



# COMPUTER CONTRACTS

## CHAPTER 5



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- What is a Contract
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- Types of 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

- 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
- Authority Section
- A set of appendices or annexes



# THE INTRODUCTORY SECTION

- The first part of the **contract is brief**; it states that it is an agreement between the **parties whose names and registered addresses** are given.
- It often begins with a **set of definitions** of terms used in the **course of the agreement**
- For example, the definitions section will tell us **that Company X Ltd**, the **software house**, is to be referred to throughout the contract as **“The Company”**, and **Company Y Ltd**, which has commissioned the work, is to be known throughout as **“The Client”**.

# WHAT IS TO BE PRODUCED

- It is clearly necessary that the contract states **what is to be produced**.
- Refers to a separate document which constitutes the **requirements specification**.
- Software engineers will be familiar with the problems of **producing requirements**
- A **specification** sets out the detailed requirements of the client. Ideally, the Specification should be complete, consistent and accurate and set out all that the client wants to be done in the performance of the contract

# WHAT IS TO BE DELIVERED

- Producing software for a client is not, usually, a matter of simply handing over the text of a program which does what is required.
- The following is a non-exhaustive list of possibilities:
  - source code;
  - command files for building the executable code from the source and for installing it;
  - documentation of the design and of the code;
  - training manuals and operations manuals;
  - software tools to help maintain the code;
  - user training;
  - training for the client's maintenance staff;
  - test data and test results.

# OWNERSHIP OF RIGHTS

- Contract should state what legal rights are being passed by the software house to 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.
- The commissioning client may well have to pass confidential information about its business operations to the software house. On the other side of the coin, the software house may not want the client to divulge to others details of the program content or other information gleaned about its operations by the client.

# 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.
- It happens not infrequently that progress on the development of a piece of software is delayed by the failure of the client to meet obligations on time.
- While the supplier will be expected to use its best activities so as to avoid wasting effort, this is not always possible.
- The contract should therefore make provision for payments to compensate for the wasted effort, incurred, for example, when the client fails to provide information on a due date or when changes are requested which result in extra work.

# 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.
- The following is a (non-exhaustive) list of possibilities:
  - provide documentation on aspects of the client's activities or the environment in which the system will run;
  - provide access to appropriate members of staff;
  - provide machine facilities for development and testing;
  - provide accommodation, telephone and secretarial facilities for the company's staff
  - **when working on the client's premises;**
    - provide data communications facilities to the site.

# STANDARDS AND METHODS OF WORKING

- The supplier is likely to have company standards, methods of working, quality assurance procedures, etc. and will normally prefer to use these. More sophisticated clients will have their own procedures and may require that these be adhered to.
- In some cases, the supplier may be required to allow the client to apply quality control procedures to the project. The contract must specify which is to apply.

# PROJECT MANAGERS

- Each party needs to know who, of the other party's staff, has day-to-day responsibility for the work and what the limits of that person's authority are. The standard terms and conditions should therefore require each party to nominate, in writing, a Project Manager.
- The Project Managers must have at least the authority necessary to fulfil the obligations which the contract places on them. It is particularly important that the limits of their financial authority are explicitly stated, i.e. the extent to which they can authorize changes to the cost of the contract.

# ACCEPTANCE PROCEDURE

- Acceptance procedures are a critical part of contract for they provide the criteria by which successful completion of the contract is judged.
- The essence of the acceptance procedure is that the client should provide a fixed set of acceptance tests and expected results and that successful performance of these tests shall constitute acceptance of the system.

# INDEMNITY

- It could happen that, as a result of the client's instructions, the supplier is led unwittingly to infringe the intellectual property rights of a third party or that, through carelessness or dishonesty, the supplier provides a system which infringes such rights—perhaps through using proprietary software as a component of the system delivered. For this reason, it is advisable to include a clause under which each party indemnifies the other for liability arising from its own faults in this respect.

# TERMINATION OF THE CONTRACT

- There are many reasons why it may become necessary to terminate a contract before it has been completed.
- for example, for the client to be taken over by another company which already has a system of the type being developed, or for a change in policy on the part of the client to mean that the system is no longer relevant to its needs the contract make provision for terminating the work in an amicable manner

# ARBITRATION

- If the event of a dispute that cannot be resolved by the parties themselves, they agree to accept the decision of an independent arbitrator.

# INFLATION

- In lengthy projects or projects where there is a commitment to long term maintenance, the supplier will wish to ensure protection against the effects of unpredictable inflation.
- To handle this problem, it is customary to include a clause which allows charges to be increased in accordance with the rise in costs.



# APPLICABLE LAW

- Where the supplier and the client have their registered offices in different legal jurisdictions or performance of the contract involves more than one jurisdiction, it is necessary to state under which laws the contract is to be interpreted.

# WARRANTY AND MAINTENANCE

- Once the product has been accepted, it is common practice to offer a warranty period of, typically, 90 days. Any errors found in the software and reported within this period will be corrected free of charge. This clause is, of course, subject to negotiation; reducing or eliminating the warranty period will reduce the overall cost of the contract and prolonging the period will increase it.
- Once the warranty period is over, the supplier may offer, or the client demand, that maintenance will continue to be available on request. Since such maintenance is likely to involve enhancement of the software rather than simply correction of faults, the resources required are unpredictable—the client almost certainly does not know what enhancements will be required in two years' time. For this reason, a fixed price for the maintenance will not be appropriate. Maintenance will therefore usually be charged on a time and materials basis; the client may possibly be required to commit to taking a fixed number of days of effort each year in order to compensate the supplier for the need to retain knowledge of the system.

# THE AUTHORITY SECTION

- The authorities of both party signature on the term and conditions mentioned in the clause section.
- The most Important things are Starting and ending date of an Agreement.
- Only an Authorized person from each party is mentioned in this Section.

# PROGRESS MEETINGS

- Regular progress meetings are essential to the successful completion of a fixed price contract and it is advisable that standard terms and conditions require them to be held. The minutes of progress meetings, duly approved and signed, should have contractual significance in that they constitute evidence that milestones have been reached



# **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.
- Under a contract hire agreement, the supplier agrees to provide the services of one or more staff to work for the client; the staff work under the direction of the client and the supplier's responsibility is limited to providing suitably competent people and replacing them if they become unavailable or are adjudged unsuitable by the client. Payment is on the basis of a fixed rate for each man day worked; the rate depends on the experience and qualifications of the staff.



**TIMES AND**  
**MATERIALS**

# TIMES AND MATERIALS

- A time and materials contract (often referred to as a “cost plus” contract) is somewhere between a contract hire agreement and a 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 costs incurred, with labour 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.
- Consultants are typically used to assess some aspect of an organization and to make proposals for improvements. The end product of a consultancy project is therefore usually a report or other document.
- Consultancy projects are usually undertaken for a fixed price but the form of contract is very much simpler than the fixed price contracts so far described.