessary negotiation.
- This complexity meant the business often relied on lawyers to prepare a first draft for most new deals.

The change



- We consolidated all the templates into a single document with different optional modules. The new document was written in plain English and shorter than just one of the original templates.
- We designed the structure to anticipate different types of contract relationship, with modules that could be used for resellers or could work alongside a customer's standard purchasing terms.
- We aimed for balanced positions that most customers could accept with little or no negotiation whilst carefully addressing the client's key risks.
- The contract included a front sheet for easily inputting the main commercial terms.

The impact



- The business no longer relies on lawyers to create contracts. In-house licensing managers generate contracts within minutes and the majority of deals are now concluded with little or no negotiation of the 'legal' terms.
- The key commercial terms are easy to find for existing deals, with all the most common details in the contract front sheet.
- Updating the contract templates is easy. Any changes only need to be made in one place to cover all products and services.
- The business' legal spend and deal time has dramatically reduced.



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