

Don't Accept the AI Excuse

Obligations apply irrespective of how a service is delivered — by human or by AI.

No need for AI – clauses: standard clauses cover it

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AI as Supplier's Trojan Horse

What suppliers claim

IP disclaimer

no indemnification for AI output

Quality carve-out

AI errors excluded from warranty

Confidentiality gap

Training on client data implicit in AI delivery

Privacy limitation

AI tools cannot guarantee data subject rights

Why it doesn't hold

Supplier's responsibility

The right to use deliverables can't be impacted by the way they were created.

One warranty standard

Representation and Warranties are a supplier core obligation, always.

One confidentiality standard

Confidentiality applies irrespective of tools used.

Privacy Laws apply

DP obligations applies irrespective of tools used.

Scope of this presentation: supplier contracts where the supplier uses AI to deliver services to you.

Not applicable to contracts where you directly license AI tools from their developers (e.g. OpenAI, Anthropic).

The Principle: No Special Rules for AI

Obligations apply irrespective of how a service is delivered — by human or by AI.

1

AI = subcontractor of supplier

Suppliers are typically allowed to use subcontractors without unveiling details to the buyer. However, this shall not impact the suppliers' obligations or the buyer's rights.

The use of AI follows the same logic.

2

The deliverable counts, not the tool

Buyers don't know whether a deliverable was created by a human, AI or a combination of both.

The tool used to produce it is irrelevant. The deliverable must meet the agreed specifications.

3

Standard clauses are sufficient

There is no need to add AI-specific clauses. Doing so risks watering down existing protections.

The principles of the standard clauses apply to AI age mutatis mutandis.

Intellectual Property

Standard position

Buyer owns all IP in deliverables. Supplier ensures transfer — including IP created by employees and subcontractors.

Supplier indemnifies against third-party IP claims.

In the context of AI

AI-generated output is created by a “subcontractor” -> IP must be transferred to the buyer.

Indemnity applies without carve-out.

WHAT TO WATCH FOR IN SUPPLIER CONTRACTS

Warranty carve-out for AI output

— reject. Specifications apply regardless of production method.

IP ownership linked to AI vendor terms

— reject. Buyer has no visibility which tools were used. Supplier must ensure it has the right to the IP created using AI and find a solution for countries where AI generated content is not protected IP.

Indemnity carve-out for AI-generated content

— reject. Buyer has no visibility which tools were used. Third party claims could have severe business impact. Indemnity must cover the full deliverable, no exceptions.

Confidentiality

Standard position

Confidential data is shared on a need-to-know basis only and purpose-limited to service delivery.

Confidential data must be destroyed at contract end.

In the context of AI

Training on buyer data is not required for service delivery and is beyond purpose limitation.

Technical solution for deletion of confidential data at contract end.

WHAT TO WATCH FOR IN SUPPLIER CONTRACTS

Broad data use licence in AI vendor terms

— reject. Training on confidential data is not permitted under the confidentiality clause.

No erasure obligation at contract end

— require it. The confidential data must be destroyed (e.g. destruction of an isolated copy of the AI tool)

Data Privacy

Standard position

Supplier processes personal data only as required for services. Security measures apply. Ensure data subject rights and cross-border transfer restrictions.

In the context of AI

No training on personal data. Supplier must remain able to fulfil data subject requests and respect cross-border restrictions — irrespective of AI tool architecture.

WHAT TO WATCH FOR IN SUPPLIER CONTRACTS

AI-based “impossibility” of data subject rights

— reject. The supplier must structure AI use to remain compliant and to support e.g data subject access requests.

Unclear Cross-border data flows via AI provider

— flag. Standard transfer mechanisms (SCCs) must cover AI tool processing.

Personal data used for AI model improvement

— reject. This is not required for service delivery and is not permitted.

Governance & Risk: What to Require

1 Upfront declaration

Supplier must declare AI tool use in the SOW — which tools, which data processed — before commencement.

2 Risk assessment access

Buyer may review the supplier's AI risk assessment process. No go-live before that review is complete.

3 Risk log

Supplier must maintain a live risk log for AI systems used in delivery. Available to the buyer on request.

4 Cost transparency

Efficiency gains from AI use must be reflected in future pricing — not absorbed silently by the supplier.

5 No vendor lock-in / black box

Supplier must be able to explain how its AI tools operate and how output is generated — enabling transition and avoiding dependency.

Don't Accept the AI Excuse

Standard clauses already cover it — because obligations apply irrespective of how a service is delivered.

AI providers are subcontractors — the supplier's obligations are not reduced by its choice of tool or method of delivery

AI output = deliverable — IP transfer, indemnity and warranty apply irrespective of how it was created

Confidential data must not be used for training and must be destroyed at contract end (e.g. by creation and destruction of an isolated copy)

Data protection obligations apply irrespective of AI tool architecture — data subject rights and transfer restrictions cannot be delegated to the tool

Require upfront declaration of AI use, access to risk assessments and an ongoing risk log

Cost efficiencies from AI must be passed on — transparency is a contractual obligation

A cheat sheet summarising these points is available at www.adrianschaub.com/ai

Public Resources & Downloads

For this video

Slide Deck

This presentation — download and use as reference

Supplier AI Clauses — Cheat Sheet

One-page reference for reviewing supplier contracts

Earlier videos in this series

Supervised AI Markup for Complex Contracts

Video · How to use AI to review supplier contracts against your playbooks

<https://youtu.be/qHMj5fVynk4>

AI-Automated Workflows for Lawyers

Video · How to build automated AI workflows for legal work

<https://youtu.be/REYAJYPtmuQ>

Dealing with AI Errors in Legal Practice

Video · Governance model for risk-based handling of AI errors

<https://youtu.be/Kk7ENH7iwKw>

Basic AI Training for Lawyers

Video · Foundations of AI for legal professionals

<https://youtu.be/xKA-fOe5-DM>