



Covid-19 Pandemic

Customer, Vendor, and Contract Best Practices

If you're getting requests from customers for refunds or cancellations, or not sure how to handle adjusting your own contracts with vendors, this guide is for you.

First, take a deep breath. We're in uncharted waters. No one has the "one" right answer. In law, we rely on precedents, which means we look back to how courts have ruled in similar situations in the past. There is no precedent here. So we're all going to have to do our best. Read on for some of our best practices as you navigate tough questions around your customers and vendor relationships.

How should I respond if a client wants to cancel their contract, their membership, or asks for a refund?

I always recommend starting by checking your client contract (or terms and conditions / terms of use for a digital product, online course, or membership).

Back when none of us could have imagined we'd be here, what did you agree on about these key terms:

- Cancellation / Termination
- Refunds
- Act of God / Force Majeure / Impossibility

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These terms may be scattered throughout your contract, so print it out and circle things or make notes with a red pen or highlighter. I think it helps to mark up a paper copy in case you need to refer back to it later.

Note that you're not bound by these terms forever, but they're a starting point to your decision making process because they're what a court would hold you to if either side filed a lawsuit.

Even if you find an Act of God / Force Majeure / Impossibility term in your contract (many service provider contracts don't include these because frankly for online business, this has not been a major concern before now), I can almost guarantee it doesn't mention pandemics. We are all figuring this out as we go. There will be lawsuits for years about these contract terms.

Now comes the hard part: you're probably going to have to compromise. In this climate, everyone is taking losses.

There's a human on the other side who's probably freaking out. Can you give a little so that you both take a little hit, but neither of you is devastated?

Examples:

- You agree to cancel a contract and keep only the deposit, or some smaller amount.
- You offer extended payment terms to keep a customer from canceling altogether.
- You reduce your scope of services (and pricing) to retain a client who's in a cash crunch.
- You postpone projects and agree to honor current pricing when they engage you in the future.

I encourage you to consider your company's values as you're making this position, as well as your customer relationships and reputation. Drawing a hard line in the sand at your contract terms may end up backfiring if your customers never work with you again, and never refer future business to you. I don't ever advocate working for free or giving away your digital products, but the more you can be flexible and accommodating, the better position you'll be in when we enter our "new normal" in (hopefully) a few months.

Consider filing a lawsuit to be your very last option, only after you've done your very best to reach a compromise. Believe me when I tell you that suing someone is almost always a terrible Return On Investment (ROI) and usually costs more in attorneys' fees, lost productivity, and stress than is gained by any damages award.

No matter what you decide, be proactive with your client communication. Check in. Ask how they're doing. See how you can be helpful. The more you do this, the earlier you'll learn about potential issues with payments or the need to postpone or cancel projects.

What should I do if I can't fulfill my contracts because my kids are home and I can't work, or I can't get the supplies I need (or some other COVID-19 related issue)?

Again, check your contract. What does it say about delays or cancellation, and is there an Act of God / Force Majeure / Impossibility term? Are there other circumstances that allow you to terminate or cancel the contract?

If the answer is yes, see if there's a specific way you're required to notify your client that you can't fulfill your side of the agreement, or want to cancel or terminate due to COVID-19, and follow it.

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If the answer is no, you can still reach out to your client and explain why you can't fulfill the contract as expected.

More communication, earlier, is always best. The client will likely (understandably) be upset.

Compromise is going to be the name of the game. What can you do to make things as right as you can? Offer a full or partial refund? Offer to fulfill the order / complete the project at a later date or on a new timeline?

What if I'm getting pushback on canceling a contract for an in-person event I had to postpone? What if my attendees are demanding refunds?

We've been working with many of our clients who had planned live events that they have either chosen to cancel to comply with government guidelines, or have been forced to cancel due to government orders restricting gatherings of large groups, travel from other countries, or other complications from COVID-19.

I'm going to sound like a broken record, but check your contract for termination, cancellation, and Act of God / Force Majeure / Impossibility terms.

We've found that venue and hotel contracts typically include very restrictive cancellation terms and stiff penalties. However, some venues and hotels are willing to accommodate either rescheduling for a future date, or cancellation without major monetary penalties, based on COVID-19. This is case-by-case, so reach out to your contacts and ask how they're handling this issue.

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If you had event insurance, check your policy to see if it will cover cancellations due to pandemic, and check your general liability policy to see if any coverage is available.

If attendees are requesting refunds and you've moved the event virtual or to a later date, check the terms and conditions that you asked them to agree to when they purchased (or any refund language on your sales page if you didn't have them agree to terms and conditions).

You're within your rights to stick to that refund policy, but you can always be more generous if it works for your business -- can you offer free transfer of tickets, or to a later event?

How can I adjust my contracts with contractor team members like graphic designers, social media consultants, copywriters, or others?

If you've made it this far, you already know: check your contract to see what it says.

And then talk to your team member. They know what's going on. This will likely not be a surprise.

Work together to find a scope of work that you can afford and they are willing to do.

If you change the terms of your contract - whether it be scope of work, pricing, or payment terms - be sure to put it in writing, signed by both of you, so there are no questions later on. (Avoid email for this because it can be difficult to piece together what you agreed on if it's multiple emails in a lengthy chain).

If necessary, terminate the contract with as much grace as you can manage.

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