

Professional Practices

**“Computer
Contracts”**

Contents

- What is a Contract
- Contract for the supply of custom built software
- Other types of software services contract

What is a Contract

- A contract is an agreement between two or more persons creating rights & duties and which is enforceable by law.
- A contract is a promise or set of promises that are legally enforceable and, if violated, allow the injured party access to legal remedies.
- An agreement between persons which obliges each party to do or not to do a certain thing.

What is a Contract

- Contracts
 - Setout the agreement between the parties
 - Setout the aim of the parties
 - Provides rules for the issues arising while contract is running
 - Ways of terminating the contract
 - Consequences of termination

What is a Contract

**“While optimists make the best deal makers,
pessimists make the best contract writers”**

Hilary Pearson

What is a Contract

- A contract
 - Should be set out in a clear and logical manner
 - should be complete and consistent
 - Should have no ambiguity
 - Should be free of doubts regarding the rights and duties of concerned parties

What is a Contract

- There are four types of contractual arrangement which are widely used in connection with the provision of software services
 - Contract hire
 - Time and materials
 - Consultancy
 - Fixed price

Contracts for the Supply of Custom-built Software at a Fixed Price

Structure of the Contract

- A short introductory section
- A set of standard terms and conditions
- A set of appendices or annexes

The Introductory Section

- The introductory section states that it is an agreement between the parties whose names and registered addresses are given.
- It is dated and signed by the authorized representatives of the parties.

What is to be Produced

- Contract must state what is to be produced.
- Two level references is normally used.

What Is to be Delivered

- Producing software is not simply handing over the text of program.
- Some other possibilities are
 - Source code
 - Command files for building the executable code from the source and installing it.
 - Documentation of the design and code.
 - Different manuals
 - Test data and test results

Ownership of Rights

- Contract should state what legal rights are being passed by the software house the client under the contract.

Confidentiality

- *Confidentiality* is the protection of personal information. *Confidentiality* means keeping a client's information between you and the client, and not telling others including co-workers, friends, family, etc.
- It should be highly considered while writing a contract.

Payment Terms

- Standard terms and conditions will specify the payment conditions like
“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 due date, the company shall have the right to terminate the contract or to apply a surcharge at an interest rate of 2 per cent.”

Calculating Payments for Delays and Changes

- The contract should make provision for payments to compensate the wasted efforts.
- It must specify the process by which these extra payments are to be calculated.

Penalty Clauses

- Delays caused by suppliers are handled by penalty clauses.

Obligations of the Client

- When 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.

Some other sections of a contract

- Standards and Methods of Working
- Progress meetings
- Project managers
- Acceptance procedure
- Warranty and maintenance
- Indemnity
- Termination of the contract
- Arbitration
- Inflation
- Applicable law

Contract Hire

Contract Hire

- Contract hire agreements are very much simpler than fixed price contracts.
- Reason is the much less involvement and responsibility of supplier.

Times and Materials

Times and Materials

- It somewhere lies between a contract hire agreement and fixed price contract.
- The supplier agrees to undertake the development of the software in much the same way as in a fixed price contract, but payment is made on the basis of the cost incurred, with labor charged in the same way as for contract hire.

Consultancy

Contracts

Consultancy Contracts

- Use of consultants is now widespread in both private and public body.
- Consultancy projects are usually undertaken for a fixed price but the form of contract is very much simpler.

Liability for defective software

- There are laws present to ensure the quality of products and goods delivered to a customer.
- Quality of goods include their
 - State and condition
 - Fitness for all required purposes
 - Freedom from minor defects
 - Safety
 - durability

Liability for defective software

- A major difficulty in the case of software is that whether it comes under the category of goods or not.
- Only statement available for the software is **“it must be written with reasonable skill and care”**
- To overcome this difficulty, guarantee clauses are often drafted in the contracts.