

Implementing new technology – what are the risks?

By Chris Dann

Innovations in technology are changing how the world does business, but implementing technology-driven systems and processes within your business is a high-risk operation.

Technology is, and will continue to be, integral to all successful supply chain participants. The upside from new technology is clear, but implementation can carry risks. Below are some key issues to look out for, and ways you can protect your business, when acquiring new technology.

Ask the right questions

It is imperative that the contract documentation clearly answers the following questions in a manner that meets your expectations and ensures fitness for purpose.

Does the software do what you need and expect it to do?

Ideally, the supplier will warrant software performance by reference to functional requirements (what it does, not just what it looks like). Certainly, that should be the case for developed software or material customisations. For packaged 'off the shelf' software, the supplier may only state it complies with their published descriptions. In this case, it is important to carefully consider those descriptions to make sure the software is fit for purpose.

What are the associated services and deliverables the supplier will provide?

Implementation, including installation, data migration, configuration, customisation and development, may be the subject of a separate professional services agreement. Be clear on what the supplier will do (typically the contract is much clearer on what the supplier won't do) and any assumptions and dependencies the supplier is relying on – are they realistic?

It is unlikely that off-the-shelf software can just be 'plugged in' and immediately meet your needs. Consider compatibility with existing systems and processes. Do a gap analysis, and plug the gaps either by changing your own systems and processes or by making sure that software will be customised to fit. Acceptance testing before you go



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live' is crucial to ensure the software, as developed and installed, meets your requirements. The contract should set out a clear testing process and detail what success/failure looks like and the consequences.

Can you use the software how, where and when you intend?

Check for any restrictions on how you can use the software – for instance, limits on the purpose/context of use, maximum number of concurrent users, hardware on which the software is loaded, data storage, use by related companies, use by contractors or third parties.

Make sure that any such restrictions are workable, taking account of your current and future business requirements. Perhaps the limits are OK now, but what happens if you grow – is the software scalable, and at what cost?

Can you terminate the licensing arrangements if you no longer need the software?

Check the contract documentation carefully to answer this question. Also check whether the supplier can terminate your licence without cause and/or cease supporting the version you have installed, and what happens on termination – is transition and data migration dealt with?

Get visibility of total costs

Costs can easily exceed your expectations if you don't do your homework upfront and exercise vigilance throughout the project. Ensure you can answer the following questions.

How is the pricing calculated?

Is it a fixed cost (in which case defining scope is vital) or time

and materials (in which case we recommend appropriate rigour around providing, updating and reporting against estimates and disciplines for disbursements – are travel (business class?) and accommodation (5 star?) costs expected)?

What are the total costs?

It is important to consider licence fees, professional services fees, support services fees, fees for scaling up (adding users/sites/modules) etc. Watch out for cost-creep!

How can the pricing change?

Standard supplier terms often have unrestricted rights to adjust hourly rates and charge more in a variety of (sometimes surprising) circumstances. Variations are a common cause of projects running over budget, so ensuring the project is properly scoped upfront is key, and a robust process should be required before changes are authorised.

A milestone-based payment regime helps incentivise good performance. Licence/subscription fees (and ideally a material chunk of any professional services fees) should not be payable until full live commercial operation of the software following successful acceptance testing.

During implementation

This is the time when good project management is essential. Timeliness of delivery is usually critical – if the project is delayed, significant unbudgeted costs can

be incurred and revenue lost. The contract should require good project management disciplines to help mitigate that risk. For instance, a detailed project plan should be prepared and regularly reported to, and a project team might be formed with representatives from customers and suppliers to monitor progress and identify, discuss and resolve or escalate issues as they arise.

Consider what remedies are available in the event of delay, which may include pecuniary consequences such as liquidated damages, rectification plans to get things back on track and ultimately termination.

After the implementation

Unfortunately, the risks do not end after implementation, and now is the time to consider maintenance, support, hosting and escrow. Be specific about your expectations of training, maintenance and support post implementation:

- ▶ Are new updates/releases provided? Are you obliged to take them and at what cost? Who will customise the new update/release to fit with your system?
- ▶ What is the scope of services, and do they overlap with the warranties?
- ▶ What are the service levels (e.g. minimum response and rectification times, helpdesk availability, maximum downtime for a hosted solution), and what are the consequences of failing to achieve those service levels?

If the software is business critical, what happens if the supplier can't or won't maintain it? You might consider an escrow agreement – a tripartite agreement under which the supplier agrees to deposit a copy of the source code with an escrow agent, and the escrow agent undertakes to the supplier and the customer that he will deliver a copy of the source code to the customer in certain events normally limited to the supplier's insolvency or its refusal or inability to provide maintenance.



Chris Dann heads the national transport and logistics team for the Anthony Harper commercial law firm, one of the few in New Zealand with strength and experience along all facets of the supply chain; for further information, visit www.anthonharper.co.nz