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Founder Thesis

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Technology M&A

Arc Three: The Acquirable Company

The Clause That Lets Your Best Customer Leave

Thesis: In every technology business, somewhere in the contract stack, there is a clause that was written by someone else to protect their own interests. At exit, it becomes the founder's problem. The document is different depending on how the business earns its revenue. The timing problem is the same. A contract stack is not merely legal infrastructure. It is part of the company's transferable asset base. The time to understand which version you are carrying is long before a buyer asks to see your contracts.

Rachel had been building her workforce management software for eleven years. In diligence, the buyer's legal team sent a spreadsheet. Column H was labelled "Change of Control." Forty-two of her ninety-one customer agreements had a tick in it. The buyer's lawyer asked whether she had obtained customer consents. Rachel had not known she needed to.

Michael ran the largest Workday implementation practice in the country. His clients' licence agreements were written by Workday. He had never worried about them. What arrived in his inbox eight weeks into the process was something he had not anticipated: a review of his vendor partner agreement, the document that governed his right to earn a share of every licence he had ever placed. His adviser asked what Workday's position would be on a change of ownership. Michael did not know. Neither did anyone else until they asked.

Sandra had built a managed services business over sixteen years. Long-term contracts. High retention. The kind of recurring revenue a buyer can model with confidence. Three of her largest agreements contained a clause she had accepted at signing without reading closely: the client's written consent was required before the contract could be assigned to a new owner. One of those clients accounted for 19% of her revenue. Her buyer made the consent a closing condition. The client knew it.

I have sat with founders in all three of these positions. The document is different every time. The conversation that follows is almost identical.

01 The Document Nobody Read

The clause did not arrive with bad intentions.

Enterprise customers have always wanted the right to decide who holds their data, who delivers their service, and who earns their commercial relationship. When a legal team drafts a software agreement, the change-of-control provision is standard protection. If the vendor is acquired by a competitor, by a company the customer dislikes, or by anyone they did not choose, the customer wants a door. The clause gives them one.

Vendor partner agreements carry the same logic from the other direction. Workday, Oracle, SAP and the rest choose their implementation partners carefully: certification requirements, quality standards, commercial relationships with end users. They have no interest in those relationships transferring automatically to a buyer they have not approved. So the partner agreement contains a provision that says, in effect: if you change hands, we decide whether the new owner inherits what you built.

The founder who accepted these clauses was not careless. She was building a business, and the customer or the vendor had leverage she did not want to test. The clause went in. The business grew. And the clause sat quietly in the contract stack for years, until a buyer's legal team went looking for it.

02 Where It Lives in Your Business

The clause takes a different form depending on how your business earns its revenue.

If your company owns its software and licences it directly to clients, the clause lives in those agreements.

It may be an express change-of-control provision, triggered when ownership of the company changes hands. Or it may be an assignment restriction, which becomes relevant where the transaction requires the contract to be transferred, assigned or novated. The distinction matters because the transaction structure determines which risk a buyer will need to manage. Either way, if a significant share of your recurring revenue sits in agreements containing such a provision, a buyer's legal team will find them. Each one becomes a question about customer consent. Where the affected revenue is material, unresolved consent may become a closing condition, a price adjustment or another deal-protection mechanism.

If your company is a reseller or implementation partner of a major technology vendor, the clause lives somewhere else entirely. Your clients' licence agreements were written by the vendor. Those are not your document. What is your document is the partner agreement: the arrangement that entitles you to earn vendor-linked economics alongside your implementation and support fees. The agreement commonly contains provisions dealing with change of control, assignment or vendor approval. The agreement may require the vendor's consent, notice or approval if ownership of your business changes hands. Until that position is clarified and, where required, obtained, the economics that make your business profitable may not transfer with the sale.

If your company delivers managed services, consulting or implementation work, the clause may appear in more than one place. Long-term managed services agreements often contain assignment restrictions. Some contain key-person provisions: clauses that tie the agreement to specific individuals or require the client's consent if the business changes hands. The longer the contract and the more embedded the relationship, the more likely these provisions are to exist and to matter.

> *At exit, contract risk is not a legal footnote. It is a question of whether revenue transfers with the business.*

03 What the Buyer Finds

A buyer's legal diligence is partly an exercise in understanding how much of the company's contractual asset base actually transfers.

The process follows a predictable sequence. The data room is uploaded. The legal team reviews the material contracts and focuses on the agreements most likely to affect revenue continuity after close. They are not reading for the commercial story. They are reading for risk.

When they find a change-of-control provision, the wording matters. Some clauses give the customer a right to terminate. Others require customer consent if the transaction is to proceed without putting the contract at risk. Some provisions are triggered only if a competitor acquires the business; others are activated by any change of ownership. Some require notice but not approval. A buyer will not treat those provisions equally, and neither will its investment committee.

What happens next is quieter and more costly than founders expect. Revenue that the buyer had modelled as transferable becomes revenue that requires confirmation. The seller must now manage the process of obtaining consents from customers, or approval from vendors, while simultaneously completing diligence, negotiating terms, and keeping the transaction confidential from anyone who does not need to know.

The practical consequences land in the deal structure. Material consents may become a closing condition: the deal does not complete until specified approvals are in hand. Price is adjusted or held back in escrow pending confirmation that the revenue has transferred. Diligence extends, because the buyer will not commit to a timeline until the consent picture is clear. And the founder's leverage in the final stages weakens, because she now needs the deal to close and has fewer options than she did before.

04 The Version You Cannot Fix

For the ISV and the managed services founder, there is at least an action available. Audit the contracts. Identify which agreements contain the provision. Approach customers at the next renewal, well before any process begins, and seek to remove the restriction, narrow the trigger, or ensure that consent cannot be unreasonably

withheld, delayed or conditioned. It requires time and knowing what to look for. But it is possible.

For the reseller, the situation is different in kind.

A reseller will rarely have practical scope to renegotiate a global vendor's standard partner terms. In most cases, the founder's task is not to rewrite the provision but to understand how the vendor applies it and which buyer profiles it is likely to approve. The document governing a critical revenue stream may have been written by one of the largest companies in the world, and it reflects the vendor's interests, not the founder's.

This is also where the economics of the reseller model make the risk most acute. Depending on the programme, implementation partners may earn recurring licence-related revenue, resale margin, referral commissions or other vendor-linked economics alongside their implementation and support fees. In many cases, that vendor-linked revenue is what makes the business profitable. A buyer that acquires a reseller and loses the vendor's relationship does not simply inherit a smaller business. It may inherit one that cannot sustain itself on services revenue alone.

What the reseller can do is think carefully about who buys the business. A buyer that already holds the relevant vendor partnership may materially reduce the consent risk, because the vendor already knows and has approved the acquirer. But that does not automatically preserve the seller's revenue share, customer registrations, certifications or contractual rights. The partner agreement still needs to be reviewed, and the vendor's process still needs to be understood. This makes buyer selection a different kind of question. The right buyer is not only the one who values the business most highly in the abstract. It is also the one whose existing vendor relationship reduces the consents required and makes approval most likely. That is a process decision, made long before a price is on the table, with someone whose work is to know which buyers qualify.

05 Why This Cannot Wait

There is a reason none of this can be managed once a process is underway.

Approaching a customer to discuss a change-of-control consent during an active sale requires the founder to disclose, or strongly imply, that the business is being sold. The customer learns this before the deal is certain. Some will use the information. They may seek concessions on pricing or service levels in exchange for their consent. They may begin evaluating alternatives. They may slow-walk a response, because time is on their side and everyone in the room knows it.

The same dynamic applies to vendor consent. Approaching Workday or Oracle mid-process to ask whether they will approve a transfer to a named acquirer signals the transaction before it has closed. The vendor knows who is buying. It may have views about that buyer's suitability as a partner. The founder is now negotiating on two fronts at once, with two parties whose interests may not align with the seller's timetable, valuation or preferred buyer.

The way to avoid this is not to manage it faster. It is to have managed it earlier: auditing the contract stack during the ordinary course of business, renegotiating where possible at renewal, understanding the vendor's consent process before a specific transaction requires it, and building toward a buyer universe that minimises the consents required. None of that work can begin once the data room opens. It has to be done before anyone arrives.

06 What Is Already in the Stack

There is a version of this that plays out in almost every transaction involving a founder-led technology business, and it is rarely dramatic.

The buyer's legal team flags the provisions. The seller's adviser works the consent list. Many customers consent when the relationship is strong, and the proposed owner creates no obvious concern. Vendor provisions can often be managed where the buyer profile has been selected with the vendor relationship in mind. The deal closes, later and at greater cost than it needed to, but it closes.

The version that does not close, or closes at a different price, is the one where the exposure was not understood until someone else found it. Where the client representing twenty per cent of revenue decides that a change of ownership is the moment to ask for a price reduction.

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Where the vendor declines consent for a buyer the founder chose without checking who would qualify.

Neither outcome is inevitable. Both are foreseeable risks. A founder who maps them early can reshape customer terms at renewal, understand vendor approval pathways, and select buyers whose ownership creates the least disruption.

Rachel, Michael and Sandra all sat across the table from a buyer who had found what they had not looked for themselves.

The document was different in each case. The moment was the same.

The clause was not written to protect them. It never was.

THE ACQUIRABILITY ASSESSMENT
Understanding your contract exposure is part of understanding your acquirability. The Acquirability Assessment maps where transferability risk sits in your business, across customers, vendor relationships, management and systems, and is the entry point to Nexxit, Cube Capital's acquirability programme.
Begin the free assessment at **nexxit.ai**

Cube Capital advises founders and boards of Australian software and technology companies on exit preparation and cross-border M&A transactions. The firm works exclusively on the sell side, retained by founders who want an independent view of how buyers will price their business, where value may be lost, and what can be done before a transaction begins.

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Founder Thesis began with Arc One, The Prepared Founder Premium (Issues 01–05).

The Other Side of the Table is Arc Two (Issues 06–14).

Arc Three: The Acquirable Company

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Issue 16 *One Buyer Is Not a Market*

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