Software Contract & Liability

Contract:
An agreement between two parties that creates an obligation to perform (or not to perform) a particular duty.

→ ~~its~~ Contract has no specific form.

Q: What is essential to form a contract

A: → Intention of parties to make the contract
→ Parties must be old enough a mature to make a contract
→ There must be consideration that each party must be receiving & ~~rec~~ providing something

Contract is largely based on common law.

Common law: body of unwritten laws based on legal precedents established by the courts

A contract must be:

→ Clear
→ Complete & consistent
→ Clear from ambiguity.

Structure of contract
→ short intro. ⇒ (definition)
→ what is to be produced. (Annexes)
→ what is to be delivered.
→ Ownership of rights (license, rights)

* Nothing else is important to avoid misunderstanding because any other things might have come up during discussion or negotiations are excluded.

Two levels of references:
→ The standard terms & conditions refer to an annex
→ The annex then refers to a separate doc. which constitutes the requirement specification.

Contract must provide:
→ method for making variation
→ method for payment calculations.
→ method for acceptance testing

Ownership:
legal rights given to the client.

→ If ownership of copyright passes to the client it is known as a <u>sale or assignment</u> (written agreement is imp)
→ If copyright remain with the software house & client is only given permission to use the prod. this is known as <u>license</u>

license includes.
- Duration : (period & termination method)
- Transfer of license
- Scope : e.g one computer, one site etc
- confidentiality : e.g. cannot allow any outsider to use.

Payment terms:
→ Time limit should be addressed.
→ payment must be made in specified times or interest may apply.

★ Delayed or variation in payments to the original requirements are the <u>commonest cause of contract disputes</u>

~~Slide~~ slide 20-21 may read for questions.

Working of Contract formation:

→ Arranging progress meetings
→ Meeting with project managers
→ what will be acceptance procedure
→ Warranty & maintance
→ Termination of contract.
→ Inflation: (vital to add in long-term contracts to specify the inflation over machinary or resources to be used
→ Applicable law.

License Agreements.

→ Giving the right to the customer to use the product in certain ways or conditions.

* → A license may allow the licensee to run as many copies of the software on computers at specified premises. This is also known as a site license

Types of Contracts:

1. Fixed price: seller and buyer agree on a fixed price before starting the work. Used ~~fora~~ for acquiring goods & services with well defined specification & requirement

2. Time & material: After requirement & specifications, work is divided in sprint & client is charged on per sprint. Used when work is uncertain & therefore be a estimated accurately enough.

3. Cost reimbursible: The seller will work for a fixed time period and after finishing he will produce a bill that buyer has to pay. seller is at advantage

→ Fixed price contract: also known as <u>lump sum</u>. Buyer and seller agree on a fixed price. Buyer is at least risk since price is decided. Seller is bound to accept high risk

* Adv: seller is at high risk

* disadv: Due to constraints or ~~overch~~ over budgeting seller may cut the project scope

4. Contract hire: The supplier supplies work force to the client and pay them fixed price per day /hour. Client is responsible to manage the resource. Client may replace any worker.

5. Time & material: In this contract payment is made on the basis of cost incurred, with labor charge in the same way as contract hire. Lies somewhere b/w fixed price & contract hire that's why called hybrid. Usually used when project requirements are not clear hence can't use fixed price.

Consultancy:

Consultant is a person ~~ed~~ called by org. to discuss ~~~~ work flow & strategy or for adivce. Fee is charged on per day basis or per consultancy basis.

→ Fixed fee consulting contract applies to project which are well defined.

→ Open ended consultancy contract is favored by consulting firms as they charge on per day basis and have no incentive to complete the task with in a fixed period.

Important Aspects Of Consultancy Contracts.

1. Confidentiality: consultant should not misuse the client's information

2. Term of reference: what report & overflow might the consultant need to refer to when the issue arises.

3. liability: How to decide liability on an advice

4. Final report ~~Submission~~ Acceptance: usually a draft version before final report.

Outsourcing:

To obtain (goods / service) by contract from an outside supplier.

* → Also known as facilities ~~sup~~ management.

* Organizations (customers) usually outsources some of their issues to the other organizations (suppliers) so they (customers) may ~~of~~ focus on core issues

Important things to consider while outsourcing

→ How the performance will be managed or monitored.

→ what if performance is unsatisfactory

→ which assets are being transfered.

→ transfer of staff.

→ Audit rights

→ Contigency planning & disaster recovery.

→ Intellectual property rights.

→ Duraction of agreement.

Liability for defective software

→ Supplier are reluctant to give an ~~gran~~ garantee of the product. Tho the contract may contain the clause. Most contracts limit the extent of liability to the purchase price of the product or any other service specified in the contract.

→ The supplier is not responsible for the deaths & injuries that may haved caused due to defective Software.

* Aint writing health & safety cuz its shit

read slide 43-46 plis!