1. From a company’s terms and conditions of sale

The Customer shall make payment in full and without any deduction or withholding whatsoever on any account within thirty days of the expiration of the month in which the invoice is dated or some later date following invoicing which must be expressly evidenced in writing as having been agreed between the Company and the Customer and should the payment not be received in full when due there shall accrue interest on the outstanding residue at the rate of 5% per annum above the base lending rate of ABC Bank plc from time to time which shall be payable by the Customer.

1. Quickly read through the following and check off items you think are important. Use a 1-5 scale, where 1 = not important and 5 = very important indeed. Would you add any other characteristics?

\_\_\_\_\_\_\_\_Clear \_\_\_\_\_\_\_\_Organized

\_\_\_\_\_\_\_\_Specific and concrete \_\_\_\_\_\_\_\_Abstract and general

\_\_\_\_\_\_\_\_Unclear \_\_\_\_\_\_\_\_Accurate terminology

\_\_\_\_\_\_\_\_Correct grammar, punctuation, usage \_\_\_\_\_\_\_\_Long and detailed

\_\_\_\_\_\_\_\_Easy to read

\_\_\_\_\_\_\_\_A short summary of agreed terms

\_\_\_\_\_\_\_\_Legal terminology shows that a lawyer wrote it

\_\_\_\_\_\_\_\_Complex

\_\_\_\_\_\_\_\_Favours the party whose lawyer prepared it

1. Do They Have a Contract?

Manoj and Manali are very good friends. Manali’s apartment needs decorating so she calls Manoj, who is unemployed at the moment, and asks him: “Will you decorate all three rooms in my apartment for RS. 20000?” Manoj agrees. On May 1 he spends Rs. 8000 on materials and starts work. On 3 May Manali tells him that she needs the work to be finished by 12 May because her parents are coming to stay. Manoj agrees to finish the work by then. Unfortunately, Manoj is a bit lazy and the work is only half done by 14 May. He finally finishes on 20 May and asks Manali for his RS. 20000, plus RS. 8000 for the materials. Manali can’t believe this. She insists that the RS. 20000 included the cost of materials, and anyway Manoj finished late. She has also lost her job in the last few days and offers him RS. 12000. Manoj consults you for advice.

1. Do They Have a Contract?

Dariusz has been meeting Reelika, a colleague from work, for the past two weeks. He is delighted when she agrees to come with him in a month’s time for a skiing weekend in Italy, for which he pays RS. 10K for both of them. Dariusz buys new clothing for himself for the trip and arranges to have flowers and wine delivered to their chalet as a surprise. He has paid for everything by credit card, which amounted to RS. 15000. Two days before the holiday, Reelika calls him to say that she is ending their relationship and can’t go with him. He insists that she is responsible for at least half of his credit card bill, if not all of it. Reelika consults you for advice.

1. Jill and Jack had a valid contract under which Jack would buy all of the fruit from Jill’s orchard. A fire swept through Jill’s orchard just before the harvest, destroying all of the fruit trees. Jill tells Jack that she will not be able to supply him with the fruit. Jack sues Jill for breach of contract. How should the judge rule?
   1. For Jill, because it has become impossible for her to perform the contract.
   2. For Jack, because Jill did not supply him with fruit as they had agreed.
2. Mike puts an ad in the newspaper stating that he wants to sell his truck for $500. James goes to Mike’s home and tells him that he is interested in buying the truck. After looking at it, James hands Mike $500 in cash, which Mike puts in his pocket. Just then, Steve drives up and tells Mike that he’ll give him $600 for the truck. Mike hands James back his $500 and sells the truck to Steve. James sues Mike for breach of contract. How should the judge rule?
   1. For Mike, because there was no offer and acceptance.
   2. For Mike, because he gave the money back to James.
   3. For James, because once Mike accepted the money, the deal was closed.
   4. For Mike, because he didn’t specifically say why he was taking the money.

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|  | **Firm Fixed-Price (FFP)** | **Fixed-Price Economic Price Adjustment (FPEPA)** | **Fixed-Price Incentive Firm (FPIF)** | **Fixed-Price Award-fee  (FPAF)** |
| **Principal Risk to be Mitigated** | None. Thus, the contractor assumes all cost risk. | Unstable market prices for labor or material over the life of the contract. | Moderately uncertain contract labor or material requirements. | Risk that the user will not be fully satisfied because of judgmental acceptance criteria. |
| **Use When..** | * The requirement is well-defined. * Contractors are experienced in meeting it. * Market conditions are stable. * Financial risks are otherwise insignificant. | The market prices at risk are severable and significant. The risk stems from industry-wide contingencies beyond the contractor's control. The dollars at risk outweigh the administrative burdens of an FPEPA. | A ceiling price can be established that covers the most probable risks inherent in the nature of the work. The proposed profit sharing formula would motivate the contractor to control costs to and meet other objectives. | Judgmental standards can be fairly applied by an Award-fee panel. The potential fee is large enough to both:   * Provide a meaningful incentive. * Justify related administrative burdens. |
| **Elements** | A firm fixed-price for each line item or one or more groupings of line items. | A fixed-price, ceiling on upward  adjustment, and a formula for adjusting the price up or down based on:   * Established prices. * Actual labor or material costs. * Labor or material indices. | * A ceiling price * Target cost * Target profit * Delivery, quality, and/or other performance targets (optional) * Profit sharing formula | * A firm fixed-price. * Standards for evaluating performance. * Procedures for calculating a fee based on performance against the standards |
| **Contractor is Obliged to:** | Provide an acceptable deliverable at the time, place and price specified in the contract. | Provide an acceptable deliverable at the time and place specified in the contract at the adjusted price. | Provide an acceptable deliverable at the time and place specified in the contract at or below the ceiling price. | Perform at the time, place, and the price fixed in the contract. |
| **Contractor Incentive *(other than maximizing goodwill)*** [1](http://www.acq.osd.mil/dpap/contractpricing/vol4chap1.htm#Note 1#Note 1) | Generally realizes an additional dollar of profit for every dollar that costs are reduced. | Generally realizes an additional dollar of profit for every dollar that costs are reduced. | Realizes a higher profit by completing the work below the ceiling price and/or by meeting objective performance targets. | Generally realizes an additional dollar of profit for every dollar that costs are reduced; earns an additional fee for satisfying the performance standards. |
| **Typical Application** | Commercial supplies and services. | Long-term contracts for commercial supplies | Production of a major system based on a prototype | Perfromance-based service contracts. |

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|  | **Cost-Plus Incentive-Fee (CPIF)** | **Cost-Plus  Award-Fee  (CPAF)** | **Cost-Plus  Fixed-Fee  (CPFF)** | | **Cost or  Cost- Sharing  (C or CS)** | | **Time & Materials (T&M)** |
| **Principal Risk to be Mitigated** | Highly uncertain and speculative labor hours, labor mix, and/or material requirements (and other things) necessary to perform the contract. The Government assumes the risks inherent in the contract -benefiting if the actual cost is lower than the expected cost-losing if the work cannot be completed within the expected cost of performance. | | | | | | |
| **Use When..** | An objective relationship can be established between the fee and such measures of performance as actual costs, delivery dates, performance benchmarks, and the like. | Objective incentive targets are not feasible for critical aspects of performance. Judgmental standards can be fairly applied.1 Potential fee would provide a meaningful incentive. | | Relating fee to performance (e.g., to actual costs) would be unworkable or of marginal utility. | | * The contractor expects substantial compensating benefits for absorbing part of the costs and/or foregoing fee or * The vendor is a non-profit entity | No other type of contract is suitable (e.g., because costs are too low to justify an audit of the contractor's indirect expenses). |
| **Elements** | * Target cost * Performance targets (optional) * A minimum, maximum, and target fee * A formula for adjusting fee based on actual costs and/or performance | * Target cost * Standards for evaluating performance * A base and maximum fee * Procedures for adjusting fee, based on performance against the standards | | * Target cost * Fixed fee | | * Target cost * If CS, an agreement on the Government's share of the cost. * No fee | * A ceiling price * A per-hour labor rate that also covers overhead and profit * Provisions for reimbursing direct material costs |
| **Contractor is Obliged to:** | Make a good faith effort to meet the Government's needs within the estimated cost in the Schedule. | | | | | | Make a good faith effort to meet the Government's needs within the ceiling price. |
| **Contractor Incentive *(other than maximizing goodwill)1*** | Realizes a higher fee by completing the work at a lower cost and/or by meeting other objective performance targets. | Realizes a higher fee by meeting judgmental performance standards. | Realizes a higher rate of return (i.e., fee divided by total cost) as total cost decreases. | | If CS, shares in the cost of providing a deliverable of mutual benefit | |  |
| **Typical Application** | Research and development of the prototype for a major system. | Large scale research study. | Research study | | Joint research with educational institutions. | | Emergency repairs to heating plants and aircraft engines. |