

# Computer Contracts

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# What is a Contract?

- An **agreement** is a set of mutual promises made between parties, but not necessarily enforceable
- A **contract** is an agreement recognized by law, meaning courts can enforce its performance
- Contracts can be between **natural persons** or **legal entities** such as companies
- No specific format is required, the focus is on the **intent to create legal obligations**
- Each party must receive or give **something of value**, forming the consideration that supports the contract

# Contract vs. Agreement

	Contract	Agreement
Legal Enforceability	Legally binding and enforceable in a court of law	Not always legally enforceable
Formality	Usually formal and written, especially for business or legal matter	Can be informal, verbal, or even implied
Required Elements	Must include offer, acceptance, consideration, legal intent, capacity, legality	May lack one or more of the essential legal elements
Legal Consequences	Breach allows the non-breaching party to seek legal remedies	Breach may damage trust but often lacks legal consequences
Common Examples	Employment contracts, NDAs, service agreements, sales contracts	Verbal promises, informal understandings, handshake deals
Purpose	To clearly define and legally protect each party's responsibilities	To establish a mutual understanding or cooperation

# Essential Elements of a Valid Contract

1. **Offer:** A clear proposal showing willingness to enter a legally binding arrangement
2. **Acceptance:** An unequivocal agreement to the offer's terms
3. **Awareness:** An understanding of the terms and conditions
4. **Consideration:** Something of value exchanged between the parties, such as money, goods, services, or promises to act (or refrain from acting) in a certain way
5. **Capacity:** The legal capacity of all parties involved to authorize a deal on behalf of the company
6. **Legality:** The purpose of the contract must be lawful — a contract cannot be formed with the intention to carry out an illegal act



# Why Computer Contracts are Unique?

- **Intangible Nature of Software:** Software cannot be physically inspected like hardware, making quality, performance, and completeness harder to verify.
- **Ambiguous Requirements:** Many IT projects start with unclear or evolving specifications, increasing the chance of misunderstandings and scope disputes.
- **Intellectual Property Challenges:** Ownership of source code, documentation, algorithms, and design assets must be explicitly defined to avoid future conflicts.
- **Operational Dependency:** A system failure can halt payroll, billing, logistics, or public services, causing significant financial or reputation damage.
- **Rapid Technological Change:** Hardware and software can become outdated quickly, requiring upgrades, migrations, or renegotiations during the contract.
- **Integration Complexity:** IT systems must work with existing databases, servers, networks, and third-party tools, increasing risk if not properly planned.
- **Higher Risk of Disputes:** Vague deliverables, undefined acceptance criteria, and poor documentation frequently lead to disagreements and blame-shifting.
- **Security & Compliance Requirements:** Contracts must address security, data protection, backups, and audit requirements, especially when dealing with sensitive data.

# Key Questions in Assessing IT Contracts

- **What if the software has defects?**

Determine warranty terms, bug-fix responsibilities, and limits of liability.

- **What if the system fails during critical operations?**

Contracts must define support response times, backup plans, and disaster recovery procedures.

- **What if the client misuses or illegally distributes the software?**

Licensing terms must clearly restrict copying, sharing, or unauthorized modification.

- **What if performance is too slow or below expectations?**

Include measurable benchmarks, performance tests, and acceptance criteria.

- **What if the system becomes outdated or unsupported?**

Define upgrade options, long-term maintenance, and vendor obligations.

- **What happens if third-party IP is violated?**

Indemnity clauses determine who bears responsibility for IP infringement.

# Case Study: Ministry of Information vs Faujisoft (2001)

## Project Details

- Rs 1.1 million project
- MIS with 4 modules: Personnel, Inventory, Accounts, News Archiving
- Rs 0.550 million bank guarantee was there (6-months validity)
- Oracle 8 was purchased (licensed) from Ora-Tech, 2 DBA's trained

## Requirements & Contract Issues

- No formal requirements / specifications were provided by the Ministry
- Faujisoft itself studied and proposed a system
- Contract was developed by Faujisoft and approved without consultation of the Ministry of Law

## Financial Aspects

- Faujisoft got money in advance (initial stages)

## Delivery Problems

- Software delivered was full of bugs
- Not meeting user requirements
- Could not get implemented

## Contractual Consequences

- As per contract / terms & conditions, nothing could be claimed
- Poor Contract -> how much loss of public money?

# General Terms & Conditions of a Contract

1. **Scope / Requirements Specification:** Defines what the system must do.
2. **Contract Management:** How progress, communication, and reporting will occur.
3. **Price:** Total cost of the project or services.
4. **Payment Conditions:** When and how payments will be made.
5. **Delivery and Acceptance:** Criteria and process for approving deliverables.
6. **Intellectual Property Rights:** Who owns the software, code, and documentation.
7. **Information, Facilities & Materials Provided by Client:** What the client must supply.
8. **Conditions Relating to Staff:** Roles, responsibilities, and qualifications of personnel.
9. **Change Control:** How scope changes will be requested and approved.



# Supreme Court of Pakistan

- 10. Warranty:** Period during which defects will be fixed at no cost.
- 11. Liability for Loss or Damage:** Defines financial responsibility for failures.
- 12. Confidentiality:** Protects sensitive business or technical information.
- 13. Indemnity:** Protection against losses caused by one party's actions.
- 14. Termination:** Conditions under which the contract can end early.
- 15. Force Majeure:** Exceptions for events beyond control (e.g., natural disasters).
- 16. Notices:** How official communication must be delivered.
- 17. Arbitration:** Process for resolving disputes outside court.
- 18. Applicable Law:** Jurisdiction governing the contract.

# Purpose of Contracts

- Contracts set out the **agreement between the parties**
- They define the **aims of the parties** and expectations
- They address **issues that may arise** during the contract
- They outline **how the contract can be terminated**
- They specify the **consequences of termination**
- Contracts provide **legal security** to both the customer and software developers
- Gaps may exist when parties fail to consider specific issues
- Contracts rarely cause disputes when everything runs smoothly, but when things go wrong, problems arise
- Example often used: **Marriage**, where disputes appear only when expectations fail

# Structure of the Contract (Introductory Section)

- The first part of the contract is **brief and formal**
- It states that it is an **agreement between the parties**, along with their names and registered addresses
- It usually begins with a **definitions section**
- Definitions clarify how certain terms will be used throughout the contract

## Example:

- Company X Ltd, the software house, is defined as “**The Company**”
- Company Y Ltd, the client commissioning the work, is defined as “**The Client**”

# Structure of the Contract (Clause Section)

## 1. What is to be produced?

It is clearly necessary that the contract states **what is to be produced**.

Refers to a separate document which constitutes the **requirements specification**.

- Software engineers will be familiar with the problems of **producing requirements**
- A **specification** sets out the detailed requirements of the client. Ideally, the
- Specification should be complete, consistent and accurate and set out all that the client
- Wants to be done in the performance of the contract

# Structure of the Contract (Clause Section)

## 2. What is to be delivered?

Producing software for a client is not, usually, a matter of simply handing over the text of a program which does what is required.

The following is a non-exhaustive list of possibilities:

- Source code;
- Command files for building the executable code from the source and for installing it;
- Documentation of the design and of the code;
- Reference manuals, training manuals and operations manuals;
- Software tools to help maintain the code;
- User training;
- Training for the client's maintenance staff;
- Test data and test results.

# Structure of the Contract (Clause Section)

## 3. Ownership of rights

It is important that the contract should also state just what legal rights are being passed the software house to the client under the contract. Ownership in physical items such as books, documents or discs will usually pass from the software house to the client, but other intangible rights, known as intellectual property rights.

It is important for the contract to state precisely who is to own these rights. Do they pass to the client or are they retained by the software house?

# Structure of the Contract (Clause Section)

## 4. Confidentiality

A second area of intellectual property law which should be considered in a software contract is confidentiality. The commissioning client may well have to pass confidential information about its business operations to the software house. On the other side of the coin, the software house may not want the client to divulge to others details of the program content or other information gleaned about its operations by the client.

# Structure of the Contract (Clause Section)

## 5. Obligations of the client

In almost all cases where work is being carried out for a specific client, the client will have to fulfil certain obligations if the contract is to be completed successfully. The following is a (non-exhaustive) list of possibilities:

- provide documentation on aspects of the client's activities or the environment in which the system will run;
- provide access to appropriate members of staff;
- provide machine facilities for development and testing;
- provide accommodation, telephone and secretarial facilities for the company's staff
- when working on the client's premises;
- provide data communications facilities to the site.



# Structure of the Contract (Clause Section)

## 6. Standards and methods of working

The supplier is likely to have company standards, methods of working, quality assurance procedures, etc. and will normally prefer to use these. More sophisticated clients will have their own procedures and may require that these be adhered to.

In some cases, the supplier may be required to allow the client to apply quality control procedures to the project. The contract must specify which is to apply.

# Structure of the Contract (Clause Section)

## 7. Project Managers

Each party needs to know who, of the other party's staff, has day-to-day responsibility for the work and what the limits of that person's authority are. The standard terms and conditions should therefore require each party to nominate, in writing, a Project Manager.

The Project Managers must have at least the authority necessary to fulfil the obligations which the contract places on them. It is particularly important that the limits of their financial authority are explicitly stated, i.e. the extent to which they can authorize changes to the cost of the contract.

# Structure of the Contract (Clause Section)

## 8. Acceptance procedure

Acceptance procedures are a critical part of contract for they provide the criteria by which successful completion of the contract is judged.

The essence of the acceptance procedure is that the client should provide a fixed set of acceptance tests and expected results and that successful performance of these tests shall constitute acceptance of the system.

# Structure of the Contract (Clause Section)

## 9. Indemnity

It could happen that, as a result of the client's instructions, the supplier is led unwittingly to infringe the intellectual property rights of a third party or that, through carelessness or dishonesty, the supplier provides a system which infringes such rights—perhaps through using proprietary software as a component of the system delivered. For this reason, it is advisable to include a clause under which each party indemnifies the other for liability arising from its own faults in this respect.

# Structure of the Contract (Clause Section)

## 10. Termination of the contract

- There are many reasons why it may become necessary to terminate a contract before it has been completed.

For example, for the client to be taken over by another company which already has a system of the type being developed, or for a change in policy on the part of the client to mean that the system is no longer relevant to its needs

- The contract makes provision for terminating the work in an amicable manner

# **Structure of the Contract (Clause Section)**

## **11. Arbitration**

If the event of a dispute that cannot be resolved by the parties themselves, they agree to accept the decision of an independent arbitrator.

## **12. Inflation**

In lengthy projects or projects where there is a commitment to long term maintenance, the supplier will wish to ensure protection against the effects of unpredictable inflation.

To handle this problem, it is customary to include a clause which allows charges to be increased in accordance with the rise in costs.

# Structure of the Contract (Clause Section)

## 13. Applicable law

Where the supplier and the client have their registered offices in different legal jurisdictions or performance of the contract involves more than one jurisdiction, it is necessary to state under which laws the contract is to be interpreted.

# Structure of the Contract (Authority Section)

- The authorities of both party signature on the term and conditions mentioned in the clause section.
- The most Important things are Starting and ending date of an Agreement.
- Only an Authorized person from each party is mentioned in this Section.



**Thank You**