

Contracts

1 What is a contract

- An *agreement* between two or more *parties* (legal / natural persons) that can be enforced in a court of law
- All the parties must intend to make the contract - can't fool people into signing
- All the parties must be competent to make the contract:
 - old enough
 - sufficiently sound mind to understand what they are doing
- There must be a (objectively determined) “consideration”, i.e. all parties must be:
 - receiving something
 - providing something

2 Contracts in the UK

- Contract law regulates every transaction:
- Breach of a contract:
 - failure to perform the obligations defined in a contract
 - court can award compensation for damages
- Mostly based on the Common Law i.e. based on past court decisions (precedence)
- Contract law in the UK: a long history
 - “well adapted to effectively handle disputes that arise in fulfilling commercial agreements” [2]
 - Perfectly adequate legislation for traditional transactions
 - * e.g. supply of goods or computers

3 Contracts in the UK

- New technologies came recently into the market:
 - internet
 - e-commerce
- Need for new regulations about new issues, as:
 - electronic signatures (<http://www.legislation.gov.uk/ukpga/2000/7/section/7>),
 - which country's law governs international transactions,
 - ...

4 Fixed Price Contracts

- Used when a company buys a *tailor made* system (or *bespoke system*), i.e.
 - a specially designed system that fits its needs
 - * just a single PC, or
 - * thousands of PCs in several cities

4.1 Components

- Consists of:
 - A short agreement
 - * Signed by the parties of the contract
 - * Clearly states that anything said before is not binding
- Contracts for small-scale development projects:
 - may be much simpler
 - often only exchange of letters (doesn't need to be "formal")
- The standard terms and conditions
 - Normal terms under which the *supplier* does business
- A set of schedules state explicitly
 - for suppliers: *what* and *when* items are to be supplied
 - for customer: *when* payments are to be made
- Annex
 - states precisely *what* is to be provided
 - * source code / documentation / user training / software tools . . .
 - additional stipulations
 - * refers to the requirements specification (separate document)

4.2 Delivery

- Software delivery is not simply delivering the source code which does what is required.
- Important: contract should state a list of deliverables:
 - Source code
 - Command file for building or executing code
 - Design documentation
 - Reference manual, training manual, operating command etc.
 - Software tool to help main the code
 - User training
 - Training for client's maintenance
 - Test data and test results
 - etc.

4.3 Ownership of rights

- Ownership of rights:
 - specifies what legal rights are passed by the software company to the client
- Physical ownership:
 - books / documents / computers / discs usually pass to the client
- Software:
 - potentially protected by Intellectual Property Rights
 - * copyright / design rights / trademarks / patents
- Very important:
 - explicitly state in the contract who has the rights

5 Confidentiality

- During the design of a tailor made system:
 - both parties gain confidential information for the other party
- Obligation of confidence
 - Clause in a contract
 - Separate non-disclosure agreements
 - Subject to Intellectual Property law

6 Payments and Penalties

- Specified by the standard terms and conditions:
 - periods to pay
 - surcharge on overdue payments
- In practice, such clauses are brought into effect only in extreme cases
 - may destroy the goodwill between the two parties
- Usually payment is done in phases
 - it reduces the financial risk of the supplier against
 - * insolvency of the client
 - * any other cash flow difficulties
- Annex:
 - Payment tied to milestones, e.g.
 - * on signature of the contract
 - * at various points during the development
 - * on acceptance of software
 - * at the end of the warranty period
 - Payment for delays and penalties
 - * client / supplier not fulfilling their obligations

7 Acceptance procedure

Critical stage of the fixed price contracts

- Provide the criteria for successful software completion
- Client should provide fixed acceptance test and accepted result
- Test set must be provided at or before acceptance procedure
- Extra tests cannot be added once test set has been delivered
 - To complete acceptance procedure in reasonable time

8 Indemnity

Definition: Indemnity

Supplier is led, unwittingly, to infringe IP of third party

- Using proprietary software
- Which party indemnifies the other for liability?

9 Termination of a contract

- Many reasons to terminate a contract:
 - client chooses another company that covers his/her needs
 - client does not need the services of the supplier anymore
- The contract must specify:
 - payment to the point of completed work
 - costs of redeploying staff
 - ownership of work products
- Both parties may accept in the contract that:
 - in the case of conflict (dispute), they will accept the decision of an independent arbitrator (e.g. from the BCS)
- Arbitration Act 1996 <http://www.legislation.gov.uk/ukpga/1996/23/contents>

10 Arbitration

- Going to court can be very expensive
- Mainly law firms benefit from it
- Contract should contain a clause the parties agree to accept an independent arbitrator's decision
 - The president of the BCS or the president of IEE
- If arbitration is required it will take place in accordance with the Arbitration Act 1996
- The Act of parliament defined the set of rules for arbitration that cover many eventualities

11 Contract Hire

- Supplier agrees to provide to a customer some staff with specific skills for an agreed rate
- Payment is set at a fixed daily / hourly rate:
 - based on skills and experience of staff
 - terminated by either party at short notice (e.g. 1 week)
- Supplier is only responsible to:
 - provide competent staff
 - replace missing / unsuitable staff quickly
- Ownership of IP must be addressed.

11.1 Consultancy

- A version of a contract hire
 - much simpler contract
- Consultants are experts hired to:
 - assess some aspect of an organisation
 - propose solutions to problems
- Fixed-price, usually small amount.
- A report is delivered as the final product. Success measure is harder than products delivered in fixed-price contracts

11.1.1 Main components

- Confidentiality agreement
- Terms of reference
 - Important to refer to it to solve disagreements.
- Liability
- Control over the final version of the report
- Usually no early termination of the contract:
 - end product is usually a report
 - difficult to prove that the services are not good

12 Outsourcing

- Handing over specific company functions to another specialized company
- Contracts can be complex:
 - how is performance to be monitored / judged
 - * what if not satisfactory
 - rates and duration
 - intellectual property rights
 - transferring / removing own staff, previously doing this job
 - contingency planning / disaster recovery
 - Service level agreement - related to performance monitoring

13 Licence agreements

- Customers buy copies of software
- There may be many different agreements
 - To use one copy
 - Run software on server, limiting the maximum number of users
 - Use unlimited number of copies
- Vendors concern:
 - Not giving away its own rights
 - Limiting customers' use of the software
 - Regular income from support activities
 - Not liable for any defects

14 Liability for defective software

- Software suppliers always try to limit their contractual commitment for quality
- In most contracts, their liability is limited to:
 - the purchase price, or
 - some fixed amount
- Unfair Contract Terms Act (1977) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/284426/oft311.pdf:
 - sets some minimum limits of the liability of suppliers
 - no limit if product defect causes death or injury
 - * important for safety-critical software
- Courts may judge liability issues case-specifically: