

Types of Software Contracts

Computer Contracts - definition

- **Computer Contracts** means all agreements, **contracts**, permissions, undertakings, arrangements and understandings (whether written or oral) under which any third party (including the Seller or any of its Group Members (other than any Group Company) and any source code deposit agent) provides any element of, or services relating to, the **Computer** Systems, including leasing, hire purchase, licensing, hosting, support, maintenance, disaster recovery and other services;

Computer Contracts

- **Fixed Price Contracts for Bespoke Systems**
- Consultancy and Contract Hire
- ‘Cost Plus’ Contracts
- Outsourcing Contracts
- Web Hosting Contracts

Computer Contracts

- **Fixed Price Contracts for Bespoke Systems:**

- Bespoke / Tailor-made Systems
- Parts of the Contract:
 - Short Agreement
 - Standard Terms & Conditions
 - Schedules / Annexes
 - Particular Requirements
 - What to be supplied?
 - When?
 - What payments? When?

Fixed Price Contracts for Bespoke Systems:

- Issues in Bespoke System Contract:
 - What is to be produced?
 - What is to be delivered?
 - Source Code
 - Command Files
 - Documentation of the design and the code
 - Reference Manuals, training manuals, operation manuals
 - Supporting Tools to help maintain the code
 - User Training
 - Training for client's staff maintenance
 - Ownership of Rights / IP Rights
 - Confidentiality

Fixed Price Contracts for Bespoke Systems

- Payment Terms

Payment shall become due within thirty days of the date of issue of an invoice. If payment is delayed by more than thirty days from the due date, the Company shall have the right, at its discretion, to terminate the contract, or to apply a surcharge at an interest rate of 2 per cent above the bank base lending rate.

- Initial payment of 15% of the contract value becomes due on signature of the contract
- Further stage payments become due at various points during the development, bringing up to 65%
- Further 25% on the acceptance of the software
- Final 10% at the end of the warranty period

Fixed Price Contracts for Bespoke Systems:

- Calculating Payments for Delays and Changes
- Penalty Clauses
 - Delays caused by the supplier
 - Suppliers very reluctant to accept such terms
 - Such clauses -> higher bid price
- Obligations of the Client
 - Provide documentation on aspects of the client's activities or environment in which the system shall run
 - Provide access to appropriate members of the staff
 - Provide machine facilities for dev and testing
 - Provide accommodation, telephone and secretarial facilities for the company's staff when working on client's premises
 - Provide data communications facilities to the site
 - Failure to meet these obligations may render the client liable for delay payments

Fixed Price Contracts for Bespoke Systems:

- Standards and methods of working
 - Supplier to have standards, methods of working, QA procedures, etc
 - Sophisticated clients can also have their own procedures
- Progress meetings
 - They must be required to be held
 - Minutes of the meeting, progress monitored
- Project managers
 - Each party nominates in writing
 - PM – have authority to fulfill the obligations of the contract
 - How much financial authority
 - Extent to which change can be authorized

Fixed Price Contracts for Bespoke Systems:

- Acceptance procedure
 - Fixed set of acceptance tests
 - But more cannot be added later
 - Who shall be present when the tests are being conducted, what if results are not satisfactory
- Warranty and maintenance
 - Lessen the warranty period – cost reduced
 - Increase the warranty period – cost is increased
 - When warranty period is over, client can still demand for maintenance
 - Which is done of time and material basis
- Inflation
 - Long term maintenance – once/twice a year
- Indemnity (Insurance)
 - Guarantees to cover any cost the other party becomes subject to because of its own faults

Fixed Price Contracts for Bespoke Systems:

- Termination of the contract
 - Client taken over
 - Change in policy of the client, so system no more valid
 - Time and resources to be re-deployed for another project
- Arbitration
 - Avoid litigation and heavy expense of paying the lawyers
 - Computing council
 - Computer society
 - IT ministry
- Applicable law
 - Where supplier and client have offices in different legal jurisdictions
 - Performance of the contract in different jurisdiction

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- **Consultancy and Contract Hire:**

- Contract hire is an agreement in which the supplier agrees to supply the customer with the services of a certain number of staff at agreed daily or hourly charge rates.
- Very simple sort of contracts
- Closely related are freelance agreements
- Consultancy is an up-market version of contract hire
 - Experts called by organizations for assessment and advice
 - Mostly fixed price contracts

Computer Contracts

- **Consultancy and Contract Hire:**
- **Consultancy Contract – Major Aspects:**
 - Confidentiality
 - Terms of Reference
 - Common source of disagreement
 - Includes scope, work description, deliverables, payments, etc
 - Liability
 - Consultant minimize their risks for loss due to their advise
 - Opt for professional liability insurance
 - Who has control over final version? (Draft version by consultant)

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- **'Cost Plus' Contracts:**

- **Also called 'Time and Materials' Contract**
- Supplier agrees to undertake the development of the software in a fixed price contract manner but final payment is made on the basis of actual costs incurred with labor charges as contract hire
- Used when work not specified, part of supplier's task is to specify what is required.
- Avoid contingency allowance

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- **Outsourcing Contracts:**

- Sometimes known as facilities management
- Is the commercial arrangement under which a customer (company/organization/person) hands over the planning, management and operations of certain functions to supplier.
- Logic / Reason: core competencies of supplier
- Major points to be addressed:
 - How is performance to be monitored and managed?
 - What if performance is unsatisfactory?
 - Which assets / staff being transferred?
 - Audit rights
 - Contingency planning and disaster recovery
 - IP rights in software development during contract
 - Duration of the agreement, and Termination provisions

Computer Contracts

- **License Agreements:**

- Types of restrictions imposed by a license agreement
 - Desktop license / single copy
 - E.g. a computer game purchased from a retail outlet.
 - Server license / multiple copies per server
 - E.g. for large multi-user database management systems and for application such as accounting packages intended for the corporate market.
 - Site license / multiple copies on a specific location
- Concerns for the software vendor:
 - Not giving any of its own rights
 - Limiting the extent to which the customer can use the software
 - Ensure a regular income from support activities
 - Ensure it is not liable for any defects

Computer Contracts

- Product liability insurance
 - protects against claims of personal injury or property damage caused by **products** sold or supplied through your business
- Professional liability insurance
 - but more commonly known as **errors & omissions (E&O)** in the US, is a form of liability insurance which helps protect professional advice- and service-providing individuals and companies from bearing the full cost of defending against a negligence claim made by a client, and damages awarded in such a civil lawsuit.

Computer Contracts

- Unfair Contract Terms Act 1977
 - A statute which imposes limits on the extent to which liability for breach of **contract**, negligence or other breaches of duty can be avoided by means of **contractual provisions**
- Health and Safety Act at Work 1974
 - Employers must protect the '**health, safety** and welfare' at **work** of all their employees, as well as others on their premises, including temps, casual workers, the self-employed, clients, visitors and the general public

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- **Web Hosting Contracts:**

- Collocation vs. Hosting
- Search Engine Registration
- Online Promotion
- Service Levels:
 - Server Response Time and Throughput Capacity
 - Server Uptime
 - System Redundancy
 - User Support
- Security